

REVIEW OF CRIMINAL LAW ON LAW NUMBER 22 OF 2009 ARTICLE 24 JO ARTICLE 273 CONCERNING TRAFFIC AND ROAD TRANSPORTATION FROM THE ASPECT OF HUMAN RIGHTS

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Abstract

As mandated by the 1945 Constitution of the Republic of Indonesia, traffic and road transportation have a strategic role in supporting national development and integration in an effort to advance public welfare. As part of the national transportation system, traffic and road transportation must be developed their potential and role to realize security, welfare, traffic order and road transportation in order to support the national transportation system. The fact that accidents on the highway often occur is not only due to natural factors or the fault of the rider, but also due to the large number of damaged roads, such as potholes, cracks and uneven road surfaces. In many cases, motorists die from avoiding potholes, resulting in loss of life and property. As road operators, the government must be held criminally accountable for their inability to repair roads.

This paper examines Law Number 22 of 2009 concerning Road Traffic and Transportation regulates law enforcement against road accidents caused by damaged roads. This law establishes criminal sanctions for road operators who do not repair damaged roads quickly. Thus, the perpetrator or the road operator can be held responsible in accordance with the law. However, those hopes are still limited to "discourse in the law" and questions about accidents caused by damaged roads, in which motorists are still the main suspects and continue to be. If we judge from the aspect of human rights, then everyone has the right to get legal certainty in the form of safety guarantees in traffic.

This study shows that based on article 273 of Law Number 22 of 2009 concerning Road Traffic and Transportation, material criminal acts committed by road operators are considered impure passive criminal acts in the case of traffic accidents that have an impact on road damage. Because the formulation of Law Number 22 of 1999 concerning Road Traffic and Transportation article 240 letter b provides legal protection for motorists who have an accident due to road damage, people who are victims of road traffic accidents can file a lawsuit against the party that caused the loss. In addition, in Law Number 22 of 1999 concerning Road Traffic and Transportation, the criminal liability of road operators to the victims.

Keywords : Traffic, road transport, human rights

INTRODUCTION

Traffic and road transportation play an important role in supporting development and strengthening national integration, as a form of implementing the mandate of the 1945 Constitution of the Republic of Indonesia to improve people's welfare. As an element of the national transportation system, this sector needs to

optimize its function and capacity to create safe, orderly, and prosperous traffic conditions. The development is also expected to support economic growth, scientific and technological advancement, the implementation of regional autonomy,

and increased responsibility in the administration of government.¹

Vehicle factors that often trigger accidents include broken tires, braking systems that do not work properly, and the use of vehicle components that are worn or not suitable but are still used without maintenance or replacement. In addition, there are also various other technical factors that can increase the risk of traffic accidents. Meanwhile, road condition factors include aspects such as the speed of the road plan, geometric design, the existence of safety fences in mountainous areas, the availability of road medians, adequate visibility, and the quality of the road surface. Roads that are damaged or potholed have the potential to cause accidents and endanger the safety of users, especially passing motorists.²

Road Traffic and Transportation (LLAJ) is a part that is very close to people's lives, it can even be likened to blood flow in the human body. Every day, people always interact with road transportation facilities to meet various needs. The development of LLAJ in Indonesia itself has gone through various phases, starting from the Dutch colonial period to the current reform era. Roads as transportation facilities are vital infrastructure that plays an important role in human activities. In the context of the transportation system, the existence of roads supports progress in various fields, including economic, social, and cultural.³ Roads also play a role in encouraging the development of a region so that balance and

equitable development between regions are created, which can ultimately help achieve national development goals.⁴ Seeing how important the role of roads is in supporting national development goals, efforts to improve and monitor the quality of roads need to be carried out on an ongoing basis. To support this, the government has stipulated Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation.

The implementation of Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation has brought significant changes in the implementation of traffic in Indonesia. This is because roads function as the main means for people to carry out mobility and meet various needs in the social, economic, political, cultural, defense, and security fields, as affirmed in the mandate of the 1945 Constitution of the Republic of Indonesia regarding the strategic role of roads.

