

Investigation in Settlement of Traffic Accident Crime Cases by Underage Children According to Law no. 11 of 2012 concerning the Juvenile Criminal Justice System

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ABSTRACT

Road traffic and transportation have a strategic role in supporting the development and national integration as part of efforts to promote public welfare as mandated by the 1945 Constitution of the Republic of Indonesia. Road traffic and transportation as part of the national transportation system must develop their potential and its role is to realize security, safety, order and smoothness of road traffic and transportation in the context of supporting economic development and regional development. Law on traffic and road transportation no. 22 of 2009 in article 1 paragraph (1) states that road traffic and transportation are a unified system consisting of traffic, road transportation, traffic network and road transportation, vehicles, drivers, road users, and their management. 1. The rule of law in the settlement of traffic accident crimes committed by minors is based on law no. 11 of 2012 and Supreme Court Regulation no. 4 of 2014. The factor causing the occurrence of traffic accident crimes committed by children aged in the jurisdiction of the Pangkep Police Satlantas is the loss of a child's focus on driving a motorized vehicle. The efforts to prevent the Pangkep Police Traffic Unit from reducing the number of public traffic accidents and minors are not optimal because they are constrained by the Covid-19 pandemic. The legal policy taken by the Pangkep Police Traffic Unit carried out a diversion in handling traffic accident cases caused by minors in case file number bp/01/i/2017/traffic.

Keywords: Investigation; Accident; Traffic

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I. INTRODUCTION

Road Traffic and Transportation have a strategic role in supporting national development and integration as part of efforts to advance public welfare as mandated by the 1945 Constitution of the Republic of Indonesia. Road Traffic and Transportation as part of the national transportation system must develop their potential and its role is to realize security, safety, order and smooth traffic and road transportation in the framework of supporting economic development and regional development.^[1] Law on Road Traffic and Transportation No. 22 of 2009 in Article 1 paragraph (1) state that Road Traffic and Transportation is a unified system consisting of Traffic, Road Transportation, Road Traffic and Transportation Network, Vehicles, Drivers, and Road Users. , and Management.

Currently, the means of transportation in Indonesia are experiencing very rapid development, not only in terms of quality but in terms of quantity. People prefer to use private vehicles compared to using public transportation, this is the reason for the rapid development of transportation in cities or villages.

This development not only has a positive impact but also has a negative impact, namely the large number of traffic violations that are thoughtless can cause traffic accidents. Even though traffic rules have been regulated in Law Number 22 of 2009 concerning Traffic, traffic violations are still being carried out, several cases of traffic violations and accidents that have occurred involve children.^[2] The proof is if you look at the group of drivers on the road, many children also contribute to the number of accidents. The number also cannot be underestimated, reaching thousands of children involved in traffic violation cases every year on the road. Judging from the data on the type of vehicle, these violations occurred on motorcyclists.^[3]

Students are in first place for the most based on the classification of perpetrators of traffic violation cases and seen from the type of vehicle, which dominates the traffic violations are motorcycles. News about traffic accidents is no longer something foreign to hear, both through print and electronic media as if to show that traffic accidents often occur. Based on data from Korlantas Polri, the number of accidents that occurred in August 2022 was around 194 total accidents, data from each Polda, the total number of victims reached 311.

Several factors cause frequent traffic accidents, including the human factor (*human error*), facility factors such as driver negligence, road damage, road overload, and other supporting facilities that have contributed to the occurrence of traffic accidents.

The age limit of 17 (seventeen) years is the minimum limit for a child who can analyze conditions and can pay attention to driving ethics. Even then, you still need high-flying hours so you don't make decisions at random. The age of children cannot predict danger well. Ethical and emotional knowledge also cannot be controlled. That is why the rules for making a SIM are at least 17 (seventeen) years old. That is why nowadays many children ride motorcycles in threes, speeding, running red lights, going against the flow and many more. They tend to imitate what other drivers do because they are considered correct because they do not yet have an understanding of correct and safe driving.^[4]

