



LAW ENFORCEMENT OF THE CRIME OF LOSS OF LIFE WITH CHILDREN AS PERPETRATORS IN CASES OF TRAFFIC ACCIDENT VIOLATIONS

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ABSTRACT

This study aims to determine the application of criminal provisions for children in traffic accidents that result in loss of life and to find out the responsibility of children in traffic accidents that result in the loss of life of others. The result of the research shows that: (1) The application of the law of children who cause traffic accidents that result in the death of others must be subject to criminal charges expressly in Law Number 3 of 1997 concerning Juvenile Courts, then the provisions of the Criminal Procedure Code apply as a general rule in this case. Based on Article 7 of Law Number 3 of 1997 concerning Juvenile Courts and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, there is special treatment for children, in the sense that there is a separation between children and adults in the legal system. These two laws were passed in 1997 and 2012 respectively. (2) The form of liability that can be imposed on a child who causes a traffic accident that results in the death of another person is vicarious liability. Because this case was resolved through the concept of restorative justice that uses a diversion pattern. Every child in conflict with the law should follow the juvenile justice process until the final stage.

Keywords: *Crime, Children, Traffic Accidents*

1. Introduction

Humans are dynamic creatures and cannot stay still for long, they always want to move and do activities. Although the activities of the community are greatly assisted and bring a number of benefits, the presence of motorized vehicles also brings other consequences including the provision of adequate roads, regulating the movement of vehicles and accident problems (Kusmagi, 2010). If a child commits a criminal offense, it is not only seen the nature of the crime and the consequences caused by the criminal offense committed, but it must also be considered the conditions and background why the child commits a criminal offense, as well as the psychological aspects of the child. No matter how evil the child is in committing crimes and deviant acts, it is a shared responsibility to return them to a good condition for their growth and development. Therefore, no matter how bad the condition is, the child must still be saved (Setiyawati & Cahyani, 2014).

Children are an integral part of the sustainability of human life and the sustainability of a nation and state. Children who are part of the younger generation are usually very concerned about community issues, because at that age idealism (tend to expect perfection) begins to grow (Soetedjo & Melani, 2017). The development of technology that continues to develop in the modern era on transportation equipment in particular which is beneficial with its use efficiently, quickly, safely and comfortably can be a problem of pain suffered by its users. Related to the problem, what is often a concern is that education both from schools

and parents is very important, because there are so many trivial things that are often children take it for granted (Rifandi HK et al., 2015).

Several cases in which minors were involved were related to traffic accidents that had occurred in Indonesia and went viral, because they involved the children of famous people. In fact, the child is not allowed to drive their own vehicle because they do not have a driving license (SIM) because they are not 17 years old. The inability of minors to drive their own vehicles is due to their unstable emotional state (Mustajab, 2012). Road traffic accidents with child perpetrators can be said to be a phenomenon that occurs in society, where the child certainly does not yet have a Driver's License (SIM) because the requirement to have it is to have an Identity Card (KTP) which means he has been said to be an adult. This needs to be a common concern, because victims of road traffic accidents must still get protection and on the other hand, children as perpetrators of traffic accidents also deserve attention, especially from a legal perspective (Maulani, 2019).

Child protection is an effort to create conditions and situations, which allow the implementation of the rights and obligations of children in a positive humane manner, which is also a manifestation of justice in a society. Thus, child protection must be sought in various fields of livelihood and life of the state, society, and family based on the law for the correct, fair treatment and welfare of children (Wasi'a, 2018). The case of Abdul Qoadir Jaelani (Dul), the son of famous musician Ahmad Dhani is one of the phenomena that was very viral a few years ago having an accident that caused 7 people to die, and 8 others including Dul were seriously injured (Robertus Belarminus, 2013).

From a juridical point of view, dul is still 13 years old, which in this case is still in the category of children. However, in Law No. 3 of 1997 concerning the Child Criminal Justice System, children in cases of children in conflict with the law are children who are 8 years old and under 18 years old who are suspected of committing a criminal offense. The incident should be an afterthought for parents, especially those with teenage children to not be permissive and must apply discipline to children. In accordance with procedures, a new driving license can be obtained if you are 17 years old (Mustajab, 2012).

