
CRIMINAL LIABILITY CASE OF UNDERAGE MOTORCYCLIST WHO RESULTED IN DEATH

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ABSTRACT

The purpose of this study is to find out how criminal liability in the accident of the passage of underage motorcyclists resulted in the death of the victim and know how the form of sanctions against minors who ride motorcycles resulted in the victim died in a traffic accident. This research uses normative research types or *library research methods*. Using several approaches, namely: the legal approach (*statue approach*), the case approach (*case approach*). First, the criminal liability of children in traffic accidents that result in the death of others is that the child can be criminally responsible for a separate process that is not the same as processing an adult. This is based on the provisions of Law No. 11 of 2012 in Article 2 in the implementation of the Criminal Justice System of Children is carried out based on the principle, protection, justice, non-discrimination, best interests for children, appreciation of opinions for children, survival and child development, development and guidance of propositional children, deprivation of independence and punishment as a last resort, and avoidance of retaliation. *Second*, that the form of punishment or sanctions and legal proceedings in cases of violations of the law by children is different from cases of violations of the law adults, in the investigation of cases of minors who commit criminal acts then investigators must apply *restorative justice* by seeking a diversion system processed by Law No. 11 of 2012 on the Child Justice System.

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I. INTRODUCTION

Regulations are developed as typical life in the general public that is managed in earnest in the perspective of conventional individuals. Regulation is expected to maintain regional correctness so that regulation is one of the standards that is organized and unwritten and directs the link between people and others, people and communities, people and climate, people and their administration, and the relation between these parts and each other. Expect to produce justice and demand. The reason for regulation can be found in its capacity as a capacity in the security of human interests, regulations have goals to be achieved.¹ Regulations consist of standards that contain the needs and prohibitions associated by officials with an agreement as a discipline.² Legitimate regulatory standards are focused on human-born mentality or activities. Regulation is a method of social control aimed at changing the behavior of the population by predefined and perceived goals.³

The progress of society can affect progress in the field of regulation or vice versa, the present situation is strongly identified with the public activities of each individual who has various needs and interests.⁴ The existence of man is so complex that the necessary principles are different guidelines as shown by the idea of the link to life itself. One of the basic principles is rules and order.⁵

Honestly, man cannot live alone without others, because man is a social creature, whereas humans with all their advantages and disadvantages usually want to live with each other. Instilling between humans can build complex relationships between each other, both independently and in groups in everyday life. The essence of correspondence is the cycle of articulation between individuals. This is to protect yourself, of course, to get a protected, peaceful and efficient life also to achieve the goal. People in completing their training, intentionally or not, are sometimes faced with different types of movement hazards, including car accidents.

Traffic in daily life has a very important position, because it affects the assistance of local governments, both using private vehicles and public transportation, para-travel, and mass-travel. Traffic, including dealing with car accidents. The Perlalutasan Unit (hereinafter referred to as Atlanta's) which is under the State Police of the Republic of Indonesia, for this situation the police play an important role in the passage of the⁶

¹ Said Sampara dkk, *Pengantar Ilmu Hukum*, (Yogyakarta: Total Media, 2011), hal. 40

² Mohammad Ekaputra, *Dasar-dasar Hukum Pidana*, (Medan: USU Press, 2017), hal. 3. 6 e

³ Sudikno Mertokusumo, *Getting to Know the Law of an Introduction*, (Yogyakarta: Liberty, 2003), p.

⁴ Ibid., hal. 45

⁵ CST.Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, (Jakarta: Balai Pustaka, 2015), hal. 32

⁶ Dwi Wahyono dkk, *Restorative Justice System di Tingkat Penyidikan Tindak Pidana Lalu Lintas*, (Semarang: Tunas Puitika Publishing 2014), hal. 1

The issue of passage is one of the issues on a public scale that arises along with the progress of society. Law No. 22 of 2009 on Road Traffic and Transportation was formed based on the question of the passage that arises along with the progress of the community, where the Law is framed to recognize the safety, welfare, demand, and smoothness of the passage and road transportation.⁷

The Perlalutasan Corps (Korlantas) regarding the accidents of the Passage that was obtained by therefore in Indonesia, in 2017 the traffic accident reached the number of 104,327 and in 2019 experienced an increase with the number of 107,500 obtained from that. The death toll averages 23,530 people per year.⁸

The principles governing road users for the passage have been regulated by Law No. 22 of 2009 on Road Traffic and Transportation, especially the regulation of Article 105 and Article 106 which states that:

1. Article 105: Any road user who uses the road is obliged:⁹
 - a. Behave in an orderly manner; and/or
 - b. Prevent things that can hinder, endanger the safety and security of traffic and road transportation, or that can cause damage to roads.
2. Article 106:¹⁰
 - a. Everyone who drives a motor vehicle on the road must drive his vehicle with reasonable and full concentration.
 - b. Everyone who drives a motor vehicle on the road must be able to safely pedestrians and cyclists.
 - c. Everyone driving a motor vehicle on the road must comply with the provisions on technical and roadworthy requirements.
 - d. Everyone who drives a motor vehicle on the road must comply with the provisions.:
 1. Signposts or prohibition signs;
 2. Road markings;
 3. Passing Signaling Tool;
 4. The Passing Movement;
 5. Stop and Park;
 6. Warning with sound and light;
 7. Maximum or minimal speed; and/or

In Indonesia, car accidents including minors are an extraordinary and real concern for the Indonesian government. The discipline and reckless driving control of young

⁷ Ruslan Renggong, *Hukum Pidana Khusus, Memahami Delik-delik di Luar KUHP*, (Jakarta: Kencana Prenamedia Group, 2016), hal.210

⁸ <https://otomotif.kompas.com/read/2019/12/30/172100015/angka--kecelakaan-lalu-lintasdi-2019-meningkat> diakses pada tanggal 15 Juli 2021

⁹ Undang-Undang Republik Indonesia Nomor 22 Tahun 2009 tentang Lalulintas dan Angkutan Jalan, Pasal 105

¹⁰ Ibid., Article 106

people have left many minors left wandering around in mechanical vehicles, leaving them powerless to turn heads because it's the culprit and the victim of a car crash. Children as perpetrators of criminal demonstrations are called bad boys or in criminal regulations should be juvenile delinquency. Romli Atmasasmita thought that juvenile delinquency is any demonstration or behavior of a child under the age of 18 (eighteen) and unmarried which is a violation of legitimate standards and may harm the child's self-improvement.¹¹

Law No. 23 of 2002 on Child Protection related to Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection states that: "Arrest, detention or detention is possible if under the law concerned is lawful and can only be done as a last resort."¹²

Based on the background mentioned above, so this study examines the following question: How is a criminal liability in the accident of underage motorcyclists that resulted in the death of the victim? And what is the form of sanctions against minors who ride motorcycles resulting in the death of the victim in a traffic accident?.

II. RESEARCH METHODS

This research uses a type of normative research or *library research* method. This research uses a case approach model that is by studying the application of legal norms and rules in legal practice. While the data analysis technique used in this study is descriptive analysis. The data that has been obtained will be analyzed qualitatively and described in descriptive form.

III. ANALYSIS AND DISCUSSION

3.1 Criminal Liability In Underage Motorcyclist Traffic Accident That Resulted in Death

Criminal living can only occur if someone has previously committed a criminal offense. When is someone said to be responsible? One can be responsible if one can distinguish actions, able to determine the will to do an act, and be aware of what he did. Error not only determines the accountability of the maker, but also the punishment of the maker. Mistakes that determine can be accounted for an item made is a way of looking at the mistakes made by sipem made. While the error that determines the punishment of the item made is a forward-looking way in this case the future of the system is made.¹³ Errors must be attributable to both preventive functions and repressive functions of criminal law. Preventive function refers to the accountability of the maker. In this case, formulate it the error of the maker (unlawful nature) in the criminal law. While the punishment can be made to the repressive function of criminal law, in this case, the

¹¹ Romli Atmasasmita, *Problema Kenakalan Anak-Anak Remaja*, Armico, Bandung, 1983, hal. 40

¹² Undang-undang Nomor 23 Tahun 2002 tentang Perlindungan Anak, Pasal 116 ayat (3)

¹³ Chairul Huda, 2008, *Dari Tiada Pidana Tanpa Kesalahan*, Jakarta: Fajar Interpratama Offset, hlm. 126.

error of the maker becomes the basis and measure for the criminal conviction of the criminal act maker,¹⁴

The number of traffic accidents involving minors and resulting in the loss of life and property of a person causes anxiety to road users, one of the contributing factors is the lack of supervision by parents and those responsible for permitting to drive four-wheeled and two-wheeled vehicles without having a driver's license, this resulted in a child having committed two violations at once, i.e. not qualified to drive a vehicle on public roads because it does not have a driver's license, as stipulated in Article 77 paragraph (1). The regulations bind every motorist who will drive a vehicle on the highway. The rules that are affirmed aim to reduce the number of traffic accidents on the highway, especially minors who do not have a driver's license. The second offense committed by a child is a criminal offense, for having lost the life of another person and caused the loss of an object.¹⁵

The elements of the criminal act of negligence contained and must be fulfilled in the rules of Article 310 paragraph (4) of Law No. 22 of 2009 concerning Traffic and Road Transport, among others:

1. Everyone; The word everyone is identical as a subject of law (supporter of rights and obligations) which can be held accountable in all its actions unless the law expressly determines otherwise.
2. Driving a Motor Vehicle, The perpetrator in the case of a traffic accident that can be punished is everyone who drives a motor vehicle.
3. Being Negligent, the determination of this error is determined that although the perpetrator can imagine the possible consequences of the act, he does not take actions or efforts to prevent the onset of consequences.
4. Resulting in Others Dying, the element of claiming that others died is generally proven based on *visum et reported* from the hospital that explains the cause and manner of death of the victim by examining the victim's body.