Regulations regarding the age limit for drivers are contained in Law Number 22 of 2009, that drivers under 17 years of age are prohibited from driving motorized vehicles. The Indonesian Child Protection Commission (KPAI) considers this phenomenon to be the responsibility of parents who allow their children to drive motorized vehicles. The Indonesian Child Protection Commission (KPAI) considers this phenomenon to be the responsibility of parents who allow their children to drive motorized vehicles.^[5]

The increasing number of traffic accidents which are dominated by minors is of course a violation that should be accounted for by parents because at that age they cannot be given the right or permission to drive. In addition, at this age, the state of mind and spirit is still very unstable, therefore motorists who are still children often have accidents. Traffic accidents experienced by minors are caused by negligence in parental supervision, for example, when underage children are still in an unstable condition when driving, for example by speeding on the road, it is not uncommon to even have wild races.

Disorderly acts in traffic are criminal acts and anyone who commits this, the perpetrator of the crime must be held accountable for his actions. Adults, and children, fall into the qualifications of criminal law subjects. Likewise, perpetrators of criminal acts who are still categorized as minors, they must still be held responsible for the criminal acts they commit, except in certain cases or circumstances.^[6]

Likewise in cases of traffic violations where the perpetrators are still children, laws and regulations have stipulated that a child can be held criminally responsible, but law enforcement must pay attention to children's human rights by remembering that children are the future of the nation and the next generation. The ideals of the nation, so that every child has the right to survival, growth and development, participation and is entitled to protection from acts of violence and discrimination as well as civil rights and freedoms and does not override or ignore children's rights.^[7]

If we look at traffic accidents experienced by minors, it is one of the biggest causes of death in Indonesia. According to Law no. 22 of 2009, Article 1 paragraph 24 Traffic accidents are unexpected and unintentional road events involving vehicles with or without other road users resulting in loss of life and/or property.

Children as perpetrators of traffic accidents have contributed to most traffic accidents until recently. This ultimately boils down to the guarantee of protection for the child and the responsibility of the child himself. By paying attention to the applicable positive law and aspects of the interests of the child as the perpetrator of traffic accidents on the road.

Juvenile Justice System Law No. 11 of 2012 in Article 1 paragraphs (2) to (3). Paragraph (2) states that "Children who conflict with the law are children who conflict with the law, children who are criminal acts, and children who are witnesses in criminal acts, and children who are witnesses in criminal acts. Paragraph (3) states that a child in conflict with the law, hereinafter referred to as a child, is 12 (twelve) years old but not yet 18 (eighteen) years old, and is suspected of committing a crime. Children are an integral part of the continuity of a nation and state."^[8]

In the Indonesian constitution, children have a strategic role which is expressly stated that the state guarantees the right of every child to survival, growth and development as well as to protection from violent discrimination. The responsibility of the state is regulated in several articles, which among other things require and provide responsibility for respecting the fulfilment of children's rights without distinction of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status, birth order, and physical condition and/or mental health, as well as protecting and respecting children's rights and being responsible for formulating and implementing policies in the field of child protection.

Law Number 35 of 2014 requires regional governments to be responsible for implementing and supporting national policies in the implementation of child protection in the regions which can be realized through regional efforts to build child-friendly districts/cities, as well as provide support for facilities, infrastructure, and the availability of human resources. in child protection.^[9]

In addition to the state's responsibility, the law provides mandates, responsibilities and obligations to the community, so that the community may no longer stand idly by and be indifferent in terms of protecting children, among the obligations and responsibilities of the community include carrying out community

participation activities in organizing child protection which is carried out by involving community organizations, academics, and child observers. So that in this case community organizations, academics and child observers should go directly to the field to do prevention by doing a lot of education in terms of protecting children, so that cases of crimes against children (especially sexual crimes) which have recently haunted us a lot can be minimized.

Law Number 35 of 2014 also provides obligations and responsibilities to parents in terms of protecting children, caring for, nurturing, educating and protecting children, developing children according to their abilities, talents and interests, preventing marriage at a young age and providing character education and instill moral values in children. Because in reality, it is the parents who are closest to the child in their daily lives who directly monitor the physical and psychological growth of the child and monitor the child's daily interactions.

The problem of traffic accident crimes involving children is another dimension of the form of law enforcement against children in conflict with the law, where according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the investigation of children is different from the investigation rules given to other persons. mature.

