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The Ultimum Remedium Principle in the Criminal Law Policy of Road Organizers to Realize Justice, Certainty and Legal Benefits

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Abstract: This study departs from the issue of criminal regulation of road organizers regulated by Article 273 of the Road Traffic and Transportation Law which adheres to the principle of *primum remedium*. It causes injustice and not in line with the constitutional rights of state organizers guaranteed by the constitution in Article 28D Paragraph (1) and Article 28G Paragraph (1). The present study utilizes normative juridical research with a statutory approach supported by philosophical, conceptual, and comparative legal approaches. The findings of the research show that the criminal regulation of road organizers that prioritizes the principle of *primum remedium* that exists in substance, purpose and objective is contrary to the values of Pancasila (especially the value of a just and civilized humanity and justice for all Indonesian people), the national goals of the Indonesian state (namely protecting all Indonesian people and the blood of Indonesia), contrary to Articles 28D and 28G of the 1945 Constitution; contrary to the Constitutional Guarantee and violates human rights, namely the right to recognition, guarantees, protection and certainty of a just law and equal treatment before the law for road organizers. The urgency of the *ultimum remedium* principle in the criminal policy arrangements for road organizers because the arrangements as stipulated in the law do not have a strong philosophical basis and are excessive because criminal law should be used as an *ultimum remedium* (ultimate weapon) not premium remedium (main weapon) if other more effective legal means can be used to discipline road organizers so that it is necessary to have a criminal policy for road organizers based on the principle of balance that places criminal sanctions as an ultimum remedium for criminal acts of road organizers to achieve justice, legal certainty, expediency in Indonesia.

Keywords: Criminal Policy, Highway Operator Crime, *Ultimum Remedium*, Justness, Certainty, Benefit

1. Introduction

As part of the national transportation system, Road Traffic and Transportation must develop its potential and role to realize security, welfare, traffic order, and Road Transportation to support economic development and the development of science and technology, regional autonomy, and public welfare as mandated by the 1945 Constitution. As part of the national transportation system, Road Traffic, and Transportation must develop their potential and role to realize security, welfare, traffic order, and Road Transportation to support economic development and the development of science and technology, regional autonomy, and accountability of State administration.

Regulation No. 22 of 2009 on Road Traffic and Transportation (hereinafter referred to as the LLAJ Law) regulates the government's duties, obligations and responsibilities as a road administrator. The government has the authority to repair damaged roads. The existence of the LLAJ Law brings changes in the legal regulation of traffic management by giving responsibility to the government for road conditions that endanger the safety of road operators. Hence, Article 238 of the Traffic and Transportation Law outlines that the government is responsible for infrastructure that causes traffic accidents, which is fully outlined as follows:

1. The government provides and/or improves traffic arrangements, facilities, and infrastructure that cause the accident.
2. The government provides funding allocation for the prevention and handling of traffic accidents.

According to Article 24 of the LLAJ Law, the government is required to be responsible for traffic accidents caused by damaged roads, which reads as:

(1) The road administrator must immediately and properly repair damaged roads that may cause traffic accidents.
(2) If it has not been possible to repair the damaged road as referred to in paragraph (1), the road operator must provide signs on the damaged road to prevent traffic accidents.

The obligation of road administrators is not only to maintain safety in the use of roads, but also includes repairing damaged roads that can cause accidents and deaths. In the case of an accident that causes death, the road operator, the City Government, is responsible for the losses suffered by the victim, and the victim is entitled to receive compensation for his life for the loss sustained. The government can also be held criminally

liable for failing to repair damaged roads, causing traffic accidents, and even death. Article 273 of the RTT Law mentions that:

(1) The road administrator who does not immediately and properly repair a damaged road resulting in a Traffic Accident as referred to in Article 24 paragraph (1)12 resulting in minor injuries and/or damage to vehicles and/or goods shall be punished with imprisonment for a maximum of 6 (six) months or a maximum fine of Rp12,000,000.00 (twelve million rupiah).
(2) In the case that the act as referred to in paragraph (1) results in serious injury, the perpetrator shall be punished with imprisonment of not more than 1 (one) year or a maximum fine of Rp 24,000,000.00 (twenty-four million rupiahs).
(3) In the case that the act as referred to in paragraph (1) results in the death of another person, the perpetrator shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp120,000,000.00 (one hundred twenty million rupiahs).
(4) The road operator who does not provide signs or signals on damaged and unrepaired roads as referred to in Article 24 paragraph (2)13 shall be punished with imprisonment of 6 (six) months or a maximum fine of Rp 1,500,000.00 (one million five hundred thousand rupiahs).

