

THE RESPONSIBILITY OF PT KERETA API INDONESIA DUE TO CROSSING ACCIDENTS FROM THE PERSPECTIVE OF MAQASHID SYARIAH (CASE STUDY OF THE PADANG ROAD RAILWAY CROSSING, MEDAN TEMBUNG)

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Abstract: This research examines the accountability of PT Kereta Api Indonesia (KAI) for accident victims at level crossings without barriers from the perspective of Maqashid Syariah, with a case study on Jalan Padang, Medan Tembung. The purpose of this research is to identify the factors causing accidents, formulate solutions to reduce the accident rate, and analyze the accountability of PT Kereta Api Indonesia (PT KAI) towards the victims from the perspective of Maqashid Syariah. This research uses qualitative methods, and the type of research is empirical juridical with a case approach, legislative approach, and conceptual approach. The research results show that PT KAI cannot be held directly responsible for accidents at level crossings without gates because the responsibility for installing gates and regulating level crossings lies with the government according to road class. Factors that cause the absence of gates at all level crossings include budget limitations, the large number of crossings, the complexity of installation authority, and the lack of public awareness. Solutions to reduce accidents at level crossings include public outreach, closing unofficial crossings, installing concrete barriers to block vehicles, and regular evaluation and supervision by the government. From the perspective of Maqashid Syariah, particularly the principle of preserving life (Hifzhu An-Nafs), PT. KAI still has a moral responsibility to assist accident victims by helping with insurance claims for accident victims, enhancing security, and educating the public, even though it is not directly responsible for the installation of crossing gates. This research concludes the need for cooperation between PT KAI, the government, and the community to improve safety at level crossings.

Keywords: accountability; accident; train; level crossing; Maqashid Shariah

I. INTRODUCTION

Trains, as one of the mass land transportation modes, have become an integral part of human life. Since it was first introduced, trains have undergone rapid development in terms of technology and infrastructure. In various countries, trains play an important role in connecting regions, supporting the economy, their ability to transport both passengers and goods in large quantities, being energy-efficient, reducing traffic congestion on highways, reducing air pollution, and decreasing the domestic fuel supply by the government. (Rachmad Hidayat & Setiadji, n.d.). PT Kereta Api, as a State-Owned Enterprise (BUMN) managing railways in Indonesia, has a significant responsibility in ensuring the safety and comfort of passengers. One important aspect of that responsibility is the obligation to provide facilities for handling losses due to train accidents. (Wicaksono, 2015). Train accidents can have significant impacts on both the victims and their families; therefore, PT KAI is required to have clear systems and procedures in place for handling damage claims, providing fair compensation, and offering post-accident assistance to the victims. The provision of facilities for accident losses is not only a legal obligation but also a form of corporate social responsibility. This is important to build public trust in train

services as a safe and reliable mode of transportation. Law Number 23 of 2007 concerning Railways, specifically Article 87 paragraph (1), which states that "The railway facility operator is responsible for losses suffered by service users and third parties arising from the operation of train transportation." This responsibility begins when the passengers are transported from the initial train station until they reach their destination station. (P. P. Indonesia, 2007). The railway crossing gates are a crucial element in the transportation safety system that often receives little attention. This simple yet vital device serves as the frontline in preventing fatal accidents at the intersection between railway tracks and public roads. Trains, with their massive weight and high speed, are unable to make sudden stops, making the presence of level crossing gates very important as an early warning system and physical barrier to prevent fatal collisions between trains and vehicles or pedestrians at the intersection of tracks and public roads. Accidents at railway crossings without gates still frequently occur in Indonesia, including on the railway crossing on Padang Road, Medan Tembung, which is not equipped with a gate and has become a hotspot for accidents, resulting in frequent collisions between trains and motor vehicles, causing unrest among the community. On March 16, 2024, an accident occurred at an unguarded railway crossing on Jalan Padang

