

The Settlement of Criminal Actions of Traffic Accidents with Child Performers

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Abstract.

The objectives of this research are: To study and analyze the application of criminal sanctions against children who commit traffic violations. The approach method used in this study is a normative juridical approach and the specifications in this study include: analytical descriptive. The sources and types of data in this study are secondary data obtained from literature studies. Based on the results of the study that the application of criminal sanctions against children who commit traffic violations must consider all matters concerning the child, such as the child's condition, family circumstances, environmental conditions, as well as reports from local community institutions. And for sanctions can be subject to criminal sanctions and action sanctions. The application itself must be distinguished from the application of sanctions against adults. Criminal sanctions to be imposed on children must be based on truth, justice, and the welfare of the child. The imposition of a crime or action is an action that must be accountable and beneficial to the child. The judge must consider the condition of the child, the condition of the house, the state of the environment as well as the report from the community advisor.

Keywords: Accident; Child; Perpetrator; Traffic.

1. Introduction

Indonesia is a unitary state in the form of the Republic of Indonesia, idealized and aspired by the founding fathers as a state of law. The 1945 Constitution of the Republic of Indonesia, the fourth amendment to Article 1 paragraph (3) affirms that "the State of Indonesia is a State of Law", where according to Logmann the State is a social organization that aims with its power to regulate and organize a society", while According to Achmad Ali, law is a set of rules or rules arranged in a system that determines what humans can and cannot do as citizens in their social life.¹

Today, all human activities are greatly helped by the existence of technology that can help their movement. One of these technologies is a motorized vehicle that functions as a means of transportation that can support fast and comfortable mobility. Almost every day humans in carrying out their daily activities use vehicles, so it is not surprising that in Indonesia motorized vehicles are experiencing very rapid development. This shows that motorized vehicles are a necessity for humans. In its development, in addition to having a positive impact, it also has a negative impact, which can cause traffic accidents.²

¹Wagianto Sutedjo, (2006), *Hukum Pidana Anak*, Refika Aditama, Bandung, p. 28

² Anindhito, Danu., & Maerani, Ira Alia. 2018. *Kebijakan Hukum Terhadap Pelanggaran Lalu Lintas Oleh Anak Di Wilayah Polda Jawa Timur*. *Jurnal Hukum Khaira Ummah*, Vol.13, (No.1), p.183-192. <http://jurnal.unissula.ac.id/index.php/jhku/article/view/2598/1952>

The traffic regulations in Indonesia are regulated in Act No. 22 of 2009 concerning Road Traffic and Transportation, where these regulations are made to ensure security, order and welfare in society which need to be determined regarding prohibited and required actions. Meanwhile, violations of these provisions are punishable by criminal sanctions. The frequent occurrence of traffic violations, both intentional and unintentional, may be due to the fact that the sanctions imposed on traffic violations are too light, so it is not surprising that there are more and more traffic violations. The legal consequence of a traffic accident is the existence of criminal sanctions for the maker or cause of the incident and can also be accompanied by civil claims for material losses caused.³

The problem is that when the accident is carried out by a child, resulting in injuries and even death, there are many considerations if the child should be punished. Therefore, it is necessary to make various efforts to provide guidance and protection for children, both regarding institutions and legal instruments that are more adequate. The existence of a law on children certainly shows that children do need to be protected. Indonesia as a state of law regulates children in a number of laws and regulations, some of which are Act No. 4 of 1979 concerning Child Welfare, Act No. 11 of 2012 concerning the Criminal Justice System for Children, and Act No. 23 of 2002 concerning Protection of Children. Child.⁴A child who accidentally makes a mistake that causes other people to be injured and even to death is a crime.

Children are an important part that must be protected and inseparable from the survival of every person, nation and state. Children are also a mandate from God Almighty in which the dignity and worth as a whole human being is attached. Children based on the definition in Act No. 39 of 1999 concerning Human Rights (hereinafter referred to as the Human Rights Law) Article 1 paragraph (5) describes the notion of a child as every human being under 18 (eighteen) years of age and unmarried, including children who still in the womb if it is in his interest. Further explanation in Article 1 Number 1 of Act No. 35 of 2014 amendments to Act No. 23 of 2002 concerning child protection (hereinafter referred to as the Child Protection Law) explains that "A child is a person who is not yet 18 years old and is even still in the womb". Thus, child protection is closely related to justice, because in juvenile criminal justice, the sense of justice from law enforcers who handle children affects their actions so as to realize children's rights.

