

APPLICATION OF DIVERSION TO CHILDREN IN CASE OF TRAFFIC ACCIDENTS THAT CAUSE LIVES

Dwi Nur Fauziah Ahmad*, Handayani²

^{1,2}Faculty of Law, Universitas Muhammadiyah Tangerang

* Correspondence email: dwi_insiy@yahoo.co.id

ABSTRACT

Minors in driving a motor vehicle are very dangerous, lack of education on road safety and a very early age result in the ability to drive a vehicle not accompanied by instinct and mature thinking so that traffic accidents often occur caused by minors. Law No. 11 of 2012 regulates how to settle cases of child crimes, including in cases of traffic accidents caused by children by diversion. Traffic accident cases regulated in Law No. 22 of 2009 about Traffic and Road Transportation as a law that specifically regulates traffic accidents, the diversion process against children as perpetrators in traffic accidents carried out in every District Court and diversion carried out according to the Act. No. 11 of 2012 and Government Regulation No. 65 of 2012 about Guidelines for the Implementation of Diversion and Handling of Children who are not yet Twelve Years Old. Application of diversion at the Tangerang City Police Station encountered obstacles but there were also efforts to overcome these obstacles.

Keywords: children, diversion, traffic

INTRODUCTION

A traffic accident is an event that occurs in a traffic movement due to an error in the traffic forming system that involves humans as drivers, vehicles, roads, and the surrounding environment. Traffic accidents are a problem that almost occurs in all countries in the world, which requires serious handling considering the size of the losses caused. If the problem of road accidents is not considered properly, it feared that there will be an increase in the some accident victims from year to year (Anjarani, 2019). The Global Status Report on Road Safety (WHO, 2015) states that every year, worldwide, more than 1.25 million people die from traffic accidents and 50 million people are seriously injured. Of this number, 90% occur in developing countries where the number of vehicles is only 54% of the number of registered vehicles in the world. If we all do nothing, 25 million lives will fall in the next 20 years.

According to Police data, in Indonesia, an average of 3 people died every hour due to road accidents. The data also states that the large number of accidents caused by several things, namely: 61% of accidents caused by human factors, namely those related to the ability and

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character of the driver, 9% due to vehicle factors (related to fulfillment of roadworthy technical requirements) and 30% caused by infrastructure and environmental factors (Hartanto, 2017). The case of a deadly accident on the Jagorawi toll road involving the son of musician Ahmad Dhani, Abdul Qadir Jaelani (Dul) leaves a story that has an impact on many things, especially the problem of criminal cases of children, as it is known in the accident that 7 people killed and 8 others injured. From this example, it can be understood that the impact caused by vehicle users who do not meet the requirements for driving is so dangerous (Detik.com, 2013).

Similar cases are also found in jurisdiction of the City of Tangerang separately specifically and Tangerang Raya in general, we still find many drivers or motorists who are still students junior high school or junior high school where it is certain that the student still does not have a Driving License to be able to drive a motorized vehicle, this of course can pose a danger to the driver himself or to other road users due to the mental and emotional conditions of minors who are still young. unstable, for example like the case study in Police Minutes Number: 01/BAD/I/2018/Restro Tangerang Kota which occurred in 2017 where a child/student became the perpetrator in an accident in the Tanah Tinggi area of Tangerang City which resulted in a motorbike rider. and the one on the ride died. This problem is familiar among the public and has even become entrenched, so that every time an orderly traffic operation carried out on the highway by the traffic police (Polantas), there are bound to many cases of traffic violations, especially traffic violations committed by children (Restrotng, 2017).

