

## Legal Implications For Regulating Investigation Authority In Accident Cases At Railroad Crossings

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### **ABSTRACT**

*The purpose of this research is to find out the legal implications of regulating the investigative authority in cases of accidents at railroad crossings. The research method used in this study is normative juridical research using a statutory approach, and a conceptual approach. The results obtained from this study are the implications arising from different provisions of Law Number 22 of 2009 concerning Road Traffic and Transportation, and Law Number 23 of 2007 concerning Railways is that there is a tug of war on the authority of investigation between related agencies, namely Police Investigators and Railway PPNS. The tug-of-war of this investigative authority resulted in a conflict of investigative authority, where Police investigators conducted investigations based on the provisions of the Criminal Code, while the Railway PPNS conducted investigations based on the provisions of Law Number 23 of 2007 concerning Railways.*

**Keywords:** *Legal Implications; Authority; Investigation; And Railways.*

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### **INTRODUCTION**

Train is one of the transportation mode which needed by the Indonesian people, especially in Java Island. This is because the train travel time is more efficient and the congestion factor is relatively low. Trains are one of the vehicles that get a lot of government attention in order to improve road safety, from year-to-year improvements it has been made, either from train maintenance or from human resources on the railway side. According to data from the Directorate General of Railways for the period of 2014-2019, the train accidents noted have been reached 526 incidents including 22 collisions between trains, 74 incidents of trains and other vehicles colliding, 254 train crashes and overturned events, 16 accidents due to floods/landslides, and 880 accidents due to miscellaneous/criminal.<sup>1</sup>

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<sup>1</sup> Suwardi, Rossa Ilma Silfiah, and Heru Kuswanto. (2018). "Kebijakan Publik Tentang Sistem Keselamatan Dan Keamanan Perkeretaapian Di Indonesia". *Prosiding Seminar Nasional Hasil Penelitian dan Pengabdian kepada Masyarakat III Universitas PGRI Ronggolawe Tuban*

Railroad crossing is one of the most important factors in preventing accidents.<sup>2</sup> One of the accidents at the Bintaro railway crossing on December 9, 2013 was caused by a problem at the railway crossing entrance. According to the witness, the BT tanker crashed. Pertamina broke down the sliding door and closed the intersection. However, it is believed to have delayed the closure of the railway crossing. In particular, we see that the level exit system in Indonesian railways plays an important role in reducing the accident rate at railway crossings.<sup>3</sup>

At the end of 2013, there was an accident between the Commuter Line KRL and a tanker truck loaded with fuel oil, with 6 deaths and 80 injuries. The incident took place right at the gate of the PondokBetung JPL train crossing, South Jakarta and the first person to be questioned was Pamuji because he was a crossing gate guard officer. Pamuji explained that he had acted according to the procedure, after the Serpong - Tanah Abang Electric Rail Train with train number 1131 departed from PondokRanji Station. Pamuji as the railroad crossing gate guard had notified and turned on the crossing siren followed by the lowering of the gate-stop. According to information, Pamuji ran out of his guard post when he saw the PT. Pertamina barged into the railroad crossing although the siren signaling the passing train had been turned on, Pamuji got even more panicky when he saw the tanker truck numbered B 9265 SEH stopped in the middle of the train track. Pamuji immediately ran to the truck while waving a red flag and directing the truck to back off. However, because the truck driven by Khosimin and supported by Mujiono had gone too far, Pamuji ordered the tanker truck driver to keep going, and Pamuji pointed the red flag towards the coachman's ground. Based on his statement, Pamuji stated that he did not know whether the car engine got off or not, what was certain was that the car stopped in the middle of the track and the train came with a speed of about 70 km/h, KRL having passengers hit the truck and caused fuel that was being brought exploded.<sup>4</sup>

Law is a means owned by the state to create justice, certainty, peace (harmony between order and peace), happiness, and as a tool for community renewal. Justice is a balance between rights and obligations, where justice is a condition that reflects the values that grow and develop together for society.<sup>5</sup> The purpose of the law must be as useful as possible to achieve the greatest happiness for society. The law is enforced for the sake of legal certainty that is able to protect the interests of its citizens. According to the authority theory, the source of government authority in conducting their legal actions are both in public law and private law. Indroharto stated that there are three kinds of authorities are attribution, delegation and mandate.<sup>6</sup>

If it is in accordance with the theory of investigation, the authority possessed by the investigator in carrying out an investigation into cases of accidents at railroad crossings is the authority of the legislators in force in the laws and regulations governing investigators. Investigators are one of the government organs as part of the sub-criminal justice system. In the criminal justice system, investigation is the initial process to find out the facts of a criminal incident. Investigators are authorized to conduct a thorough examination, collect evidence in order to find suspects of criminal acts.<sup>7</sup>