Medan Tembung District, which resulted in the death of a motorcyclist. Based on the author's investigation through news reports and direct interviews with local residents, the accident at the Jalan Padang railway crossing occurred around 10:00 AM WIB. The motorcycle rider was hit by the Siantar Ekspres KA U77A train after their vehicle got stuck on the level crossing tracks. This is due to the absence of a crossing gate as a physical barrier, so the motorcyclist did not realize that a train was about to pass. Accidents have occurred very frequently at that crossing, but unfortunately, there has been no attention from the Indonesian railway authorities in Medan and the government. Minister of Transportation Regulation Number 24 of 2015 concerning Railway Safety Standards article 24 paragraph (6) states, "In the event that the intersection between the railway track and the road cannot be made at the same level, it must be equipped with signs, markings, and traffic signaling devices, level crossing gates, and level crossing attendants." (K. P. Indonesia, 2015).

A level crossing is an intersection at the same level between a railway track and a road that is at the surface level without using a tunnel or bridge. (P. P. Indonesia, 2007). Regulations in the field of land transportation are among those stipulated in Law Number 22 of 2009 concerning Traffic and Road Transportation and Law Number 23 of 2007 concerning Railways along with their implementing regulations. Both laws have been amended by Law Number 6 of 2023 on Job Creation. Based on the statement of the Secretary of Medan Tembung Subdistrict, "From the beginning, there has been no gate and no guard at the crossing, and this year there have been three accidents." This research delves deeply into the obligations of PT Kereta Api Indonesia (PT KAI) in providing fair and adequate compensation to victims, as well as the implementation of maqashid sharia values in handling the case. Train accidents without level crossings are a violation of human rights, which include the right to life, security, and safety. This research has significant relevance to maqashid sharia, as it encompasses aspects of the protection of life (hifdz an-nafs) in the context of the safety of road users and passengers, the protection of property (hifdz al-mal) related to compensation for material losses, and the protection of intellect (hifdz al-'aql) in terms of handling post-accident trauma. Maqashid Syariah demands that the interests of the community must be prioritized, including the safety and security of those who use train services. Several previous studies referenced in this research that share similar topics include Ario Wicaksono's (2015) study on "Criminal Liability of PT KAI (Persero) for Accidents Occurring at Railway Crossings Without Barriers Related to Law Number 23 of 2007 on Railways." This study discusses the regulation of criminal liability of PT KAI in relation to Law Number 23 of 2007 on Railways.

Next, the research by M Alfarisi Kurniawan (2020) "The Responsibility of P.T Kereta Api Indonesia (KAI) for Hitting a Car at a Railway Crossing" discusses the objectives and provides an understanding of how the public should behave when crossing railway tracks. Fauzi Abdillah's research (2019) "Liability for Train Accidents: A Review of Law No. 23 of 2007 on Railways and Masalah Mursallah (A Study of the Surabaya Operational Area Office)" aims to understand the

legal implications in the form of laws as legal references created to be adhered to, so that in keeping up with the times, it can serve as a lesson for the future. Unlike previous studies, this research offers a fresh perspective by adopting the lens of Maqashid Syariah in analyzing the responsibility of PT KAI due to accidents at crossings without gates. This perspective allows us to view phenomena from a more holistic and welfare-oriented standpoint.

II. RESEARCH METHOD

This research uses the empirical juridical research method. (Atikah, 2022) Empirical juridical research is legal research regarding the enactment or implementation of normative legal provisions in action in every specific legal event that occurs in society. (Sigit et al., n.d.). The approach used in this research is the living case studies approach, which is employed to determine the forms of losses that victims may experience due to the absence of a level crossing barrier at the Padang, Medan Tembung road crossing. The statute approach is conducted by examining regulations and laws related to the legal issues being studied, and the conceptual approach is used to understand how the concept of responsibility that can be attributed to PT KAI is viewed from the perspective of maqashid syariah. (Efendi Jonaedi & Ibrahim Johnny, 2016). Data were collected through interviews, observations, and document studies. Interviews were conducted with three local residents, the village secretary, and the assistant manager of Divre 1 North Sumatra PT KAI. Document studies included regulations, books, and journals related to this research. The data processing technique used by the researcher is qualitative analysis, which is then analyzed by reducing and organizing to obtain a comprehensive understanding of PT KAI's responsibility for level crossing accident victims from the perspective of maqashid sharia.