The rights of every child are things that must be upheld without the child asking. The right of the child in question is a will possessed by the child which is equipped with power (*macht*) and which is given by the legal system/law order to the child concerned.⁵For the realization of children's rights, efforts to protect children should start as early as possible, so that they can participate optimally in

³ Hamzah, Muhammad D, 2018, *Penegakan Hukum Pada Kasus Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Hilangnya Nyawa Orang*. *Jurnal Daulat Hukum*, Vol.1, (No.1), p.43-52. <http://dx.doi.org/10.30659/jdh.v1i1.2563>

⁴ Nofitasari, S, 2016, *Sistem Pemidanaan Dalam Memberikan Perlindungan Bagi Anak Sebagai Pelaku Tindak Pidana*. *Fairness and Justice Jurnal Ilmiah Ilmu Hukum*, Vol.14, (No.2), p.183-218. <https://doi.org/10.32528/faj.v14i2>.

⁵ Maulana Hassan Wadong, (2000), *Advokasi dan Hukum perlindungan Anak*, Gramedia Widiasarana Indonesia, Jakarta, p. 29

the development of the nation and state. Child protection in this case is called legal/juridical protection.⁶

At this time we are facing problems regarding children, not only in numbers but also because the problems are increasingly complex. With the passage of time which is growing day by day, deviations in behavior or unlawful acts committed by children are caused by several factors, including: the negative impact of rapid development, the flow of globalization in the field of communication and information, advances in science and technology as well as changes in the style and way of life of some parents, which have brought about social changes in people's lives that greatly affect the values and behavior of children.⁷ Behavior that is not in accordance with the norms or deviations from these norms can cause problems in the field of criminal law.

There are some new developments that have not been accommodated by traffic regulations. For example, various alarms that should be more. Although some rules have been accommodated through Regional Regulations (Perda). Many provisions were left behind due to the development of society, apart from many customary laws, they became unenforceable. For example, the need to survive at night for motorized or motorized vehicles hardly applies to goods and tricycles. Repression against them is almost never carried out, or if it does, it causes an uncomfortable reaction for the officers themselves.⁸

Criminal law recognizes two types of actions, namely crimes and violations. Crime is an act that does not conflict with the law but also conflicts with moral values, religious values and a sense of community justice. Violation is an act that is only prohibited by law, such as a driver who does not have a driver's license, a driver who is in this case a minor, and so on.

The Indonesian National Police (Polri) is a state instrument that plays a role in maintaining public security and order, law enforcement, protection, shelter, and service to the community in the context of maintaining domestic security. Therefore, the National Police are required to continue to develop to be more professional and closer to the community. In other words, the Police are required to develop themselves into civilian police. As a civilian police officer, the position of the National Police in state organizations has a dominant influence in the implementation of the police in a proportional and professional manner which is a prerequisite for supporting the realization of good governance.⁹

The declining image of the National Police in the eyes of the public is an important issue which until now continues to imprison the Police in carrying out

⁶ Hamidah Abdurrachman dkk, (2015), "*Model Penegakan Hukum Anak yang Berhadapan dengan Hukum dalam Proses Penyidikan*", Badan Penerbit Fakultas Hukum Universitas Pancasakti, Tegal, p. 168

⁷ Gatot Supramono, (2007), *Hukum Acara Pengadilan Anak*, Djambatan, Jakarta, p. 12.

⁸ Anton Susanto, Ira Alia Maerani and Maryanto, 2020, *Legal Enforcement by the Police against Child of Criminal Doer of a Traffic Accident Who Caused Death (Case Study in Traffic Accident of Police Traffic Unit of Cirebon City Police Jurisdiction)*, dalam *Jurnal Daulat Hukum Volume 3 (1)*, Published Master Of Law, Faculty of Law Unissula, p. 21

<http://jurnal.unissula.ac.id/index.php/RH/article/view/8402/3928>

⁹ Sadjijono, (2008), *Seri hukum Kepolisian, Polri dan Good Governance*, Laksbang Mediatama, Surabaya, p. 22.

their duties and authorities as guards of security and public order, carrying out law enforcement, and providing guidance, protection and creating security, order and smooth traffic in serving the community.¹⁰

In handling traffic accidents, the National Police as the responsible party, in a professional manner, seeks to reconcile the parties involved in the accident by means of penal mediation, or better known as criminal mediation.