<sup>2</sup> Idhar Resmadi. (2014). "Kajian Moralitas Teknologi Pintu Perlintasan Kereta Api (Studi Kasus: Pintu Perlintasan Kereta Api Cikudapateuh Bandung)". *Jurnal Sosioteknologi*

<sup>3</sup> Roy Rizki. (2014). "Analisis Wacana Kritis Pada Pemberitaan Pasca Tragedi Bintaro 2". *Erudio Journal of Educational Innovation*

<sup>4</sup> Siti Fatimah. (2019). "Pengantar Transportasi," *Myria Publisher*

<sup>5</sup> Adelia Dwi Agata. (2020). "Perlindungan Penumpang Kecelakaan Kereta Api Di Daerah Operasi 4 Semarang." *Jurnal Ilmiah Dinamika Hukum*

<sup>6</sup> Ridwan HR. (2008). *Hukum Administrasi Negara*. Jakarta: Raja GrafindoPersada, p. 104

<sup>7</sup> Gabriella Evangelista and Siti Nurbaiti. (2019). "Perlindungan Hukum Atas Hak Kenyamanan Konsumen Sebagai Pengguna Jasa Tranportasi Kereta Api Commuter Line Khusus Wanita". *Jurnal Hukum Adigama*

However, just like Pamuji as one of the many other railroad guards said, he often becomes the main suspect in the event of an accident at the railroad crossing he guards.<sup>8</sup> As we know, drivers or riders also sometimes do not heed traffic signs and often break through railroad crossings resulting in train accidents. Drivers who are victims of accidents are not named as suspects, but it is often the railroad crossing guards who become suspects for the accident. Based on the above background, the authors would like to examine more deeply related problems, namely those related to the legal implications of regulating the investigative authority in cases of accidents at railroad crossings.

## METHOD

This research is a normative-juridical research using statutory approach and conceptual approach. This research is a normative juridical with a literature study, namely by studying journals, books, legislation and other documents related to this research. Normative law is directly related to the practice of law which involves two main aspects, namely the formation of law and the application of law.<sup>9</sup> The research is analyzed descriptively by describing the facts in the form of data with legal materials in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are from binding laws and regulations, secondary legal materials are originating from the library, both printed textbooks, papers, and scientific journals obtained through libraries and online and tertiary legal materials, namely dictionaries of law relating to the regulation of investigative authority in cases of accidents at railroad crossings.

The data needed in this paper are primary and secondary data. Primary data is data obtained from the field. Researchers obtained data from direct interviews with source person in the form of academics and practitioners regarding the regulation of investigative authority in cases of accidents at railroad crossings. Secondary data is material obtained from the library which includes official documents, library books, laws and regulations, scientific works, articles, and documents related to research materials.

Data collection technique is carried out through reviewing data obtained from research in the field, legislation, textbooks, research results, journals, articles and others, as well as browsing on several internet sites related to the subject taken, concerning the regulation of investigative authority in cases of accidents at railroad crossings.

The result of the research is presented in the form of descriptions that are arranged systematically, meaning that the primary data and secondary data obtained will be linked each other according to the problems studied, thus, it is a unified whole in accordance with research needs.

## ANALYSIS AND DISCUSSION

### The Phenomenon of Accidents at Railway Crossings of PT. Indonesian Railways

PT. Kereta Api Indonesia as the operator of the train service provider in Indonesia has determined SOP (Standard Operating Procedure) and SPM (Minimum Service Standard) which, among other things, prioritizes the safety and security of service users.<sup>10</sup> Train travel safety is the priority of PT. Indonesian Railways as operator. In practice, accidents are things that may happen and if there is a train accident, an investigation will be carried out by Civil Servant Investigators (hereafter called PPNS) in coordination with the Police to find out the cause

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<sup>8</sup> Aldi Subhan Lubis. (2019). "Pelaksanaan Pembayaran Ganti Rugi Dalam Kegiatan Pengadaan Tanah Pembangunan Jalur Kereta Api Bandara Soekarno-Hatta Terhadap Bidang Tanah Yang Tidak Memiliki Alas Hak." *Doktrina: Journal Of Law*.

<sup>9</sup> Rusli, Hardijan. (2006). "Metode Penelitian Hukum Normatif: Bagaimana?." *Law Review*, Volume V. No. 3. p. 50.

