

## Settlement of Motorcycle Traffic Accidents by Children Causing Death

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### ABSTRACT

This study aims to analyse the forms of legal liability applicable to minors who operate motorcycles and cause fatalities in traffic accidents, as well as to examine the possibility of legal action against their parents. The phenomenon of underage individuals driving on public roads raises serious legal and social concerns, as it not only endangers traffic safety but also generates questions regarding the appropriate legal subject to be held responsible when accidents occur. This research employs an empirical legal research method, which relies on real-world data obtained through interviews, observations, and document analysis to examine how the law is applied in practice. The findings indicate that within the juvenile criminal justice system, legal accountability must prioritise the best interests of the child, respect for the child's views, and the application of restorative justice through diversion mechanisms. Case resolution is directed toward reconciliation between the victim and the child offender, avoiding deprivation of liberty, and fostering a sense of responsibility in the child. Furthermore, the study identifies the potential for parental liability where parents are proven to have provided opportunities, means, or assistance that facilitated the commission of the criminal act, as stipulated in Articles 56 and 57 of the Indonesian Criminal Code. Accordingly, this study underscores the importance of fair law enforcement that remains oriented toward child protection, while also recognising parents as parties who may bear legal responsibility under certain conditions.

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### 1. INTRODUCTION

The development of motorcycles in Indonesia has increased very rapidly from year to year. Motorcycles are seen as a means of transportation that is able to meet the mobility needs of the community, especially for the lower middle economic group. Relatively affordable prices, low operational costs, and its ability to penetrate traffic jams are the main reasons for the high use of motorcycles. On the

other hand, this convenience can have a bad impact if the driver does not have adequate driving skills and discipline in complying with traffic regulations, so it has the potential to cause fatal accidents.

One of the most common phenomena on the highway is minors riding motorcycles. They are often seen riding motorcycles to school or in residential neighborhoods, without having a driver's license and without sufficient psychological readiness or traffic knowledge. The presence of child riders on the highway not only disrupts traffic stability, but also increases the risk of accidents. In fact, Law Number 22 of 2009 concerning Road Traffic and Transportation has emphasized that every driver of a motor vehicle on the road is required to have a Driver's License. The fact that children still drive a lot on public roads shows the problem of legal awareness, parental supervision, and weak enforcement of traffic rules in the community.

Traffic accidents involving minors are a serious legal and social problem in Indonesia, especially if the accident results in death. Although laws and regulations expressly prohibit minors from driving motor vehicles, practice in the field shows that children still often drive motorcycles on the highway. This phenomenon raises complex issues related to legal liability, both to children as perpetrators and to parents as parties who have supervisory obligations. From a legal perspective, children who commit criminal acts are in a different legal regime than adults. The Juvenile Criminal Justice System in Indonesia emphasizes the protection of children's rights, the best interests of children, and restorative justice and diversionary approaches as the main mechanism for resolving cases. However, when a traffic accident caused by a child results in a death, a tension arises between child protection and the demand for justice for the victim.

Previous research has generally addressed traffic law enforcement and child delinquency in general. However, studies that specifically examine the resolution of fatal traffic accidents committed by children, as well as the possibility of parental liability, are still relatively limited. Therefore, this study aims to analyze the settlement of motorcycle traffic accidents by children that cause death, focusing on children's legal accountability and potential parental accountability.

The low traffic discipline in Indonesia has also aggravated the situation. Various studies and observations show that traffic violations are more frequent not due to ignorance, but due to a low awareness of obeying the rules. Many orderly drivers are not out of awareness, but because they are afraid of being sanctioned or fined. Traffic violations that often occur include driving recklessly, violating signs, not using safety equipment, and driving without a complete vehicle license. These violations have the potential to lead to accidents that harm themselves and others. According to Law Number 22 of 2009, traffic accidents are events on the road that are unexpected and accidental, involve vehicles, and result in human casualties and/or property losses. Most of these accidents are caused by human error and negligence, including disobedience to traffic regulations, selfish nature, and lack of concern for the safety of other road users.

The law classifies traffic accidents into mild, moderate, and severe accidents, with serious accidents covering events that result in the death or serious injury. The cause can come from the negligence of road users, vehicle unsuitability, as well as road and environmental factors. In the context of children as perpetrators of accidents, the problem becomes more complex because it concerns the position of children as legal subjects as well as parties whose rights must be protected. As human beings whose dignity and dignity must be upheld, children are under the responsibility of parents, families, and society. Parents are responsible for safeguarding, educating, and supervising children, including in terms of the use of motor vehicles. However, on the other hand, children also have limitations in taking responsibility for their actions, so the law must regulate specific mechanisms that distinguish them from adults.