Where in the 9 perspectives of juvenile justice, there is a special subsystem of the criminal justice system or in other words there are special officials who are given authority in administering justice processes against children in conflict with the law. One of the officers who handle criminal matters is an investigator who is authorized according to statutory regulations.

Investigators who deal with child problems must be special investigators regulated by the Law in the Juvenile Justice System. In traffic accident crimes committed by minors, the authority to investigate is carried out by the police which is the initial process in the administration of juvenile justice. To create conditions where children get their rights by applicable laws and regulations, and the police as an institution engaged in law enforcement both in a preventive and repressive manner is an institution that plays an important role in realizing legal certainty.

II. RESEARCH METHODS

Legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand. This type of research is empirical normative, which combines normative legal research and social law research. To solve the legal issues discussed by the author in the preparation of this scientific paper, the author chose the Pangkep Police Station as a research location. The reason the author chose this research location is that the author assesses that there are many cases of underage traffic accidents that are currently happening in Pangkep Regency.

III. DISCUSSION

Completion Process Level of Investigation of Children in Traffic Accident Crimes

A person who violates criminal law will face the state through its law enforcement apparatus. As an instrument of social control, criminal law relies on sanctions because its function is to deprive people of their rights to life, freedom or property rights. Invasion of these basic rights is justified to preserve society and protect fundamental rights from interference by others.

Article 1 point 7 of the Law on the Juvenile Criminal Justice System states that diversion is the transfer of child cases from the criminal justice process to processes outside the criminal justice system. The SPPA Law regulates diversion which functions so that children who conflict with the law are not stigmatized as a result of the judicial process they must undergo. The use of diversion mechanism is given to law enforcers (police, prosecutors, judges, and other institutions) in dealing with law violators involving children without resorting to formal courts. The application of this diversion is intended to reduce the negative impact of children's involvement in a judicial process.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System provides special treatment for children in conflict with the law starting from the investigation process. This special attention and treatment is intended so that children do not become victims of the application of rigid and formal legal procedures which are feared to cause suffering, physical and social for the child.

Even though the child who is involved with the law is the perpetrator, the child is also categorized as a victim, the meaning of the victim, in this case, is the victim of the negligence of his parents which causes the child to commit a crime. Even though the basic concept of criminal law states that it is the person who commits the crime who can be held accountable for his actions, in this case, the child who is considered a victim of the negligence of their parents causing parents to also be responsible for the crimes that have been committed by their children.

Based on the Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law, an investigation is a series of investigative actions in terms of and according to the methods regulated in this Law to seek and collect evidence with that evidence to make clear about the criminal acts that occurred and the

purpose find the suspect. The definition of an investigation is a follow-up of investigative activities with strict requirements and restrictions on the use of coercive measures after gathering sufficient initial evidence to make light of an event that should be suspected of being a crime.

Investigations carried out to find and collect evidence were also carried out to find the suspect. The investigation is carried out by the Investigator. Where investigators according to the Criminal Procedure Code are police officials of the Republic of Indonesia or certain civil servant officials (PPNS) who are given special authority by law to conduct investigations.

Article 7 paragraph 1 of the Criminal Procedure Code regulates the investigator's authority as follows:

- a) Receive a report or complaint from someone about a criminal act;
- b) Take the first action at the scene;
- c) Ordering a child offender to stop and check the child offender's self-identification;
- d) Arrest, detain, search and confiscate; Examine and confiscate documents;
- e) Take fingerprints and photograph a person;
- f) Calling people to be heard and examined as child perpetrators or witnesses;
- g) Bring in the necessary experts in connection with the examination of the matter
- h) Holding an end to the investigation;
- i) Conducting other actions according to the responsible law;

The procedure for carrying out diversion according to Government Regulation Number 65 of 2015 is for the Investigator to notify the Diversion attempt Public Prosecutor within a maximum period of 1 x 24 hours from the start of the Diversion attempt. While investigators have 1 x 24 hours from the date the investigation warrant is issued to deliver notification of the start of the investigation to the Public Prosecutor. Furthermore, within a maximum period of 7 x 24 hours from the start of the investigation, the Investigator notifies and offers to the Child and/or person/Guardian, as well as the victim or Child Victim and/or parent/Guardian to resolve the case through Diversion.