<sup>10</sup> Jumardi Jumardi *et al.*, (2020). "Perkembangan Transportasi Kereta Api Di Jakarta." *Jurnal Patingalloang*

of the accident so that similar accidents do not happen again in the future.<sup>11</sup> The intersection between highways and railroads is a unique phenomenon in the world of transportation, because each mode of transportation has a different infrastructure system, operates with a different system of facilities, and the person in charge and manager is also different. The two modes of transportation with different characteristics meet at the level crossing so that the area has a high risk for all railways in the world.

In Indonesia throughout 2020, there have been a total of 231 train accidents, consisting of collisions between trains and trains 6 times, between trains and road vehicles at crossing gates is 58, trains falling/rolling over is 69, train accidents due to floods/landslides is 12, and other accidents is 86. The train accident has claimed 76 lives, 114 seriously injured, and 58 lightly injured. Accidents at crossings account for 25.11% of all train accidents. From 8,370 crossing gates in Java and Sumatra, 1,128 (13.48%) of which is guarded and 7,242 (86.52%) of which is not.<sup>12</sup>

The provisions governing railway level crossings are contained in the Regulation of the Director General of Land Transportation Number: SK.770/KA.401/DRJD/2005 concerning Technical Guidelines for Level Crossing between Roads and Railroads.<sup>13</sup> The regulation provides requirements that must be met for level crossings between roads and good railroads, such as the presence of doorstops, traffic signs, road markings, signal lights, and even the degree of slope for level crossings. These provisions should be fulfilled in order to maintain the safety of the souls of train service users and motorized vehicle drivers when crossing level crosses between roads and railways.<sup>14</sup>

### **Causes of Accidents at Railroad Crossings**

The main causes of accidents at crossing gates can be identified in the form of ones described in the following.<sup>15</sup>

- a. Community discipline is remain low therefore there are often mass violations by vehicle drivers against the rules related to crossing procedures through crossing gates.
- b. Misperceptions of vehicle drivers regarding road conditions, the operating mechanism of the train approaching the crossing gate (including the braking ability of the train), as well as the speed of the vehicle and its braking ability.
- c. Malfunction/technical damage to the vehicle.
- d. Non-compliance with road maintenance standards by road authorities in the area around crossing gates.
- e. Poor maintenance of protection systems and warning systems at crossing gates.
- f. Human error made by the crossing gatekeeper.

### **Legal Conflict Regarding the Investigation Authority in Railroad Crossings**

Regulations in the railway sector include Law Number 23 Year 2007 concerning Railways, Government Regulation Number 56 Year 2009 concerning Railway Operations, and

<sup>11</sup> Anton Budiharjo and Isro Febrian Yunarto. (2019). "Kajian Peningkatan Keselamatan Perlintasan Sebidang Kereta Api Grogol Di Kabupaten Tegal Study On Improving The Safety Of The Crossroads Of The Grogol Railway In The Tegal Regency." *Jurnal Keselamatan Transportasi Jalan (Indonesian Journal of Road Safety)*

<sup>12</sup> Bagus Priyo Pangestu, Barlian Henryranu Prasetyo, and Gembong Edhi Setyawan. (2017). "Implementasi Kendali Palang Pintu Kereta Api Menggunakan IR Sensor Dan NRF24L01". *Jurnal Pengembangan Teknologi Informasi dan Ilmu Komputer*

<sup>13</sup> Budiharjo and Yunarto, "Kajian Peningkatan Keselamatan Perlintasan Sebidang Kereta Api Grogol Di Kabupaten Tegal Study On Improving The Safety Of The Crossroads Of The Grogol Railway In The Tegal Regency". *Jurnal Keselamatan Transportasi*

<sup>14</sup> Kristian Nurseto. (2017). "Implementasi Undang-Undang Nomor 23 Tahun 2007 Tentang Perkeretaapian Mengenai Larangan Mendirikan Bangunan di Sempadan Rel Kereta Api Surabaya". *Novum: Jurnal Hukum*

<sup>15</sup> Sigit Dimas Imadudin Satrianto Kiki Aprilli Yannik. (2016). "Palang Pintu Otomatis Dengan Countdown Sebagai Upaya Menghindari Kecelakaan Di Perlintasan Kereta," *Pelita - Jurnal Penelitian Mahasiswa UNY*

Government Regulation Number 72 Year 2009 concerning Railway Traffic and Transportation. In addition, there is a regulation related to train which is Law No. 22 Year 2009 concerning Road Traffic and Transportation.<sup>16</sup> To enforce law enforcement officers in the railway sector, the investigation of railway cases must be carried out as well as possible.<sup>17</sup>

Law Number 22 Year 2009 concerning Road Traffic and Transportation provides provisions regarding the authority of the investigation to be in the hands of the Police of the Republic of Indonesia,<sup>18</sup> where members of the Indonesian National Police who can become investigators are at least the rank of Inspector Two, and the related investigator's authority is regulated in Article 260 paragraph (1), described in the following:

1. Stopping, prohibiting, or delaying the operation and temporarily confiscate motorized vehicles that are reasonably suspected of violating traffic regulations or are tools and/or proceeds of crime;
2. Examining the truth of information relating to the investigation of criminal acts in the field of traffic and road transportation;
3. Requesting information from drivers, motorized vehicle owners, and/or public transportation companies;
4. Confiscating driving licenses, motorized vehicles, cargo, motorized vehicle registration certificates, motorized vehicle trial certificates, and/or test pass marks as evidence;
5. Taking action against criminal acts of traffic violations or crimes according to the provisions of laws and regulations;
6. Making and signing the minutes of inspection;
7. Stopping the investigation if there is not enough evidence;
8. Making detentions related to traffic crimes; and/or
9. Taking other actions according to the law in a responsible manner.

Due to the insufficient number of investigators in Indonesia, this authority can be delegated to assistant investigators as described in Article 261 of Law Number 22 Year 2009 concerning Road Traffic and Transportation, which in full, the article reads "auxiliary investigators as referred to in Article 259 paragraph (2) letter b has the authority as referred to in Article 260 paragraph (1) letter h which must be delegated authority from the investigators of the state police of the Republic of Indonesia in the field of traffic and road transportation."<sup>19</sup>

Based on Law Number 23 Year 2007 concerning Railways, it is known that Railway Civil Servant Investigators (PPNS) are given the authority to carry out law enforcement in the railway sector.<sup>20</sup> Law enforcement is carried out through investigations contained in Chapter

<sup>16</sup> Dhya Wulandar. (2019). "Peranan Kepolisian Dalam Penanggulangan Balapan Liar Menurut Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas Dan Angkutan Jalan (Studi Kasus Di Polres Bone)". *Jurnal Al-Dustur : Journal of Politic and Islamic Law*

<sup>17</sup> Indonesia Ministry Of Transportation. (2007). "Undang-Undang Republik Indonesia Nomor 23 Tahun 2007 Tentang Perkeretaapian," *Indonesia, Ministry Of Transportation* a selector valve, a multi-port valve, a gas-liquid separator and a solenoid valve for the determination of arsenic by hydride generation atomic absorption spectrometry using tetrahydroborate as reductant was developed. The reduction time of sample with tetrahydroborate has increased by keeping the reactant in gas-liquid separator by using the solenoid valve. Various parameters affecting the performance of the sequential injection system were optimized, including reaction-time, carrier gas flow, sample volume, tetrahydroborate volume and concentration. Established sequential injection hydride generation technique was simple and automated operation. A sample throughput of 112/h was achieved with 400 µL samples with a precision of 2.0% RSD at 4 µg/L As (n = 10)

<sup>18</sup> Rudolf Silaban and Indah Malau Pase. (2021). "Tinjauan Yuridis Sanksi Pidana Terhadap Pelaku Pelanggaran Lalu Lintas Menurut Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas Dan Angkutan Jalan". *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana*

<sup>19</sup> Shylvia Sandra Djaleha. (2018). "Penggunaan Sepeda Motor Sebagai Transportasi Komersial Menurut Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas Dan Angkutan Jalan". *Lex Privatum*

<sup>20</sup> Ministry of Transportation, "Undang-Undang Republik Indonesia Nomor 23 Tahun 2007 Tentang Perkeretaapian" a selector valve, a multi-port valve, a gas-liquid separator and a solenoid valve for the determination of arsenic by hydride generation atomic absorption spectrometry using tetrahydroborate as reductant was developed. The reduction time of sample with tetrahydroborate has increased by keeping the reactant in gas-liquid separator by using the solenoid valve. Various parameters affecting the performance of the sequential injection system were optimized, including reaction-time, carrier gas flow, sample

XVI Investigation, specifically Article 186 which states that “Certain Civil Servant Officials in the railway sector may be given special authority as investigators as referred to in Law Number 8 Year 1981 concerning Criminal Procedure Code to conduct investigation of violations of provisions such as<sup>21</sup> Civil Servant Investigators, referred to are authorized to:

1. Examining the veracity of reports, complaints, or information regarding the occurrence of criminal acts in the railway sector;
2. Summoning people to be heard as witnesses and/or suspects of criminal acts in the railway sector;
3. Conducting searches, seals, and/or confiscates the equipment used to commit criminal acts in the railway sector;
4. Carrying out an examination of the place where the crime took place and other places where evidence of a crime in the railway sector is suspected;
5. Confiscating evidence of criminal acts in the railway sector;
6. Requesting information and evidence from individuals and/or legal entities for the occurrence of criminal acts in the railway sector;
7. Bringing in the experts needed for the investigation of criminal acts in the railway sector;
8. Preparing and signing minutes of examination of criminal cases in the railway sector; and
9. Stopping the investigation if there is not enough evidence of a crime in the railway sector.