According to the provisions of Article 273 paragraph (1), paragraph (2), and paragraph (3) of the LLAJ Law, road operators who do not immediately repair damaged roads and can endanger road users can be held liable because damaged and potholed roads are very dangerous for road users and cause a sense of discomfort when using State or government facilities. Such actions are categorized as Crimes against the Public Interest. The LLAJ Law uses penal means for the negligence of road operators who do not immediately and adequately repair damaged roads that result in traffic accidents.

The LLAJ Law does not explain who constitutes a road operator. However, the definition of a road operator is provided in Article 1 point 14 of Law No. 38/2004 on Roads, which states that a road operator is a party that regulates, develops, and supervises roads by its authority. The authority to manage roads is divided according to their respective authorities, namely:

1. The central government is authorized to maintain national roads
2. The province government has the authority to manage provincial roads
3. The district government is authorized to organize district roads and village roads
4. The government of the city has the authority to manage city roads.

However, formulating criminal penalties for road operators who do not repair road damage that causes traffic accidents is challenging and can potentially cause injustice. The criminalization of Article 273 of the LLAJ Law can potentially threaten the constitutional rights of road operators to guarantee legal protection and equal treatment before the law. According to the background described above, the problems that will be formulated in this dissertation research are as follows:

1. What are the Problems of Legal Regulation of Criminal Acts for State Organizers in the Indonesian Legal System?
2. What legal principles should exist in decriminalizing criminal acts for state officials?
3. What is the ideal concept for decriminalizing criminal acts for state administrators with justice in the future?

2. Methodology

This study is a normative juridical research because this research describes the conflict (conflict) of law and results in legal uncertainty in the prosecution of *Illegal Logging crimes*, namely the conflict between Article 110 of the Job Creation Law with Article 36 number 19 and Article 37 numbers 12-17; Articles 98-99 of the Environment Law. The present study uses five approaches, namely *the conceptual approach, statutory approach, case law approach, historical approach, and comparative approach).*

3. Finding and Discussion

3.1 The Regulation of Road Administration by the Government in Road Administration in Indonesia

The road administrator is the control by the State, which authorizes the Government and Regional Governments to carry out road administration based on Law Number 38 of 2004 concerning Roads, Article 13 paragraph (1) and paragraph (2). The road administrator is the Directorate General of Highways which has the task of carrying out some of the main tasks of the Ministry of Public Works in the formulation and implementation of policies and technical standardization in the field of roads appointed by the government to carry out development, supervision and regulation in the field of roads. On the other hand, the local government is the governor, mayor, and regional apparatus, which are elements of road organizers.

Government Unlawful Acts (Ruler), known as *Onrechmatige Overheidsdaad*, is a government action consisting of factual actions, either doing something or not doing something that harms the community's interests as a legal subject. The Supreme Court of the Republic of Indonesia through Supreme Court Regulation Number 2 of 2019, mentions *Onrechmatige Overheidsdaad* as an Unlawful Act by Government Agencies and/or Officials. Unlawful Acts committed by the government are essentially the same as Unlawful Acts in general. However, in an illegal act committed by the government, the government is a representative of the State as a legal subject who through its policies regulates the public interest has crossed private interests (individual interests).

The government is responsible for compensation for losses suffered by the community due to damage to road facilities and infrastructure. Unlawful Acts in the civil realm, as stipulated in Article 1365 of the Civil Code, confirms that any illegal act that results in harm to another person is required due to the fault of the person causing the damage to compensate. Furthermore, Article 1366 of the Civil Code emphasizes compensation for Unlawful Acts due to negligence, stating: *"Everyone is liable not only for damages caused by his actions but also for damages caused by his negligence or carelessness"*.

The provisions of Article 273 paragraph (1), paragraph (2), and paragraph (3) of the LLAJ Law state that road administrators who do not immediately repair damaged roads that can endanger road users can be held criminally liable because damaged and potholed roads are very dangerous for road users and cause discomfort when using state or government facilities.

Problems Criminal sanctions for road organizers are challenging to apply to road organizers as legal subjects. In terms of when or under what conditions the criminal offense mentioned above can be said to have been committed by a public legal entity, Law Number 22 Year 2009 does not provide regulations. This law only limits the regulation to corporations as Public Transportation Companies, as if this provision does not apply to other forms of corporations, especially for public legal entities. This arrangement is only limited to who can be held accountable and the form of punishment that can be imposed. In the provisions of Article 315 paragraph (1), it can be interpreted that a criminal offense can be said to be a criminal offense by a corporation if a corporation commits a criminal offense.

