

The Legal Protection of Child Persons Caused In Traffic Accident That Causes Loss of Life

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Abstract. *Traffic accidents involving minors and resulting in the loss of life or property of a person are troubling road users. One of the factors causing traffic accidents is the lack of supervision by parents and those responsible for giving permission to drive four-wheeled or two-wheeled vehicles without having a driver's license. Children who become perpetrators in traffic accidents can then be referred to as children who are in conflict with the law. Children in conflict with the law. In this study using normative juridical method. The research specification used in this study is a descriptive type of analysis. In this study the authors focused on library research as well as primary materials in the form of applicable laws and secondary materials in the form of expert opinions, law books, journals and magazines. Data analysis techniques in this study were carried out by qualitative data analysis, namely data collection using laws, theories and legal principles. The results show the enactment of the Juvenile Justice System Act, legal settlement of children in conflict with the law increasingly prioritizes the values of justice, welfare, and upholds the protection of human rights for children by implementing restorative justice. Children as perpetrators of traffic accidents will receive legal protection because they cannot be held responsible for what happened. Everything that happens to the child is still the responsibility of the parents. However, children as perpetrators must still be responsible in accordance with the applicable juvenile criminal justice system.*

Keywords: Accidents; Children; Protection; Traffic.

1. Introduction

Traffic accidents involving minors cause new problems in law enforcement to determine appropriate sanctions as a form of responsibility by these children. According to Soedjono in Sudarsono, explaining that the purpose of law is to

protect interests, so the law protects individual interests in society, even protecting society as a whole.¹

Traffic accidents involving minors and resulting in the loss of life or property of a person are troubling road users. One of the factors causing traffic accidents is the lack of supervision by parents and those responsible for giving permission to drive four-wheeled or two-wheeled vehicles without having a driver's license. This resulted in a child having committed two violations at once, namely not fulfilling the requirements to drive a vehicle on public roads because he did not have a SIM. The legal consequences of traffic accidents are criminal sanctions for the perpetrator or the cause of the incident and can also be accompanied by civil lawsuits for material losses incurred.²

In addition to civil law, criminal sanctions for traffic violators that result in loss of life are also regulated in Act No. 22 of 2009 concerning road traffic and transportation in Article 310 paragraph (3) and paragraph (4). The Road Traffic and Transportation Act states that:

(1) Everyone who drives a Motorized Vehicle who because of his negligence results in a Traffic Accident with the victim being seriously injured as referred to in Article 229 paragraph (4), shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine of up to IDR 10,000,000.00 (ten million rupiah).

(2) In the case of an accident as referred to in paragraph (3) which results in the death of another person, the penalty shall be imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR 12,000,000.00 (twelve million rupiahs).³

The provisions on sanctions for criminal violations stipulated in the article above are intended to provide a deterrent effect on someone who is negligent in driving a motorized vehicle resulting in a traffic accident and causing a person to suffer loss of both his property and his life and even to death.⁴In terms of sanctions, the criminal threats described above apply to adults, while the prison sentence for a child who commits a crime is a maximum of 1/2 (one-half) of the maximum prison sentence for an adult. So from this formulation, it can be explained that children who drive motorized vehicles because of their negligence that result in the death of another person, are punished with imprisonment for

¹Sudarsono, 1991, Introduction to Law, Rineka Cipta, Jakarta, p. 113

²Anindhito, Danu, & Maerani, Ira Alia, Legal Policy Against Traffic Violations by Children in the East Java Regional Police, Khaira Ummah Law Journal, Vol. 13 No. 1 (2018),p. 183

³Act No. 22 of 2009 concerning road traffic and transportation

⁴Mega Rosdiana, 2018, Legal Basis for Traffic Accidents, Hudapress, Semarang, p. 78

half of the penalty for adults (six years), which is a maximum of three years in prison.

There are many considerations when a child must be sentenced, therefore efforts are needed to provide guidance and protection for children, both in terms of institutions and more adequate legal instruments. The existence of laws on children shows that children really need to be protected.⁵Children who become perpetrators in traffic accidents can then be referred to as children who are in conflict with the law. Children in conflict with the law.⁶A good and fair settlement is always part of the consequences of an accident. In this settlement, it must be seen how the form of protection for children who are in conflict with the law, especially in accidents that cause other people to die so that the rights and obligations of the parties are still fulfilled and protected as well as possible. What is even more important is how the child who is dealing with the law can still recover from the incident that happened to him and can still continue his life without being bound by deep trauma due to the traffic accident that happened to him.

