Artikel Dian Rahadian

by - -

Submission date: 10-Aug-2024 11:18AM (UTC+0700)
Submission ID: 2408829335
File name: Template_Unikal_Dian_Rahadian.docx (69.08K)
Word count: 2492
Character count: 13419

Pena Justisia:
Vol. 22, No. 1, March, 2024

[PENA JUSTISIA: MEDIA KOMUNIKASI DAN KAJIAN HUKUM]

Criminological Juridical Review of Traffic Accidents Resulting in Child Deaths Due to Negligence Reviewed from the Perspective of the Juvenile Justice System

Dian Rahadian[1], Farida Kaplele[2]
[1]dianrahadian@gmail.com
[2]farida.kaplele16@gmail.com

Faculty of Law, Cendrawasih University, Indonesia

Article Info

Received:
Revised:
Accepted:

Keywords:
Criminologist;
Accident;
and Children.

Abstract

The aim of the normative research currently being carried out is to find out how criminologically the occurrence of traffic accidents carried out by children occurs due to negligence or carelessness in driving motorized vehicles. This implementation is regulated in Law Number 22 of 2019 concerning Road Traffic and Transportation as well as the Juvenile Criminal Justice System Law. The research method used is descriptive analysis which leads to normative juridical legal research, namely research carried out by referring to legal norms, namely researching library materials or secondary materials. Secondary data by processing data from primary legal materials, secondary legal materials and tertiary legal materials. The results of the research show that in the Juvenile Justice System and related to Criminological Science, it is clear that the Juvenile Criminal Justice System Law regulates basic and additional criminal penalties. In relation to the issue of responsibility for a child who is still a minor, this concerns matters of age where he can be held accountable but which are outside the Criminal Code.

Introduction

The development of law in Indonesia is currently increasingly rapid, as evidenced by the several legal systems implemented that have influenced the development of society through existing legal arrangements, where the presence of the state is the enforcer of legal supremacy in upholding the pillars of justice in this country and emphasizing that where no one has power that cannot be accounted for. Relating to rules and other matters such as violations of traffic rules caused by minors ranging from minor violations to serious violations and must be resolved through the laws and regulations that are in force in this country.[1]

This role has been proven to be the basis for considering the formation of legal rules as a legal umbrella that protects legal order in the community area so that criminalization and violations on the streets do not occur, especially cases caused by children who are still underage and do not even have a driving license to drive a vehicle. The role of law is a vital

[1] Gerson W Bawengan., Hukum Pidana Di Dalam Teori dan Praktek, Pradnya Paramita, Jakarta, 2010 . Hlm 45

role where the establishment of Law Number 22 of 2009 concerning Road Traffic and Transportation, hereinafter abbreviated as UULLAJ). Apart from that, Law Number 23 of 2002 concerning Child Protection on the one hand also regulates how to apply law enforcement to children who are proven to have violated traffic rules so that it can be said that unpredictable and unintentional traffic accidents involve vehicles with or without users. other ways that result in human casualties and property loss.[2]

Accidents caused by children are of particular concern to law enforcement officials and local governments because several factors occur, not only from the child's negligence but also from inadequate infrastructure, for example, potholes on roads or vehicles that are not in good condition, even humans. negligent or wrongdoing of the human or child.[3]

Traffic accidents that occur are caused by, among other things, fatigue, negligence, carelessness and boredom experienced by the driver. Some accidents that occur and become a factor are due to human error or the human factor is more dominant. The factor in traffic accidents that often occurs comes from the driver or motorist.[4]

Traffic is an important sector in terms of infrastructure, so discipline for drivers must also be implemented properly so as not to harm other people, even harm property and even kill lives. Traffic violations are not a simple and trivial matter, especially if they result in loss of life or even death. Negligence is also a factor in negligence and criminality, especially if the vehicle user does not meet driving standards and does not have equipment such as a driving permit.[5]

