

## The Application of Restorative Justice in Traffic Accidents with Child Perpetrators that Resulted in The Death of The Victim

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### ABSTRACT

*The basic principle of restorative justice in the case of an accident that resulted in the death of the victim is the recovery of the victim's heirs who suffered from the death of the victim. The perpetrator's family and the victim's family make an agreement in the form of compensation to the victim's family. This research examines the settlement of traffic accident cases with the principle of restorative justice in Law Number 22 of 2009 concerning Road Traffic and Transportation and the application of the principle of restorative justice in the examination of cases in court in cases of traffic accidents committed by children resulting in death. The research method is normative juridical. The results showed that Law Number 22 of 2009 concerning Road Traffic and Transportation requires compensation to be given to the victim's family where in the perspective of restorative justice this is in line with the recovery of losses suffered by the victim's family. If the perpetrator is a child, the settlement uses diversion if there is an agreement between the parties. If no agreement is reached, the examination continues in court where the judge still prioritizes the principles of restorative justice in examining and passing a verdict.*

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### I. INTRODUCTION

Transportation Observer from Soegijapranata University, Djoko Setijowarno highlighted that the number of traffic accidents in Indonesia is increasing every year. Djoko explained from data from the Indonesian National Police, the number of victims of traffic accidents in the period 2010-2020 ranged from 147,798 - 197,560 people. Meanwhile, the number of fatalities ranged from 23,529 to 32,657. In 2020 the death toll reached 23,529 people, or the equivalent of three people dying per hour. The number of traffic accidents claimed many victims from the productive age group, who on average are the backbone of the family so that traffic accidents are prone to causing economic collapse on a family scale. Based on the age category, victims who died were dominated by the productive age category of 15 - 34 years old, and the second position was 35 - 60 years old,<sup>1</sup> The police further released that the majority of these accidents involved children aged 11-17 years as perpetrators with two-wheeled

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<sup>1</sup> Miris! Indonesia 'Pandemi' Kecelakaan Lalu Lintas: Sejam Meninggal 3 Orang, dikutip dari laman : <https://oto.detik.com/berita/d-6187372/miris-indonesia-pandemi-kecelakaan-lalu-lintas-sejam-meninggal-3-orang>, diakses pada 10 Juni 2023

motorized vehicles.<sup>2</sup> Edo Rusyanto from the Coordinator of the Road Safety Action Network stated that data obtained in the span of 2014 - 2019 showed that more than 139,000 children became perpetrators of traffic accidents.<sup>3</sup>

Children who become perpetrators in traffic accidents, hereinafter referred to as Children in Conflict with the Law (ABH), are required to take responsibility for their actions in accordance with Law No. 22 of 2009 concerning Road Traffic and Transportation (LLAJ Law) where the criminal justice process refers to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) the criminal justice process against children is regulated in such a way solely for the purpose of child protection.

According to Article 229 paragraph (4) of Law No. 22 Year 2009 on Road Traffic and Transportation ("LLAJ Law"), traffic accidents that result in death or serious injury are classified as serious traffic accidents. Then, Article 310 paragraph (4) of the Traffic and Transportation Law stipulates that any person whose negligence results in a traffic accident with serious injuries is punishable by imprisonment of up to 5 years and/or a maximum fine of Rp10 million. Furthermore, Article 235 paragraph (1) states that: "If the victim dies as a result of a traffic accident as referred to in Article 229 paragraph (1) letter c, the driver, owner, and/or public transportation company is obliged to provide assistance to the victim's heirs in the form of medical expenses and/or funeral expenses without dropping the criminal case."

Based on this, the compensation is basically the right of the victim's heirs so that the compensation should be given to the victim's heirs. If the perpetrator is ABH then it is the parents or family of the perpetrator who will bear the compensation. Providing compensation to the victim's family seems to bring out the nature of civil law which is more prominent than the nature of criminal law. In this case, the provision of compensation or compensation for victims of traffic accidents is not solely related to the issue of legal arrangements, criminal or civil, but also has a much deeper problem, namely the relationship (inner and outer) between the victim and the perpetrator. During the trial process itself, the judge will always ask the perpetrator of the road traffic crime whether he has provided compensation to the victim or his family. Compensation will not restore the life of a person who has died, but the provision of compensation is very useful, especially if the victim of road traffic crime is the breadwinner of the family.