According to E.Y.Kanter, et al., a person who can be responsible who can be accounted for in his book adds that the ability to be responsible is based on the circumstances and abilities of the "soul" (*geestelijke vermogens*), and not on the state and ability of "thinking" (*verstandelijke vermogens*), of a person, although in terms officially used in article 44 of the Criminal Code is *verstandelijke vermogens*.¹⁶

¹⁴ Anggela N. Mogi, "Pertanggungjawaban Pidana Anak Dalam Perkara Kecelakaan Lalu Lintas", dalam *Lex Crimen*, Volume IV, Nomor 2, April 2015, hlm. 84

¹⁵ Kasmir M. Koloi, " Pertanggungjawaban Pidana Anak Dibawah Umur Terhadap Hilangnya Nyawa Dalam Kecelakaan Lalu Lintas", melalui <http://academia.edu>, diakses tanggal 20 September, 2021, hlm.3.

¹⁶ E.Y. Kanter, Dkk, 1982, *Asas-asas Hukum Pidana Di Indonesia Dan Penerapannya*, Jakarta: Alumni, hlm 249-250

Criminal liability to a minor, as the subject of a criminal offense, that the child can be criminally responsible for a separate process that is not the same as processing an adult. This is based on the provisions of Law No. 11 of 2012 in Article 2 in the implementation of the Criminal Justice System of Children is carried out based on the principle, protection, justice, non-discrimination, best interests for children, appreciation of opinions for children, survival and child development, development and guidance of propositional children, deprivation of independence and punishment as a last resort, and avoidance of retaliation.¹⁷

In criminal liability against minors who have been regulated in the Criminal Code and outside the Criminal Code. In the criminal liability of children stipulated in the Criminal Code by seeing with an act stipulated in the law as the basis has been based on the principles related to criminal liability, namely in the form, principle of legality, and principle of error, as Andi Hamzah who quoted the opinions of Pompe and Jonkers, including also "against the law" as an error in the broadest sense in addition to "intentional" or "error" (*schuld*) and can be accounted for (*toe rake ningsvatbaar heid*) or the term Pompe *toerekenbaar*.

In its sense that the principle of legality refers to the principle of interest of the Criminal Procedure Law (formal) only. With the law that is needed by the community, but if there is no previous in the law, then by itself the law cannot be applied and enforced. In its conclusion, Moeljatno said: "No act is prohibited and threatened with criminality if it is not determined in advance by legislation, in Latin, *nullum Delictum Nulla Poena Sine Praevia Lege*) There is no crime without the regulation first."¹⁸

These statements explain that an existing rule, it can harm others, is not prohibited, as long as the rule is not specified in advance in the rule of law. It can be stated that the law is the power of an existing rule, as a provision in an act that is said to be a criminal offense.

Related to juridical accountability stipulated in the Criminal Code, there is a rule in criminal liability, that not everyone is said to be able to be responsible. It is said that a person is incapable of responsibility, which consists of two aspects that can be seen, the first aspect:¹⁹

1. The state of his soul
 - a. Disturbed by the disease, which is persistent (*temporary*)
 - b. Experiencing defects in growth (gag, idiot, *imbecile*, and so on).
 - c. Disturbed by surprise, hypnotism, anger, overflowing, subconscious influences, slack, delirious, and so on.
2. The ability of his soul

¹⁷ Kasmir M. Koloi, *Op. Cit*, hlm. 4.

¹⁸ Moeljatno, 1983, *Asas-asas Hukum Pidana* Cet. I, Jakarta: Bina Aksara, hlm. 23.

¹⁹ Kasmir M. Koloi, *Op. Cit*, hlm. 6.

- a. Unable to realize the true nature of the actions he or she is doing
- b. Unable to determine his will for the action to be taken, and
- c. I can't know the accident of that action.

The above aspect is the basis of the provision in determining someone who commits a criminal act that cannot be held accountable. In the sense that a person can be held accountable for the deeds he does, with both aspects of it does not experience problems, both the state of his soul and the ability of his soul. Related to the question of accountability of a child who is still a minor in addition to regarding age as an important thing a child can be held accountable, but both aspects are also the benchmark of a child who commits criminal acts can be held accountable.