Some traffic problems are still dominated by women and children, resulting in accidents ranging from serious accidents to minor accidents. Therefore, there are many considerations if children must be punished so that efforts are made to provide guidance and protection for children in accordance with the applicable juvenile justice system. In the Child Protection Law, it is explained in Article 359 that causing another person to die is a criminal offense. As explained in Article 81 of Law Number 11 of 2012 concerning the Juvenile Justice System, it is stated that imprisonment for children can be imposed at a maximum of one-half of the maximum penalty of imprisonment for adults.[6]

It is clearly said that it is wrong if children who are declared to be underage drive motorized vehicles, whether motorbikes or cars, and there needs to be a supervisory role for parents, teachers and the surrounding environment, rather than allowing children to

---

[2] Sudarsono, Kenakalan Remaja, Rineka Cipta, Jakarta, 2008, Hlm 3
[3] Adami Chazawi, Pelajaran Hukum Pidana Bagian I, Raja Grafindo Persada, Jakarta, 2010. Hlm 34
[4] Kartini Kartono, Kenakalan Remaja, Raja Grafindo Persada, Jakarta, 2011, Hlm 87
[5] Topo Santoso dan Eva Achjani Zulfa, Kriminologi, PT. Raja Grafindo Persada, Jakarta, 2001, Hlm 98
[6] Elias Leasa, Penyitaan Barang Bukti Dalam PElanggaran Lalu Lintas, Jurnal Sasi Vol. 21 Nomor 2 Tahun 2015 Hlm 1.

drive, let alone ignoring the safety of road drivers or pedestrians, so there is a need for this. strict supervision of the surrounding environment, especially from the child's environment, namely parents.[7]

2. Research Method

Through a normative approach, data is collected and analyzed from laws and other regulations scattered in the Directory.[8] Apart from that, the current community order is supported by legal provisions relating to the Traffic Law and Juvenile Justice Law in Indonesia and is only limited to punishment for those who commit violations and fulfill the requirements for children as recidivists only.[9]

3. Results and Discussion

Traffic problems such as accidents are events that cannot be predicted by any driver and are not planned or can even be said to be accidental. Transportation is a very important and strategic tool used by every society in particular. There are many problems on the highway, ranging from minor violations to serious violations that can result in loss of life. The realization of legal sanctions for crimes committed on the highway is provided with legal sanctions that are actually implemented by the authorities.

Etymologically, crimonological language comes from the words crimen which means crime and logos which means science. This term was first put forward by a French anthropologist named Paul who used an anthropological approach. Furthermore, in the criminological sense it refers to committing crimes as a social phenomenon both theoretically and purely. From the definition above, it is clear that crimonology is a science that is behind the occurrence of crimes, in this case if it is related to accidents caused by minors..[10]

The presence and birth of a child is a gift and trust as well as a deposit given by God which must be protected and provided with education, security and health because from the womb children have the same human rights which must be upheld and have the same civil rights and freedoms. Child protection is one of the goals of implementing children's rights and obligations humanely, which is a manifestation of Pancasila. Children as shoots of the nation are the next generation in the development of the nation and state.[11]

The reason is that not all children can live a normal life, but there are also many

---

[7] Romli Atmasasmitha, Teori & Kapita Selekta Kriminologi, Eresco, Bandung, 2012. Hlm 25
[8] Soerjanto Adi, Metodologi Penelitian Sosial dan Hukum, Granit, Jakarta, 2014. Hlm 4
[9] Zainuddin Ali, Metode Penelitian Hukum, Sinar Grafika, Jakarta, 2019. Hlm 1
[10] I.S.E Sahetapy, Teori Kriminologi, Citra Aditya, Bandaung, 1992. Hlm 2
[11] Mulyana W Kusuma, Kriminologi dan Masalah Kejahatan, Armico, Bandung, 1984, Hlm 29

children who commit mischief and end up coming into conflict with the law. Deviant behavior or unlawful acts committed by children are deemed necessary in the current era. Several efforts have been made to reduce the number of unlawful acts so that it is necessary to ensure the effectiveness of imprisonment in dealing with crimes committed by children. In daily practice we often see that a minor drives a vehicle without being accompanied by a parent, so it is natural that in the end we encounter several cases of traffic accidents caused by children.