In addition, the presence of this law also marks an important update in traffic management regulations compared to the previous regulation, namely Law Number 14 of 1992 concerning Road Traffic and Transportation. The change is clearly seen in Article 273 of Law Number 22 of 2009 which contains criminal provisions against road operators, including:

1. Road operators who do not immediately and properly repair road damage as stipulated in Article 24 paragraph (1), so as to cause accidents that result in minor

¹ Baso Hamka, "Criminological Review of Traffic Accident Crimes at the Maros Police (Case Study 2014 - 2015)", Makassar: Faculty of Law, Hasanuddin University, 2017, p. 1.

² Soerjono Soekanto, 1984, *Inventory and Analysis of Traffic Legislation*, Jakarta: CV. Rajawali, p. 21. Broadly speaking, traffic accidents tend to be caused by 4 (four) interrelated factors, namely human factors, vehicle factors, highway factors and environmental factors. In essence, violations or accidents that occur on the highway that often occur can be said to be at fault with highway users (human factors) who do not obey and comply with

applicable regulations. The shortcomings that exist in humans as highway users, especially lack of discipline are the main causes of traffic accidents. See Agio V Sangki, "Criminal Liability of Vehicle Drivers Resulting in Death in Traffic Accidents", in *Jurnal Lex Crimen*, Volume I, Number 1, January-March 2012, p. 2.

³ Article 1 Paragraph (3) of Law No. 34 of 2006 concerning Roads

⁴ Ministry of Public Works. 2012. *Legislative Arrangements on Roads*. Jakarta: Ministry of Public Works. p. 1.

injuries and/or damage to vehicles or goods, shall be sentenced to a maximum of six months in prison or a maximum fine of Rp12,000,000.00.

2. If the negligence results in the victim being seriously injured, the organizer can be sentenced to a maximum of one year in prison or a fine of up to Rp24,000,000.00.
3. If the damage to the road that is not immediately repaired causes the victim to die, the criminal threat increases to imprisonment for a maximum of five years or a maximum fine of Rp120,000,000.00.
4. Road operators who do not install signs or signs on damaged roads that have not been repaired as stipulated in Article 24 paragraph (2) can be subject to imprisonment for a maximum of six months or a fine of up to Rp1,500,000.00

Based on the provisions of Article 273 of the Road Traffic and Transportation Law, it is explained that if the road operator does not immediately make repairs to the road damage, and this condition results in minor injuries, vehicle damage, serious injuries, and causing death, then the operator can be subject to criminal sanctions as stated in the article. Although this regulation has been in effect until now, the reality is that accidents triggered by damaged road conditions still continue to occur.

Provisions regarding negligence in traffic accidents that occur due to the non-implementation of road maintenance have not been regulated in Law Number 14 of 1992 concerning Road Traffic and Transportation, Law Number 38 of 2004 concerning Roads, and Government Regulation Number 34 of 2006 concerning Roads. Therefore, the criminal legal basis related to this issue still refers to Article 359 and Article 360 of the Criminal Code (KUHP).

From this description, it can be concluded that the government, both at the central and regional levels, can be held criminally responsible if it allows road damage to cause casualties. Article 24 paragraph (1) of Law Number 22 of 2009 concerning Road Traffic and Transportation emphasizes that road operators are obliged to immediately and appropriately repair road damage that has the potential to cause accidents. If these obligations are not carried out and the road damage results in an accident that causes minor injury and/or damage to vehicles and goods, the organizer can be subject to a maximum prison sentence of six months or a fine of up to IDR 12,000,000.00 in accordance with the provisions of Article 273 paragraph (1).

In various cases of traffic accidents caused by road damage, not a few people have filed a lawsuit with the government to demand compensation and demand responsibility for the loss of life. However, in reality, most people often experience defeat in the trial process. In fact, the Road Traffic and Transportation Law has actually provided an opportunity for aggrieved parties to sue road operators.

This research is different from the previous research as follows:

1. Dian Lestarinig Budhiarto (2016) in her research entitled *Analysis of Article 24 Juncto Article 273 of Law Number 22 of 2009 concerning Road Traffic and Transportation for Road Operators Who Do Not Fulfill the Obligation* to examine the responsibility of road operators along with the application of criminal sanctions as stipulated in Article 24 jo. Article 273 of Law 22/2009. The study highlights several problems, such as the lack of a clear definition of road operators, the absence of a definite deadline regarding the obligation to repair damaged roads, and the use of traffic signs or signs during the repair period. The author suggests that these provisions be clarified through additional regulations to avoid the

occurrence of diverse interpretations. The fundamental difference with the research I compiled is that it does not look at this issue through the perspective of human rights, particularly the right to safety and the right to public services. The emphasis is more on normative studies related to the formulation of articles and interpretive aspects of the law. On the contrary, my research includes an analysis of the suitability of criminal sanctions against human rights principles and principles, not just highlighting editorial shortcomings in the applicable legal norms.

