

## Parent Responsibility Towards Criminal Actions Of Traffic Accident By Children Which Sustained Others Death

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### Abstract

*The aim of this study to find out and analyze the efforts made by parents and Polrestabes Semarang in overcoming traffic accidents by children that cause other people to die, the resulting losses, as well as the form of parental responsibility for traffic accidents by children in the jurisdiction Polrestabes Semarang. The research problem is analyzed by the theory of the operation of law in society, the theory of criminal liability and the theory of substitute liability. The approach method used is juridical sosiological method, the specification in this research is descriptive data analysis used is qualitative. The results of the study: That the factors that cause the use of motorized vehicles by children in the jurisdiction of the Semarang Police are ignorance, personal encouragement, family encouragement, social encouragement, disinterest and opinions are not obliged to order traffic. That in order to overcome this problem, it has been done Efforts by the Traffic Police of the Semarang Police, include Pre-emptive, preventive and repressive efforts. Parents must also try to encourage the school to prepare school pick-up facilities, issue restrictions on using motorbikes, and not provide parking spaces. Parents can also make efforts by encouraging the Semarang City Government to provide transportation.*

*Keywords: Accountability, Parents, Crime, Traffic Accidents, Children.*

### 1. Introduction

Traffic in Indonesia is regulated in statutory regulations, namely Act No. 22 of 2009 concerning Road Traffic and Transportation, in which the law is made to ensure security, order and welfare in society which need to determine prohibited and required actions.<sup>1</sup>

A child who commits a crime cannot be punished, but as much as possible the punishment given is not severe. We can see this in Article 16 paragraph (3) of Act No. 23 of 2002 concerning Child Protection Jo. Act No. 35 of 2014 concerning Amendments to Act No. 23 of 2002 concerning Child Protection states that: , detention, or imprisonment is only carried out if it is in accordance with the applicable law and can only be done as a last resort. "<sup>2</sup>

Protection of children who commit criminal acts must be performed Restorative justice. Restorative justice is a settlement process carried out outside the criminal justice system by involving victims, perpetrators, victims' families and

<sup>1</sup> Muhammad Dani Hamzah, *Penegakan Hukum Pada Kasus Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Hilangnya Nyawa Orang*, Jurnal Daulat Hukum, Vol 1 No 1 March 2018, p. 43, <http://jurnal.unissula.ac.id/index.php/RH/article/view/2563>

<sup>2</sup> Act No. 23 of 2002 Concerning Child Protection, p. 9

the community as well as parties with an interest in a criminal act that occurs to reach an agreement and settlement.<sup>3</sup>

Related to diversion, diversion is born with the aim of providing protection for children's rights. Diversion appears with the aim of trying to avoid the stigma of being evil in children. With the diversion of law enforcers both in the police, prosecutors and courts, they are given the authority to divert the judicial process out of the existing formal justice process.<sup>4</sup>

Provisions regarding traffic crimes to the loss of another person's life are regulated in Article 310 of Law No. 22 of 2009 paragraph (4) Concerning Traffic and Road Transportation, which reads as follows: "In the event of an accident as referred to in paragraph (3) which results in the death of another person, shall be punished with imprisonment of up to 6 (six) years and / or a maximum fine of IDR 12,000,000.00 (twelve million rupiahs)",<sup>5</sup> whereas in the Criminal Code it is usually referred to as error, carelessness, or negligence as stated in Article 359 of the Criminal Code reads: "Anyone who causes the death of a person is sentenced to prison for the duration of five years or the confinement of a maximum of one year".<sup>6</sup>

The elements in Article 310 paragraph (4) of Act No. 22 of 2009 concerning Road Traffic and Transportation are as follows: <sup>7</sup> Everyone drives a motor vehicle due to his negligence and which results in the death of other people.

Traffic accidents can certainly have fatal consequences for other road users. They may experience losses in the form of material or immaterial losses that may arise from the accident.