III. RESULT AND DISCUSSION

The Responsibility of PT KAI Towards Accident Victims at Unmanned Level Crossings

Responsibility is a consequence of the freedom of an individual regarding their actions, which is related to ethics or morals in performing an act (Alhadi Alif M, 2020). Responsibility is something that is required, always accompanied by sanctions. (Khoiri Misdar Farid, 2012). Losses resulting from an act are an indication of a criminal offense and result in criminal sanctions. PT KAI, as a state-owned enterprise (BUMN), is a legal subject in the form of a legal entity that has rights and obligations in conducting legal acts. (Supriadi Asep, 2014). Although the current Indonesian Penal Code fundamentally recognizes only humans as subjects of criminal law, through legal developments, Indonesia has acknowledged corporations as subjects of criminal law. This is demonstrated in various laws outside the Criminal Code that explicitly state that corporations are legal subjects that can be held legally accountable, such as in Law No. 7 of 1955

concerning Economic Crimes and Law No. 11 concerning Excise (Ali Kusumo, 2008). Although the Criminal Code has not explicitly regulated corporations as criminal legal subjects, in practice, corporations like PT KAI can be held criminally liable for actions taken by their management or employees. This is based on the principle of vicarious liability, which states that a corporation can be prosecuted for crimes committed by its directors, employees, or others acting on behalf of the corporation with the intent to benefit the corporation. The application of this principle allows for more effective law enforcement against violations involving corporations, while also providing legal protection for the public from potential losses caused by corporate actions. However, this was decided by the judge with conditions and reasons and carried out through careful investigation and proof. In the case of an accident that occurs due to the absence of a level crossing gate, PT KAI can be held accountable for operational negligence. However, the main responsibility actually lies with the government because it has the authority to set regulations, safety standards, and budget allocations for railway safety infrastructure.

PT KAI, as a railway operator, has limited authority and budget in building new infrastructure such as level crossings. This is because the decision to place the level crossing must go through a bureaucratic process and approval from various relevant government agencies. In addition, PT KAI's budget for safety infrastructure development heavily relies on government funding, considering that PT KAI's main role is more focused on the management and execution of daily railway operations. Through a direct interview with one of the PT KAI staff, Mr. Prasetyo Irfan Nugroho, who is the assistant manager of Divre 1 North Sumatra, stated that "PT KAI's authority is only to operate train journeys, while the regulator or responsible party is the government." In accordance with Government Regulation Number 56 of 2009 concerning the Organization of Railways, Article 6, paragraph (1) states, "The organization of public railways is the responsibility of the Government and its implementation is carried out by state-owned enterprises and/or regional-owned enterprises." (P. P. Indonesia, 2009).

This article emphasizes that the Government has the primary responsibility in the organization of public railways. This means that the government is responsible for ensuring that all aspects of railways, including infrastructure such as tracks, stations, and level crossings (including gates), are well managed. Based on the road class. Class I roads are under provincial authority, while Class II & III roads are under the authority of cities and regencies. In this case, PT KAI cannot automatically be held criminally liable. This is due to several factors. First, the legal provisions contained in Law Number 23 of 2007 state that the government is responsible for the management of railway infrastructure. Second, the Minister of Transportation Regulation Number 94 of 2018 Article (2) which states:

"To ensure the safety of train travel and the safety of road users, level crossings that have been in operation before this ministerial regulation takes effect and have not been equipped with level crossing safety equipment must be managed by the minister for national roads, the governor for

provincial roads, the regent or mayor for district or city roads and village roads, and legal entities or institutions for special roads used by legal entities or institutions." (K. P. Indonesia, n.d.-a). Through the above regulation, it can be concluded that the government is also involved in this matter. So the train is not the only party that can be blamed and held responsible for the installation of the level crossing gate. Railway infrastructure includes railway tracks, train stations, and their buildings and facilities. The installation of railway crossing gates at all level crossings in Indonesia is still hindered by several factors, namely:

1. Budget Constraints:

The installation of railway crossing gates requires a significant amount of money, including the cost of material procurement, construction, and maintenance. The government has budget constraints to finance the installation of gates at all level crossings in Indonesia. Priority is usually given to busy and accident-prone crossings.

2. The Large Number of Level Crossings:

In Indonesia, there are tens of thousands of level crossings. This poses a challenge in the effort to install gates at all crossings.

3. Authority for Installing Level Crossing Barriers:

The installation of railway level crossing barriers is not solely the responsibility of PT KAI. According to the Minister of Transportation Regulation Number 65 of 2018 concerning Level Crossing Safety, this leads to complex coordination and division of responsibilities.

4. Public Awareness:

The lack of public awareness in adhering to traffic regulations at level crossings is also one of the factors contributing to the absence of gates at all crossings. Often, drivers recklessly break through existing barriers or cross the tracks without ensuring the train has passed. Legally, trains are prioritized over other vehicles, so when a train passes, land vehicles must stop in accordance with the provisions of Law No. 23 of 2007 on Railways Article 124, which states:

"At a level crossing between a railway track and a road, road users must yield to the train." This is also regulated in Law Number 22 of 2009 concerning Traffic and Road Transportation, Article 114, which requires motor vehicles to yield to trains. (P. P. Indonesia, 2009b). Based on previous research on the behavior of road users at level crossings, it includes risky behaviors when crossing the level crossing, such as not reducing vehicle speed when crossing, not stopping briefly, not looking left and right to see if there is no train passing, breaking through barriers, stopping near the railway tracks, and stopping in different directions (Anton Budiharjo, 2019 in (Oktaria Setyo Dhina, n.d.)). In the event of an accident at an unmanned level crossing, PT KAI can only assist the victims or their families in processing the insurance claims that will be provided by PT. Jasa Raharja (Persero). The insurance claims vary depending on the severity of the accident: for victims with disabilities, Rp. 25,000,000, and for deceased victims, Rp. 50,000,000.

Accountability of PT.KAI from the Perspective of Maqashid Syariah

Maqashid syariah are the objectives of sharia and the secrets established by the shari' (God) in every provision of its laws. (Nur Iffatin, 2014). The father of maqashid syariah is Al-Syathibi, who laid the foundation of the science of maqashid. The theory of maqashid was popularized by Syathibi through one of his works titled *al-Muwafaqat fi Ushul asy-Syariah*, a book written as an effort to bridge several points of difference between the Maliki and Hanafi scholars. Al-Syathibi divided maqashid into three levels: *dharuriyyat* (primary), *hajjiyyat* (secondary), and *tahsingat*. (tersier). (Mufid M, 2016) The Categories of Maqashid Syariah, as defined by Prof. Dr. A. Syafii Ma'arif, encompass the fundamental and universal objectives of Islamic law that serve as the basis for the establishment of Islamic legal rulings. These goals are not merely a collection of specific objectives, but rather comprehensive principles that guide the interpretation and application of Islamic law. The levels of *dharuriyyat* are further divided into:

وَأَنْفِقُوا فِي سَبِيلِ اللَّهِ وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ وَأَحْسِنُوا إِنَّ اللَّهَ يُحِبُّ الْمُحْسِنِينَ

Meaning: And spend (your wealth) in the way of Allah, and do not throw yourselves into destruction, and do good, for indeed Allah loves those who do good. Ibn Ashur in the book *At-Tahrir wat Tanwir* explains that the verse strongly prohibits actions that endanger the safety of life. The use of the verb *وَلَا تُلْقُوا* "do not throw yourselves into destruction," is general in nature, encompassing a prohibition against all forms of actions that endanger life. Another verse in the Quran is Surah Al-Maidah, verse 32.

