

THE ROLE OF THE POLICE REGARDING DIVERSION LEGAL MEASURES AGAINST CHILDREN AS CRIMINAL OFFENDERS TRAFFIC ACCIDENT (Research Study at Serdang Berdagai Police)

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Abstract

Traffic accidents involving children result in the emergence of new problems in law enforcement in relation to determining sanctions for the child's responsibility. Through restorative justice, the basis for the solution is to achieve balance between the victim and the perpetrator of the crime, and then the criminal process can be carried out flexibly so that it is not limited to the need for justice. The goal of restorative justice is to restore the consequences of children's violations and efforts to improve children's morals so that children no longer repeat their actions. The aim of this research is to find out the role of the police in the process of legal action against children as perpetrators of traffic accident crimes based on the results of a research study at the Serdang Bedagai Police Station. By using a type of empirical research that is descriptive analysis, through data collection such as interviews, library data and document data sourced from primary legal materials and secondary legal materials which are then processed and analyzed. The role of the police in efforts to divert children as perpetrators of criminal traffic accidents at the Serdang Bedagai Police Traffic Unit is based on a report and investigators making a BAP, then Bapas conducting community research in the perpetrator's home environment, then Bapas issuing a letter of recommendation as to whether or not the diversion process is appropriate and The letter was handed over to investigators, investigators called the parties involved to carry out diversion

Keywords: *Role of the Police, Diversion, Children, Criminal Perpetrators, Traffic Accidents*

INTRODUCTION

Law is a set of regulations relating to human behavior as members of society. The purpose of law is to ensure security, happiness and order in society. All members of society have diverse interests, so that members of society have relationships and these relationships are regulated by law to create balance in human life. If someone or several people violate the law, there will be an upheaval in balance, because breaking the law can cause harm to other people. To restore balance in society, sanctions are imposed. The clearest manifestation of legal sanctions appears in criminal law. Criminal law is a law that regulates what actions are not carried out, which are prohibited, accompanied by threats or punishments in the form of certain punishments for anyone who violates these prohibitions. However, actions that are prohibited by legal regulations are often violated by society and often even become habits. For example, driving a vehicle on the road exceeding the maximum speed limit, and breaking through traffic lights on the road. However, in reality, quite a few drivers are still underage, so they often commit traffic violations and even cause traffic accidents. The role of law in nation building will have consequences in the process of change and renewal of existing institutions, including the function of laws and in the implementation of nation development policies. Every citizen is obliged to "uphold the law", the daily reality of citizens who are negligent or deliberately do not carry out an obligation to the detriment of society, citizens are considered to have "violated the law" because their obligations have been determined by law. A law that has a strategic role in regulating public order is a legal rule that develops with traffic problems. Currently, it is not only adults who violate traffic rules but also underage students, their level of awareness in traffic is still low.

To overcome this problem, parents must prohibit their children from driving without supervision, but the reality we face is that it is easy for parents to let their children drive vehicles. Apart from that, parents also allow their children to drive vehicles to school, although seen from

any angle this cannot be justified by a student bringing a vehicle because they are not old enough and do not have a driving license (SIM). In this case, a child who drives without a driver's license has violated Article 77 Paragraph (1) of Law Number 22 of 2009 concerning Road Traffic and Transportation. Article 77 Paragraph (1) of Law Number 22 of 2009 concerning Road Traffic and Transportation states that "every person who drives a motorized vehicle on the road is required to have a driving license according to the type of motorized vehicle being driven."