In Indonesian criminal law, the principle is known that criminal liability is personal and cannot be transferred to others. This means that, in principle, parents cannot replace the position of children as perpetrators of criminal acts. However, in the civil realm, parents can be held accountable to pay compensation for their children's actions if they are proven to be negligent in supervision. On the other hand, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System specifically regulates how to deal with children in conflict with the law. This system prioritizes the principle of the best interests of children, respect for children's opinions, children's survival and growth and development, as well as

coaching and guidance. Deprivation of liberty and criminalization were placed as a last resort. The juvenile criminal justice system is required to prioritize restorative justice and seek diversion, namely the transfer of case settlement from the criminal justice process to outside the court, with the aim of achieving peace between victims and children, resolving cases outside the judicial process, preventing children from deprivation of independence, encouraging community participation, and instilling a sense of responsibility in children.

In practice, the settlement of traffic accident cases involving children as perpetrators is resolved through the judicial process, but not a few are resolved familiarly through a peace mechanism between the perpetrator and the victim or his family. The police as law enforcement officers have a central role in determining the direction of handling cases, whether it is continued to the judicial process or resolved through a non-litigation approach. Law Number 22 of 2009 authorizes the National Police of the Republic of Indonesia to maintain security, order, law enforcement, protection, and service to the public in the field of traffic, including in handling accident cases involving children.

On the other hand, Law Number 22 of 2009 Article 310 regulates criminal threats for the perpetrators of accidents that result in death up to imprisonment and fines, while Article 359 of the Criminal Code stipulates that a person who, due to his negligence, causes the death of another person can be sentenced to prison. These provisions are intended to provide strict sanctions for traffic violations that cause the loss of life of others, while encouraging awareness and compliance with the rules for the safety of road users. However, when the perpetrator of the accident is a child, the application of these articles must be adjusted to the principles of child protection, so a careful analysis of the appropriate and fair form of legal liability is needed.

In the context of criminal law, children who commit criminal acts are in a special legal regime that emphasizes protection and guidance. The Juvenile Criminal Justice System in Indonesia adopts a restorative justice approach as the main paradigm in resolving children's cases (Arief, 2016). This approach aims to avoid stigmatization and the negative impact of criminalization, while still paying attention to the interests of the victim.

However, when a criminal act committed by a child results in the loss of another person's life, a dilemma arises between child protection and the fulfillment of a sense of justice for the victim. Research by Nugroho (2019) shows that the application of diversion in fatal traffic accident cases often faces resistance from the victim's family because it is considered not proportional to the losses experienced.

Previous research has tended to place children as the sole legal subject in traffic accident cases. In fact, a number of studies confirm that the role and negligence of parents are significant factors in the occurrence of violations of the law by children (Putri & Handayani, 2021). Therefore, this study aims to analyze the settlement of motorcycle traffic accidents by children that cause death, by highlighting the legal responsibility of children as well as the potential liability of parents.

Starting from these various problems, the formulation of the problem in this study includes two main things, namely how to be legally responsible for children who cause death due to traffic accidents by riding motorcycles, and how to form legal solutions to children in the case of traffic accidents that result in death. This research aims to find out and analyze the form of legal responsibility of children in the case of traffic accidents that result in death, as well as to understand the legal settlement mechanism applied, both through the judicial channel and through a restorative justice approach in accordance with the provisions of laws and regulations.

## 2. METHODS

The research aims to provide a clear picture of legal accountability and the mechanism for resolving traffic accidents committed by children that cause death. Descriptive-analytical research was chosen because it is able to explain the applicable legal norms as well as analyze their application in concrete situations, so that the results of the research are not only theoretical but also reflect legal practices that occur in the field.

The type of research used is normative legal research, which focuses on the study of positive legal principles, principles, and provisions. Normative legal research is carried out by examining relevant laws and regulations such as Law Number 22 of 2009 concerning Road Traffic and Transportation, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, as well as provisions in the Criminal Code. To strengthen the analysis, this study also included case studies, namely examining real examples of traffic accident cases involving children as perpetrators. The use of case studies allows the author to see how law enforcement officials apply normative provisions in practice and how settlement mechanisms, both through litigation and non-litigation, are carried out.