مَنْ أَجْلٌ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَهُمْ رَسُولُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِنْهُمْ بَعُدَ ذَلِكَ فِي الْأَرْضِ لَمْسْرِفُونَ

Meaning: Therefore, We have decreed upon the Children of Israel that whoever kills a soul, unless for a soul or for corruption [done] in the land, it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely. And Our messengers came to them with clear proofs. Then indeed, many of them, even after that, throughout the land, were transgressors. This verse emphasizes the value of human life. He equated the murder of one person with the murder of all humanity, showing that every soul has infinite value. Also stating that saving one life is equivalent to saving all of humanity, this encourages Muslims to actively protect and save the lives of others. Because preserving life is not only an individual responsibility, but also a social responsibility of the entire community. In the case of the absence of a level crossing barrier, there are 3 principles that are violated, namely *Hifzhu an-Nafs* (preservation of life). This is because it emphasizes the importance of protecting human life. The case of a train accident without a barrier results in the loss of human lives, causing trauma to the victims

and their families, which is consistent with preserving the mind (*Hifzhu al aql*). This trauma can disrupt their mental health and quality of life. Lastly, *Hifzhu Al mal* (preservation of property) occurs when there is damage to property such as vehicles.

According to maqashid syariah, PT KAI has significant moral and material responsibilities related to accidents that occur at level crossings without gates. Although PT KAI acts as an operator and not the main regulator, the principles of maqashid syariah require the company to take proactive steps in protecting human lives. This means PT KAI cannot simply rely on the argument that they are just an operator and that the main responsibility lies with the government. On the contrary, they must make every effort within their capacity to prevent harm and protect the community. As for PT KAI's responsibility towards accident victims at crossings without gates, viewed from the maqashid Syariah, first, the construction of gates at accident-prone crossings is a concrete step in protecting lives. (*hifdz an-nafs*). Despite being constrained by budget and government approval, PT KAI must proactively propose and promote this development based on a comprehensive study of critical points. Second, the installation of clear and easily visible warning signs is a minimal yet effective step in protecting the intellect (*hifdz al-aql*) of road users. The use of modern technology such as LED lights and digital message boards can enhance the effectiveness of these warnings.

Third, socializing safety to the community is an important effort in accident prevention. Through campaigns in schools, local communities, and mass media, PT KAI not only protects lives but also raises awareness and knowledge among the public. Fourth, the enhancement of security at crossings with CCTV, warning lights, and security personnel demonstrates a commitment to the protection of life and property. (*hifdz al-mal*). This integrated security system allows for constant monitoring, enhances vigilance, and facilitates rapid response in emergency situations. Lastly, assistance in handling post-accident insurance claims reflects PT KAI's responsibility in protecting the victims' and their families' property. These actions reflect PT KAI's commitment to protecting the lives, intellect, and property of the community, in accordance with the principles of maqashid Syariah to maintain balance and social justice.

Solutions to Reduce Accident Rates at Level Crossings The role of the government is certainly very much needed as level crossings are also the responsibility of the government. For each level crossing, supervision, inspection, and evaluation should be conducted by government agencies such as the director general, governor, regent, and mayor (according to their respective regional levels) at least once a year as stipulated in the Minister of Transportation Regulation No. 94 of 2018, article 5, paragraphs (1) and (2). (K. P. Indonesia, n.d.-b). Based on the law, crossings are divided into two types: official and unofficial crossings. An official crossing is a level crossing that complies with the legal requirements and provisions according to Law No. 23 of 2007 on Railways. (Kelo Dewi Mustika Gita, 2020)