The case experienced by Dul is quite unique because basically a child cannot be held criminally responsible on the grounds that a child is not a legal subject because it is considered not yet capable of responsibility and a child has not or is prohibited from driving a motor vehicle, but in fact what happened was the opposite. The provision of punishment or sanctions and the legal process that takes place in cases of violation of the law by children is indeed different from cases of violation of the law by adults, because the rationale for giving punishment by the State is that every citizen is a creature who is responsible and able to take responsibility for all his actions. Meanwhile, children are recognized as individuals who cannot yet be fully responsible for their actions (Adisaputra, 2014).

2. Methods

The type of research used is empirical juridical, which is field research that reviews applicable legal provisions and what has happened or research conducted on actual reality with the intention of knowing and determining the facts and data

needed. Especially regarding criminal provisions for children in traffic accident cases that result in the loss of life of others (Jonaedi Efendi et al., 2018). The data sources in this research are in the form of field findings conducted by conducting research at the Baubau Police Office, and data in the form of theories that are relevant to the theme of the discussion. Primary data is obtained directly through interviews with experts, resource persons. Secondary data documents obtained from agencies research locations, literature, and regulations. Data collection through library research collects data and theoretical foundations by studying books, scientific papers, articles. Field research was conducted directly at the research location by conducting interviews to collect primary data at agencies or parties directly related to the research (Ali, 2021).

3. Findings and Discussions

3.1 Application of Criminal Law for Children in Traffic Accident Cases Resulting in Loss of Life of Others

Based on data obtained by the author from Baubau Police regarding the number of traffic accidents in the Baubau City area, data for 2022 compared to 2021 decreased by 6%, this shows that law enforcement in preventing traffic accidents in Baubau City can be said to be successful. The following is data on traffic accidents for the last three years that occurred in the jurisdiction of Baubau Police, the data can be seen in the following table:

Table 1
Traffic Accident Data 2020 to 2022 in Baubau Police Area

NO	Description	Total			Total Description
		2020	2021	2022	
1.	Number of Incidents	84	48	57	Cases
2.	Deaths	12	7	9	People
3.	Serious Injuries	24	15	8	People
4.	Minor Injuries	34	33	37	People

Source: Baubau Police Traffic Unit (2023)

Based on the table above, it can be seen that the number of traffic accidents in 2021 compared to 2020 has increased. So that when viewed from the traffic accident data in the table, only in 2020 is the traffic accident data that has increased when compared to the previous year so that the amount of losses caused has increased. So based on data obtained from 2020 to 2022, it can be concluded that when viewed from the number of traffic accidents, the problems that arise in enforcing sanctions increase. The following data on traffic accidents and victims in 2021 when compared to 2020 can be seen in the following table:

Table 2

**Data on traffic accidents and victims of traffic accidents that occurred
between 2021 and 2022 in Baubau police area**

NO	Description	Total		Trend	Grid		Total Descri ption
		2021	2022		Angka	%	
1.	Number Of Occurrences	48	57	Up	9	12.5	Case
2.	The Victim Died	7	9	Up	2	14.8	People
3.	Seriously Injured	15	8	Down	-7	-18.10	People
4.	Minor Injuries	33	37	Up	4	16.7	People
5.	Material Losses	145.000 Rb	215.000 Rb	Up	70.000 Rb	18.5	Rupiah

Source: Baubau Police Traffic Unit (2023)

The table above shows that the number of traffic accidents in the Baubau Regional Police Area in 2022 did increase from 2021, but the number of seriously injured victims decreased by 18.10%. Furthermore, the explanation from members of the Baubau Police Accident Unit that the decrease in the number of accident victims who died and were slightly injured was more valuable for the Baubau police. This can be understood, because ideally the number of accidents and the number of all categories of accident victims every year decreases, but if you have to choose one of them that decreases, it certainly means more if the number of deaths and or seriously injured victims decreases than the number of accidents because the price of life and health is much more meaningful than any material. A traffic accident is an event on the road that unexpectedly and unintentionally involves a vehicle with or without other road users resulting in human casualties and or loss of property. From the above understanding, it can be concluded that traffic accidents have several elements. In the first, the incident was not suspected by the driver, and in the second, the incident was accidental. And also mentioned resulting in human and or goods casualties.

Criminal sanctions for perpetrators of traffic accidents in the jurisdiction of the Baubau Regional Police according to Mr. Asri S.H explained that law enforcement does not distinguish social status, education level, skin color, ethnic and religious differences. This is confirmed in the 1945 Constitution Article 27 paragraph (1), "all citizens have the same position in law and government and are obliged to uphold the law and government without exception" Seeing the many phenomena of traffic criminal cases that occur in the jurisdiction of the Baubau Regional Police, it is necessary for policies taken by Baubau Regional Police Satlantas police personnel to bring this problem so that the child who is in conflict

with the law is not subject to prison sanctions but is carried out with diversion efforts.