Traffic accidents involving minors result in the emergence of new problems in the application of law relating to determining sanctions for responsibility by these children. Children who are the cause of traffic accidents that cause the victim to die must be held accountable for their actions based on applicable laws and regulations. Article 310 paragraph (4) Law no. 22 of 2009 concerning Road Traffic and Transportation (UU LLAJR) states that: "In the event of an accident as intended in paragraph (3) which results in the death of another person, the person shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to a lot of Rp. 12,000,000.00 (twelve million rupiah)". This is because the level of traffic accidents that often occur and are disturbing for road users involving minors and the number of fatalities is still high. Every actor must be held accountable for this, this regulation is binding on every driver who will drive a vehicle on the highway. The stated regulations aim to reduce the number of traffic accidents on the road, especially for minors who do not yet have a driver's license. Muhammad Nasir in his book entitled Children are not to be punished, states that children are not to be punished but given guidance, as he said: Children are not to be punished but must be given guidance and guidance, so that they can grow and develop as normal, healthy and intelligent children. completely. Children are a gift from Allah Almighty as potential future generations of the nation who are still in their physical and mental development period. Sometimes children experience difficult situations that make them commit acts that violate the law. However, children who break the law do not deserve to be punished, let alone later put in into prison. Based on accident data from the National Police Traffic Corps, every year accident victims involving under 17 years of age account for 25% of the total accidents.

Under 17 years of age are mostly students who use motorbikes as a means of transportation. In the process of resolving criminal acts, especially traffic accidents, starting from the investigation process by the police directly from the crime scene, the prosecution process by the public prosecutor to the examination at trial by the panel of judges. However, the problem is if the perpetrator of the violation is a minor. In Indonesia, traffic accidents (traffic accidents) involving minors are of special and serious concern to the Indonesian government. Loose driving discipline and control from children's parents means that many underage children are free to roam around driving motorized vehicles, making them vulnerable to becoming perpetrators and victims of traffic accidents. Children as perpetrators of criminal acts are called delinquent children or in criminal law it is said to be juvenile delinquency. Romli Atmasasmita is of the opinion that juvenile delinquency is any action or behavior of a child under the age of 18 (eighteen) years and is not yet married which constitutes a violation of norms. - applicable legal norms and can endanger the child's personal development. Law Number 23 of 2002 concerning Child Protection Jo. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that "Arrest, detention or imprisonment is only carried out if in accordance with applicable law and should only be done as a last resort. Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System determines that the main punishment for children consists of:

1. Criminal warning
2. Sentence with conditions
3. Job training
4. Prison.

From the above options, imprisonment is the last option that can be imposed on children, but in reality prison is the most dominant type of sanction taken by judges in Indonesia. Prison sentences basically cannot guarantee that the convict will be deterred and will no longer repeat his crime. This is because the Correctional Institution (LP) is a school of crime for inmates.

Restorative justice returns conflict to the parties most affected (victims, criminals and their "communities") and gives priority to their interests. Restorative justice seeks to restore victims' safety, personal respect, dignity and, more importantly, a sense of control. Through restorative justice, the basis for the solution is to achieve balance between the victim and the perpetrator of the crime, and then the criminal process can be carried out flexibly so that it is not limited to the need for justice. One of these solutions is the example of minors. The aim of restorative justice is to restore the consequences of children's violations and efforts to improve children's morals so that children no longer repeat their actions.

Imprisoning a child can disrupt his physical, mental and psychological development. In fact, many victims' families demand the most severe punishment because their unwillingness to die for those closest to them, even if by chance, even before peace is achieved, is very difficult to achieve. The formulation of the problem in this research is how the law regulates children as perpetrators of criminal acts according to Law no. 11 of 2012 concerning the Juvenile Criminal Justice System? and what is the role of the Serdang Bedagai police in the process of legal action for diversion against children as perpetrators of traffic accidents? Therefore, the author conducted research in the form of a journal with the title, "The Role of the Police in the Process of Legal Action for Diversion against Children as Perpetrators of Criminal Accidents. Traffic (Research Study at Serdang Bedagai Police)".