Traffic accidents by Act No. 22 of 2009 concerning Road Traffic and Transportation (hereinafter referred to as the LLAJ Law), Article 1 number 24 is an incident on the road that is unexpected and unintentional involving a vehicle with or without other road users resulting in human casualties and/or property loss. A traffic accident that results in the death of the person is a criminal event that is against the law related to a person's fault. Error according to Simons is an error in a broad sense which includes *dolus* (intentional) and *culpa* (negligence or omission).¹¹ Traffic accidents that often occur involve children. This is always increasing every year in this country, various prevention and control efforts are always pursued. Not only children as victims and witnesses, but includes children as perpetrators.

The purpose of this study is as follows: To examine and analyze the application of criminal sanctions against children who commit traffic violations.

2. Research Methods

The approach method used in this study is a normative juridical approach and the specifications in this study include: analytical descriptive. The sources and types of data in this study are secondary data obtained from library studies.

3. Result and Discussion

Application of Criminal Sanctions Against Children Who Do Traffic Violations

Traffic in Indonesia is regulated in laws and regulations, namely Act No. 22 of 2009 concerning Road Traffic and Transportation, where these regulations are made to ensure security, order and welfare in society which need to be determined regarding prohibited and required actions.¹²

Accidents are largely determined by the driver factor. The driver has a big role in the occurrence of traffic accidents. Drivers who do not anticipate or are unable to predict the dangers can cause traffic accidents. Traffic accidents that

¹⁰Riyanto, Umar Ma'ruf and Sri Kusriyah, 2020, *Implementation Of Police Role In Countermeasures Of Traffic Criminal Acts Of Traffic Violations In Efforts To Establish Police Images As Community Guidelines, dalam Jurnal Daulat Hukum Volume 3 (1)*, Published Master Of Law, Faculty of Law Unissula, p. 267 <http://jurnal.unissula.ac.id/index.php/RH/article/view/9385/4154>

¹¹ Zainal Abidin, (2007), *Hukum Pidana 1*, Sinar Grafikasi. Jakarta, p.224

¹² Muhammad Dani Hamzah, 2018, *Penegakan Hukum Pada Kasus Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Hilangnya Nyawa Orang*, dalam *Jurnal Daulat Hukum Volume 1 (1)*, Published Master Of Law, Faculty of Law Unissula, p. 44 <http://jurnal.unissula.ac.id/index.php/RH/article/view/2563/1920>

have occurred so far are caused by negligence, negligence, carelessness experienced by the driver.¹³

Road Traffic and Transportation has a strategic role in supporting national development and integrity as part of efforts to improve people's welfare, but it is on this highway that traffic accidents often occur. The high number of traffic accidents, including human factors (human error), utility factors such as vehicle failure, road damage, excessive road loads, and other supporting facilities play a role in the occurrence of traffic accidents.¹⁴

There are 2 regulations that regulate traffic accidents that result in serious injuries and even death. The first regulation that regulates is in the Criminal Code and the second is Act No. 22 of 2009 concerning Traffic and Transportation explaining criminal sanctions for perpetrators of traffic accidents.

The two regulations both regulate criminal acts which because of their mistakes result in injuries and even death. The sanctions in the Criminal Code are contained in Article 359 and Article 360, while Act No. 22 of 2009 concerning Road Traffic and Transportation is regulated in Article 310 and Article 311. The Criminal Code regulates that due to negligence causing other people to die or be injured, while the LLAJ Law regulates due to negligence and intentional.

This is what distinguishes between errors, omissions, and intentional. A mistake is an act for which someone must be held accountable. Negligence is an act in the form of a lack of prudence and results in a risk, while what is meant by intentional here is an act where someone already knows that it is a wrong act.

Criminal sanctions imposed on children must be based on truth, justice, and child welfare. The imposition of a crime or action is an action that must be accountable and beneficial to the child. The judge must consider the condition of the child, the condition of the house, the state of the environment, and the report from the community advisor.¹⁵

Children who are not yet 12 (twelve) years old, even though they have committed a crime, cannot be submitted to a juvenile court. This is based on sociological, psychological, and pedagogical considerations, that the child who is not yet 12 (twelve) years old has not been able to account for his actions. Children who are not yet 12 (twelve) years old and commit a crime cannot be subject to criminal sanctions or action sanctions. To determine whether the child will be sentenced to a crime or action, the judge considers the severity of the crime committed. In addition, it also pays attention to the condition of the child, the household condition of the parent/guardian/foster parent, the relationship between family members, and the state of the environment. In addition, the judge also pays attention to the report of the community advisor.