While viewed from the criminal liability of minors outside the Criminal Code, in terms of regulations on criminal acts committed by an immature person, in the provision of criminal sanctions, can not only be seen in the provisions of the punishment contained in the Criminal Code as material law. Given the difference in the sanctioning of an immature person and an adult who commits a criminal act, with such a difference, so that in the criminal trial of an underage person there are rules of conduct that by other laws that have been regulated on the principle (*lex Specialis Derogat Legi Generali*) criminal acts, in particular, exclude the criminal acts that have been described in the Criminal Code article 103 " committed by other laws and regulations are threatened with criminal unless by law is determined otherwise.

This means that against the criminal punishment of children, it has been regulated in the special child law which is classified in several of them:

1. Law No. 11 of 2012 concerning the Criminal Justice System.
2. Law No. 23 of 2002 on Child Protection.
3. Law No. 4 of 1979 on Child Welfare.

Some of the special child laws mentioned becoming a foundation for the search for truth and justice for children by focusing on material laws. Therefore, the judge needs to pay attention and review the contents of the public prosecutor's indictment to be presented in juvenile justice, taking into account the elements in the article indicted and the verdict made by the public prosecutor. In determining a minor has elements of criminal acts and does not, it is necessary to look at several aspects, namely:

1. Judging from the ability to respond the child who commits a crime, meaning that whether the child has met the child's age provisions that have been regulated in juvenile justice law;
2. The element of criminal liability, meaning more referring to the element of error that becomes an important element in the criminal act, to determine whether the child can be convicted or not, and the last aspect,
3. Evidence-based evidence that will be proven in the juvenile justice process.

The provision of punishment or sanctions and legal proceedings that take place in cases of violations of the law by children are indeed different from cases of lawlessness by adults because the rationale of the provision of punishment by the state is that each citizen is a person who is responsible and able to account for all his actions. While the child is recognized as an individual who has not been able to be fully responsible for his actions.

In some cases involving a child as a defendant in a traffic accident that causes the loss of a person's life, not only juridical factors should be a concern, but also nonsurgical factors. Non-juridical consideration by the judge is needed because the issue of legal responsibility carried out by the defendant's age is not enough if it is only based on normative aspects, the vision of loss only, but the internal and external factors of children behind children in committing delinquency or crime must also be considered wisely by the judge who tried.²⁰

The rule of law underlying this is contained in Article 5 paragraph (1) and Article 8 paragraph (2) of Law No. 48 of 2009 concerning the Power of Justice. Article 5 paragraph (1) is as follows:

"Judges and constitutional judges are obliged to dig in, follow, and understand the legal values and sense of justice that live in society." Article 8 paragraph (2) is as follows:

"In considering the severity of the criminal lightness, the judge shall also pay attention to the good and evil nature of the Accused."

The considerations of judges from the juridical and non-juridical sides emphasize that the source of the law of legislation that applies in Indonesia not only comes from written laws but also some laws or rules that are not written. Judges must know and understand the social values that live in the order of people's lives.

According to J. E. Sahetapy, mitigating matters in the trial were:

1. The defendant's attitude and respect for the court, and the confession frankly thus smoothed the course of the trial.
2. At the time of his crime there was no motive related to the public background.
3. In the trial, the defendant has expressed remorse for his actions.
4. The defendant was not convicted of attempting to try several individuals who would violently escape from prison.
5. The defendant has never been convicted of criminal matters.

The sociological aspect is useful for studying the social background of why a child commits a criminal act. Psychological aspects are useful for reviewing the psychological condition of the accused at the time of committing a criminal act and after undergoing a

²⁰ Andi Hamzah, 2009, *Terminologi Hukum Pidana*, Jakarta: Sinar Grafika, hlm. 20.

criminal act, while the criminology aspect is needed to examine the causes of a criminal act and how the attitude and behavior of the child who committed the criminal act, thus the judge is expected to give a fair verdict.²¹

The next interesting consideration of the Judge, in this case, is the consideration of *ultimum remedium* (last resort) and the peace made by the defendant's family with the victim's family. Law No. 22 of 2009 on Traffic and Road Transport has been regulated regarding the existence of peace in traffic accidents. The peace in question can be in the form of apologies from the victim's family to the perpetrator, the provision of care costs, funeral costs, or compensation due to the criminal act of traffic accidents that occur. But these various forms of peace do not drop the charges against the perpetrators of the traffic accident. This has been strictly stipulated in Article 235 paragraph (1) of Law No. 22 of 2009 on Traffic and Road Transport which states that:

"If the victim dies as a result of a traffic accident as referred to in Article 229 paragraph (1) letter c, the driver shall assist the victim's heirs in the form of medical expenses and/ or funeral costs by not dismissing criminal charges."