Furthermore, the party that can be held criminally responsible is the corporation and/or the management of the corporation. The essential criminal punishment in the form of fines that can be imposed on corporations, is a maximum of three times the criminal sentence for managing the corporation or criminal subjects in the form of individuals. Essential punishment, such as a fine, is necessary because a corporation can't be imposed with an essential punishment such as imprisonment.

The problem with the construction of Article 273 of the Traffic and Transportation Law, which applies *the primum remedium* principle to the act of not immediately and properly repairing a damaged road that causes a traffic accident

1. Hubungan kausalitas antara kecelakaan lalu lintas yang menimbulkan korban dengan perbuatan tidak segera dan patut penyelanggara jalan untuk memperbaiki jalan yang rusak seringkali tidak selalu jelas sehingga rumusan ancaman pidana tersebut sulit diterapkan dan berpotensi menimbulkan ketidakadilan. Kerusakan jalan dengan potensi membahayakan pengguna jalan yang menimbulkan kewajiban kepada penyelenggara jalan untuk diperbaiki, seringkali disebabkan oleh pelanggaran sistematis berupa pembiaran oleh berbagai stakeholder terkait.

   As expressed by Member of Commission VII of the House of Representatives Bambang Hermanto, that the problem of damaged roads occurs in almost every mining location, and the statement of the Directorate General (DG) of Highways of the Ministry of PUPR through the Director of Road Development that the condition of national roads in Jambi, especially those traversed by coal transportation, is damaged. Director General of Highways Hedy Rahadian admitted that he objected if he was told to repair 200 km of damaged national roads in the Jambi area. The reason is that the use of the road is not yet orderly because it is still often passed by coal transportation. In addition, hundreds of kilometers of damaged national roads in Jambi due to crossed coal transport seized the state budget of up to Rp 1.2 trillion to fix it. State revenue from coal mining is only Rp 500 billion.

2. Law enforcement of Article 273 of the LLAJ Law is also difficult to implement, because traffic accidents are usually multifactorial: Human, road, motor vehicle, and natural environmental factors. The LLAJ Law provides different *"treatments"* to each other, namely:

1. Article 76 of the LLAJ Law stipulates administrative sanctions for everyone who violates the provisions of Article 53 paragraph (1), Article 54 paragraph (2) or paragraph (3), or Article 60 paragraph (3), namely violations of testing roadworthiness requirements such as the ability of the main brake and parking brake (although it is a factor that has the potential to cause traffic accidents if ignored) However, while the actions of state officials who do not immediately repair damaged roads

that cause traffic accidents are given criminal sanctions, the state officials who do not immediately repair damaged roads that cause traffic accidents are given criminal sanctions.

2. Article 91 paragraph (1) of the LLAJ Law stipulates that every officer of the Indonesian National Police in the field of driver's license issuance who violates the procedures for issuing driver's licenses is subject to administrative sanctions in the form of disciplinary sanctions and/or police professional ethics. This violation is "only" subject to administrative sanctions, even though the function of the Driver's License serves as proof of driving competence.

Based on the above, it can be seen that acts of negligence or intentionality committed by technical testing officers; roadworthiness related to the condition of motor vehicles and police officers related to driving licenses (only) are given administrative sanctions. Article 273 of the LLAJ Law penalizes administrative actions of road administrators in fulfilling their obligation to immediately repair damaged roads, not based on adequate rationality. This *"overcriminalization"* of negligent administrative actions of road administrators will result in disproportionate punishment.

Law is a law whose function is to protect human interests, so that human interests are protected, the law must be implemented professionally. This means that protection is an action taken in a certain way under applicable laws or regulations. Legal protection is the right of every citizen, and on the other hand, it is an obligation for the state itself. Therefore the state is obliged to provide legal protection for its citizens. In principle, legal protection of society depends on and is based on the concept of recognition and protection of human dignity. According to Roscoe Pound, the main task of law is to conduct social engineering, with the main function, among others, protecting interests, namely public interests, social interests, and private interests in a balanced manner. This harmonious balance is the essence of justice.

Law is the protection of human interests in the form of norms or methods. In principle, a relationship exists between the subject of law and the object of law that is protected by law and creates obligations. The rights and obligations arising from these legal relationships must be protected by law, to make community members feel secure in carrying out their interests. It indicates that legal protection can be interpreted as a guarantee or certainty that a person will get what has become his rights and obligations, hence the person concerned feels safe.