In the establishment of the Law on Juvenile Justice, it was emphasized that a child who is not old enough has the right to receive a reduced sentence to implement special treatment for psychological needs. Therefore, the authors were persuaded to take up research entitled Legal Protection for Children Perpetrators of Traffic Accidents Causing Loss of Life. With a focus on the problem of legal settlement of children as perpetrators of traffic accidents which result in loss of life and what forms of legal protection for children as perpetrators of traffic accidents resulting in loss of life. The purpose of this study was to find out the results of problem identification related to solving children as perpetrators of accident crimes and forms of protection for children as criminals.

2. Research Methods

The method used by the author in compiling the journal uses the normative juridical method. The research specification used in this study is a descriptive type of analysis. In this study the authors focused on library research as well as primary materials in the form of applicable laws and secondary materials in the form of expert opinions, law books, journals and magazines. The data collection technique carried out in this study used literature study, collecting data from the results of a review of literature and secondary data which included primary legal materials, secondary legal materials and tertiary legal materials. Data analysis

⁵Nofitasari. S, The Penal System in Providing Protection for Children as Offenders of Crime, Fairness and Justice Scientific Journal of Legal Studies, Vol. 14 No. 2(2016),p.183.

⁶Article 1 Point 2 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System

techniques in this study were carried out by qualitative data analysis, namely data collection using laws, theories and legal principles.

3. Results and Discussion

3.1. Legal Completion of Children as Perpetrators of Traffic Accidents Resulting in Loss of Life

Against a good and fair legal settlement is always part of the consequences of the accident that occurred. In this settlement, it must be seen how the form of protection for children who are in conflict with the law, especially in accidents that cause injuries and even death, so that the rights and obligations of the parties are fulfilled and protected as well as possible. Even more important is how the child who is in conflict with the law can still recover from the incident that happened to him and can still continue his life without being bound by deep trauma due to the traffic accident he experienced.⁷

Children who are in conflict with the law are those who can become perpetrators, victims, even witnesses. The arrangement for children in conflict with the law in Indonesia is known in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System which explains that what is meant by children who can become criminal offenders are those who are 12 (twelve) years old but not yet 18 (eightteen) years old. Meanwhile, children who are victims or witnesses are those who are not yet 18 (eighteen) years old. Whoever commits a crime must be held accountable for the crime.

According to Roeslan Saleh, criminal responsibility is defined as continuing objective reproach that exists in criminal acts and subjectively fulfills the requirements to be punished for his actions.⁸ In criminal law there is a principle of legality which implies that no act is prohibited and punishable by criminal if it has not been stated in a statutory rule beforehand.⁹

The criminal justice process is a juridical process, in which the law is affirmed without prejudice to freedom of expression and defense where decisions are taken with certain motivations. In addition to setting aside freedom of expression and defense, it is also necessary to pay attention to children's rights because they are related to legal protection of children.¹⁰

⁷Astuti. L, Legal protection for children in conflict with the law in traffic accidents, *Justicia Legal journal*, Vol. 1 No. 1 (2017), p. 144

⁸Roeslan saleh, *Thoughts About Criminal Responsibility*, First Printing, Jakarta, Ghalia Indonesia, p-33

⁹The principle of legality is contained in article 1 paragraph 1 of the Criminal Code

¹⁰Wagiati Soetodjo, 2010, *Child Criminal Law*, Bandung. Aditama Refika. p. 29

Since the Law on the Juvenile Justice System was enforced, law enforcement against children who are in conflict with the law has increasingly prioritized the values of justice, welfare, and upholding the protection of human rights for children. In addition, the existence of the Law on the Juvenile Justice System provides limitations on accountability for children, where this law provides space for perpetrators, as well as victims and witnesses to settle cases peacefully as long as an agreement is reached between them. This agreement then becomes the initial capital to implement diversion. It's just that new diversion can be applied if the crime is not punishable by imprisonment for under 7 (seven) years and the act is not a repetition of a crime.¹¹

The diversion process is carried out by way of deliberation between the heads of the parties in accordance with Article 8 of Act No. 11 of 2012 concerning the Juvenile Justice System, namely:

(1) The Diversion process is carried out through deliberations involving children and their parents/guardians, victims and/or parents/guardians, community counselors, and professional social workers based on a restorative justice approach.