¹³ Preliyanto Puji Utomo, Umar Ma'ruf, and Bambang Tri Bawono, 2020, *Application Of Act No. 22 Of 2009 As A Traffic Accidents Countermeasures Management In The Blora Police Law Area*, dalam *Jurnal Daulat Hukum* Volume 3 (2), Published Master Of Law, Faculty of Law Unissula, p. 259 <http://jurnal.unissula.ac.id/index.php/RH/article/view/9373/4140>

¹⁴ Iman Faturrahman, and Bambang Tri Bawono, 2021, *Application of Restorative Justice to Solution of Traffic Accidents*, dalam *Jurnal Daulat Hukum* Volume 4 (1), Published Master Of Law, Faculty of Law Unissula, p. 28, <http://jurnal.unissula.ac.id/index.php/RH/article/view/13881/5377>

¹⁵ Wagianto Suttedjo, Op.cit, p. 88

Against naughty children can only be imposed a criminal action specified in this Law. For crimes and actions against children can be found in Chapter II Article 22 to Article 32 of Act No. 3 of 1997 concerning Juvenile Justice. Even though the child is returned to the parent, guardian, or foster parent, the child is still under the supervision and guidance of the community supervisor, including participating in scouting activities and others. If the Judge is of the opinion that the parents, wall, or foster parents cannot provide better education and guidance, the Judge may determine that the child is placed in a Child Correctional Institution to attend education, coaching and job training. In principle, education Coaching and job training are organized by the Government at the Child Correctional Institution or the Ministry of Social Affairs. What is meant by 'reprimand' is a warning from the Judge either directly or indirectly to the guardian, parent, or foster parent so that the child does not repeat his actions. While additional requirements such as the obligation to report periodically to the Community Advisor.

In determining the crime or action that can be imposed on a child, the judge pays attention to the severity of the crime or delinquency committed by the child concerned, taking into account the child's condition, the household of parents, guardians, or foster parents, the relationship between family members and the surrounding environment. Likewise, judges are required to pay attention to the Community Advisory Report.

The application of criminal sanctions against children who are perpetrators of traffic violations is contrary to the Juvenile Criminal Justice System because there are many consequences or impacts that will become serious problems for the child, such as psychological impacts to trauma which result in hampering the development of the child both physically and mentally. There are several things that distinguish the process of handling and applying sanctions by children who are traffic violators to those who cause accidents with adults, namely: during the examination process children may not be detained with guardian guarantees, it is mandatory for children to seek diversion. The child must be the last resort in accordance with the *Ultimum Remidum* principle.¹⁶

The application of criminal sanctions against children who commit traffic violations must consider all matters concerning the child, such as the child's condition, family circumstances, environmental conditions, as well as reports from local community institutions. And for sanctions, criminal sanctions and action sanctions can be imposed. The application itself must be distinguished from the application of sanctions against adults.

According to the author, the application of criminal sanctions against children who commit traffic violations in the jurisdiction of the Rembang Police is analyzed using the theory of justice that the principle of justice is a benchmark for what is right, good, and appropriate in life and therefore binds all people, both the community and the authorities. That justice can be seen from a value is justice which is classified as a social value, which in one aspect involves various human associations in any group (family, community, custom, nation, or international alliance).

¹⁶ Vega, Andriana, Kondoahi. 2014. *Sanksi Pidana Terhadap Anak yang Melakukan Pelanggaran Lalu Lintas*. Lex et Societaris. Vol.II, No. 27 August

That in the study of the theory of justice according to the Islamic perspective that Islamic law is a broad pattern of rational human behavior and the supreme authority of Allah's will. As a trust, children must be protected and protected all their interests, physical, psychological, intellectual, their rights, dignity and worth.

4. Conclusion

Based on the description in the previous chapter, the authors conclude that: The application of criminal sanctions against children who commit traffic violations must consider all matters relating to the child, such as the child's condition, family circumstances, environmental conditions, as well as reports from local community institutions. And for sanctions can be subject to criminal sanctions and action sanctions. The application itself must be distinguished from the application of sanctions against adults.

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