The approach method used is a normative juridical approach with case studies. The normative juridical approach is carried out through the study of various legal norms that are the basis for regulating child liability and resolving traffic accidents. This approach examines the rule of law textually and systematically, then compares it with the legal facts in a particular case. Case studies are used as a complement to connect theory and practice so that a comprehensive understanding of the implementation of the juvenile criminal justice system is obtained, including the application of restorative justice and diversion.

### 3. RESULTS AND DISCUSSION

#### Legal Liability for Children of Traffic Accidents That Cause Death

In the juvenile criminal justice system, children are seen as legal subjects with limited criminal liability. The principle of the best interests of children is the main basis in determining the form of legal responsibility. Therefore, children's accountability is not interpreted as retribution, but as a means of education, coaching, and social reintegration as regulated in Law Number 11 of 2012.

The findings of this study confirm that children's legal accountability is more directed towards a non-imprisonment approach, in line with the principles of child protection and international standards on children's justice. Restorative justice is the main approach in resolving traffic accident cases committed by children. Through the diversion mechanism, the parties are given space to dialogue, express losses and sufferings, and reach mutual agreements. This approach is considered effective in reducing stigma against children and preventing the recurrence of criminal acts (Zehr, 2015). However, this study also found challenges in the application of restorative justice, especially related to the inequality of position between perpetrators and victims and the emotional burden of victims' families. Therefore, the role of a professional mediator and clear procedures are required.

The phenomenon of minors riding motorcycles is still often encountered in the community and has the potential to cause traffic accidents that result in the death of the victim. In the context of Indonesian criminal law, every criminal act committed by a person, including a child, must be held accountable as long as the elements of guilt and the ability to be responsible are met. Based on the provisions of Article 310 paragraph (4) of Law Number 22 of 2009 concerning Road Traffic and Transportation, accidents that result in death due to negligence can be subject to imprisonment for a maximum of six years. However, Indonesian law provides special treatment for children of criminal offenders because their condition is still in the stage of moral, mental, and emotional development.

On the other hand, it is known that in the juvenile criminal justice system, criminal liability is based on the principle of "the best interests for the child" as affirmed in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). Children are still considered capable of responsibility, but with a coaching approach, not retaliation. This is in line with the principle that criminalization of children is the last resort (ultimum remedium). Therefore, even though children can be subject to criminal sanctions when causing death due to their negligence in traffic, investigators, public prosecutors, and judges are obliged to seek diversion as an alternative form of settlement.

The restorative justice approach in traffic accident cases by children shows a paradigm shift from retributive to rehabilitative. This is in line with the view of Arief (2016) who emphasized that the main goal of juvenile criminal justice is the recovery and future of the child, not retribution. The findings of this

study strengthen the argument that conventional punishment is ineffective in the context of children, especially in cases of traffic negligence.

However, this study also confirms the criticism conveyed by Nugroho (2019), that the application of diversion in cases that result in death requires strict restrictions and supervision so as not to ignore the victim's sense of justice. Therefore, restorative justice must be understood as a balanced process between the interests of the child and the victim.

Regarding parental accountability, this study supports the view of Putri and Handayani (2021) who state that parents have legal and moral responsibility for their children's actions. By placing parents as parties who can be held accountable under certain conditions, the law is not only repressive but also preventive.

The results of the study show that law enforcement officials consistently seek diversion in the handling of traffic accidents committed by children, including those that have fatal consequences. This finding is in line with Wibowo's (2020) research which states that diversion is seen as the main instrument in realizing restorative justice in the juvenile criminal justice system in Indonesia.

In addition, this study found that the success of diversion was greatly influenced by the willingness of the victim's family to reconcile. A study by Sari and Prakoso (2018) emphasized that emotional factors and the perception of justice of the victim's family are the determining variables in the penal mediation process. If an agreement is reached, the settlement of the case emphasizes social recovery rather than criminal sanctions. Regarding parental accountability, this study shows that law enforcement officials are beginning to consider the role of parents more seriously. This is in line with the findings of Rahman (2022) who stated that parental negligence in supervising children can be qualified as a form of indirect contribution to the occurrence of criminal acts.

Philosophically, the application of accountability to children aims to instill awareness of the mistakes made, not to stigmatize them as perpetrators of crimes. In addition, the practice of juvenile criminal justice must consider the age factor, the child's understanding of the consequences of his actions, and the community research report (Litmas) from Bapas. These principles ensure that legal accountability to children is not limited to punishment, but is oriented towards fostering and reintegrating children's socially.