Legal protection functions as a condition for the existence of the law itself in terms of regulating the relationships that exist in society. The issue of legal protection is often discussed as a result of legal certainty. The problem of the absence of legal protection for state organizers is what causes legal uncertainty.

In the context of this study, the law must be present to provide legal protection for motorists who experience accidents due to the impact of road damage, because it is the right of motorists to get road conditions that are safe to use. On the other hand, this right raises the obligation of road organizers to immediately repair damaged roads so as not to cause accidents that cause harm to motorists. However, the law must be implemented professionally for law enforcement to benefit the community, instead of causing unrest, providing a sense of security, and avoiding fear of state administrators in Indonesia.

The reason for protecting the public interest should not make a person - in this instance, a road organizer - lose their sense of security and be threatened with fear when they are about to perform their duties or obligations to serve the public interest. Such an assertion is also intended to protect state officials from possible misapplication of the criminal provisions in Article 273 of UU LLAJ. Regarding the provisions as mentioned before, the researcher will first consider the following matters:

1. Can the criminal provision against the actions of state officials who do not immediately repair damaged roads that result in traffic accidents make sense (*gerechtvaardigd, justified*) from the point of view of criminal law theory?
2. Are the criminal penalties set out in Article 273 of UU LLAJ sufficiently proportional to violating the provisions set out in Article 24 paragraph (1) of UU LLAJ?

Looking at the two perspectives above is necessary because it will determine the constitutionality of the article as mentioned above. Including criminal sanctions as determined by Article 273 of the Law a quo from the humanistic criminal law perspective is inappropriate and disproportionate.

Article 273 of the LLAJ Law, which imposes criminal sanctions on road operators who do not immediately repair damaged roads resulting in traffic accidents, is not rational, for two reasons:

1. Road damage that occurs can be caused by violations committed by road users (such as high vehicle volumes, vehicles that exceed the permitted cargo), so the cause of road damage that causes traffic accidents is not the road organizers addressed by the article. This is related to the doctrine that criminal law should maintain harmony between **social defense, procedural fairness and substantive justice**. Criminal liability aimed at road operators to repair road damage caused by violations and crimes of other parties, creates injustice for the road operators concerned..

2. Road administrators do not always have the power or control to use the budget to repair every damaged road and maintain road conditions to support safe, orderly, smooth traffic and road transportation services. The LLAJ Law regulates preservation funds in Article 29, which states that the condition of the Road must be maintained. The Road Preservation Fund is used specifically for Road maintenance, rehabilitation, and reconstruction activities. The Road Preservation Fund can be sourced from road users and managed by the provisions of laws and regulations. Is this preservation fund under the management authority of the road operator? If so, is the preservation fund sufficient to maintain all existing roads? This is related to the doctrine that criminal law should maintain harmony between **order, legitimacy and competence**. The road repair budget must go through an approval process from various stakeholders, as it is not entirely under the control of state administrators. As an example of road damage by coal transportation in Jambi, the road repair budget must go through the approval of the Indonesian Parliament and the central government because it involves the existence of national public roads that use the APBN. Suppose the road administrator does not have full power/control to repair damaged roads. How can it be held criminally liable for road damage that is not repaired when the damaged road causes a traffic accident?

Hence, the threat of punishment in the form of imprisonment contained in Article 273 of UU LLAJ is not in line with the philosophy of criminal law as described above, as well as the constitutional rights of state organizers guaranteed by the Constitution in Article 28D Paragraph (1) and Article 28G Paragraph (1). Thus, criminal sanctions as *primum remedium* stipulated in Article 273 of the LLAJ Law are irrational and must be amended.

Let's compare our laws with those of other countries regarding the state's responsibility towards victims of traffic accidents due to road damage. Many countries use a civil approach, rather than a criminal one. In the relationship between citizens and the government as legal subjects, when the government commits unlawful acts that harm citizens, based on the provisions of the above laws and regulations, the government must be responsible for compensation.

Since the enactment of Supreme Court Regulation Number 2 of 2019 concerning Guidelines for Dispute Resolution of Government Actions and the Authority to Adjudicate Unlawful Acts by Government Agencies and/or Officials *(Onrechtmatige Overheidsdaad),* every case of Unlawful Acts Committed by Government Agencies and/or Officials becomes the authority of the State Administrative Court as stipulated in the provisions of Article 2 paragraph (1).