2. Deddy Kurniawan (2025) in his research entitled *Criminal Liability of Road Operators* concluded that the application of criminal sanctions against violations of Article 273 of Law Number 22 of 2009 still does not provide legal certainty because until now there has been no court decision with permanent legal force. This condition makes criminal enforcement against negligent road operators not running effectively, so that the community as victims continues to suffer losses.

PROBLEM FORMULATION

Based on the above background description and to emphasize the role of law in handling traffic accident cases that occur due to poor condition of road facilities, the formulation of the problem in this study can be detailed as follows:

1. What is the position of the Road Operator as a legal subject in the event of a traffic accident?
2. What are the factors that result in law enforcement of Article 273 of Law Number 22 of 2009 concerning Road Traffic and Transportation not running effectively?

RESEARCH METHODS

This research uses a normative legal research method (doctrinal research), because the focus of the research is to

evaluate the norms, principles, and legal concepts regarding the principle of equality before the law and criminal cover. This research analyzes relevant laws and regulations, doctrines, court decisions, and scientific works. To enrich the perspective, this normative research is supported by a limited non-doctrinal approach, in the form of observations on the practice of the application of cover crimes in court decisions and public discourse. The research uses several approaches, namely the legislative approach, the conceptual approach, the case approach and the historical approach. The researcher uses primary, secondary and tertiary legal materials. After the field data is obtained, conclusions are drawn. The method of drawing deductive conclusions draws conclusions from the general to the specific.

RESULTS OF RESEARCH AND DISCUSSION

1. Road operators as legal subjects for traffic accident cases

Juridically, road operators are parties mandated by the state to ensure the availability of road infrastructure that meets safety and feasibility standards for all users. This responsibility includes construction activities, routine maintenance, damage repair, and supervision of road conditions so as not to cause potential hazards. Law Number 22 of 2009 concerning Road Traffic and Transportation emphasizes that when there is damage to the road, the organizers are obliged to immediately take repair actions, and during the process, they are obliged to place clear warning signs or signs to prevent accidents. This provision is a manifestation of the state's obligation to provide protection and ensure public safety as part of essential public services.

Furthermore, positive law, especially Article 273 of the LLAJ Law, stipulates that road operators can be held criminally liable if they neglect these obligations resulting in traffic accidents. Thus, its position is not only as an

administrative institution that manages transportation facilities, but also as a subject of criminal law that can be sanctioned if proven negligent. This regulation confirms that any act or omission of a road operator has serious legal consequences, especially when non-compliance with safety standards leads to loss or fatalities on the road.⁵

The results of the study show that what is meant as a road operator is not only limited to one institution, but includes the central government, local governments, officials who are given special authority, and various other stakeholders involved in the process of road management, maintenance, and supervision. All of these entities are legally positioned as subjects who can be held criminally liable if they do not carry out their obligations to immediately deal with road damage, and such negligence then leads to traffic accidents. This regulation confirms that the obligations of road operators are not only administrative or managerial, but also have more serious legal consequences in the form of potential criminal sanctions when their negligence endangers public safety.⁶ Article 273 of the Road Traffic and Transportation Law provides a clear provision that any road operator who does not carry out his obligation to repair road damage, and the negligence then causes an accident, can be subject to criminal liability. This regulation stipulates that if the result of the negligence only causes minor losses, such as minor injuries to road users or vehicle damage, the road operator can be sentenced to imprisonment for up to six months or subject to a fine according to the limits set by law. However, if the negligence leads to more serious impacts,

such as causing serious injury or even causing loss of life, then the severity of the criminal threat increases significantly. This provision shows that the law pays great attention to the aspect of public safety and places the road operator as the party responsible for the risks arising from negligence in maintaining the quality and safety of the road.