In the science of law, there are 3 (three) categories of acts against the law, namely as follows: Actions against the law due to deliberate action; Actions against the law without error (without any intention or negligence); and Actions against the law due to negligence.<sup>8</sup>

In criminal law the principles of legality and guilt are recognized. The principle of legality is based on the *adagium nullum delictum nulla poena sine praevia lege poenali*, meaning that no act can be punished except for the strength of the criminal rules in the legislation that existed before the act was committed. "No act may be punished, but on the strength of the criminal provisions in the law, which is earlier than the act".<sup>9</sup>

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<sup>3</sup> Anita Indah Setyaningrum, Umar Ma'ruf, *Diversi Sebagai Bentuk Penyelesaian Perkara Pidana Anak Melalui Pendekatan Restorative Justice Oleh Penyidik Polda Jawa Tengah*, Jurnal Hukum Khaira Ummah Vol. 12. No. 4 December 2017, p. 976

<sup>4</sup> Fiska Ananda, *Penerapan Diversi Sebagai Upaya Perlindungan Hukum Terhadap Anak Pelaku Tindak Pidana*, Jurnal Daulat Hukum, Vol. 1. No. 1 March 2018, p. 79  
<http://jurnal.unissula.ac.id/index.php/RH/article/view/2566>

<sup>5</sup> Act No. 22 of 2009 concerning Road Traffic and Transportation, p. 151

<sup>6</sup> Criminal Code, p. 88

<sup>7</sup> Agus Supriyadi, Aris Mashdurohatun, *Analisa Hukum Terhadap Lalu Lintas Yang Mengakibatkan Hilangnya Nyawa Orang Lain Yang Dilakukan Oleh Orang Karena Pengaruh Minuman Keras*, Jurnal Khaira Ummah Unissula, June 2016,  
<http://jurnal.unissula.ac.id/index.php/jhku/article/view/1848>

<sup>8</sup> Munir Fuady, *Perbuatan Melawan Hukum*, PT. Citra Aditya Bakti, Bandung, 2005, p. 3

<sup>9</sup> Yulies Tiena Masriani, *Pengantar Hukum Indonesia*, PT Sinar Grafika, June 2004, p. 65

Traffic accidents that occur in the jurisdiction of the City of Semarang which are caused by children must have fulfilled the elements of an illegal act and are also contrary to the provisions contained in Act No. 22 of 2009 concerning Road Traffic and Transportation.

Then, the case of then-suspected minors handled by the Semarang Traffic Police is still high. During the last 3 years there have been 30 cases, with 30 victims dying and 8 minor injuries. As for the settlement of cases through SP3 as many as 22, due to the death of the suspect, and 8 settlement of cases carried out by diversion.

## **2. Research Methods**

The approach method used in this research is juridical sociologic, because in this research, in addition to using a legal science approach, it also tries to apply other social sciences. This means that in determining the data the emphasis is on juridical aspects, while social science is used as an assistant, namely by making a direct approach to some people who occupy certain positions in accordance with the object of research.

Research specifications, namely descriptive analysis by focusing on the problem and then processed and analyzed to draw conclusions. The specification in this study is analytical descriptive, which is a study that aims to determine the Accountability of Parents for the Crime of Traffic Accidents by Children which Result in Other People Dying. The sampling method used was purposive sampling, namely the sampling technique by taking a certain group of subjects from the population to be studied. This technique is used when the sample members are specifically selected based on the research objectives. The data analysis method used is qualitative, namely analysis that is not based on exact data in the form of numbers but in the form of questions only.

## **3. Results and Discussion**

### **3.1. The Efforts Made By Parents and The Semarang Police In Tackling The Crime Of Traffic Accidents By Children**

Efforts made by parents are increasing supervision of children, including their social environment, and not giving motorized vehicles to children. Parents must also try to encourage the school to prepare school pick-up facilities, issue restrictions on using motorbikes, and not provide parking spaces. Parents can also make efforts by encouraging the Semarang City Government to provide mass transportation through the housing route to school and vice versa, so that students are not in trouble and are not late for school.