According to the explanation as mentioned earlier, any citizen who suffers a loss due to the government's negligence in not repairing damaged road facilities and infrastructure and/or not providing signs or signs for damaged road facilities and infrastructure can file a lawsuit at the State Administrative Court stating the reasons for the actions taken (whether done or not done concretely or in reality) contrary to laws and regulations and contrary to general principles of good governance.

Article 273 of the law not only harms state administrators' interests and constitutional rights in obtaining fair recognition, guarantees, protection, and legal certainty; but also the right to security and protection from threats of fear to do or not do something for the benefit of the community.

Thus, the threat of punishment in the form of imprisonment contained in Article 273 of UU LLAJ is not under the philosophy of criminal law as described above, so it is also not in line with the constitutional rights of state organizers guaranteed by the constitution in Article 28D Paragraph (1) and Article 28G Paragraph (1). Thus, the criminal sanctions stipulated in Article 273 of UU LLAJ are irrational and should be abolished.

3.2 The Principle of Proportionality or Balance in the Reform of Administrative Criminal Law in Indonesia Based on Pancasila Values

There is a criminalization paradigm shift in the LLAJ Law, where previously criminal sanctions were the last alternative *(ultimumremedium). Still,* criminal sanctions are now used as the main effort (*primum remedium*). Is it necessary and proportional?

The regulation of criminal sanctions for road organizers based on Article 273 of the LLAJ Law has the following implications:

a. The principle of *primum remedium*by presenting criminal sanctions in the form of fines or imprisonment for the negligence of road administrators who do not immediately repair damaged roads that cause traffic accidents is disproportionate, unjust, violates the second principle of Pancasila (fair and civilized humanity); not under the philosophy of criminal law, so it is also not in line with the constitutional rights of state administrators guaranteed by the constitution in Article 28D Paragraph (1) and Article 28G Paragraph (1). Thus, the criminal sanctions stipulated in Article 273 of the LLAJ Law are irrational and should be abolished.

b. The tendency of the *primum remedium* principle applied and internalized in Article 273 of the LLAJ Law has the potential to violate human rights and the constitutional rights of citizens, namely the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law (Article 28D paragraph 1), including for road administrators.
c. The principle of *Primum remedium* in Article 273 of UU LLAJ violates the principles of the formation of laws and regulations under Law Number 12 of 2011, including the principle of enforceability; the principle of usability and usefulness; the principle of clarity of formulation. Article 273 of UU LLAJ also violates the principles of material content of laws and regulations, namely, among others, the principle of protection; the principle of humanity; the principle of justice; the principle of equality in law and government; the principle of order and legal certainty; and the principle of balance, harmony and harmony.

Criminal provisions stipulated in the law do not have a strong philosophical basis. They are excessive because criminal law should be used as an *ultimumre medium (ultimate weapon)* not *primum remedium* (main weapon) if other more effective legal means can be used to discipline road organizers or example, administrative law.

3.3 The Implication of the Principle of Balance and the *UltimumRemedium*Principle in the Policy Of Criminal Acts of Road Administrators With Justice

According to Sudikno Mertokusumo, the law that functions as the protection of human interests in its enforcement must pay attention to 3 (three) fundamental elements of law, including: legal certainty *(Rechtssicherheit*), expediency (*Zweckmassigkeit*) and justice (*Gerechtigkeit*). Therefore, in determining the provision of criminal sanctions in a law, it is necessary to pay attention to the three fundamental elements of the law because that is the essence of legal objectives. On the other hand, the determination of criminal sanctions should be carried out in a measured and careful manner because it is related to the policy of deprivation of freedom from human rights legalized by law.

The presence of the principle of balance or proportionality in the criminal law policy of road organizers has the following implications:

a. The principle of balance will present the *ultimumremedium* principle in the criminal law policy of road organizers, meaning that criminal sanctions are used when it is essential and other laws cannot be used (*mercenary*); if other lighter law enforcement mechanisms are ineffective or not seen. The principle of balance provides the basis for the reformulation of Article 273 UULLAJ Criminal law enforcement of road organizers still pays attention to the *ultimumremedium* principle which requires the application of criminal law enforcement as a last resort after the application of administrative law enforcement is considered unsuccessful.
b. The principle of balance will protect road organizers, namely human rights and constitutional rights of citizens, namely the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law (Article 28D paragraph 1). Thus, the principle of balance in the criminal law policy of road organizers also aligns with fulfilling the second principle of Pancasila, fair and civilized humanity.

This study recommends that the Constitutional Court reconstruct the application of the *primum remedium* principle in the concept of punishment, including in the Road Traffic and Transportation Law. This is because there is a tendency for the *primum remedium* principle to be applied and internalized in legal products, thereby potentially violating citizens' human rights and constitutional rights.