Table 3
The Number Of Cases Of Traffic Accidents With Child Perpetrators That Occurred Between 2021 And 2022 In The Baubau Regional Police Area

NO	Year	Number Of victims			Diversio n	Court Proceedings
		Child Offenders	Dead	Luka-Luka		
1.	2021	9	2	6	4	2
2.	2022	12	4	8	3	4
Total		21	6	14	7	6

Source: Baubau Police Traffic Unit (2023)

From the table above, it can be seen that the mechanism of Restorative Justice by way of diversion applied by police investigators in Baubau police facing every problem of children, especially cases of traffic crimes that increase every year. The diversion process was carried out in the Baubau police meeting room, which was attended by the parents of the perpetrator, the victims and perpetrators and conducted deliberations and consensus in order to reach an agreement. Seeing the crime committed by the child, it takes responsibility for the crime committed by the child, because basically the child should not be punished, but done with a diversion effort, so that the child does not become traumatized by the crime he committed.

Further explanation from Briпка Brigpol Rasmin S.H about the occurrence of an accident in the element of negligence as an element of an accident on the highway: "As an example of an accident involving two trucks and two motorcycles Kokalukuna District, kadolamoko village resulted in two motorcyclists died. Chronology of events, from the rear appears fuso truck loaded with sand bernopol DT 9448 UYX driven by Rusli from Bungi. Suddenly, from behind appeared fuso truck loaded with sand bernopol DT 9448 UYX from Baubau, the accident finally inevitable to result in molen truck mired in a ditch. At the same time from the direction of Bawen appeared two Honda Motor Vehicles bernopol DT 5504 BG, coupled from Kadolomoko using a Honda Vario. As a result of the accident, two riders and a motorcycle pillion died, as a result of the accident the traffic flow was congested up to four kilometers more"

Regarding legislation relating to criminal acts committed by minors. The existence of differences in imposing criminal sanctions against adults, because it is a minor committing a criminal offense, has its own law, namely Law No. 11 of 2012 on the juvenile criminal justice system. As has been formulated in the Criminal Code Article 63 Paragraph (2),⁷¹ or also called the principle (Lex Specialis Derogat legi Generali) which means that Special Crimes set aside general crimes.

The provision of punishment is only imposed as a last resort (ultimum remedium). This is when attempts at diversion fail, both at the level of investigation, prosecution and in juvenile court hearings. In the juvenile criminal justice system according to Law Number 11 year 2012 shall prioritize restorative justice approach pursued diversion in each stage of the handling process at the investigator, prosecution and examination level in juvenile court hearings, with provisions only applicable to criminal acts punishable by imprisonment under 7 (seven) years. and is not a repetition of criminal acts. In Article 11 of Law No. 11 of 2012 concerning the juvenile criminal justice system, the results of the diversion agreement can be as follows :

- a. peace with or without compensation.
- b. handing back to parents/guardians
- c. participation in education or training in educational institutions or LPKS for a maximum of 3 (three) months, or
- d. community service

The diversion agreement must obtain the consent of the victim and/or the victim's child's family and the willingness of the child (who is in conflict with the law) and his family, except for criminal offenses, misdemeanors, victimless crimes, or the value of the victim's losses is not more than the value of the local provincial minimum wage. In such circumstances, the act of diversion does not require anyone's consent.

If the diversion is not achieved, then the child in conflict with the law may be sanctioned in the form of criminal and/or action. Children who are not yet 14 years old should not be sentenced, only sentenced to action. So the action can only be sentenced to a child who conflicts with the law whose age has been 12 (twelve) years and has reached 14 (fourteen) years. According to Law Number 11 of 2012, that children who conflict with the law who are not yet 12 (twelve) years old cannot be processed by law.

Sanctions for children in conflict with the law consist of the main criminal and additional criminal.

a. Ultimate Criminal

- 1) in the form of a misdemeanor in the form of a warning that does not deprive the child of independence.
- 2) criminal with conditions. The judge may impose a conditional prison sentence, if sentenced to a maximum prison sentence of 2 (two) years. This means that the imprisonment imposed does not need to be carried out with the burden of one of the three conditions (terms of guidance outside the community service institution or supervision conditions). Coaching outside the institution can be a necessity.
 - a) construction outside the city. The judge who imposed the sentence. This criminal punishment can follow several requirements, namely following each given program. by pejabar pembina for Community Service guidance and counseling.
 - b) Community Service. Aims to educate children so that their concern for society increases about something positive, such as helping elderly

parents, people with special needs, orphans, and working in government agencies and social welfare institutions on a voluntary basis. If not run it all without a valid reason, then the fostering officer must propose to the supervisory judge to oblige the child to repeat all or part of the community service crime imposed on the child. This criminal sanction is imposed for a minimum of 7 hours and a maximum of 120 hours.