The determination of road operators as legal subjects in the context of traffic accidents, as stipulated in Article 273 of Law Number 22 of 2009 concerning Road Traffic and Transportation, needs to begin by first understanding the concept of legal subject itself. The subject of law is basically any entity or party that is given a position by law to have rights, assume obligations, and exercise certain authority in legal relationships. In other words, the subject of the law is a party who can be held accountable for his actions or omissions, because the law recognizes his existence as a holder of rights and an executor of obligations. Through this framework, the road operator is placed as a party that legally has responsibility for the maintenance, safety, and feasibility of the road, so that it can be held criminally liable if its negligence results in a traffic accident.⁷ Based on this definition, it can be understood that what is meant by the subject of law is any individual or party who is given a position by law to have rights while at the same time shouldering certain obligations. This position gives rise to what is called legal authority (*rechtsbevoegheid*), which is the capacity or ability recognized by the legal system to receive, exercise, and account for the rights attached to it. Thus, legal authority reflects the authority of a person or an entity to act

⁵ Solhani Guntur Siregar, "TANGGUNG JAWAB HUKUM PEMERINTAH TERHADAP The Purpose of This Study Is to Analyze the Regulation of Government Legal Responsibility for Road Damage Resulting in Accidents Based on Law Number 22 of 2009 Concerning Traffic and Road Transportation , To Analyze the Government ' s Legal Responsibility for Road Damage Transportation . The Method Used Is Normative

Legal Research , Namely Research Based on Concerning Traffic and Road Transportation . Based on the Results of the Study , It Is Known That" VIII, no. 1 (2024): 313–31.

⁶ Deddy Kurniawan, "Criminal Liability of Road Operators" 14, no. 22 (2020): 114–22.

⁷ Zainal Asikin. 2012. Introduction to Law. Jakarta: RajaGrafindo Persada. p. 33.

in a legal relationship and to be a legitimate holder of rights based on the provisions of laws and regulations.

Referring to the provisions of Article 273 of Law Number 22 of 2009 concerning Road Traffic and Transportation, the parties authorized in the operation of the road can be placed as legal subjects because they have direct responsibility for the maintenance and safety of road use. The classification of this organizer is determined based on the type and status of the road.

1. For national roads, the responsibility lies with the central government, while the technical implementation is under the authority of the Minister of Public Works.
2. On provincial roads, the authority for implementation is handed over to the provincial government with the provincial public works office as the operational implementer. Meanwhile,
3. The district road is the responsibility of the district government and is managed by the district public works office as the implementer.
4. For city roads, the implementation function is in the hands of the city government, while the implementation of technical activities is still carried out by the city's public works office. The
5. Village roads, even though they are in the village area, are still under the authority of the district government which is then implemented through the district public works office. Moreover
6. Toll roads that are categorized as national-scale infrastructure are also under the authority of the central government, with technical implementation remaining the responsibility of the Minister of Public Works or an appointed party.

The series of regulations in Article 273 of the LLAJ Law emphasizes that each level of government, according to the limits of its authority and area of responsibility, can be held legally liable if it neglects to carry out its obligations to maintain and repair roads. Thus, all road operators in the central and regional government structures are subject to criminal liability.

Based on this description, it can be understood that the legal subjects in road administration are the implementers who obtain **attributive (original)** authority, which is authority directly granted by laws and regulations. This authority is permanently attached and does not depend on grants from other government organs, as long as Law Number 38 of 2004 concerning Roads and Government Regulation Number 34 of 2006 concerning Roads still stipulates it. Since the source of its authority comes from the law, there is no need to doubt its legality and validity, because it has been given directly by the legal system.

On the other hand, for the implementation of national roads in each province, the implementation of daily technical tasks is carried out by the National Road Operator Work Unit (PJN). The authority possessed by the PJN Task Force is not attributive, but **non-attributive**, because it is obtained through the delegation of authority from the authorized officials, in this case the Minister of Public Works. This non-attributive authority is not permanently attached, but is temporary or incidental, and can be revoked at any time if the Minister as the holder of the original authority withdraws the transfer.