The LLAJ Law basically does not recognize the term peace between the parties in traffic accident cases, considering that the Law determines that every traffic accident case that has fulfilled the criminal elements based on the provisions of the law must be processed in accordance with the applicable criminal justice system mechanism, in this case according to the LLAJ Law. However, in practice, if the traffic accident involves a child as the perpetrator, then if an agreement is reached between the perpetrator's family and the victim, the police can facilitate to settle the case based on a restorative justice mechanism where the case is settled out of court. Out-of-court settlement of traffic cases as one of the manifestations of restorative justice only applies to traffic accidents that result in minor injuries as stipulated in National Police Chief Regulation No. 15 of 2013. If the traffic accident results in the death of the victim even though the perpetrator is a child, the case will still be resolved through the judicial process by taking into account the provisions in the SPPA Law. However, judges in the examination process in court can still consider the principle of restorative justice as a basis for sentencing children as perpetrators.

## II. RESEARCH PROBLEMS

1. How does Law No. 22/2009 on Road Traffic and Transportation accommodate the principle of restorative justice in the settlement of traffic accidents?
2. How is the principle of restorative justice used in the examination of cases in court in cases of traffic accidents committed by children resulting in the death of victims?

## III. RESEARCH METHODS

This research is a type of normative juridical research conducted by analyzing the problems in the research, namely the application of restorative justice in the examination of cases in court in cases of traffic accidents committed by children resulting in the death of victims and the reconstruction of Law No. 22 of 2009 concerning Road Traffic and Transportation in accommodating restorative justice principles in the settlement of traffic accidents resulting in the death of victims. The research approach is carried out on legal principles and refers to

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<sup>2</sup> Sepanjang 2018, 197 Kecelakaan Lalu Lintas Libatkan Anak-anak, dikutip dari laman : <https://www.cnnindonesia.com/nasional/20181123162343-12-348744/sepanjang-2018-197-kecelakaan-lalu-lintas-libatkan-anak-anak>, diakses pada 10 Juni 2023

<sup>3</sup> Rendra Saputra, Fakta, Kenapa Tiap Jam-jam Ini Banyak Sekali Kecelakaan?, dikutip dari laman : <https://www.viva.co.id/otomotif/992694-fakta-kenapa-tiap-jam-jam-ini-banyak-sekali-kecelakaan>, diakses pada 10 Juni 2023

legal norms contained in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System and Law No. 22 of 2009 concerning Road Traffic and Transportation and uses types of data from library materials which are usually called secondary data in the form of literature and journals related to the research theme.

#### IV. RESULT AND DISCUSSION

1. The principle of restorative justice in Law Number 22 of 2009 concerning Road Traffic and Transportation. Law No. 22/2009 on Road Traffic and Transportation, formulates a traffic accident as an unexpected and unintentional road event involving a vehicle with or without other road users that results in human casualties and/or property damage. Traffic accidents are events that are difficult to predict when and where they will occur. Accidents cause not only trauma, injury, or disability but also death. Accident cases are difficult to minimize and tend to increase with the increase in road length and the number of vehicle movements.

In relation to the punishment of perpetrators in traffic accidents, the public thinks that the imprisonment given to the perpetrators is not effective. The imprisonment served by the perpetrator will also not restore the lives of victims of traffic accidents that have occurred. Public awareness that the accident occurred and caused the death of the victim was not intentional, the perpetrator did not want the consequences of his actions to encourage the amount of forgiveness from the victim's family to the perpetrator. The family or heirs of the victim prefer a more effective punishment for the perpetrator such as providing assistance or compensation. Restoration that can be carried out by the perpetrator of the crime can be in the form of compensation, social work or carrying out certain activities that are mutually agreed between the perpetrator and the victim.<sup>4</sup> For example, if the victim of the traffic accident is the sole breadwinner of the family, imprisonment for the perpetrator will not alleviate the victim's family and the victim's family is helped more by the assistance or compensation provided by the perpetrator. The compensation given to the families of the victims of traffic accidents does not mean buying or paying the price for the lives that have been lost. Both the perpetrator and the victim's family or heirs must be aware that the compensation is a form of fulfillment of the rights of victims of traffic accidents that must be given because it has become a mandate from Law Number 22 of 2009 concerning Road Traffic and Transportation. In the perspective of victimology, the compensation mandated by the LLAJ Law is restitution. Restitution is an indication of the responsibility of the perpetrator of a criminal offense.<sup>5</sup>