Some legal research that has been carried out is by Tika Listiana with the title The Role of the Bandar Lampung Police Traffic Unit in Preventing Traffic Violations Against Students in Bandar Lampung City. This research applies the Bandar Lampung Police Traffic Unit to educate students who do not use helmets and do not have a driving license.[12]

Furthermore, Ragil Ira Mayasari, based on his research, explained in the title Juridical Review the Concept of Applying Restorative Justice in Traffic Accidents to Underage Children, explaining the results of his research, namely that children can be held criminally responsible with a separate process which is not the same as processing adults through the juvenile justice system. Apart from that, the strategic role of parents and educators can help their children to develop their children's motor skills and contribute to the child's development in particular.[13]

A form of violation committed by children in criminological science that often occurs in society is in the form of traffic accidents because the child's ego and emotional level in driving a vehicle has not yet been maturely addressed because they are still emotionally unstable when using a motorized vehicle.[14]

In relation to the issue of responsibility for a child who is still a minor, this concerns matters at an age that can be held responsible but are outside the Criminal Code. Therefore, there needs to be participation from the environment to be able to educate children around the house so that they are not involved in criminal acts. As we know, in criminal justice against someone who is still a minor, there are rules of action that other laws have regulated regarding the principle of lex specialis derogat lex generali, where specific criminal acts can overrule criminal acts in general. Moreover, the law focuses on material law, some of the special laws for children mentioned are used as a basis for seeking truth and justice for children who are undergoing cases, in this case we relate to traffic. Where traffic accidents

[12] Tika Listiana, Hermi Yanzi dan BArchah Pitoewas, Peranan Satlantas Polresta Bandar Lampung Dalam Mencegah Pelanggaran Lalu Lintas Terhadap Pelajar. Jurnal Kultru Demokrasi Vol. 5 Nomor 5 Tahun 2017. Hlm 5
[13] Ragil Ira Mayasari, Tinjauan Yuridis Konsep Penerapan Restoratif Justice Dalam Kecelakaan Lalu Lintas Terhadap Anak di Bawah Umur, Jurnal Actual, Vol 10 Nomor 1 Tahun 2020 Hlm 18
[14] Mahrus Ali, Dasar-Dasar Hukum Pidana. Sinar Grafika, Jakarta, 2011. Hlm 43

caused by children have a big impact on other parties, namely family and other parties who are in the surrounding environment.[15]

It is explained in the book by Leden Marpaung where crime is divided into 2 types of elements, namely subjective elements and objective elements. The element of the subject crime is more about the intent of an experiment, such as planning in advance, whereas when looking at the object element, it is an element that is related, for example, the nature of being against the law and causality.[16]

Juridical provisions regarding juvenile law in Indonesia are based on references to the Juvenile Justice System and linked to Criminological Science. It is clear that the Juvenile Criminal Justice System Law regulates basic and additional penalties without being regulated in Article 10 of the Criminal Code. It is explained in article 71 that several basic punishments for children include: Guidance outside the Institution, Supervision and Imprisonment in addition to additional confiscation of profits and fulfillment of customary obligations. However, referring to Article 359 of the Criminal Code and Article 310 of the Road Traffic and Transportation Law, it provides normative provisions regarding accidents that kill lives and because children are involved in traffic accidents, they must be able to face the law. However, when compared to the Juvenile Criminal Justice System Law, it explains that criminals are those aged 12 to 18 years.[17]

Several other things that need to be considered are internal and external supervision factors, both supervision from parents and the environment around neighbors' houses and so on. Because the monitoring factor to prevent crime from occurring is by supervising and guiding their children. If it is proven that a lack of supervision and/or assistance from parents or legal guardians caused the accident, they can also be subject to sanctions and up to legal liability.[18]

Parents can be strongly held accountable depending on their level of involvement in supervising their child's behavior on the street. In ongoing prevention efforts, several related parties collaborate with each other as external supervisors, for example the presence of law enforcement officers and non-governmental organizations or community organizations that are concerned with the development of children so that they do not commit criminal acts, etc..[19]