The delegation of authority experienced by the PJN Task Force is a form of **delegation**, namely the transfer of part of government authority from the holder of attributive authority to other government organs under him. With the delegation mechanism, all the authority given is transferred to the recipient of the delegation so that the responsibility for the implementation of the authority also lies

entirely with the recipient. In other words, if there is negligence or violations related to the implementation of national roads at the provincial level, then the PJN Task Force as the recipient of the delegation is the party that must be held accountable, not back to the Minister as a delegate.

The results of various studies also show that the biggest obstacles in the application of criminal provisions against road operators often come from non-judicial factors. These obstacles include limited government budgets in carrying out rapid and comprehensive road repairs, because available funds must be divided between new development projects and routine maintenance activities. In addition, coordination between institutions that have a role in road management such as the Public Works and Spatial Planning Office (PUPR), the Transportation Office, and the Police often do not run optimally. This condition shows that the existence of a clear rule of law is not always followed by effective implementation in the field, so a stronger policy commitment is needed from all parties so that the criminal norms in Article 273 can be implemented as they should.

In addition to the aspect of criminal liability, a number of academic studies also emphasize that road operators can not only be held criminally liable, but can also be sued civilly. This mechanism allows accident victims to claim compensation for the losses they incur, whether material losses such as vehicle damage or medical expenses or immaterial losses related to suffering or loss of opportunity. Thus, the scope of legal responsibility of road operators becomes wider, not only limited to potential criminal charges, but also includes the obligation to provide compensation through civil channels if their negligence is proven to cause a traffic accident.

2. The cause of the ineffective enforcement of Article 273 of Law

Number 22 of 2009 concerning Road Traffic and Transportation

One of the fundamental problems that causes the enforcement of Article 273 of the LLAJ Law to not run effectively is the blurring of the boundaries regarding who is meant to be the *road operator* in practice in the field. Although the law has actually established the obligations of road operators normatively, the reality on the ground shows that there are often differences in interpretation between the central government, local governments at the provincial and district/city levels, as well as technical agencies such as the PUPR Office, even including other bodies or parties that receive the delegation of authority. This situation has led to a debate about who should be criminally responsible when an accident occurs due to improper roads, so that the law enforcement process becomes directionless and loses the main focal point.

In addition to the unclear definition, the existence of a mechanism for the delegation of authority and the involvement of third parties such as contractors or road business entities also complicates the process of proving elements of criminal wrongdoing. In cases involving corporations or implementing agencies, law enforcement officials often have difficulty determining who individuals or officials can be held accountable specifically. This complexity makes proving errors much more difficult because they have to trace the chain of authority, administrative processes, and technical obligations of each party. As a result, law enforcement officials often choose not to use Article 273 which is considered difficult to prove, and switch to other legal provisions that are factually easier to process. This condition shows that the lack of clarity in the responsibility structure contributes directly to the low application of criminal liability against road operators.

One of the main factors that makes the implementation of Article 273 of Law Number 22 of 2009 concerning Road

Traffic and Transportation not running optimally is the existence of a strong intervention from political and economic interests in the law enforcement process, especially when the party that is the subject of the law is an institution or official who has obtained the delegation of road management authority. This situation occurs because violations of Article 273 are essentially included in the category of crimes that attack the public interest. This type of crime has structural weaknesses, one of which is the lack of effective public control. When the monitoring mechanism is not optimally carried out by the authorities, and when the public's access to information and public accountability procedures is blocked, law enforcement efforts will face serious obstacles.

In this context, the enforcement of Article 273 has become increasingly difficult because law enforcement often faces pressure from various external interests. In many cases, investigations and prosecutions are hampered by political forces, especially when the allegedly negligent agency has close ties to local officials or political actors. On the other hand, economic factors such as interests in infrastructure development projects, budget considerations, or relationships with implementing contractors also give rise to a tendency to avoid legal proceedings in order to maintain the continuity of certain projects or interests.

Research shows that these interventions often hinder the movement of investigators and public prosecutors. Officials are often in a difficult position when it comes to prosecuting parties who have significant political influence or economic power. As a result, even though road damage has caused victims and meets the elements of negligence as referred to in Article 273, legal proceedings often do not run as they should. In the end, this condition creates a kind of de facto impunity for road operators who should be held criminally accountable. Thus, political and economic barriers prove to be crucial factors that

hinder the effectiveness of law enforcement in the context of public safety.