Traffic violations are simple cases that are categorized as speedy trials. However, when the volume of cases reaches thousands of cases and must be heard in court within a day, it has created problems. In overcoming these problems, improvement in the handling and settlement of traffic offense cases in the Court is an absolute thing to do. However, in addition, the alternative of resolving traffic violations outside the Court, namely through the application of diversion, should be used as an alternative way to reduce case loads and problems in the Court. Functionally, the application of diversion is used as part of the education and guidance system and the community protection system (especially for children/underage offenders). The existence of out-of-court case settlement through restorative justice or penal mediation is a new dimension studied from theoretical and practical aspects. Studied from the practical dimension, penal mediation will correlate with the achievements of the judiciary. As time goes by, there is an increase in the volume of cases with all forms and variations that enter the court, so that the consequence is a burden for the court in examining and deciding cases according to the principle of "simple, fast and low cost justice" without having to sacrifice the achievement of judicial objectives, namely legal certainty, expediency and justice. Do all criminal cases have to be filed and resolved before the court, or are there certain cases that can be resolved through penal mediation? Normatively, the LLAJ Law regulates the settlement mechanism of traffic offense cases. The handling of traffic violation cases is similar to the handling of criminal cases in general, involving the Police and Civil Servant Investigators (PPNS), the Prosecutor's Office, and the Court. Investigation authority is delegated to the Police and PPNS in the field of Road Traffic and Transportation (LLAJ) with greater authority resting with the Police. Any traffic violation examined under the speedy trial procedure may be subject to a fine based on a court order. A speedy trial may be conducted in the absence of the offender. Offenders who cannot be present may deposit the fine with a bank appointed by the Government. The amount of the fine deposited with the bank is the maximum fine imposed for each Road Traffic and Transportation offense. Proof of deposit of the fine must be attached to the evidence file of the offense. In the event that the court decision determines that the fine is less than the deposited fine money, the remaining fine money must be notified to the violator for collection. The remaining fine money that is not collected within 1 (one) year since the court decision is deposited into the state treasury. In the process of implementing a speedy trial, there are several special characteristics of the procedural law, compared to other forms of trial. Some of the specificities of the speedy trial are that the process of case submission is not carried out through the public prosecutor's apparatus, but the

<sup>4</sup> Atang Hermawan Usman, Kesadaran Hukum Masyarakat dan Pemerintah Sebagi atas kerugian fisikai Faktor Tegaknya Negara Hukum di Indonesia, *Jurnal Wawasan Hukum*, Vol. 30 No. 1 (2014), 34.

<sup>5</sup> Angkasa, *Viktimologi*, (Jajawali Pers, 2020), 194.

investigator acts as the Public Prosecutor's Attorney, there is no need for an indictment, it is conducted with a single judge, witnesses do not take oaths, and the nature of the decision is final and binding.<sup>6</sup>

With regard to trials, the provisions in the Traffic and Transportation Law only concern speedy trials and trials without the presence of the violator. The lack of regulation on the handling of traffic violation cases in court is also evident in the derivative regulations of the Law, both in Government Regulation No. 80/2012 on the Procedure for Inspection of Motor Vehicles on the Road and Enforcement of Road Traffic and Transportation Violations and the Joint Agreement Letter between the Chief Justice of the Supreme Court, Minister of Justice, Attorney General and Chief of Police on the Procedure for Settlement of Certain Road Traffic Violation Cases signed on June 19, 1993.

2. The principle of restorative justice in the examination of cases in court in cases of traffic accidents committed by children resulting in death.

Law No. 11/2012 on the Juvenile Criminal Justice System leads to a restorative justice approach, which prioritizes the interests of the child as the perpetrator in improving the child's future and self, punishment as a last resort and in additional punishment also in this law there is the fulfillment of customary obligations, meaning that this law recognizes the validity of customary rules. The principles adopted in the juvenile criminal justice system include the best interest of the child; respect for the opinion of the child; survival and growth of the child; guidance and guidance of the child; deprivation of liberty and punishment as a last resort; and avoidance of retaliation. The juvenile criminal justice system must also prioritize a restorative justice approach, and must seek diversion with the aim of achieving peace between the victim and the child; resolving children's cases outside the judicial process; resolving children's cases outside the judicial process; avoiding children from deprivation of liberty; encouraging the community to participate; and instilling a sense of responsibility in children.