The efforts made by the Semarang Police Traffic Unit are: Pre-emptive efforts; Preventive Efforts; Repressive Efforts.

#### ***Pre-emptive Efforts***

Pre-emptive efforts are carried out by carrying out the activities of Police Friends of Children, police goes to school, socialization in schools, campuses,

communities, organized and unorganized communities, traffic safety campaigns, driving training, driving safety, safety riding, and traffic villages. .

Throughout 2018, there were 607 *Dikmas Lantas* activities, while in 2019 there were 648 *Dikmas Lantas* activities. In 2020 to August 2020, 400 *Dikmas Lantas* activities have been carried out. In addition to the organized community education activities as mentioned above, the Dikyasa Unit also conducts socialization and *Dikmas* Then through short videos, e-flyers, posters, memeinfographics, and other appeals through social media, both Instagram, Facebook, Twitter and Whatsapp groups. . In 2018 there were 155 products, 2019 there were 189 products, and from 2020 to August there were 165 products.

### ***Preventive Measures***

For preventive efforts, the traffic unit carries out Arrangement, Guarding, Escorting and Patrol activities. This activity is carried out by the *Turjawali* unit every day at points prone to violations of minors throughout the city of Semarang. Every day, 160 combined traffic police personnel and units then the police make arrangements and morning guarding, starting at 06.00 to 10.00 WIB. Then proceed with the arrangement and guarding of the afternoon starting at 16.00 to 20.00 WIB. In addition, at certain intersections, post was also established, which was filled by traffic control personnel for 24 hours in 3 alternating picket teams. For patrol activities, the *Turjawali* unit deployed 12 units of 4-wheeled vehicles, and 22 large motorbikes to patrol areas prone to violations and harm-prone areas, then, in three teams, which were held in the morning,

### ***Repressive Efforts***

For repressive efforts, throughout 2018, the Traffic Police of the Semarang Police has prosecuted 81,240 tickets, including 14,039 underage offenders. Meanwhile, in 2019, 90,590 tickets were prosecuted, including 27,132 underage offenders. For the year 2020, up to July, 37,084 tickets have been ticketed, with the number of offenders under the age of 7,116 tickets.

The efforts made by parents and the Semarang Police Traffic Unit in tackling the crime of traffic accidents by children were analyzed by the theory of the operation of law in society. In law enforcement, the effectiveness and success or failure of law enforcement against perpetrators of child traffic accidents depends on three elements of the legal system, namely the substance of the law, the structure of law, and legal culture.

First, the substance of the law, there is no criminal act that can be punished if there are no rules governing it. So in the criminal act of traffic accidents committed by children, it is clear that there are rules governing it, namely the Traffic Law, the Criminal Code and the Children Criminal Justice System Law. If the law or regulation is implemented / implemented, it can have a deterrent effect on the perpetrators and can reduce or cope with the occurrence of traffic accidents by children.

The two legal structures, starting from the Police, Attorney General's Office, Courts and Rehabilitation. In order for everything to go as expected, each authority in the legal structure must comply with the rules governing it, such as the Police Law No. 2 of 2002 and Law No. 22 of 2009 concerning Road Traffic and

Transportation. Carrying out the authorities of each of these legal structures can overcome the occurrence of traffic accidents by children, because of the deterrent effect for the perpetrators.

The third is the legal culture, the overall attitude of the community members and the value system that exists in society that will determine how the law should apply in the society concerned. In overcoming the crime of traffic accidents by children it can be achieved, if the legal culture of the community, especially the community in the jurisdiction of the Semarang Police Traffic Unit obeys and obeys existing rules, for example children brought under age are not allowed to drive motorized vehicles

### **3.2. Losses caused by the criminal act of traffic accidents by children**

Compensation given by parents to the victim must be as much as possible which includes material loss as well as immaterial loss, if this immaterial loss is actually suffered by the victim. According to the interview the author conducted with Second Inspector Sujid Riyanto, a member of the Semarang Police Traffic Unit, as for the most common forms of loss to victim as a result of traffic accidents committed by children in the form of:

- Injuries to the physical,
- Damage to motor vehicles,
- Damage to items carried at the time of the traffic accident,
- Loss of income / income due to illness so that they cannot work, and
- Traumatic to drive a motorized vehicle by yourself.
- The victim died

The resulting losses are analyzed using the theory of criminal liability, which is a punishment for the maker for an act that violates the prohibition or creates a prohibited situation. Criminal liability because it involves the process of transferring the existing punishment to the criminal act to the maker. In the criminal act of traffic accidents by children, parents must be accountable for the actions of their children, because the perpetrator or the child is still a minor, the parents must be responsible. The responsibility is through paying all compensation caused by a traffic accident committed by his child, for example replacing all medical treatment for the victim.

### **3.3. Forms of Parental Responsibility Acts Against the Law Committed by Children**

As it is known, children are not capable of acting or doing a legal act. Therefore, parents are responsible for all actions taken by children. Because it is impossible for the burden to be borne alone by the victim considering that the child cannot be blamed.

The responsibility of the parents here is in the form of compensation. Compensation is given in the form of an amount of money that is in accordance with the losses suffered by the victim which includes material losses, namely real losses suffered by the victim including expected but lost losses and includes

immaterial losses, namely fear, pain and loss of life. It is the responsibility of the parents to provide compensation for both minor and heavy losses.

Parental responsibility is analyzed using Substitute Responsibility Theory. It is a criminal responsibility imposed on someone for the actions of the person. In the form of substitute responsibility for parents to criminal acts of traffic accidents by minors, namely the responsibility for all losses caused by the child's actions that result in losses to other people. Each person is not only responsible for losses caused by their own actions but also for losses caused by the actions of the people who are dependent on them, or caused by items under their control, namely the responsibility of parents or guardians for the actions of their immature children.

#### **4. Closing**

Efforts made by the Semarang Police Traffic Police in overcoming traffic accidents are Pre-emptive, preventive (prevention) and repressive (prosecution) efforts. Parents also play an important role in reducing the number of traffic accidents against children, among others, by increasing supervision of children, including their social environment, and not giving motorized vehicles to children. Parents must also try to encourage the school to prepare school pick-up facilities, issue restrictions on using motorbikes, and not provide parking spaces. Parents can also make efforts by encouraging the Semarang City Government to provide transportation through the housing route to school and vice versa, so that students have no trouble and are not late for school. Losses caused by criminal acts of traffic accidents by children are material and immaterial losses. Compensation given by parents to the victim must be as much as possible which includes material loss as well as immaterial loss, if this immaterial loss is actually suffered by the victim. The responsibility of the parents here is in the form of compensation. Compensation is given in the form of an amount of money that is in accordance with the losses suffered by the victim, which includes material losses, namely real losses suffered by the victim, including expected but lost losses and immaterial losses, namely fear, pain and loss of life.

It is suggestions that The need for full awareness from parents to actively participate in supporting the government in order to prevent traffic accidents with child offenders, the way is by prohibiting, controlling and not giving opportunities for children to drive motorized vehicles; It is necessary to increase capacity building / training in order to increase knowledge and understanding for all personnel including investigators who handle traffic accident cases with child perpetrators so that they become more professional. Apart from that, intensifying traffic accident prevention strategies with child offenders in a more focused / linear, strategic and comprehensive manner which must prioritize appropriate Pre-emptive activities to eliminate intentions, appropriate preventive activities to eliminate opportunities and repressive activities that really prioritize law enforcement that is right on target ; It is necessary to revise the Laws, Government Regulations and Head of Police Regulations related to traffic violations and accidents to also accommodate the implementation and technical instructions for traffic accidents with child offenders as well as articles that regulate the imposition of criminal sanctions and fines against parents who are proven to allow and

provide opportunities for children to drive without a license and be involved in traffic accidents.

## 5. References

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