Witness testimony is legal evidence regulated in Article 184 paragraph 1 of Law Number 8 of 1981 concerning the Criminal Procedure Code, what is meant by a witness, according to Article 1 number 26 of the Criminal Procedure Code is a person who can provide information in the interest of the investigation, prosecution and trial of a case crime that he heard about himself, he saw it himself and he experienced it himself.

Examination of witnesses at the investigative level, investigators because of their obligations have the authority to summon to be heard and examined as suspects or witnesses at the investigative level, minutes of the examination of witnesses must be made. The legal basis for examining witnesses at the investigative level is Article 112 of the Criminal Procedure Code which reads:

1. The investigator who examines by clearly stating the reason for the summons, has the authority to summon suspects and witnesses deemed necessary for examination with a valid summons, taking into account the reasonable time limit between the receipt of the summons and the day the person is required to fulfil the summons.
2. The person called must come to the investigator and if he does not come the investigator calls again, with an order to the officer to bring him to him.

The legal position of Correctional Centers (BAPAS) in Indonesian laws and regulations is contained in Law no. 12 of 1995 concerning Corrections. Article 1 Number 4 of Law no. 12 of 1995 defines BAPAS as follows: "Correction Centers, hereinafter referred to as BAPAS, are institutions for carrying out correctional client guidance" Based on Article 1 Point 4 of Law no. 12 of 1995 concerning Corrections states that Correctional Centers, hereinafter referred to as BAPAS, are institutions to carry out the guidance of Correctional Clients. Further contained in Article 34 of Law Number 3 of 1997 concerning Juvenile Courts, the main duties of social counsellors at Correctional Institutions are as follows:

1. Help expedite the tasks of investigators, public prosecutors and judges in cases of naughty children, both inside and outside the juvenile court by making reports on the results of community research;
2. Guiding, assisting, and supervising delinquent children who are based on a judge's decision are sentenced to parole, supervision punishment, fines are handed over to the state and must attend work training or children who obtain parole from correctional institutions.

Bapas has an important role in the investigative process carrying out the duties and functions of community research, guidance, supervision, assistance, and the diversion process. Not yet able to act professionally, so at the operational level it is necessary to increase resources, and the number of Bapas in each district as well as the facilities and infrastructure to support performance in the field (in conducting community research) require special attention and to what extent successful diversion of the child.

The report on the results of community research at least contains the following:

1. Individual data and family structure of the child concerned;
2. Conclusions or opinions from social advisors who make reports on social research results.

The role of community counsellors has been regulated in the SPPA Law in Article 65 letter (a) which reads "Social counsellors are tasked with making community research reports for the benefit of diversion, providing assistance, mentoring, and supervising children during the diversion process and implementing agreements including reporting to the court whether diversion not implemented". Juvenile cases end with a formal warning which is recorded in the police record book and does not need to be submitted to the Head of the District Court to obtain a determination.

Deliberation in this case is a negotiation process that is carried out in a family atmosphere, sincere and without any coercion. This indicates that the victims and their families must be active in the diversion process so that the recovery process can be achieved by restorative justice. The consequence of this condition is that it is necessary to exchange information directly between the victim and the perpetrator of the crime so that a profitable agreement can be made between the two of them as the final result of the crime occurring.

On January 17 2019, according to sources, the process of carrying out diversion at the Medan Traffic Traffic Unit was guided by the SPPA Law and with guidelines for Government Regulation Number 65 of 2015 concerning Guidelines for Diversion and Handling of Children Who Are Not 12 Years Old. The investigator receives the report from the complainant and then the investigator makes the Minutes of Examination (BAP), then the investigator submits the BAP to the Correctional Center (Bapas).