---

[15] Mochtar Kusuma Atmadja,, Konsep-Konsep Hukum Dalam Pembangunan, Alumni, Bandung 2012. Hlm 65
[16] Leden Marpaung, Asas Teori Praktik Hukum Pidana, SInar Grafika, Jakarta, 2005. Hlm 17
[17] Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana, Citra Aditya Bhakti, Bandung, 2015. Hlm 24
[18] HR. Abdussalam, Hukum Kepolisian Sebagai Hukum Positif dalam Disiplin Hukum. Restu Agung, Jakarta. 9. Hlm 87
[19] Yesmil Anwar, Saat Menuai Kejahatan: Sebuah Pendekatan Sosiokultural Kriminologi, Hukum. UNPAD Press, Bandung, 2014. Hlm 24

Based on the description above, it can be analyzed legally, where the juridical review in criminological science is clear, which can be seen in the Traffic and Road Law, the Child Protection Law and the Child Protection Criminal System Law. Apart from that, there is also a need for internal monitoring factors from within the household family and external monitoring factors such as neighbors and law enforcement officials so that this supervision from internal and external parties contributes to children not carrying out criminal activities and is even able to suppress the factor of negligence from children when driving in traffic.

4. Conclusion

Based on the findings of this research, it can be concluded that in this juridical review it is necessary to reconsider the juvenile justice system which specifically functions in cases of accidents involving minors, especially accidents that result in loss of life. There is also a need for handling efforts from the authorities as well as the family and the surrounding environment, especially when considering whether a child can drive. Apart from that, Law Enforcement of Laws outside the Criminal Code that regulate traffic crimes were created to provide discipline and sanctions that must be applied, especially in the Child Protection Law, the Juvenile Justice System Law and the Traffic and Road Transport Law as an Effort. handling motor accidents seen in criminology involving a child.

References

Books and Journals

Adami Chazawi, Criminal Law Lessons Part I, Raja Grafindo Persada, Jakarta, 2010.

Barda Nawawi Arief, Anthology of Criminal Law Policy, Citra Aditya Bhakti, Bandung, 2015

Gerson W Bawengan., Criminal Law in Theory and Practice, Pradnya Paramita, Jakarta, 2010

HR. Abdussalam, Police Law as Positive Law in Legal Discipline. Restu Agung, Jakarta. 2019.

J E Sahetapy, Criminological Theory, Citra Aditya, Bandaung, 1992.

Kartini Kartono, Juvenile Delinquency, Raja Grafindo Persada, Jakarta, 2011

Leden Marpaung, Theoretical Principles of Criminal Law Practice, SInar Graphics, Jakarta, 2005

Mahrus Ali, Basics of Criminal Law. Sinar Graphics, Jakarta, 2011.

Mulyana W Kusuma, Criminology and Crime Problems, Armico, Bandung, 1984

Mochtar Kusuma Atmadja, Legal Concepts in Development, Alumni, Bandung , 2007

Ragil Ira Mayasari, Juridical Review of the Concept of Implementing Restorative Justice in Traffic Accidents Against Minors, Actual Journal, Vol 10 Number 1 of 2020.

Rianto Adi, Social and Legal Research Methodology, Granit, Jakarta, 2014.

Romli Atmasasmitha, Theory & Capita Selecta Criminology, Eresco, Bandung, 2012.

Soerjono Soekamto, Factors that Influence Law Enforcement, Raja Grafindo Persada, Jakarta, 2007

Sudarsono, Juvenile Delinquency, Rineka Cipta, Jakarta, 2008,

Tika Listiana, Hermi Yanzi and Barchah Pitoewas, The Role of the Bandar Lampung Police Traffic Unit in Preventing Traffic Violations Against Students. Journal of Democratic Culture Vol. 5 Number 5 of 2017.

Topo Santoso and Eva Achjani Zulfa, Criminology, PT. Raja Grafindo Persada, Jakarta, 2001,

Yesmil Anwar, When Reaping Crime: A Sociocultural Approach to Criminology, Law. UNPAD Press, Bandung, 2014.

Zainuddin Ali, Legal Research Methods, Sinar Graphics, Jakarta, 2019.