There is no superiority between Indonesian National Police Investigators and Transportation Service Civil Servants Investigators, both of whom have the same authority and should cooperate in the law enforcement efforts against the crime of train accidents at level crossings. However, in reality the facts that occur in the field are that the investigation is more likely to be carried out by Police Investigators who first arrive at the scene of the case and have made a criminal report in accordance with the provisions in the Criminal Code, while the investigation carried out by the Railway PPNS is only be a reference, and not necessarily the main reference in the criminal record. There is one legal principle which implies that special legal rules will override general legal rules.<sup>22</sup> The principle of **lex specialis derogat legi generalis** is a known principle of laws in various legal system, which is then translated that more specific regulations override general regulations.

Based on the description above, it is known that the case of investigating traffic accidents at railroad crossings is a crime that is included in the general criminal rules, namely Law Number 22 Year 2009 concerning Traffic and is also regulated in special criminal rules, namely Law Number 23 Year 2007 concerning Railways. Therefore, based on the principle of *lex specialis derogat legi generalis* which states that special legal provisions override general ones, the provisions that apply to the exercise of investigative authority in cases of traffic accidents at railroad crossings are the provisions contained in Law Number 23 Year 2007 concerning Railways.

If we refer to the principle of *lex specialis derogat legi generalis*, then PPNS Railways has full authority regarding cases of accidents at railroad crossings and criminal acts related to railways. This is because Law Number 23 of 2007 concerning Railways overrides laws of a general nature, namely the Criminal Code and Law Number 22 Year 2009 concerning Road Traffic and Transportation. However, because the Railway PPNS is now still lacking personnel

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volume, tetrahydroborate volume and concentration. Established sequential injection hydride generation technique was simple and automated operation. A sample throughput of 112/h was achieved with 400 µL samples with a precision of 2.0% RSD at 4 µg/L As (n = 10).

<sup>21</sup> Vinca Fransisca Yusefin and Sri Mulyati Chalil. (2018). “Penggunaan *Lie Detector* (Alat Pendeteksi Kebohongan) Dalam Proses Penyidikan Terhadap Tindak Pidana Dihubungkan Dengan Undang-Undang Nomor 8 Tahun 1981 Tentang Kitab Undang-Undang Hukum Acara Pidana”. *Wacana Paramarta: Jurnal Ilmu Hukum*

<sup>22</sup> Fikri La Hafi and Budiman Budiman. (2017). “Penerapan Asas *Lex Specialis Derogat Legi Generalis* Dan Penyelesaian Sengketa Ekonomi Dalam Undang-Undang Perbankan Syariah Di Indonesia”. *Al-Ihkam: Jurnal Hukum & Pranata Sosial*

to the regions, the presence of a Police Investigator who first comes to the crime scene can help the Railway PPNS to collect initial evidence and related information, although the one has authority to investigate is Railway PPNS.

Based on the discussion, it can be said that there has been a dualism of investigative authority in cases of accidents at railroad crossings, Law Number 22 of 2009 concerning Road Traffic and Transportation distributes its authority to Polri Investigators with the assistance of Assistant Investigators from related Civil Servants, while Law No. Law Number 23 of 2007 concerning Railways distributes its investigative authority to Civil Servant Investigators in the Railway sector. This has a legal implication that from the different provisions of Law Number 22 of 2009 concerning Road Traffic and Transportation, and Law Number 23 of 2007 concerning Railways, there is a tug of war on investigative authority between related agencies, namely Police Investigators and PPNS Railways. The tug-of-war of this investigative authority resulted in a conflict of investigative authority, where Police investigators conducted investigations based on the provisions of the Criminal Code, while the Railway PPNS conducted investigations based on the provisions of Law Number 23 of 2007 concerning Railways.

## CONCLUSION

The implication arising from the different provisions of Law Number 22 Year 2009 concerning Road Traffic and Transportation, and Law Number 23 Year 2007 concerning Railways is that there is a tug of war on investigative authority between relevant agencies, namely Police Investigators and Railway PPNS. The tug-of-war of this investigative authority resulted in a conflict of investigative authority, where Police Investigators conducted investigations based on the provisions of the Criminal Code, while the Railway PPNS conducted investigations based on the provisions of Law Number 23 Year 2007 concerning Railways.

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