Traffic accident cases involving minors are of special concern because they involve children who are not old enough in criminal cases, this makes government issue a related law, namely Law Number 11 of 2012 about the Juvenile Criminal Justice System. where this Law aims to protect and lead to a restorative justice approach that prioritizes the interests of children as perpetrators where punishment is a last resort. Law Number 22 of 2009 about Road Traffic and Transportation clearly regulates the conditions that must be adhered to create security and safety in traffic for the common interest, one of the rules that must be met to be able to drive a motorized vehicle is age. which determined to be able to have a driving license, in Article 77 paragraph 1 Road traffic laws, states that those who do not have a driving license punished with imprisonment or a fine. (Restrotng, 2017). This study aims to Implement Diversion Towards Children In Case Of Traffic Accidents That Cause Lives In The Jurisdiction Of The Tangerang City

METHODOLOGY

This type of research is empirical legal research. Empirical legal research is one type of legal research that analyzes and examines the workings of law in society. The object of this research study is the effectiveness of the rule of law; Compliance with the rule of law; The role of

legal institutions or institutions in law enforcement; Implementation of the rule of law; influence of the rule of law on certain social problems or vice versa; and influence of certain social problems on the rule of law (Ishaq, 2017). Sources of data used in this study at the Tangerang City Police Station by conducting interviews with sources, namely the Police who served as child investigators at the Tangerang City Police Station to get data related to the problems studied. Data collection techniques by observation, interviews and library documents. The data obtained in this study processed by the editing process. This activity carried out to re-examine and correct or check the results of the research so that a conclusion will drawn up. In processing data using qualitative analysis, namely analysis by describing the data that obtained by answering and solving any problems or questions based on theories both in books, laws and regulations as well as data obtained from field studies on children as traffic accident offenders.

RESULT AND DISCUSSION

A tronton truck unit (pol number B-9568-FYT) driven by the suspect (still a child) on Wednesday morning at around 05:35 local time from direction of Daan Mogot road towards Cikokol, crossed General Sudirman street allegedly broke through a red traffic sign (meaning stop) which resulted in the suspect's vehicle crashing into a Honda Kharisma motorcycle unit (pol number B-6795-CCW) driven by the victim (Mr Muller Sumanulang and Ms Ratna Delima Siregar), resulting in both died at the scene with a broken head covered in blood. The Juvenile Criminal Justice System Act (2012) states that diversion is the transfer of settlement of children's cases from the judicial process to a process outside of criminal justice. Diversion comes from the word divert, which means there is a change of direction from something. The implementation diversion carried out in the case of a criminal act which: (a) is punishable by imprisonment of less than 7 (seven) years; and (b) not a repetition a crime. From these two things, diversion can only be carried out in resolving criminal cases in general, it is only possible for criminal cases that are punishable by a criminal sentence of under seven years and not a repetition a crime.

The regulation on diversion is also regulated in PP No. 65 of 2015 about Guidelines for the Implementation of Diversion and Handling of Children Under 12 (twelve) Years Old. The PP has the principles, rules and ways for implementing diversion. In addition, the regulation on the diversion Supreme Court Regulation No. 14 of 2014 about Guidelines for Implementing Diversion in the Juvenile Criminal Justice System, and in the Indonesian Attorney General's Regulation No. Per-006/A/JA/04/2015 about Guidelines for Implementing Diversion at the Prosecution Level. Diversion carried out if the conditions for implementing diversion as stated

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in Article 7 paragraph (2) of the Juvenile Criminal Justice System Law met, in this SPPA Law also has criminal penalties for law enforcers (Investigators, Public Prosecutors, and Judges) with most imprisonment of 2 years against law enforcers who intentionally do not carry out this diversion obligation.

If the diversion legal process does not reach agreement at each level of examination, the community advisor suggests continuing the case investigation by the procedural law of juvenile criminal justice and accompanied by a community advisor in accordance article 23 paragraph (1) of Law No. 11 of 2012 about the Juvenile Criminal Justice System. If in this case the client is proven guilty, then in the best interests of the child, without prejudice to the authority the honorable judge, the client may sentenced to a "criminal condition, supervision" and guidance carried out by the Serang community counselor as regulated in article 71 paragraph (1) letter (b) number (3) and article 73 of Law No. 11 of 2012 on the Juvenile Criminal Justice System.