Legislation

Constitution of 1945 4th Amendment

Criminal Code

Law Number 23 of 2002 concerning Child Protection

Law Number 22 of 2009 concerning Road Traffic and transportation

Law Number 11 of 2012 concerning the Juvenile Justice System

Artikel Dian Rahadian

ORIGINALITY REPORT

22%	21%	15%	11%
SIMILARITY INDEX	INTERNET SOURCES	PUBLICATIONS	STUDENT PAPERS

PRIMARY SOURCES

1	Submitted to Fakultas Hukum Universitas Indonesia Student Paper	3%
2	garuda.kemdikbud.go.id Internet Source	2%
3	journal.uad.ac.id Internet Source	2%
4	ojs3.unpatti.ac.id Internet Source	1%
5	digilib.unila.ac.id Internet Source	1%
6	journal.unimas.ac.id Internet Source	1%
7	jurnal.unikal.ac.id Internet Source	1%
8	ejournal.steitholabulilmi.ac.id Internet Source	1%
9	Submitted to Institut Pendidikan Guru Malaysia	1%

	Student Paper	
10	Submitted to Universitas Islam Indonesia Student Paper	1 %
11	eprints.umm.ac.id Internet Source	1 %
12	jurnal.ubl.ac.id Internet Source	1 %
13	repository.unsri.ac.id Internet Source	1 %
14	Arief Setyanto, Soemarno, DGR Wiadnya, Cahyo Nugroho. "Biodiversity of Lobster (Panulirus) from Eastern Indian Ocean of Indonesia Waters", IOP Conference Series: Materials Science and Engineering, 2019 Publication	1 %
15	soj.umrah.ac.id Internet Source	1 %
16	ejournal.unisbablitar.ac.id Internet Source	<1 %
17	Rian Prayudi Saputra. "TINJAUAN YURIDIS TINDAK PIDANA PENCURIAN YANG DILAKUKAN OLEH ANAK DALAM PUTUSAN PENGADILAN NEGERI BANGKINANG KELAS IB NOMOR: 08/PID.SUS/ANAK/2019/PN.BKN", Jurnal Pahlawan, 2022 Publication	<1 %

18	Zulita Anatasia. "Diversion Against Crime by Children Confronting the Law to Achieve Restorative Justice", Pancasila and Law Review, 2021 Publication	<1 %
19	core.ac.uk Internet Source	<1 %
20	docplayer.info Internet Source	<1 %
21	scholar.unand.ac.id Internet Source	<1 %
22	Maulida Fitri, Muhamad Zainuri, RAHMAT HIDAYAT. "ANALYSIS OF THE POWER OF ONLINE TICKET LAWS IN PROVIDING CONVENIENCE FOR TRAFFIC OFFENDERS", Minhaj: Jurnal Ilmu Syariah, 2023 Publication	<1 %
23	123dok.com Internet Source	<1 %
24	Ifahda Pratama Hapsari. "Restoraktiv Justice Policy in the Investigation of Children as Trafficking Actor", Journal of Social Science Studies, 2018 Publication	<1 %
25	Rahman Amin, Anggreany Haryani Putri, Endang Hadrian. "Indonesia National Police	<1 %

efforts in handling football supporter riots; study of events at Kanjuruhan Stadium, Malang Regency, Indonesia", Cogent Social Sciences, 2024
Publication

26	eprints.stainkudus.ac.id Internet Source	<1 %
27	jurnal.fkip.unila.ac.id Internet Source	<1 %
28	jurnal.unissula.ac.id Internet Source	<1 %
29	repository.uisu.ac.id Internet Source	<1 %
30	Humaeroh Humaeroh, Zakaria Syafei, Nurul Ma'rifah. "Formulation of Underage Marriage in The Perspective of Islamic Law and Legal Sociology", KRTHA BHAYANGKARA, 2023 Publication	<1 %
31	dahwiraliyahoocom.wordpress.com Internet Source	<1 %
32	ejurnal.ung.ac.id Internet Source	<1 %
33	ijmmu.com Internet Source	<1 %
34	pdfs.semanticscholar.org Internet Source	<1 %

Exclude quotes	On	Exclude matches	Off
Exclude bibliography	On		