The Constitutional Court as the protector of human rights and the constitutional rights of citizens is obliged to protect citizens from legal products, especially laws that cause constitutional losses so that they are contrary to the 1945 Constitution. In its legal considerations, besides using the 1945 Constitution as a test stone, the Constitutional Court also uses three principles that become the purpose of law, namely the principle of justice, the principle of legal certainty, and the principle of benefit as a test stone in the case of judicial review.

Based on the results of the study, the researcher recommends that the House of Representatives and the President as the legislators need to establish clear criteria or constitutional measures in including the norms of criminal sanctions in the law because if they place the concept of criminal sanctions as an *open legal policy*, it can deprive the constitutional rights of Indonesian citizens (WNI). There needs to be a revision of Law No. 12/2011 on the Formation of Legislation related to the criteria for including criminal sanctions in a law based on the abovementioned matters.

3.4 The Concept of Criminal Law Policy toward Road Organizers Reflects the *Ultimum Remedium* Principle to Realize Justice, Legal Certainty, and Expediency

The criminal regulation of road organizers that prioritizes the principle of *primum remedium* that exists in substance, purpose, and goal is contrary to the values of Pancasila (especially the value of fair and civilized Humanity and justice for all Indonesian people). The national goals of the Indonesian state (namely protecting all Indonesian people and the blood of Indonesia), contrary to Articles 28D and 28G of the 1945 Constitution; contrary to the Constitutional Guarantee and violates human rights, namely the Right to recognition, guarantees, protection and certainty of a just law and equal treatment before the law for road organizers.

The importance of the *Ultimum Remedium* principle in the regulation of road organizer criminal policy because the regulation as stipulated in the law does not have a strong philosophical basis and is excessive because criminal law should be used as an *Ultimum Remedium* (ultimate weapon), not *primum remedium* (main weapon) if other more effective legal means can be used to discipline road organizers so that it is necessary to have a criminal policy for road organizers based on the principle of balance that places criminal sanctions as an *Ultimum Remedium* for criminal acts of road organizers to achieve justice, order and smooth traffic in Indonesia.

Article 273 of Law Number 22 of 2009 concerning Road Traffic and Transportation shows that "the criminal offense regulated in the article is a material criminal offense". This means that "the criminal offense prohibited in Article 273 is a criminal offense that causes an accident." Thus, a material criminal offense is a criminal offense formulated by prohibiting an act that can cause an effect or is called a prohibited effect".

The occurrence of an act does not depend on the completion of the act but on whether the act has caused a road traffic accident. Herein lies the problem with constructing Article 273 of the LLAJ Law, which applies the primum remedium principle to not immediately and properly repairing a damaged road that causes a traffic accident. The formulation of criminal threats is difficult to apply and has the potential to cause injustice.

Another concept often associated with the *Ultimum Remedium* doctrine is the principle of proportionality. This principle is a legal principle in a general sense, whether in constitutional, civil, or administrative law. Despite the fact that in some countries, the principle of proportionality is not written in legislation, this principle is considered important in the search for justice, especially in criminal law. Therefore, the formulation of the *Ultimum Remedium* principle needs to be related to the principle of proportionality to realize the idea of punishing the *Ultimum Remedium* last resort.

In some countries, such as the United States and Canada, this principle is enshrined in legislation, namely in the Constitution. In Canada, this principle relates to the prohibition of *(excessive 'cruel and unusual punishments)* as set out in Section Eight of the Canadian Bill of Rights. In the United States, the principle of proportionality is enshrined in the Eighth Amendment to the United States Constitution. The twelfth section of the Canadian Charter states that everyone has the right not to be subjected to unreasonable and cruel punishment. Meanwhile, the Eighth Amendment to the United States Constitution states that excessive bail is not required, fines are not imposed, and cruel and unusual punishment is not imposed.

Based on the various concepts and understanding of the principle of proportionality stated above, it can be concluded that this principle is more aimed at what is to be achieved by punishment. The principle of proportionality can be categorized as a condition of punishment objectives. When connected with the *Ultimum Remedium* doctrine, this principle is only one aspect of the *Ultimum Remedium* doctrine. This means that if civil or administrative sanctions are considered more proportional, it is better to use them. In contrast, if the imposition of criminal sanctions is deemed disproportionate, it is better to impose civil or administrative sanctions. Likewise, if it is related to the selection of the types of punishment to be imposed, then if for a criminal offense, sanctions that are more in the form of fines or compensation will be better imposed than physical or physical sanctions if deemed more proportional.