The statement implementation of diversion carried out by both parties, namely the first party is the person responsible for management of the truck vehicle with pol number B-9568-FYT which at the time of the incident driven by the suspect and the second party, namely the biological child of the victim who died when the traffic accident occurred. Based on the results of deliberation between the two parties, both parties have reached the following agreement: a. The first party is willing to give help in the form of compensation costs to the second party in the amount of Rp. 50,000,000.00 (fifty million rupiah), the receipt attached and the second party has received it; b. Both parties are aware that the traffic accident is a disaster that comes from God Almighty and not an element intent; c. Both parties after the statement letter signed jointly, each did not sue each other in civil or criminal law and considered the problem to resolved by family deliberation. Thus, after the diversion statement signed, the Tangerang City Metro Resort Police issues a Diversion Decree Number: SKD/01/I/2018/Restro Tng Kota to stop the investigation.

The investigation case carried out by the Tangerang City Metro Resort Police by M Isa Ansori (Kanit Laka) with the rank of Adjunct Commissioner of Police as an investigator who assisted by Panut H at the rank of AIPTU as an assistant investigator for Laka Lalu in conducting an examination the suspect ASP. During the examination, the suspect is in good physical and mental health and accompanied by a legal advisor appointed by the Police on behalf of Ariyatno Based on information that the suspect understands the case that occurred, provides a clear description of the case being faced and behaves cooperatively and is willing to take responsibility.

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Before investigators, the suspect admitted that he did not have a driver's license (SIM) when the incident occurred and admitted that he had never or had never been involved in any case with the authorities. Consideration that for the purposes of the investigation and/or for the offender who summoned 2 (two) times in a row and does not come without a valid reason, it is necessary to issue this arrest warrant. This call for is valid from December 06 to December 07 2017. This letter issued on December 06 and signed by Drs. Lis Gunanto D MM as Police Commissioner. Considering that to help the investigation at the investigation level, the suspect in his case is punishable by imprisonment of more than 5 (five) years as referred to in Article 310 paragraph (4) of Law No. 22 of 2009 on Road Traffic and Transportation, it is deemed necessary to appoint Legal Advisor to aid the suspect in the examination process at the Laka Traffic Investigation level at the Metro Tangerang City Police.

Based on the data and analysis of the results of community research as well as the trial of the Penitentiary Observation Team (TPP) Serang Penitentiary on Friday, December 8, 2017, in the best interests of the child, we as community advisors remember the cases suspected of clients who threatened with a most criminal sentence of less than 7 (seven) years. seven) years and this is the first time the client has committed a crime. So as article 7 and article 10 paragraph (2) letter (a) Law No. 11 of 2012 about the Juvenile Criminal Justice System and articles 3 and 7 paragraph (4) letter (a) Government Regulation No. 65 of 2015 on Guidelines for Implementing Diversion , then BAPAS recommends clients for ASP to make Diversion efforts (in the form of refunds in the event a victim) at every level. If the diversion legal process does not reach an agreement at each level of examination, the community advisor recommends continuing to investigate the case so.

Investigators in the diversion implementation process are facilitator in diversion deliberations to help reach a diversion agreement by listening to the wishes of the child, the child's parents, and the victim or victim's parents and community advisors and social workers. In the case of a traffic accident, in terms of formulating a diversion agreement, the victim asked for more compensation for the loss suffered by the victim. In addition, the obstacles to the implementation diversion at the Tangerang City Police Station caused by public knowledge about the diversion process in resolving cases of child crimes, the role of law enforcement officers. who are less competent in carrying out the diversion process, the victim's distrust of the diversion results, the perpetrators cannot meet the amount of compensation from the victim, the difference in the meaning of justice between the perpetrator's family and the victim's family.