In the event of a traffic accident that results in death, the child can be subject to action or criminal punishment according to the provisions of Article 71 of the SPPA Law, including coaching in special institutions for children, community services, job training, or supervision. However, almost all juvenile crimes in traffic accidents tend to be directed to the mechanism of restorative justice because of the nature of the act that is born from negligence, not intentional to take life. Therefore, the role of law enforcement officials in prioritizing restorative justice is very important so that the handling of cases does not cause a greater psychological and social impact on children.

Although Indonesia's legal framework has provided strong protections for children through the SPPA Law and related regulations, implementation on the ground still faces various challenges. One of the main obstacles is the low legal awareness of the public against the prohibition of children from driving motor vehicles. Many parents consider that giving a motorcycle to a child is common, so they are not aware of the legal consequences or safety risks.

Another obstacle lies in the lack of facilities and resources for law enforcement officials to effectively socialize traffic rules and the juvenile justice system. In addition, the success of diversion is highly dependent on the willingness of the victim or the victim's family, which is not always easy to achieve. In the case of accidents that cause death, emotions and trauma are often obstacles to peace. However, the restorative justice approach still needs to be improved because it has been proven to be more effective in preventing the repetition of criminal acts by children than criminalization.

Overall, the resolution of traffic accident cases by children requires synergy between families, the police, the community, and other legal institutions. The legal system has provided a fair and coaching-oriented settlement space, but its success can only be achieved through the awareness, cooperation, and commitment of all parties.

### Legal Settlement through Diversion and Restorative Justice as well as Parental Involvement

Legal settlement of the child perpetrator of a traffic accident that caused death is basically directed to the diversion mechanism, as stipulated in Articles 6 to 15 of Law Number 11 of 2012. Diversion is the transfer of case settlement from the judicial process to the deliberation process involving the child, parents, victim or victim's family, community counselors, professional social workers, and other related parties. The goal is to achieve peace between perpetrators and victims, prevent children from being deprived of independence, and instill responsibility in children.

In traffic accidents, diversion is very relevant because the nature of the crime is forgetfulness (culpa), not intentionality. Many cases show that the victim's family is willing to pursue a non-litigation settlement through family deliberation, especially if the elements of good faith, apology, and compensation are met. Diversion agreements can be in the form of peace with or without compensation, handover of the child to the parents, community service, or education/training at a specific institution for a maximum of three months. If the diversion agreement is successful, the investigation and prosecution must be stopped in accordance with the provisions of Article 12 of the SPPA Law.

The implementation of diversion in traffic accident cases also pays attention to the guidelines in Government Regulation Number 65 of 2015, which contains technical procedures for diversion and handling of children under 12 years old. The PP emphasizes that diversion can be carried out without the victim's consent if the crime is relatively minor, without victims, or the loss is below the provincial minimum wage value. Although in cases of accidents that cause the death of the victim, generally requires the consent of the victim's family, the legal apparatus still encourages deliberation for a more humane settlement.

In the diversion process, parents have a very important role. Legally, parents cannot replace the child's criminal liability because the principle of criminal law does not recognize the transfer of criminal liability. However, parents can be held morally and civilly accountable, especially if they are proven to be negligent or provide an opportunity for the child to ride a motorcycle without meeting the legal requirements (e.g. without a driver's license, or allowing the child to use a vehicle provided by the parent). In fact, in the Criminal Code there are provisions in Articles 56 and 57 that allow the entrapment of parents as participants in criminal acts in the event that they provide means or opportunities to children until criminal acts occur.

On the other hand, in the restorative justice mechanism, parents play a direct role as parties who must accompany, negotiate agreements, and bear the recovery of victims' losses. The diversion process basically puts the parents as part of the settlement because they are considered responsible for the parenting, supervision, and coaching of the child. Thus, the settlement of children's cases through restorative justice not only targets children as perpetrators, but also improves family relationship patterns and increases parental responsibility in supervising children's behavior.

Overall, legal settlement for the child perpetrator of a traffic accident emphasizes recovery, not retaliation. Diversion is the main instrument that combines the interests of victims, perpetrators, families, and the community while safeguarding the future of children. This effort is in line with the modern paradigm in juvenile justice that prioritizes a balance between legal certainty, utility, and protection for children as the nation's next generation.