Restorative justice is a process that involves all parties, namely those who have an interest in resolving cases in certain offenses, jointly resolving problems and compensating for losses, the obligations of the parties and the needs in the process of healing and getting things right. The ultimate goal of restorative justice is healing. By receiving prompt reparation, the harm suffered by the victim can be addressed.<sup>7</sup>

The application of restorative justice in cases involving children as perpetrators aims to provide protection to Children Against the Law because basically these children cannot be separated from the context that covers them, namely family, environment and factors that affect them. Regulation of the Chief of Police of the Republic of Indonesia Number 15 of 2013 concerning procedures for handling Traffic Accidents states that only minor traffic accidents can be resolved outside the court session. Out-of-court settlement does not apply to traffic accidents that result in the death of the victim. As for traffic accident cases with fatalities where the perpetrator is a child, Law Number 11 of 2012 concerning the Child Criminal Justice System determines to be resolved through diversion, namely the transfer of the settlement of juvenile criminal cases from the criminal justice process to a process outside the criminal justice system. The settlement of juvenile crimes through diversion is carried out with a restorative approach. Through a restorative approach, a deliberation is needed and involves all relevant parties, including the child and parents / guardians, victims and / or parents / guardians, Community Supervisors (BAPAS), Professional Social Workers (PEKOS), representatives and other involved parties in order to reach a diversion agreement. Diversion deliberation is the settlement of juvenile crimes through the concept of dialogue between all parties so that it becomes a very important consideration in resolving criminal cases in promoting restorative justice. Dialogue or deliberation is an integral part of diversion to achieve restorative justice, so a facilitator is needed in conducting diversion deliberations, namely a judge appointed by the President of the Court to handle the child's case.<sup>8</sup>

In a number of traffic accident cases, diversion was not possible due to a lack of agreement on the amount of compensation requested by the victim. The lack of agreement is due to the amount of compensation requested by the victim, while the perpetrator is unable to fulfill the victim's request. The large amount of compensation demanded by the victim so that the perpetrator is unable to fulfill the request submitted by the victim, because Law Number 11/2012 concerning the Juvenile Criminal Justice System does not clearly regulate compensation through Diversion efforts. If the families of the perpetrator and victim cannot reach an agreement for an out-of-court settlement, the case proceeds to trial. In the Decree of the Director General of the General Judicial Agency Number 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Application of Restorative Justice in the

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<sup>6</sup> C.S.T.Kansil dan Christine Kansil, *Memahami Pembentukan Peraturan Perundangundangan*, (Jakarta : Pradya Paramita, 2007) , 29.

<sup>7</sup> Angkasa, *Viktimologi*, (Jajawali Pers, 2020), 219.

<sup>8</sup> Rafi Muhammad Ave, *Mengenal Diversi dalam Penyelesaian Perkara Pidana Anak*, dikutip dari laman : [---

\*Proceedings homepage:\* <https://conferenceproceedings.ump.ac.id/index.php/pssh/issue/view/28>](https://www.pn-pariaman.go.id/berita/artikel/570-mengenal-diversi-dalam-penyelesaian-pidana-anak.html#:~:text=Menurut%20UU%20SPPA%2C%20Diversi%20adalah,proses%20di%20luar%20peradilan%20pidana, diakses pada tanggal 10 Juni 2023.</a></p></div><div data-bbox=)

General Judicial Environment, it is determined that during the trial the judge continues to prioritize peace and prioritize the principles of restorative justice in his decision.

The application of restorative justice at the level of court hearings requires the ability of judges to design a model of meeting between the parties in a forum that is not a "court hearing for criminal cases". In the Indonesian context, it also relates to the activities that judges may be able to do to design a meeting model outside the norms as regulated in the Criminal Procedure Code. Indonesia's experience with court-connected mediation in civil cases has not been satisfactory. Therefore, the introduction of restorative justice at the court level without clear legal criteria is problematic. The restorative justice model at the court examination level essentially provides an opportunity for the parties to resolve through "conference" models that are harmonious for victims, perpetrators, and the community. Thus, judges are required to use strategies or manage the settlement of criminal cases by choosing and offering alternative models that are appropriate.<sup>9</sup>

At the end of the court examination of children who are perpetrators in traffic accidents that result in the death of victims, the verdict on perpetrators who are not yet 14 (fourteen years) years old can only be subject to non-criminal measures which include return to parents, handover to someone, treatment at a Mental Hospital, treatment at LPKS, obligation to attend formal education funds or attend training held by the government or private entities and reparation for the consequences of the criminal act.