Compared to the factors that are considered by the judge in handing down the verdict stipulated in the law as outlined above, then in this case the judge's consideration is based more on the personal circumstances of the Defendant who is a minor and the non-juridical aspect so that the judge imposes a light criminal verdict due to the element of negligence.

Article 235 paragraph (1) of Law No. 22 of 2009 on Traffic and Road Transport can be known that peace in the form of granting coronation fees and/or funeral costs is a matter that becomes the obligation of the driver who causes traffic accidents. The peace that occurs is not a reason that can drop criminal charges against the perpetrator. The case of traffic accidents is still processed by the applicable criminal event law even though there has been an agreement between the victim and the perpetrator of the traffic accident crime not to prosecute the perpetrator.²²

It is seen that peace has no power at all to abolish the criminal. Traffic accident cases are more likely to be sentenced to the perpetrators of traffic accidents. While in the application system, Law No. 22 of 2009 on Traffic and Road Transport does not regulate the existence of peace, whether it should be considered or not in dropping criminals. This is very reasonable because currently the arrangements regarding the guidelines are not regulated in the applicable positive law. The absence of these guidelines gives the freedom to judges to impose criminals on criminal offenders.

²¹ Andi Hamzah, *Loc. Cit.*

²² Jimmy Fernando Dapot Sianturi, "Pertanggungjawaban Tindak Pidana Kelalaian Lalu Lintas Oleh Anak Yang Menyebabkan Orang Lain Meninggal Dunia (Studi Putusan Pengadilan Negeri No.212/Pid.B/2013/PN-PMS)". *Tesis*. Program Studi Magister Ilmu Hukum Fakultas Hukum Universitas Sumatera Utara Medan, hlm. 102.

Peace as a matter that can abolish the criminal is not found in various District Court Rulings, but only as a mitigating matter. This is because in the Criminal Code have been mentioned imitatively things that can eliminate and alleviate the criminal. The peace that has been done should be used as the end of the settlement of traffic accident cases because that is what is desired by the perpetrator and also the victim. This is in line with the theory of Criminal Law put forward by D. Schaffmeister and N. Keijzer, a Dutch jurist, who stated that the element of criminal acts is if a person is proven to have committed his deeds and deeds are reprehensible or done with the same or detrimental to others. A person can be punished if the formulation of his delink is fulfilled, both formal and material and the nature of unlawful acts is fulfilled both formal and material and the act is reprehensible. But if it is no longer reprehensible and no one is harmed, then one cannot be punished.

Peace in traffic accidents in various State Court Rulings for example in the case of accidents where Abdul Qadir Jaelani in the form of forgiveness, compensation, treatment costs, and the cost of burial provided by the perpetrator against the victim and the victim accept him sincerely and forgive the perpetrator, then there is no harmed party and the despicable nature of the perpetrator's actions becomes lost because of the good faith of the perpetrator to Apologize and take responsibility for his actions.

The values incarnated in peace are *the living law* because it incarnates the real legal feelings of society. This living law must be exhumed through a legal discovery (*rechtsvinding*) of judges whose legal power is regulated in Article 25ayat (1) and Article 28 paragraph (1) and (2) of Law No. 4 of 2004 Jo. Law No. 48 of 2009 on Judicial Power.

The good nature of the Accused to reconcile with the victim's family and be accepted by the victim's family should be considered also by the judge in his ruling. The values incarnated in peace are living *laws* because they incarnate the real legal feelings of society.

If the Judge wishes to be consistent with his considerations as Article 66 paragraph (4) of Law No. 39 of 1999 concerning human rights concerning *ultimum remedium* which is the last resort in the handling of a Bad Boy or a child in conflict with the law, the Judge should be able to consider Law No. 3 of 1997 concerning the Child Court regarding criminal sanctions or actions that can be imposed against Naughty Children. Because in Law No. 3 of 1997 concerning the Child Court, the separation of age for child criminals is not known so that the imposition of sanctions that must be carried out by children both acts and criminals, is entirely dependent on the judgment and decision of the judge.

By taking into account the values that exist in the peace between the Defendant and the victim's family and the process of negligence, the Judge should be able to give punishment in the form of in some cases of child accident as a defendant as Article 24 paragraph (1) and (2) law No. 3 of 1997 concerning the Child Court or The Verdict Of Discharge from Lawsuits (*slag van Recht vervolging*) because juridically the Defendant is proven to commit unlawful acts that result in others dying, but the errors that exist in the Defendant can be ruled out or eliminated due to sudden shock which then affects

the defendant's actions unconsciously and cannot fully control his will because there is something coercive from the outside so that it can not do anything other than commit a criminal act.