(2) If necessary, the deliberations as referred to in paragraph (1) may involve Social Welfare Workers and/or the community.

(3) The Diversion process must pay attention to:

- a. The interests of the victim;
- b. Child Welfare and responsibility;
- c. Avoidance of negative stigma;
- d. Avoidance of retaliation;
- e. Community harmony; And
- f. Decency, decency and public order

The sentence imposed in a traffic accident resulting in the death of another person is a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR 12,000,000.00 (twelve million rupiah). Judging from the punishment imposed as long as the accident is an act committed for the first time and not a repetition,

¹¹Ariani, Nevey V, Implementation of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System in an Effort to Protect Children, *Journal of Media Hukum*, Vol. 21 No.1 (2014), p. 107

if the accident is committed by a child, diversion can actually be carried out. Because even though the accident resulted in the death of another person, the maximum prison sentence is only 6 years, while the requirement for enactment of diversion against criminal acts carries a prison sentence of under 7 years.¹²

Often the emphasis on law enforcement is always placed on the aspect of order alone. This is very likely due to the fact that law is identified with enforcing legislation, an assumption like this is very wrong, because the law must be seen in one system, which causes certain interactions in various elements of the legal system that do not only refer to the rules (codes of rules.) and regulations (regulations), but covers a broad field, including structures, institutions and processes (procedures) that contain them and are related to living law in society (living law) and legal culture (legal culture).¹³

As a rule of law, the Juvenile Criminal Court in Indonesia aims to provide the best for children without ignoring the interests of society and upholding the law in Indonesia as well as protecting and upholding justice and paying attention to the future of Indonesian children as the nation's successor. With the enactment of the Juvenile Justice System Act, legal settlement of children in conflict with the law increasingly prioritizes the values of justice, welfare, and upholds the protection of human rights for children by implementing restorative justice.¹⁴ Diversion is a basic idea to eliminate the negative impact of the criminal justice system which always produces a negative stigma which then labels children according to the actions that happened to them.¹⁵

3.2. Forms of Legal Protection for Children as Perpetrators of Traffic Accidents Resulting in Loss of Life

Fitzgerald explained Salmond's theory of legal protection that law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on other parties. The interest of law is to deal with human rights and interests, so that law has the highest authority to determine human interests that need to be regulated and protected.¹⁶

¹²See Article 310 paragraph 4 of Act No. 22 of 2009 concerning Road Traffic and Transportation

¹³Lutfil Ansori, Law Enforcement Reform, Progressive Law Perspective, Juridical Journal Vol. 4 No. 2 (2017), p. 159

¹⁴Afthonul Afif, 2015, Forgiveness, Reconciliation, and Restorative Justice, Student Libraries. Yogyakarta. p. 328.

¹⁵Setya Wahyudi, 2011, Implementation of the Idea of Diversion in the Renewal of the Juvenile Criminal Justice System in Indonesia, Genta Publishing, Yogyakarta, p. 14.

¹⁶Satjipto Raharjo, 2000, Legal Studies, PT. Citra Aditya Bakti, Bandung, p. 53

Legal protection for children can be interpreted as an effort to protect the law against various freedoms and human rights of children (fundamental rights and freedoms of children) as well as various interests related to children's welfare.¹⁷

With regard to the protection of children, in the criminal law system in Indonesia, the Government has shown good faith in implementing the ratification of several international conventions relating to the legal protection of children in Indonesia, by establishing Act No. 35 of 2014 concerning Child Protection which is an amendment to Act No. 23 of 2002 concerning Child Protection.