If associated with the guarantee of human rights, it is very relevant in this research on criminal law policies against road organizers, because the view of how the state regulates human rights does not imply direct restrictions on these rights by the nation. On the contrary, according to this perspective, the regulation of actions taken by the government. Related to this, Bahder Johan Nasution explains that from the point of view of the human rights system, human rights, however, are characterized by principles that limit government authority. However, the state can also reduce fundamental rights according to the need for control. Therefore, although these fundamental rights have the potential to reduce government authority, these limits do not automatically eliminate government leadership, which has the authority to control people's lives. The principle of legal certainty means that every action of each law enforcement agency in tackling traffic and road transportation crimes is always based on Law Number 22 of 2009 concerning Road Traffic and Transportation.

The principle of justice means that the actions of each law enforcement agency in tackling traffic and road transportation crimes must provide equal opportunities for citizens to obtain justice. All parties must be given protection by all law enforcement agencies. Meanwhile, the principle of benefit for the community can be interpreted as the utilization of Law Number 22 of 2009 concerning Road Traffic and Transportation that occurs

in Indonesia both by the community and the government. both by the community and by the government.

Law No. 22/2009 on Road Traffic and Transportation does not clearly explain who a road organizer is. The inclusion of regulations on the criminal liability of road organizers in Law Number 22 Year 2009 on Road Traffic and Transportation is a form of fulfillment of the demands of accountability where every executor of government duties in one of the fields of land transportation, namely road traffic and transportation, must be held accountable, so it is expected to create justice. Because so far the regulation of the government's responsibility as a road organizer to the people who are victims of road facilities provided by the government has not existed in the previous law.

The principle of justice means that the actions of each law enforcement agency in tackling traffic and road transportation crimes must provide equal opportunities for citizens to obtain justice. All parties must be given protection by all law enforcement agencies. Meanwhile, the principle of benefit for the community can be interpreted as the utilization of Law Number 22 of 2009 concerning Road Traffic and Transportation that occurs in Indonesia both by the community and the government. both by the community and by the government.

As stipulated in the Law, both Law Number 22 of 2009 concerning Road Traffic and Transportation, Law Number 38 of 2004 concerning Roads and Government Regulation Number 34 of 2006 concerning Roads, road organizers are responsible for regulating, fostering, developing, monitoring and improving the quality of roads, so that roads can be used for the greatest prosperity of the people. The act of a road operator who does not immediately repair a damaged road that causes a traffic accident has been included as a criminal offense in Law Number 22 of 2009 concerning Road Traffic and Transportation. As road operators responsible for the proper functioning of roads, they should know that roads used by the public must meet traffic safety and security standards. Therefore, road operators who do not immediately repair the damaged road can be said to be negligent in carrying out their duties to provide road facilities that are fit for function or meet safety standards.

The formulation of the *Ultimum Remedium* principle in the Criminal Law Policy of Road Organizers to Realize Justice, Legal Objectives and Benefit is very urgent so in dealing with the problematic criminal acts of road organizers it should use the principle of proportionality that the imposition of punishment can apply under the theory and the government makes efforts to formulate legislation in formulating criminal provisions because of the *Ultimum Remedium* principle so that the harmonization of laws and regulations, both vertically and horizontally.

4. Conclusions

The following are the conclusions of the present study:

a. The regulation of criminal sanctions for road organizers based on Article 273 of the LLAJ Law does not present the Ultimum Remedium Principle by presenting criminal sanctions in the form of fines or imprisonment for negligent acts of road organizers who do not immediately repair damaged roads that cause traffic accidents is disproportionate, unjust, violates the second principle of Pancasila (fair and civilized humanity); not under the philosophy of criminal law. Therefore, it is also not in line with the constitutional rights of state administrators guaranteed by the constitution in Article 28D Paragraph (1) and Article 28G Paragraph (1). Hence, the criminal sanctions stipulated in Article 273 of UU LLAJ are irrational and should be abolished. The possibility of the *primum remedium* principle being applied and internalized in Article 273 of UU LLAJ potentially violates human rights and the constitutional rights of citizens. Article 273 of UU LLAJ likewise violates the principles of material content of laws and regulations, namely, among others, the principle of protection; the principle of humanity; the principle of justice; the principle of equality in law and government; the principle of order and legal certainty; and the principle of balance, harmony and harmony.
b. The equitable legal policy format for road organizers should present the principle of balance or proportion, which will have the following implications: The balance principle will present the *Ultimum Remedium* principle in the criminal law policy of road organizers, which means that criminal sanctions are used when it is essential and other laws cannot be used (*mercenary*); if other lighter law enforcement mechanisms have been ineffective or are not considered to be effective.
c. *The Ultimum Remedium* principle concept in the Criminal Law Policy of Road Organizers to Realize Justice. The aim of Law and Benefit is urgency to handle the problem of criminal acts of road organizers should use the principle of proportionality so that the imposition of punishment can apply by the theory and the government makes efforts to formulate legislation in formulating criminal provisions because of the *Ultimum Remedium principle* so that the harmonization of laws and regulations, both vertically and horizontally.