- c) supervision, subject to a minimum of three months and a maximum of two years. Criminal sanctions are in the form of monitoring the behavior of children daily by being supervised by the public prosecutor, as well as guidance through community guidance institutions.
 - d) job training, a minimum of 3 (three) months and a maximum of 1 (one) year. This crime is carried out in institutions that must be appropriate for the age of the child.
 - e) coaching, institutions that have the authority to conduct job training or coaching institutions, both government and private. This penalty is imposed for a minimum of 3 months and a maximum of 2 years. It may be released on parole when the child has undergone a $\frac{1}{2}$ construction of the length of the construction, and not less than three months of good conduct then obtain parole.
 - f) prison. If the child's actions are very harmful to the community, then the child can be sentenced to imprisonment in LPKA, the maximum sentence is $\frac{1}{2}$ of the maximum adult sentence. Imprisonment in LPKA ends when the child is 18 years old. When the child is already serving a $\frac{1}{2}$ prison sentence and is behaving well then it is entitled to parole.
- b. Additional Criminal
- 1) in the form of deprivation or deprivation of profits from the proceeds of crime obtained in the interests of the state.
 - 2) fulfill customary obligations, fines or sanctions that must be carried out in accordance with the enforceability of local norms.

Related to the sanctions imposed on children perpetrators of traffic crimes that resulted in minor injuries, serious injuries, and even death. It is seen from the consideration of the judge. As described in Article 70 of the Juvenile Criminal Justice System Act which reads : The lightness of the act, the child's personal circumstances, or the circumstances at the time the act was committed or what happened later can be used as the basis for the judge's consideration not to impose a crime or impose an action taking into account the aspects of justice and humanity.

3.2 Forms Of Child Liability In A Traffic Accident Resulting In The Loss Of Life Of Another Person

Traffic accidents according to Article 1 to Article 24 of Law No. 22 of 2009 was an unexpected and unintentional road incident involving a vehicle with or without other road users that resulted in human casualties and/or loss of property. Based on the results of an interview with Mr. Rasmin S.H there are several factors that cause traffic accidents, namely :

1. Negligence of road users, for example: using mobile phones when driving, tired and Sleepy Body Condition, driving a vehicle in a state of intoxication, lack of understanding of traffic signs.
2. Vehicle unworthiness, for example: vehicles with non-standard modifications, faulty brakes, tire conditions that are not suitable for use, load limits that exceed vehicle transport limits.
3. Road and/or environmental unworthiness: potholed road conditions, lack of installation of traffic signs and road markings.

Various elements of negligence that cause accidents namely:

1. Negligence Due To People

To see if a person can be held accountable before the trial, it must be determined whether the perpetrator of the crime committed a mistake intentionally (*dolus*) or negligence/ forgetfulness (*culpa*). In criminal law, the element of intent or what is called *opzet* is one of the most important elements. In relation to this intentional element, then if in a formulation of a criminal offense there is an act intentionally or commonly referred to as *opzettelijk*, then this intentional element dominates or covers all other elements that are placed behind it and must be proven.

Deliberate means also the presence of a conscious will aimed at committing a specific crime. Then it relates to the proof that the act he did was done intentionally, contained the understanding of wanting and knowing or ordinary it's called *willens en wetens*. What is meant here is a person who commits an act intentionally it must fulfill the will formula or it must want what it does and fulfill the *wettens* element or it must know the consequences of what it does. Here associated with the theory of the will formulated by Von Hippel, it can be said that the intended intentionally is the will to make an act and the will to cause a result of the act or the result of the act is the intention of doing the act.

If the element of Will or want and know in relation to the element of intent can not be proved clearly materially because the intent and will of a person is difficult to prove materially, the proof of the existence of intentional elements in the perpetrator committing unlawful acts so that his actions can be accounted for by the perpetrator is often only associated with the circumstances and actions of the perpetrator at the time he committed the unlawful act which he was accused of. In addition to the above elements, there are also referred to as an element of negligence or forgetfulness or *culpa* which in criminal law doctrine is referred to as unconscious forgetfulness or *onbewuste schuld* and conscious forgetfulness or *bewuste schuld*. Where in this element the most important factor is the perpetrator can suspect the consequences of his actions or the perpetrator less be careful.