Then it should also be seen related to the concept of criminal liability against children. The child who commits criminal acts as revealed by Roeslan Saleh does not at fault because he does not understand or has not realized the meaning of the deeds done. Children have special psychiatric characteristics and characteristics, namely before having a perfect inner function. Therefore, children are not punished because they do not have gaps or omissions. Because according to Roeslan Saleh, an element of guilt does not exist in him therefore the child is considered innocent, by the principle of not being convicted if there is no mistake, then the child is not old enough to be not convicted.²³

3.2 Form of Sanctions Against Minors Who Ride Motorcycles Resulting in Death

Punishment or sanctions and legal proceedings in cases of violations of the law by children are different from cases of lawlessness by adults because the rationale of the provision of punishment by the state is that each citizen is a person who is responsible and able to account for all his actions.

The child is recognized as an individual who has not been fully responsible for his actions. Due process and sentencing of minors, (as something that is ultimately almost inevitable in cases of lawlessness), the child must receive special treatment that distinguishes him from adults.²⁴

Steps or efforts made by the Police in handling criminal acts then the perpetrators of minors where investigators are obliged to mediate both parties involved is to have received a report from the victim, then issue a Police Report (LP) then make a Warrant of Investigation and investigators apply *restorative justice*. By seeking a diversion system, investigators send a letter to the Correctional Center (Bapas) to assist criminal offenders and then minors and conducting community research and accompanying during the investigation.

Investigators send a letter to the Legal Counsel for assistance from criminal offenders and minors during the investigation. The Diversion system was attended by the parties, namely the victim accompanied by family and village devices while the suspect was present accompanied by family and village devices and Correctional And Legal Advisors.

²³ Roeslan Saleh, 1983, *Perbuatan Pidana dan Pertanggungjawaban Pidana; Dua Pengertian Dasar dalam Hukum Pidana*, Jakarta: Aksaran Baru, hlm. 84.

²⁴ Abintoro Prakoso, *Pembaharuan Sistem Peradilan Pidana Anak*, Laksbang Grafika, Yogyakarta, 2013, hal.78

If a diversion agreement has been reached, the victim has agreed that the case is resolved familiarly and does not demand to the legal track. Furthermore, the investigator sends a Letter of Agreement Diversi and News Event deal diversion to the District Court will then get a verdict from the District Court whose contents order the investigator to stop the investigation. If an agreement is reached diversion Investigator only sends a letter of agreement diversi and news event to get a verdict/determination Diversi from the District Court. But if no agreement is reached Diversi means the victim is still suing and investigators continue the case by applicable law.

If no agreement is reached, the Investigator's diversion sends the SPDP (Letter of Knowledge of the Commencement of Investigation) to the Prosecutor's Office. Furthermore, it is processed by Juvenile Justice Law No. 11 of 2012.

The sanction that can be given to a minor, that a child who is not yet twelve (12) years old, cannot be brought before the child's trial, even though a child has committed a criminal act. Because this is based on sociological, psychological, and pedagogic considerations, that the child who is not yet 12 (twelve) years old has not been able to account for his actions.²⁵

In the provisions of the sanction of action, based on not yet 14 (fourteen) years old as stipulated in article 69 paragraph (2) of Law No. 11 of 2012 that children who are not yet fourteen (14) years old can only be sanctioned, while the provisions of criminal sanctions given to children over the age of 12 (twelve) years and have been up to 18 (eighteen) years.

Law No. 11 of 2012 in Article 70 related to the sanction of acts and criminals in the provision of the lightness of the judge's decision in imposing a criminal, as Article 70 states that "the lightness of the child's actions, personal circumstances, or circumstances at the time of the deed or what occurred later can be used as a basis for the judge's consideration not to impose the criminal or impose the action taking into account the aspects of justice and humanity." Based on Article 70 of Law No. 11 of 2012 that the age of the child is very necessary in the process of child criminal cases, because it is important in determining the sanctions that will be given as a form of accountability of the child, as well as the age of the child as a benchmark called as a child or not.²⁶

Punitive sanctions against minors, in Law No. 11 of 2012, described in Article 69 paragraph (1) mentioned the determination of sanctions against minors, namely in the form of sanctions and criminal sanctions. Criminal sanctions that criminal is a punishment given to legal subjects or perpetrators of minors who have committed an error for a criminal act committed and have been proven legitimately and convincingly.

²⁵Abintoro Prakoso *Op. Cit.*, p. 88

²⁶ See Article 70, Law No. 11 of 2012 on the juvenile justice system

Regarding the punishment as stipulated in The Criminal Code Article 10 on penalties that provide two amendments based on the basic criminal provisions and additional criminals, the types of criminals in Indonesia are sourced in the Criminal Code, which is regulated in Article 10 of the Criminal Code (Criminal Code) which consists of:²⁷

1. The criminal tree consists of:
 - a. death penalty;
 - b. prison sentence;
 - c. criminal confinement;
 - d. criminal fine;
 - e. criminal cover.
2. Additional Criminal
 - a. disenfranchisement;
 - b. confiscation of certain items;
 - c. announcement of the judge's ruling.