## V. CLOSING

1. The settlement of traffic accident cases in Law No. 22/2009 on Road Traffic and Transportation adheres to the principle of restorative justice in the form of recovery to the victim's family through the provision of compensation and settlement of cases through peaceful agreements.
2. The principle of restorative justice in the examination of cases in court in cases of traffic accidents committed by children resulting in death requires judges to be able to design a harmonious "conference" model for victims, perpetrators, and the community.

## REFERENCES

- Angkasa, Viktimologi, Rajawali Pers, Jakarta, 2020.
- Kansil, C.S.T. dan Christine Kansil, Memahami Pembentukan Peraturan Perundang-undangan, (Jakarta : Pradya Paramita, 2007) .
- Sigit Pramukti, Angger dan Fuady Primaharsya, Sistim Peradilan Pidana Anak, (Yogyakarta : Medpress Digital, 2014).
- Arsyad, Umar Hasan, Tri Imam Munandar, Penerapan Diversi Terhadap Anak Dalam Perkara Kecelakaan Lalu Lintas, "Jurnal Sains Sosio Humaniora", Vol. 4 No. 2 (2020).
- Hermawan Usman, Atang, Kesadaran Hukum Masyarakat dan Pemerintah Sebag atas kerugian fisikai Faktor Tegaknya Negara Hukum di Indonesia, Jurnal Wawasan Hukum, Vol. 30 No. 1 (2014).
- Mangun Sosiawan, Ulang, Perspektif Restorative Justice sebagai Wujud Perlindungan Anak yang Berhadapan dengan Hukum, "Jurnal Penelitian Hukum De Jure Vol. 16 No. 6 (2016).
- Wahid, Abdul, Tinjauan Hukum Terhadap Santunan Bagi Keluarga Korban Meninggal atau Luka Akibat Kecelakaan Lalu Lintas Menurut UU Nomor 22 Tahun 2009, Jurnal Ilmu Hukum Legal Opinion, Edisi 3 vol 1 (2013)
- Ariefianto, Yuniar, Penerapan Restorative Justice Dalam Penyelesaian Kasus Kecelakaan Lalu Lintas, dikutip dari laman : <https://media.neliti.com/media/publications/114794-ID-penerapan-restoratif-justice-dalam-penye.pdf>, diakses pada tanggal 10 Juni 2023.
- Ave, Rafi Muhammad, Mengenal Diversi dalam Penyelesaian Perkara Pidana Anak, dikutip dari laman : [---

<sup>9</sup> Yuniar Ariefianto, Penerapan Restorative Justice Dalam Penyelesaian Kasus Kecelakaan Lalu Lintas, dikutip dari laman : <https://media.neliti.com/media/publications/114794-ID-penerapan-restoratif-justice-dalam-penye.pdf>, diakses pada tanggal 10 Juni 2023.](https://www.pn-pariaman.go.id/berita/artikel/570-mengenal-diversi-dalam-penyelesaian-pidana-anak.html#:~:text=Menurut%20UU%20SPPA%2C%20Diversi%20adalah,proses%20di%20luar%20pe radilan%20pidana, diakses pada tanggal 10 Juni 2023.</a></p></div><div data-bbox=)

Miris! Indonesia 'Pandemi' Kecelakaan Lalu Lintas: Sejam Meninggal 3 Orang, dikutip dari laman : <https://oto.detik.com/berita/d-6187372/miris-indonesia-pandemi-kecelakaan-lalu-lintas-sejam-meninggal-3-orang>, diakses pada 10 Juni 2023

Sepanjang 2018, 197 Kecelakaan Lalu Lintas Libatkan Anak-anak, dikutip dari laman : <https://www.cnnindonesia.com/nasional/20181123162343-12-348744/sepanjang-2018-197-kecelakaan-lalu-lintas-libatkan-anak-anak>, diakses pada 10 Juni 2023

Saputra, Rendra, Fakta, Kenapa Tiap Jam-jam Ini Banyak Sekali Kecelakaan?, dikutip dari laman : <https://www.viva.co.id/otomotif/992694-fakta-kenapa-tiap-jam-jam-ini-banyak-sekali-kecelakaan>, diakses pada 10 Juni 2023