Then regarding the improvement of safety at level crossings between railway tracks and roads, it is stated in Article 3 paragraph (1) as follows: "Level Crossings that are not yet listed in the Level Crossing list as referred to in Article 2 paragraph (4) can have their safety improved." This means that every level crossing that does not have signs and barriers can be installed. With the condition that the crossing is officially registered or has permission. There is often a misunderstanding among the public towards the government and PT KAI about why gates are not built at every crossing, even though one of the reasons for the high accident rate at level crossings is the lack of public awareness. Because there are still many road users who do not understand the government regulation that trains must be prioritized over other vehicles, it is necessary to conduct socialization at level crossings so that road users can increase their awareness, caution, and mindset when crossing level crossings. (Aghstya, 2021).

There shouldn't be any level crossings in that area, but they were built by the community to facilitate mobility, resulting in many unofficial crossings without signs, including crossing gates, which have caused numerous accidents. Here is a list of official and unofficial crossings found on the DIVRE I North Sumatra crossing route:



- a. Total Number of Crossings = 487 JPL
 - b. Number of Non-Grade Crossings = 35 JPL
 - c. Number of Grade Crossings = 452 JPL
- With Barriers = 117 JPL
Without Barriers = 335 JPL

From the data above, there are more unofficial grade crossings than official ones. Therefore, one of the solutions from PT.KAI to reduce the accident rate is to provide understanding to the community and road users through socialization conducted by PT.KAI staff at least 4 times a month or once a week. Then, for crossings without permits, closures will be carried out in accordance with the Minister of Transportation Regulation No. 94 of 2018 Article 2 Paragraph (3) concerning the Implementation of Safety for Level Crossings on Railways, which states, "Level crossings without

a JPL Number, unguarded, and/or without gates that are less than 2 m (two meters) wide must be closed or normalized by the railway infrastructure provider."(K. P. Indonesia, n.d.-a) The next solution implemented by PT KAI is the installation of concrete slabs at level crossings that do not have official permits or are illegal. In its execution, PT KAI collaborates with various parties such as local governments, transportation departments, and local security forces to ensure the installation process runs smoothly. The main purpose of installing this concrete pad is to prevent four-wheeled vehicles such as cars, trucks, and other heavy vehicles from passing through the area. This is based on accident statistics data showing that four-wheeled vehicles have a higher accident risk, especially due to the frequent incidents where vehicle tires get stuck on railway tracks, which can result in the vehicle being trapped when a train passes. The closure of this unofficial crossing is a strategic policy of PT KAI. (Rozaq Fadli dkk, 2021). To provide a clearer picture, here are the technical details for installing concrete pads as a cover or barrier to prevent motor vehicle passage:



The installation of concrete pads by PT KAI is carried out in a measured manner, considering the appropriate distance and height to prevent access for four-wheeled vehicles, while still allowing pedestrians and two-wheeled vehicles to pass. PT KAI must continue to conduct regular evaluations to ensure the optimal function of the concrete pads without causing new problems for the surrounding community.

IV. CONCLUSSION

Through the research that has been conducted and explained in this legal writing, it can be concluded that PT KAI cannot be held directly responsible for accidents at level crossings without gates, because the responsibility for installing gates and regulating level crossings lies with the government according to the road class. Several factors that contribute to the absence of gates at all level crossings include budget constraints, the large number of crossings, the complexity of installation authority, and the lack of public awareness. To reduce accidents at level crossings, several proposed solutions include socializing with the community, closing unofficial crossings, installing concrete barriers to block vehicles, and regular evaluation and supervision by the government. From the perspective of Maqashid Syariah, particularly the principle of preserving life (Hifzhu an-Nafs), PT KAI still has a moral responsibility to assist accident victims through compensation, enhanced security, and public education, even though it is not directly responsible for the installation of the crossing gates. This research emphasizes the importance of cooperation between PT KAI, the government, and the community to enhance safety at level crossings, including raising public awareness of the rules and dangers at railway crossings.

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