The existence of differences stipulated in Law No. 11 of 2012 concerning the main criminal and additional criminals in juvenile justice, with what has been poured in Article 10 of the Criminal Code, but has its basic criminal provisions and additional criminals.

As for the main criminal provisions in Law No. 11 of 2012 concerning the Juvenile Justice System stipulated in Article 71 paragraph (1) and paragraph (2) of the main criminal and additional criminals such as children, namely consisting of;

1. criminal warning
2. criminal with conditions, which are divided over
 - a. Criminals outside the Institution
 - b. community service or
 - c. supervision
2. job training
3. construction in the institution and
4. prison.

While regarding additional criminals consists of:

1. confiscation of profits derived from criminal acts; or
2. fulfillment of customary obligations.²⁸

As for the main criminal and additional criminals stipulated in Law No. 11 of 2012 concerning the Juvenile Justice System, it is described as follows;

Main Criminal Explanation:

²⁷ Lihat Pasal 10, Kitab Undang-Undang Hukum Pidana

²⁸ Pasal 71 ayat (1) UU No. 11 Tahun 2012 tentang Sistem Peradilan Anak

1. Criminal warning, stipulated in Article 72 of Law No. 11 of 2012 concerning the Juvenile Justice System, that the warning criminal is a misdemeanor that does not result in restrictions on the freedom of the child,
2. Criminal with the condition, regulated by Law No. 11 of 2012 concerning the Juvenile Justice System in Article 73 paragraph (1) and up to Article 77, conditional criminals can be imposed by a judge in the case of imprisonment imposed a maximum of 2 (two) years.
3. Job training stipulated in Article 78 paragraph (1) and paragraph (2) of Law No. 11 of 2012 concerning the Juvenile Justice System, that job training is carried out in institutions that carry out training according to the age of the child and is subject to a maximum of 3 (three) months and a maximum of 1 (one) year.
4. Coaching in the institution described article 80 paragraph (1, 2, 3, and 4) of Law No. 11 of 2012 concerning the Juvenile Justice System, with the conclusion of binding in the institution, namely criminal conducted in the place of job training organized, by the government and private. Provided that if the circumstances of the child's actions do not harm the community, and in its implementation a maximum of 3 (three) months and a maximum of 24 (twenty-six) months with the provision that the child has served 1/2 (one-second) of the length of construction in the institution and no less than three months of good behavior to get parole.
5. The prison code in the setting of the child's criminal placement is placed in the Special Development Institution of Children (hereinafter written by LPKA), as explained in Article 81 paragraph (1) of Law No. 11 of 2012 concerning the Juvenile Justice System, "Explaining that the child is sentenced to prison in LPKA if the circumstances and actions of the child will endanger the community".

LPKA is a place where a child who undergoes prison law, while related to the absence of LPKA in an area where a child is serving a prison sentence, related to it, then a child can be placed into an adult Correctional Institution (LAPAS) based on the recommendations of community bullies. This has been regulated and mentioned in Article 86 paragraph (3) of Law No. 11 of 2012 concerning the Juvenile Justice System.

If there is no youth penitentiary, the head of LPKA can transfer the child as referred to in paragraphs (1) and (2) adult correctional institutions based on the recommendations of community bullies. Related to the main criminal provisions against minors, stipulated in Law No. 11 of 2012 concerning the Juvenile Justice System, providing clarity regarding children who get sanctioned.

Additional Criminal Explanation:

1. Additional criminals set out in Article 71 paragraph (2) consisting of:
 - a. confiscation of profits derived from criminal acts, or

- b. Fulfillment of customary obligations After the above has been explained criminal sanctions against minors, then the author explained the second sanction, namely the sanctions of the actions of minors.
2. As for the form of sanctions action is one of the sanctions that can be given to minors, according to Law No. 11 of 2012, Article 82 paragraph (1) of the actions that can be imposed on children are as follows:
 - a. return to parent/guardian
 - b. Surrender to someone
 - c. Treatment in a mental hospital
 - d. Treatment at LPKA
 - e. obligation to follow formal education and/or training held by the government or private bodies.
 - f. Revocation of driver's license; and/or
 - g. Improvements due to criminal acts.

The determination of the sanctions of the actions of minors mentioned above has been explained in Article 82 paragraph (2) mentioned that as referred to in paragraph (1) letter d, letter e, letter f is imposed at most 1 (one) year. While in Article 82 paragraph (3) it is mentioned that the act as referred to in paragraph (1) can be filed by the Public Prosecutor in his claim, except criminal acts that are threatened with imprisonment of at least 7 (seven) years. Article 82 Paragraph (4) states that further provisions regarding actions referred to in paragraph (1) are governed by government regulations.