After obtaining the BAP from the investigator, the Bapas then conducts Community Research (Litmas) in the perpetrator's home environment, from the results of the Bapas Litmas a letter of recommendation will be issued from the Bapas, where the recommendation letter can be a recommendation for diversion and a recommendation for not a diversion. The investigator as the facilitator will summon the parties, namely the reported party (perpetrator), the parents or guardians of the reported party, the complainant (victim), the parents or guardians of the reporting party, community leaders, and accompanied by the Bapas, the perpetrator is accompanied by the Bapas which will then hold deliberations where later the results of the deliberations are written down in the form of a diversion agreement and the results of the diversion are submitted to the court and the court decides to make a stipulation that the diversion was successful.

The diversion process is carried out through deliberations involving children and their parents/guardians, victims and/or their parents/guardians, social counsellors, and professional social workers based on a restorative justice approach.

Investigators in the case of carrying out investigations of children who are reported or accused of committing a crime must seek consideration or advice from the Community Advisor, and if necessary may also ask for consideration or advice from education experts, child experts and other experts. Prisons within 3x24 hours are required to submit the results of community research to investigators, this is intended so that the results of the examination in the investigation process are by the actual situation. Child investigators can consider whether or not the case file/Inspection Minutes (BAP) can be forwarded for the prosecution process. If there is a Diversion agreement, then the agreement can be carried out by the investigator and the perpetrator or his family, the Community Advisor and can also involve community leaders.

The Causes of the Occurrence of Traffic Accident Crimes by Underage Children

Parents greatly influence the development of a child. Weak parental supervision has increased underage motorcyclists. In addition, because of the increasingly advanced and modern era, many people let children use their motorbikes. Even the condition of the surrounding environment also influences the increasing number of children who ride motorbikes, because many families themselves teach children to use motorized vehicles. The large population and wide coverage area certainly have different types of human resources. Both in terms of nature, behaviour and environment.

Based on the author's interview with the Head of the Traffic Unit of the Pangkep Police, they are as follows;

"For the factor of the occurrence of traffic accident crimes for minors in the Pangkep Police Traffic Unit area, of course, it is influenced by permission from parents, habits that have been cultivated by young children and the distance from their homes to destinations that are far away and impossible to reach by on foot. Such as the distance from home to school or from home to the nearest supermarket"

The author also asks about the condition of the roads around the Belawan Port Police area so that there are single accidents or contra accidents caused by road conditions.

"The road conditions around this area are monitored quite well. Whether it's corrugated or hollow. Because it's still normal and not that bad. Besides, it's a matter for the Public Works Department."

It can be concluded that from the results of interviews with related parties, several causes influence the occurrence of traffic accidents for minors, namely:

1. Internal Factors

a. Parental Permission

Permits are one of the most widely used instruments in administrative law. The government uses permits as a juridical means to control the behaviour of citizens. Permission is also interpreted as an agreement from the authorities based on laws or government regulations, to under certain circumstances deviate from the provisions of the prohibition of legislation. Permission can also be interpreted, if the regulator, in general, does not prohibit an action, as long as it is carried out by the applicable provisions. Thus, the administrative action that allows the action, is a permit.

Furthermore, the permit also means, if the legislator prohibits an act, but still allows it, as long as it is carried out in a manner that is determined for each concrete matter, then the act of the state administration which allows the said act is like a permit. The definition of permission is also stated in the KBBI (Big Indonesian Dictionary), which means a statement granting (not prohibiting and so on), approval and allowing. Of course, if it is related to internal factors in minor child accidents, then the parents of these children mostly permit minors to drive motorized vehicles and set aside the dangers experienced by the child and overrule the rules that apply in traffic.

b) Habits of a Child

Habit is something that is usually done, habit also means a pattern for responding to certain situations that are learned by an individual and which is done repeatedly for the same thing. Lexy J. Moleong explained that habit is a way of doing or acting that is owned by a person and acquired through a learning process that is fixed, uniform and automatic.

Habits are human actions that are repeated in the same way. If a certain habit is accepted by society and the habit is always repeated in such a way that an action contrary to that habit is felt as a violation of the feeling of law, then a legal habit arises, which is seen by society as law.