Another obstacle that also causes law enforcement in cases of accidents due to damaged roads that have not run effectively is the complexity of the authority structure in road administration. In practice, officials or agencies that are normatively responsible such as the Minister of Public Works, the Public Works Office at the provincial, district, and city levels often delegate some of their authority to third parties, either in the form of contractors, business entities, or other forms of corporations. When the authority has been delegated, the responsible legal subject is no longer only government agencies, but also corporate entities involved in the implementation of road construction, repair, or maintenance.

However, law enforcement against corporations as the subject of criminal law brings its own challenges. In a corporate structure consisting of many work units, management levels, and complex division of functions, tracing the element of error (*mens rea*) becomes much more difficult than that of individuals. Law enforcement officials often face difficulties in determining who is directly responsible for the negligence that occurs, whether it is the director, field manager, technical supervisor, or other parties involved in the decision-making chain. This ambiguity has an impact on the weak evidence of criminal errors.

As a result, although factually corporate negligence can be seen as the cause of road damage that causes accidents, legal proceedings often end without the parties actually being held accountable. This situation creates space for impunity, where the corporation that is supposed to be responsible is spared criminal sanctions because of the difficulty of proof. Thus, this structural and technical obstacle is one of the significant factors that weakens the implementation of Article 273 of the LLAJ Law in the context of road implementation

by the party that receives the delegation of authority.

Difficulties in law enforcement of Article 273 of Law Number 22 of 2009 concerning Road Traffic and Transportation do not only arise from the substance of the regulation itself, but also from the limited capacity of law enforcement officials when conducting the investigation process for traffic accidents. One of the main obstacles they often face is trying to accurately determine the main source of the cause of accidents. The identification process becomes complicated because traffic accident events are generally the result of the interaction of various interrelated causal factors.

In general, factors that can trigger the occurrence of traffic accidents include:

- a. Driver factors, which are aspects related to a person's basic ability to control the vehicle. The elements of vision and hearing play a vital role because they both determine the driver's ability to respond to the conditions around him.
- b. The pedestrian factor, which not only has the potential to be a victim but can also be a contributing factor to the occurrence of accidents, for example through behavior that does not comply with traffic rules.
- c. Vehicle factors, namely the technical condition and completeness of the vehicle. Accidents can occur due to problems with vehicle equipment, lighting systems, safety devices, engine conditions, or other components that do not function as they should.
- d. Road factors, namely the physical condition and road infrastructure. Damage to the road surface, poor lighting, lack of maintenance, lack of lighting, and inadequate or unclear traffic signs can trigger accidents.
- e. Environmental factors, which are related to external conditions such as the situation around the road, weather or season, density and character of traffic flow, and other natural factors that can

affect the behavior of road users and their ability to control vehicles.

With the existence of various factors that affect each other, investigators are required to have adequate analytical and technical skills in order to determine the exact cause of the accident. However, such weak capacity is often an obstacle in the effective law enforcement process.

From the aspect of legal regulation, a big problem arises in the form of a mismatch between technical provisions such as quality standards and road specifications—with criminal provisions that regulate liability for traffic accidents. This gap creates a similar obstacle when the proof process is carried out. To be able to apply criminal sanctions, firm and verified measures are needed regarding the minimum standards of road feasibility. The problem then arises because there is no benchmark that normatively determines when a road condition can be categorized as a form of negligence by road operators. In the absence of binding technical guidelines and without a standard of proof that can be used as a fixed reference, prosecutors and judges face difficulties in assessing whether certain road conditions can meet the elements of criminal violations as required in Article 273. This is why criminal verdicts related to negligence in road maintenance are still very rare.

In addition, the weak public oversight function and lack of transparency have also worsened the situation. The suboptimal community control mechanism, limited access to information, and lack of accountability from road operators have resulted in the public having difficulty monitoring the road repair process or asking for accountability when there is government negligence. This condition also makes various cases that actually concern the public interest not receive adequate social pressure to encourage law enforcement officials to take decisive steps. In the end, the lack of encouragement from the public and the lack of accountability of public officials caused many alleged

violations to not be followed up effectively.⁸

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⁸ Hakim Jurnal, Ilmu Hukum, and Abdul Wahab Harun, "Law Enforcement Against Damaged Road Operators That Result in Traffic Accidents at