As for the explanation of what is stated in Article 82 paragraph (1), letter b, letter c, and letter g of Law No. 11 of 2011 concerning the Juvenile Justice System, which is described in:

1. Article 82 paragraph (1) letter b determines that a person is an adult who is considered capable, well-behaved, and responsible, and trusted by the child and the submission is done by the judge.
2. Article 82 paragraph (1) letter c states that the child is given treatment in a mental hospital, giving the meaning that the child has a mental disorder or mental illness.
3. Article 82 paragraph (1) letter g, against children in conflict with the law is given sanctions of action, with improvement due to criminal acts, meaning an improvement to the damage caused by the act done by the child in his actions, and restore the original condition before the criminal act occurred.

Liability for minors who cause serious injury or loss of life in a criminal offense can then be brought before the judiciary and can be held accountable based on the provisions stipulated in Law No. 11 of 2012 concerning the Juvenile Justice System and has been regulated the provisions of criminal law with 1/2 (one-second) sentence from adults.

IV. CONCLUSION

Based on the results of research and discussion, the conclusions in this study are as follows: *First*, that the criminal liability of children in traffic accidents that result in the death of others is that the child can be criminally responsible with a separate process that is not the same as processing adults. This is based on the provisions of Law No. 11 of 2012 in Article 2 in the implementation of the Criminal Justice System of Children is carried out based on the principle, protection, justice, non-discrimination, best interests for children, appreciation of opinions for children, survival and child development, development and guidance of propositional children, deprivation of independence and punishment as a last resort, and avoidance of retaliation. *Second*, that the form of punishment or sanctions and legal proceedings in cases of violations of the law by children is different from cases of violations of the law adults, in the investigation of cases of minors who commit criminal acts then investigators must apply *restorative justice* by seeking the diversion system processed by Law No. 11 of 2012 concerning the Juvenile Justice System.

REFERENCE:

- Abintoro Prakoso, *Pembaharuan Sistem Peradilan Pidana Anak*, (Laksbang Grafika, Yogyakarta, 2013).
- Anggela N. Mogi, "Pertanggungjawaban Pidana Anak Dalam Perkara Kecelakaan Lalu Lintas", dalam *Lex Crimen*, Volume IV, Nomor 2, April 2015).
- Andi Hamzah, 2009, *Terminologi Hukum Pidana*, Jakarta: Sinar Grafika).
- Chairul Huda, 2008, *Dari Tiada Pidana Tanpa Kesalahan*, Jakarta: Fajar Interpratama Offset).
- CST.Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, (Jakarta: Balai Pustaka, 2015).
- Dwi Wahyono dkk, *Restorative Justice System di Tingkat Penyidikan Tindak Pidana Lalu Lintas*, (Semarang: Tunas Puitika Publishing 2014).
- E.Y. Kanter, Dkk, 1982, *Asas-asas Hukum Pidana Di Indonesia Dan Penerapannya*, Jakarta: Alumni).
- Jimmy Fernando Dapot Sianturi, "Pertanggungjawaban Tindak Pidana Kelalaian Lalu Lintas Oleh Anak Yang Menyebabkan Orang Lain Meninggal Dunia (Studi Putusan Pengadilan Negeri No.212/Pid.B/2013/PN-PMS)". *Tesis*. Program Studi Magister Ilmu Hukum Fakultas Hukum Universitas Sumatera Utara Medan).
- Kasmir M. Koloi, " Pertanggungjawaban Pidana Anak Dibawah Umur Terhadap Hilangnya Nyawa Dalam Kecelakaan Lalu Lintas", melalui <http://academia.edu>, diakses tanggal 20 September, 2021.
- Mohammad Ekaputra, *Dasar-dasar Hukum Pidana*, (Medan: USU Press, 2017).
- Moeljatno, 1983, *Asas-asas Hukum Pidana* Cet. I, Jakarta: Bina Aksara).
- Ruslan Renggong, *Hukum Pidana Khusus, Memahami Delik-delik di Luar KUHP*, (Jakarta: Kencana Prenamedia Group, 2016).

Roeslan Saleh, 1983, *Perbuatan Pidana dan Pertanggungjawaban Pidana; Dua Pengertian Dasar dalam Hukum Pidana*, Jakarta: Aksaran Baru).

Romli Atmasasmita, *Problema Kenakalan Anak-Anak Remaja*, Armico, Bandung, 1983).

Said Sampara dkk, *Pengantar Ilmu Hukum*, (Yogyakarta: Total Media, 2011).

Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar*, (Yogyakarta: Liberty, 2003).

<https://otomotif.kompas.com/read/2019/12/30/172100015/angka--kecelakaan-lalu-lintasdi-2019-meningkat> diakses pada tanggal 15 Juli 2021.