This area of *culpa* or negligence lies between intentional and accidental, this negligence can be defined as when someone commits an act and that act causes a consequences that are prohibited and threatened with punishment by law, then although the act was not done intentionally but the perpetrator can do otherwise so as not to cause consequences that are prohibited by law, or the perpetrator can not do the deed at all. In this *culpa* or omission, the most important element is that the perpetrator has awareness or knowledge which the perpetrator should be able to imagine will there be consequences arising from his actions, or in other words that the perpetrator may suspect that the consequences of his actions will cause an effect that can be punished and prohibited by law.

It can be said that if there is a relationship between the mind of the perpetrator and the consequences arising from his actions or there is a born

relationship which is a causal relationship between the actions of the perpetrator and the prohibited consequences, then a criminal penalty can be imposed on the perpetrator for the criminal act. In the criminal field, articles related to negligence are also found. Penal Code Article 359: Whoever by his fault (negligence) causes another person to die, shall be punished with imprisonment at most five years or a maximum of one year imprisonment. While the Criminal Code Article 360 (1) Whoever by mistake (negligence) causes others to get serious injuries, punishable by a maximum of five years ' imprisonment or a maximum of one year's imprisonment. (2) who because his error (negligence) causes others to be injured in such a way that a disease or obstruction arises to carry out official work or search for a certain time, shall be punishable by a maximum imprisonment of nine months or a maximum imprisonment of six months or a maximum fine high four thousand five hundred dollars.

2. Negligence Due To Vehicle

Vehicle factors that often haunt accidents are brake function, tire condition, and lighting. There are several factors that cause vehicles to have traffic accidents, such as overturning or crashing, these factors include:

1. Puddles, entering the rainy season can be ascertained that many puddles are created due to road conditions that are not smooth or bumpy. Traveling at speeds above 60 km / h, makes the tire grip on the asphalt begin to decrease and can even be lost. Water is a barrier material between the tire and the road surface, it will be even more dangerous when the tire tread is thin. The tendency that often occurs is that the vehicle will suddenly pull to the right or left.
2. Tire rupture, as dangerous as a puddle of water is not only a vehicle that is difficult to control, the vehicle can also suddenly lose control and overturn due to differences in vehicle height due to broken tires, especially when traveling at a sufficient speed high.
3. Bumpy roads, when vehicles are speeding and passing waves, what happens is the vehicle drifts slightly. Even the rear often cannot be adjusted, especially if the suspension condition is bad. This uneven road causes the vehicle to drift because the tires do not adhere well and thus lose control.
4. Brake failure or Slip, this will definitely make the vehicle out of control and difficult to slow down. Especially on cars with automatic transmissions that rely solely on the brakes without engine brake. You should always check the braking system before traveling.
5. Human Error, this factor is the biggest contributor to traffic accidents. Some examples are spurring the vehicle beyond the ability to drive, drowsiness, excessive reaction when the car experiences negative symptoms such as unsteadiness, oversteer and understeer. Decreased concentration of drivers due to busy SMS, phone and eat while driving a vehicle.

4. Conclusion

Based on the results of the author's research, the conclusions in this study are as follows:

1. In Law No. 3 of 1997 on Juvenile Court does not regulate expressly about the arrest of child suspects. Therefore, the act of arresting a child suspect applies the provisions of the Criminal Procedure Code as a general rule. According to Article 7 of Law No. 3 of 1997 on Juvenile Courts, and Law No. 11 of 2012 on the juvenile criminal justice system, there is special treatment for children, in the sense that there is a separation between children and adults.

2. The form of responsibility that can be requested to the child according to the researcher is vicarious liability. Because this case was resolved through the concept of restorative justice that uses a pattern of diversion. It is supposed that every child in conflict with the law must follow the juvenile justice process until the final stage. However, restorative justice or penal settlement of cases is already contained in the letter of the National Police Chief No Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009, regarding the handling of cases through Alternative Dispute Resolution (ADR) despite its partial nature, emphasizing that the settlement of criminal cases by seeking peace as a form of application of ADR, must be agreed upon by the parties but if there is no new agreement concluded in accordance with applicable legal procedures in a professional and proportionate manner.

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