The recommendations of this article are as follows:

a. The present study recommends that the Constitutional Court reconstruct the application of *the primum remedium* principle in the concept of punishment, including in the Road Traffic and Transportation Law. This is due to the tendency of the *primum remedium* principle to be applied and internalized in the legal products of the law. It therefore can potentially violate human rights and the constitutional rights of citizens.
b. Based on the results of this study, the researchers recommend that the DPR and the President as the legislators need to establish clear criteria or constitutional measures in including the norms of criminal sanctions in the law. It is necessary to revise Law No. 12/2011 on the Formation of Legislation related to the criteria for including criminal sanctions.
c. It is necessary to revise Article 273 of Law No. 22 of 2009 concerning Road Traffic and Transportation because the article still has weaknesses. This is because the offense regulated in Article 273 of Law No. 22 of 2009 Concerning Road Traffic and Transportation is material.

References

[1]. Lindrawati R, Aju, Bambang Sugiri, and Ismail Navianto, Pertanggungjawaban Pidana Penyelenggara Jalan Berdasarkan Undang-Undang Nomor 22 Tahun 2009 Tentang Lalu Lintas dan Angkutan Jalan. Bandung: Mandar Maju, 2014.
[2]. Bahder Johan Nasution, Negara Hukum dan Asasi Manusia, Cetakan ke-3. Bandung: Mandar Maju, 2014.
[3]. Adami Chazawi, Pelajaran Hukum Pidana 2. Jakarta: PT RajaGrafindo Persada, 2011.
[4]. Tonga, Pidana Seumur Hidup Dalam Sistem Hukum Pidana di Indonesia. Malang: UMM press, 2004.
[5]. Lili Rasjidi and B. Arief Sidharta, Filsafat Hukum Madzab dan Refleksi,. Bandung: PT. Remaja Rosda Karya, 1994.
[6]. Lili Rasjidi and B. Arief Sidharta, Filsafat Hukum Madzab dan Refleksi,. Bandung: PT. Remaja Rosda Karya, 1994.
[7]. Malahayati, Amrizal, and Muhammad Nasir, "Konsep Perlindungan Hukum Dan Hak Asasi Manusia Terhadap Penata Laksana Rumah Tangga Indonesia," Jurnal Hukum Tata Negara, no. 1, 2015.
[8]. Maria Theresia Geme, Perlindungan Hukum terhadap Masyarakat Hukum Adat dalam Pengelolaan Cagar Alam Watu Ata Kabupaten Ngada, Provinsi Nusa Tenggara Timur. Disertasi.Program Doktor Ilmu Hukum Fakultas Hukum Universitas Brawijaya Malang, 2012.
[9]. Otje Salman Soemadiningrat, Filsafat Hukum Perkembangan dan Dinamika Masalah. Bandung: Refika Aditama, 2009.
[10]. Octavia Shendy Garusu, "Proses Penyelesaian Tipiring Lalu Lintas," Jurnal Lex et Societatis, 2014.
[11]. Irma Tambunan, "Beban Negara Rp 1,2 Triliun untuk Benahi Jalan Nasional yang Rusak akibat Batubara,."
[12]. Bambang Hermanto, "Selesaikan Jalan Rusak Akibat Tambang, Bambang Hermanto Usul Gunakan Dana CSR."
[13]. Zainal Asikin, Pengantar Ilmu Hukum. Jakarta: RajaGrafindo Persada, 2012.
[14]. S. Mertokusumo and W. R. Tjandra, "Perbuatan melawan hukum oleh pemerintah. Cahaya Atma Pustaka," 2014.
[15]. M. A. Bimasakti, "Onrechtmatig Overheidsdaad Oleh Pemerintah Dari Sudut Pandang Undang-Undang Administrasi Pemerintahan/Act Against the Law By the Government From the View Point of the Law of Government Administration," Jurnal Hukum Peratun, vol. 1, no. 2, 2018.