Based on the above understanding, it can be concluded that a habit is an act that is repeated for the same thing and is then accepted and recognized by society. In society, the existence of unwritten or customary law is recognized as a legal norm that must be obeyed. In the practice of administering the state, unwritten laws are called conventions. Compliance with unwritten law because of the absence of written law that is needed by society/state. Therefore, unwritten laws (customs) are often used by judges to decide cases that have never been regulated in-laws. The author concludes that minors who are already driving motorized vehicles are a habit or something common in everyday life.

2. Factor Extra

a) Long Distance

Distance is the space between (length or distance) two objects or places. Distance is a numerical measure that indicates how far the position of an object is from other objects. In the field of physics or in everyday terms, distance can refer to the length (physically) between two positions, or an estimation based on certain criteria (for example the distance between Jakarta and Bandung). The distance from point A to point B is generally expressed as. In most cases, the phrase "distance from A to B" is interchangeable with "distance from B to A". In mathematics, the distance or metric function is a generalization of the concept of physical distance; namely, as a way to give an understanding of how "far" or "close" the positions of two objects are. In psychology and the social sciences, distance is a non-numeric measure.

The author concludes that the distance or length of the road between the place of origin and the destination is far. Therefore, many minors around the jurisdiction of the Belawan Police Traffic Unit drive motorized vehicles. Wherever the child lives, if the surrounding environment allows children to use motorized vehicles, then other children will also use motorbikes. Even those who initially forbade it, finally allowed their children to use motorbikes.

b) Child's Living Environment

According to the Big Indonesian Dictionary, the word environment means the area (area, etc.) which includes everything that affects the growth of humans or animals. Meanwhile, according to Sudiyono, who quoted Sartain's opinion, what is meant by the environment is all the conditions in this world that in certain ways can affect human behaviour, growth and development.

In achieving success in child growth and development, the environment is one of the supporting factors. A comfortable place and environment for growth and development make it easier for children to absorb good and bad attitudes. By preparing the right environment, relatives will get better results.

Furthermore, in the book Basics of Education written by Marlina Gazali, the environment can be interpreted as everything that is outside the child. In the sense that the environment is everything that is around the child, both in the form of objects, events that occur as well as the conditions of society, especially those that

can have a strong influence on students, namely the environment where the educational process takes place and the environment where children interact daily day.

Meanwhile, Sartain (an American psychologist), as quoted by M. Ngalim Purwanto that what is meant by the environment (environment) is, all conditions in this world that in certain ways affect a person's behaviour, growth, development or life processes except genes. -genes and even genes are also seen as preparing the environment (to provide environment) for other genes.

Thus, it can be concluded that the environment is everything that appears around us and many factors influence human development and behaviour. The environment is everything that is around humans that influences the development of human life either directly or indirectly. The environment has an important meaning for humans, with the physical environment humans can use it to meet their material needs, with the biological environment humans can meet their physical needs, and with the social environment humans can meet their spiritual needs.

The environment is seen as a place where humans are in carrying out all their daily activities. The environment provides the necessities of human life. Vice versa, human life is very dependent on the availability of adequate natural resources in the environment. Humans and the environment always have reciprocal interactions, humans affect the environment and vice versa humans are influenced by their environment. Similarly, humans shape their environment and humans are shaped by their environment.

The environment plays an important role in human culture, from primitive humans to modern ones. Environmental issues began to become a world topic when humans began to feel their wider impact, which can be seen in the many disasters that have occurred on this earth due to various human activities such as floods, landslides, water pollution due to industrial waste, and so on. Under these conditions, the environment needs to be properly regulated and managed so that it can provide optimal benefits, meeting the needs of the current generation without compromising its ability to meet the needs of future generations.

IV. CONCLUSION

The rule of law in the settlement of traffic accident crimes committed by minors is based on Law no. 11 of 2012 and Supreme Court Regulation No. 4 of 2014. The factor causing the occurrence of traffic accident crimes committed by children aged in the jurisdiction of the Pangkep Police Traffic Unit is the loss of a child's focus on driving a motorized vehicle. The efforts to prevent the Pangkep Police Traffic Unit from reducing the number of general traffic accidents and minors are not optimal because they are constrained by the Covid-19 pandemic. The legal policy taken by the Pangkep Police Traffic Unit carried out a diversion in handling traffic accident cases caused by minors in case file number BP/01/I/2017/Traffic.

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