If in this case the client is proven guilty, then in the best interests of the child, without prejudice to the authority of the honorable judge, the client may be sentenced to a "criminal condition, supervision" and guidance is carried out by the Serang community counselor as regulated in article 71 paragraph (1) letter (b) number (3) and article 73 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, taking into account: 1) The current client is 17 years and 6 months old, the future is still long and can be fostered in a better direction; 2) Imprisonment against children is only used as a last resort as referred to in Article 81 paragraph (2) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System; 3) If sentenced to a prison sentence, it is feared that the client will be influenced by correctional inmates who are more mature than himself; 4) The client has regretted his actions and promised not to repeat his actions; 5) Parents are still able to care for and provide better direction to clients. The statement of the implementation of diversion was carried out by both parties, namely the first party is the person responsible for the management of the truck vehicle with pol number B-9568-FYT which at the time of the incident was driven by the suspect and the second party, namely the biological child of the victim who died when the traffic accident occurred.

Based on the results of deliberation between the two parties, both parties have reached the following agreement: a. The first party is willing to give help in the form of compensation costs to the second party in the amount of Rp. 50,000,000.00 (fifty million rupiah), the receipt attached and the second party has received it; b. Both parties are aware that the traffic accident is a disaster that comes from God Almighty and not an element intent; c. Both parties after the statement letter signed together, each did not sue each other either physically or personally civil or criminal law and considers the problem to resolved by family deliberation.

CONCLUSION

Regulations about traffic accidents regulated in Law no. 22 of 2009 on Road Traffic and Transportation, which is an unexpected and unintentional event involving a Vehicle with or without other Road Users resulting in human casualties and/or property loss. Factors causing traffic accidents consist of human factors, vehicle factors, and physical environmental factors. Criminal arrangements in traffic accidents in Law No. 22 of 2009 about road transport traffic regulated in Article 310, Article 311, and Article 312 where the punishment is not more than 7 years so that children as perpetrators in traffic accidents can use a settlement mechanism by way of diversion. Diversion at the Tangerang City Police Station implemented since the issuance PERMA No. 04 of 2014 dated July 24, 2014 on Guidelines for Implementing Diversion in the Juvenile Criminal Justice System. Diversion carried out only for criminal acts committed

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by children which the penalty for the crime is less than 7 (seven years) and is not a repeat of the crime. In terms of solving traffic accident cases caused by children as perpetrators, there is no difference in the diversion process if the cases are different, every traffic accident case in Law no. 22 of 2009 about Road Traffic and Transportation, whether intentional or unintentional, whether the victim died and/or suffered minor or serious injuries, all of which carried out based on the diversion mechanism contained in supreme court rules Number. 4 of 2014.

The number of traffic accidents in Indonesia, especially in cases of accidents committed by children, shows an alarming number so that there must a coordination relationship between the community, schools, law enforcement officers and parents to supervise children who are underage so that they do not bring their own vehicles. This can done by providing shuttle buses for students, more intense supervision from the police, and education for children in terms of good and correct traffic on the highway.

Diversion as an effort to keep children from prison must receive special attention from law enforcement officials, the community and the government, in the case of traffic accidents caused by children, diversion must a last resort for children so that their future can well guaranteed. But the role of parents is very important in this case so that their children avoid traffic accidents on the highway which are very dangerous for themselves and others. The Tangerang City Metro Police should offer guidance and socialization for the community and parents in terms of resolving diversion cases as an alternative solution for children who have problems with the law.

As for the settlement cases of traffic accidents committed by children, the obstacles that are often met are the formulation an agreement on the compensation desired by the victim and the ability to pay from the perpetrator or the family of the perpetrator of the crime so that conflicts often occur and result in difficulty in obtaining a valid agreement. good and fair for both parties, namely if a traffic accident causes the death of a person or the victim's family dies, the victim's family more often demands that the victim be sentenced to prison and does not want to do diversion.

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