Law enforcement against traffic violations committed by children does not only depend on written rules, but also on the active role of the police, the community, and parents. The police as the front line of traffic law enforcement have the responsibility to carry out preventive and repressive actions. Preventive measures include socializing traffic order in schools, education about the dangers of accidents, and campaigns to not allow minors to drive motor vehicles. Meanwhile, repressive actions are carried out in the form of direct action such as tickets, vehicle confiscation, or on-site coaching when children are caught driving without a permit.

In the context of a traffic accident that causes death, the police play a role in initiating the investigation process and determining whether the case can be directed to diversion. The police are obliged to cooperate with the Correctional Center (Bapas) to conduct assessments of children to determine

the most appropriate steps for their psychological and social development. This process reflects a paradigm shift in law enforcement, from a purely punitive approach to a constructive and restorative approach.

The community also has an important part in the prevention and settlement of cases. The permissive culture that considers it normal for children to ride motorcycles without a license is one of the causes of rampant violations. The community needs to be involved in traffic safety education, supervision of local children, and an active role in mediation when accidents occur. In some cases, the success of diversion occurs because of the close social relationship between the perpetrator and the victim, thus facilitating the process of deliberation and peace.

Meanwhile, parents play a very central role. Accidents involving children are often inseparable from parental negligence, either by allowing, permitting, or even providing means for children to drive without meeting legal requirements. Therefore, parents are not only morally responsible, but can also be held civil liable for their negligence in supervising children. In some legal provisions, parents can be considered to participate in criminal acts if they consciously provide the opportunity or means to commit unlawful acts.

In the process of resolving cases, parents have an obligation to accompany their children at every stage, from investigation, diversion, to the implementation of agreements. The presence of parents is not only as a formal companion, but as a party who is also responsible for shaping the character of children. Without parental support, the restorative justice process is difficult to succeed, as most of the responsibility for recovery, such as apology or compensation, is carried out by the perpetrator's family.

### **Implementation of Diversion and Restorative Justice in Cases of Traffic Accidents by Children**

The application of diversion in the case of traffic accidents that result in death is a challenge in itself because criminal acts that take lives often cause strong emotional reactions from the victim's family. However, the Child Criminal Justice System Act clearly states that diversion must be pursued at every level of examination, although its success depends on the consent of the victim or his or her family. In practice, successful diversion is usually supported by four important factors: good faith from the child and his family, a strong desire for reconciliation, a willingness to compensate, and the existence of harmonious social relationships between families.

In the case of a traffic accident, most children as the perpetrator have no malicious or intentional intent to take someone's life. His actions were purely the result of negligence driven by emotional immaturity and lack of driving skills. Therefore, the mechanism of restorative justice is more appropriate to be applied than retributive punishment. Restorative justice focuses the process on restoring social relationships, recovering victims' losses, and fostering children so that they do not repeat their actions. This approach is in line with the ideals of the juvenile justice system that puts the best interests of children as a top priority.

However, there are certain circumstances where diversion is difficult to do, such as when the victim's family rejects the peace process or demands punishment for deep emotional wounds. In this situation, law enforcement officials play a major role in facilitating communication, providing explanations about the purpose of diversion, and convincing the parties that non-litigation settlements do not eliminate the moral obligations or responsibilities of the child. When diversion is not achieved, the legal process continues, but the judge still has room to make decisions that are educational and coaching.

## **4. CONCLUSION**

Based on the results of research on the settlement of motorcycle traffic accidents by children that cause death, it can be concluded that legal responsibility for children is still recognized in the Indonesian criminal justice system, but its application pays attention to the principles of child protection and the best interests of children. Children are seen as not yet emotional, mental, and social maturity, so the approach used is not solely punishment, but coaching through diversion mechanisms and restorative justice. Case settlement is more directed at restoring relationships and losses of victims,

instilling a sense of responsibility for children, and the involvement of parents as morally and civilly responsible parties in child supervision and development.

In line with that, it is recommended that law enforcement officials strengthen preventive efforts through traffic education and consistent enforcement of rules for children and parents. The government, educational institutions, and the public need to increase socialization about the dangers of driving a motor vehicle for minors. Parents should be more active in supervising children's behavior and not giving access to motorcycles before meeting legal requirements. In addition, the application of restorative justice and diversion needs to continue to be maximized so that case resolution can be more humane, fair, and beneficial for the future of children without neglecting the rights of victims. Community support is indispensable to create a culture of traffic order and a safe environment for all road users.

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