METHOD

The nature of the research used is descriptive analysis, which is a method that aims to comprehensively or comprehensively describe the role of the police in diversion efforts towards children as non-criminal perpetrators of traffic accidents which is then analyzed systematically to obtain overall research results to arrive at a conclusion. The type of research in writing this thesis is directed at empirical legal research, research that looks at legal realities that occur in society from an empirical legal perspective. The data collection technique in this research is by using the field research method. The field technique is "field research or direct inspection of the field, namely to the Serdang Bedagai Police Station by visiting the location to get formula answers by conducting interviews." The author in this study used Primary Data, namely "data obtained or collected by people conducting research from existing sources". Secondary data is in the form of books, journals, encyclopedias, magazines, papers, articles and others. relevant to the problem regarding the title of the author's research. There are two types of analysis, namely qualitative analysis and quantitative analysis. In this research, the author uses a qualitative data analysis method, namely a method by analyzing data that has obtained a general and comprehensive picture of the actual situation. This type of qualitative data is data that is collected not in the form of numbers that can be measured.

RESULTS AND DISCUSSION

Contents Results and Discussion

1. Diversion Process at the Level of Investigating Cases of Children Involved in Traffic Accidents

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, liberty or property. This invasion of basic rights is justified in order to preserve society and protect fundamental rights from interference by others. Article 1 point 7 of the Juvenile Criminal Justice System Law states that diversion is the transfer of a child's case from the criminal justice process to a process outside criminal justice. The SPPA Law regulates diversion which functions so that children in conflict with the law are not stigmatized as a result of the judicial process they have to undergo. The use of this diversion mechanism is given to law enforcers (police, prosecutors, judges, other institutions) in dealing with law violators involving children without using formal courts. The implementation of 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 who are in conflict with the law from the start of the investigation process. This special attention and treatment aims to ensure 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 children. Even though children who are involved with the law are in fact perpetrators, children are also categorized as victims, the meaning of victim in this case is the victim of their parents' negligence which caused the child to commit a criminal act. Although the basic concept of criminal law states that the person who commits a criminal act is the one who can be held responsible for his actions, in this case the child is considered the victim of his parents' negligence, causing the parents to also be responsible for the criminal act their child has committed. The procedure for implementing diversion according to PP Number 65 of 2015 is that the Investigator notifies the Diversion effort to the Public Prosecutor within a maximum period of 1 x 24 hours from the start of the Diversion effort. Meanwhile, investigators have 1 x 24 hours from the time the investigation order is issued to submit a notification letter 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 will notify and offer 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 statements are legal evidence as regulated in Article 184 paragraph 1 of Law Number 8 of 1981 concerning Criminal Procedure Law. What is meant by witness, according to Article 1 number 26 of the Criminal Procedure Code, is a person who can provide information for the purposes of investigation, prosecution and justice regarding a criminal case that he heard for himself, saw for himself and experienced for himself. Examination of witnesses at the investigative level, the investigator because of his obligation has the authority to summon to be heard and examined as a suspect or witness at the investigative level, the witness examination must be made into a report. The legal basis for examining witnesses at the investigative level is article 112 of the Criminal Procedure Code which reads:

- 1) The investigator who carries out the examination by clearly stating the reason for the summons, has the authority to summon suspects and witnesses who are deemed necessary for examination with a valid summons by observing a reasonable time period between the receipt of the summons and the day the person is required to comply with the summons.
- 2) The person who is summoned is obliged to come to the investigator and if he does not come then the investigator calls him again, with orders for the officer to bring him to him.

2. The Role of the Police in Legal Efforts for Diversion of Children as Perpetrators of Traffic Accident Crimes

Children who violate the law or commit criminal acts are greatly influenced by several other factors outside the child. In order to protect children from the influence of the formal process of the criminal justice system, human thought or legal and humanitarian experts arose to create formal rules for the action of removing (removing) a child who has violated the law or committed a criminal act from the criminal justice process by providing other alternatives. which is considered better for children. Based on these thoughts, the concept of diversion was born, which in Indonesian terms is called diversion or diversion. Diversion is a process that has been recognized internationally as the best and most effective way to deal with children in conflict with the law. Interventions for children in conflict with the law are broad and varied, but most emphasize detention and punishment, regardless of how minor the offense is or how young the child is. The police in implementing diversion are explained as follows:

- a. The investigator in charge of carrying out the investigation is a special child investigator or PPA investigator

Investigations of children in cases where children are in conflict with the law are carried out by child investigators, who are appointed based on the Decree of the Chief of the National Police of the Republic of Indonesia or an official appointed by him. In the case of a child who is in conflict with the law due to a traffic accident crime, the investigator can coordinate

with the Head of the Traffic Accident Unit and also the Head of the Gakkum Unit (Law Enforcement).

b. Arrest

When carrying out an arrest, investigators must have preliminary evidence that can prove the child's guilt in committing an act that is prohibited by statutory regulations. For example, a child who has not yet reached the age of 17 is driving a vehicle without a driver's license and is reckless when driving, resulting in a traffic accident.

c. Detention

Detention is within the authority of investigators. Detention may be carried out by child investigators after seriously considering the interests of the child.

d. Child examinations are carried out in a family atmosphere

The examination must be carried out in a family atmosphere considering that the perpetrator is still a child and to prevent experiencing "secondary victimization" (repeat of crime).

e. Investigators are required to ask for considerations or suggestions from community counselors

Children's investigators are obliged to ask for advice from community counselors in accordance with what has been described in Article 27 Paragraph 1 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

f. The right to receive legal aid and other assistance

In the process of investigating children who are perpetrators of criminal traffic accidents at the Serdang Bedagai Police, children are given the right to receive legal assistance.

g. Child investigations must be kept confidential

The child examination process must be kept secret to avoid the labeling process and protect the child's mental development. The investigator provides a press release so that the news is not distorted, exaggerated, and is in accordance with the facts.

CLOSING

Conclusion

Legal Regulations for Children as Perpetrators of Criminal Acts According to Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, namely that Diversion applies to children who are 12 (twelve) years old but not yet 18 (eighteen) years old or 12 (twelve) years old even though they have been married but are not yet 18 (eighteen)) years, who is suspected of committing a criminal offense. Diversion requirements are regulated in Article 7 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. There are 2 conditions for diversion, namely:

1. Threatened with imprisonment for less than 7 (seven) years
2. Not a repetition of a criminal act

Legal protection for children as perpetrators of juvenile crimes in Indonesia is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which states that child protection can not only be resolved through the judicial process, but can also be resolved through processes outside of criminal justice or other known as diversion, where the solution involves the perpetrator, victim, family of the perpetrator/victim and related parties to work together to find a fair solution by emphasizing restoration to the original state, and not retaliation, which is known as the restorative justice approach. Restorative justice is an approach taken to obtain justice by mediation or reconciliation, in cases of children in conflict with the law, this is known as diversion.

The role of the Serdang Bedagai Resort Police in legal efforts to diversion against criminal acts of traffic accidents committed by children has been maximized. This is proven by data obtained from the Serdang Bedagai Police Station that from 2019 to 2021 cases of traffic accidents carried out by children were successfully carried out. Diversion efforts were carried out and in 2022 there were only 4 cases recorded at the Serdang Bedagai Police Station and successful diversion efforts were carried out. , the diversion process is based on a report and the investigator

makes a BAP, then the Bapas conducts Community Research (Litmas) in the perpetrator's home environment, the Bapas issues a recommendation letter as to whether or not the diversion process is feasible and the letter is handed over to the investigator, the investigator calls the parties involved in carrying out diversion, then the results of the diversion are stated in the form of a letter which the results of the diversion are then submitted to the Court where the Court will later make a determination letter that the diversion was successful and the obstacles found in the diversion process at the investigation level in the case of a child involved in a traffic accident traffic at Traffic Traffic Units, the lack of time given by law for law enforcers to attempt diversion, compensation efforts experience obstacles because sometimes both parties in terms of compensation efforts do not comply with the agreement, many people do not know about diversion efforts so that The police and fathers had difficulty implementing diversion.is an overview based on the research that has been done. The conclusion is not a summary of the results of the discussion that refers to a particular theory, but the results of the analysis/correlation test of the data discussed.

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