In the consideration of the SPPA Law it is stated that children are a mandate and a gift from God Almighty who has dignity and worth as a whole human being, and to maintain his dignity, children have the right to receive special protection, especially legal protection in the justice system. Indonesia as a state party to the Convention on the Rights of the Child which regulates the principle of legal protection for children has an obligation to provide special protection for children who are in conflict with the law.¹⁸

Act No. 35 of 2014 concerning Child Protection, regulates child criminal law which is generally regulated in the Criminal Procedure Code. This law also regulates the protection of the rights of children who are suspects in criminal acts. The rise of traffic violations due to children riding their own motorbikes is a problem that has not been solved so far. Various reasons were expressed by parents, why they allowed their children to ride motorbikes.

Provisions for legal protection for children in conflict with the law have been regulated in article 64 of Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection, namely:

Article 64

Special Protection for Children in conflict with the law as referred to in Article 59 paragraph (2) letter b is carried out through:

- a. treatment in a humane way by paying attention to needs according to their age;
- b. Separation from adults;

¹⁷Andik Prasetyo, Legal Protection for Child Offenders, Journal of Law Studies, Volume 9, Number 1.2020, p. 56

¹⁸Ibid., p. 57

- c. Provision of legal assistance and other assistance effectively;
- d. Implementation of recreational activities;
- e. Freedom from torture, punishment or other cruel, inhumane and degrading treatment of dignity and degree;
- f. Avoidance of imposition of death penalty and/or life imprisonment;
- g. Avoidance of arrest, detention or imprisonment, except as a last resort and for the shortest time;
- h. Providing justice before the Juvenile Court which is objective, impartial, and in a session closed to the public;
- i. Avoidance of publication of his identity.
- j. Providing parental/guardian assistance and people trusted by the child;
- k. Providing social advocacy;
- l. Giving personal life;
- m. Providing accessibility, especially for Children with Disabilities;
- n. Providing education;
- o. Provision of health services; And
- p. The granting of other rights in accordance with the provisions of the legislation.

The children who are not yet 12 years old, even if they have committed a crime, cannot yet be brought to a juvenile court hearing. This is based on sociological, psychological and pedagogical considerations, that children who are not yet 12 years old cannot be held accountable for their actions. Children who are not yet 12 years old and commit criminal acts cannot be subject to criminal sanctions or action sanctions. To determine whether a criminal or action will be imposed on a child, the judge considers the severity of the crime committed. In addition, it is also noted; the condition of the child, the situation of the parent/guardian/foster

parent household, the relationship between family members, and the condition of the environment.¹⁹

Children as perpetrators of traffic accidents will receive legal protection because they cannot be held responsible for what happened. Everything that happens to the child is still the responsibility of the parents. However, children as perpetrators must still be responsible in accordance with the applicable juvenile criminal justice system. Perpetrators (Children in Legal Conflict) and their victims have very little opportunity to convey the version of justice they want. Because here the state determines the degree of justice for the victim by giving prison sentences to the perpetrators. As a consequence of his actions the child is subject to imprisonment. Though prison is not a good place for their growth.

Apart from that, by being in prison, children will gain new knowledge about crime and it is not impossible that after spending a period of detention, children will actually be entangled in the same actions or perhaps actions at an even greater level.²⁰

4. Conclusion

The law on the juvenile justice system provides space for perpetrators, as well as victims and witnesses to settle cases peacefully as long as an agreement is reached between them. This agreement then becomes the initial capital for the implementation of diversion. With the enactment of the Juvenile Justice System Act, legal settlement of children in conflict with the law increasingly prioritizes the values of justice, welfare, and upholds the protection of human rights for children by implementing restorative justice. Act No. 35 of 2014 concerning Child Protection, regulates child criminal law which is generally regulated in the Criminal Procedure Code. This law also regulates the protection of the rights of children who are suspects in criminal acts. Children as perpetrators of traffic accidents will receive legal protection because they cannot be held responsible for what happened. Everything that happens to the child is still the responsibility of the parents. However, children as perpetrators must still be responsible in accordance with the applicable juvenile criminal justice system.

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¹⁹Rika Saraswati, 2009, Child Protection Law in Indonesia, Citra Aditya bakti, Bandung, p. 111

²⁰DS. Dewi, Fatahillah A. Gratitude, 2011, Penal Mediation: Application of Restorative Justice in Indonesian Juvenile Courts, Indie Publishing, Depok. p. 25-26

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