

# *Diversions Urgency In Traffic Violations Committed By Minors*

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*Abstract-- Increasing of traffic breach committed by minors and/or at children age, shows the weak role of regulations related to child protection and child welfare, as well as the weakness and inaccurate sanctions applied to violators. Sanctions given to them based on Law No. 22 of 2009 concerning traffic and road transportation is felt to be inappropriate and not in accordance, especially with the existence of Law No. 11 of 2012 which regulates the Juvenile Justice System. Child victims of traffic violations committed by minors and/or at children age, have taken many victims, of course not only on the child himself but also on other vehicle drivers. This has become a disturbing social problem in the community that drives the Constitutional Court suing Law No. 22 of 2009 concerning Road Traffic and Transport, due to violations committed by minors are not only the role played by themselves, but also the role of family, social community and the State, which must be able to overcome. This paper will describe and conclude the appropriate sanctions and form of family supervision, community and the state, to be able to overcome traffic violations by minors. By prioritizing the application of Diversion, the resolution of traffic violations by minors is not only appropriate in its application, but also becomes a media and means of control, as well as reminders and supervisors for each party responsible for child protection aspects, so that this problem can be resolved in the environment of our social community.*

**Keywords-Child Victims; Diversion; Juvenile Justice; Minors; Restorative Justice; Traffic Breach; Traffic Violation.**

## I. INTRODUCTION

In the last 10 years, the number of cases and traffic accidents of motorbike users in Indonesia has never decreased from year to year, in fact it tends to continue to increase, even though various efforts have been made by related agencies. The author sees that motorcycle traffic accidents that occur in Indonesia are caused by several factors, one of which is that the efforts made in prevention and enforcement are not optimal. One of the contributing

factors is the policy of the Ministry of Industry, which has created a motorcycle cylinder capacity above 80cc in Indonesia without considering the social, cultural and safety aspects existing and developing in Indonesia. The Ministry of Industry only aims to create motorbikes that will be in demand and state revenue will increase without considering other aspects that may be affected.

The high percentage of traffic accidents relates to motorbikes proves that motorcyclists are at high risk of experiencing traffic accidents and traffic violations. Therefore, the Directorate General of Land Relations of the Ministry of Transportation needs to evaluate the type test that has been given for motorbikes over 80cc. If necessary, they must dare to stop the production of motorcycles with a capacity of more than 80cc. Since 2005, motorcycle production has increased rapidly and there has been fiscal policy support from the Financial Services Authority (OJK) and Bank Indonesia. Coupled with a fairly easy procedure with only a down payment of 30% or even without a down payment, so that motorcycle sales are selling well. Prior to 2005, motorcycle production ranged from 2 million to 3 million per year. In 2005, began to rise and the massive production of motorcycles was around 7 million - 8 million units of motorized vehicles each year. [1] This is one of the triggers, because the ease of obtaining a motorbike and the low cost has made some parents take shortcuts to make efficiency by providing motorized vehicles for their children to school and daily needs, which clearly contradicts with their rights as children.

In the 2019 Traffic Portrait Book in Indonesia, the fact is that the population of motorized vehicles throughout Indonesia in 2018 was 141,428,052 units and 81.58% of the motorized vehicle population were motorbikes. The dominance of motorbikes increases the risk factor for motorcycle involvement in traffic accidents. Based

on the island, Java is the island with the largest population of motorized vehicles, namely 72,329,662 units or 51.14%. Meanwhile, based on province, DKI Jakarta is the province that has the highest number of motorized vehicles in Indonesia, namely 20,770,538 units (14.6%). Nationally, vehicle ownership per capita is 0.53 or every two people own one motorized vehicle. Meanwhile, DKI Jakarta is the province with the largest per capita vehicle ownership in Indonesia. Per capita vehicle ownership in DKI Jakarta is 1.98 or each person owns two motorized vehicles. [1] Based on the explanation above, it is clear that the ease of owning a motorized vehicle will, of course, also caused an impact on the number of traffic violations at the age of children and motorcycle accidents which are quite significant. Not to mention the added readiness and maturity of each motorized vehicle driver and safety support facilities that need attention. Throughout 2018, out of 196,457 incidents, 73.49% of road traffic accidents involved motorbikes. This percentage of involvement is much greater than that of other vehicle types. There are 72.13% of road traffic accident victims in the age group 15-54 years. Meanwhile, 11.68% of road traffic accident victims were aged 0-14 years. [1]

Seeing from their educational background, accident victims with: [2]

- High school education of 138,995 people in 2016. That number only decreased in 2017 to 132,423 people.
- Junior high school students. A total of 31,106 junior high school students were victims in 2016. The number dropped to 29,783 in 2017.

Based on this background the authors are interested in conducting research on the sanctions that can be given to traffic offenders committed by minors (juvenile), considering that there is a Traffic Law Number 22 of 2009 and the Juvenile Criminal Justice System Law Number 11 of 2012. Until now, traffic violations committed by minors are still happening, hopefully this research can be a new formulation to be developed into input that can be used in various strategic aspects of child protection efforts in Indonesia.

## II. PROBLEMS

Based on the problems described above, to anticipate the discussion not spreading too much, it is limited to 2 (two) problem formulations. The formulation of the problem in this study is first, how can minor drivers be subject to sanctions according to the Traffic Law? And, second how is the application of sanctions against minor drivers from the perspective of the Juvenile Justice System Law?

## III. RESEARCH METHOD

This research method uses a juridical-normative approach, where law is conceptualized as norms, rules, principles or dogmas. A normative juridical approach is also known as a doctrinal approach / research or normative legal research. The juridical-normative research stage, through literature study, however, as long as necessary, an interview can be conducted to complement the literature study. Basically, the data collection technique with this approach is carried out by written literature (literature) through detailed, systematic, and directed classification and recording of documents / literature, in this study also looks at all regulations relating to driver sanctions at the age of children and also looks at the factors which supports children to drive motorized vehicles, so this research can reveal and analyse the sanctions given to children in traffic laws and the objectives of the Child Protection Act and the Juvenile Justice System Law.

## IV. DISCUSSION

### A. Child Protection

Every child has inherent rights whether requested or not. Children in Indonesia, of course, are having their rights regulated in positive law. Indonesia as one of the countries that has ratified the convention on children's rights certainly has the obligation to continue to strive for children's rights, including those in the convention on children's rights, which are:

Article 19 Every child has the right to receive proper care, protected from violence, abuse and neglect.

Article 20 Every child who cannot be cared for by his own family has the right to be properly

cared for by people who respect religion, culture, language and other aspects of the child's life.

Article 21 The best interests of the child must be the first consideration if a child is to be adopted. If the child cannot be properly cared for in the country of birth, adoption in another country may be considered.

Article 40 Every child accused of breaking the law must be treated in a manner that respects his or her rights. Children should be provided with legal aid and punishment in the form of imprisonment imposed only for very serious crimes. [3]

The rights and obligations of children are then deepened and clarified by the legislation of Law Number 23 of 2002 concerning Child Protection, so that it can be a good direction for the central government, local governments, to the community as social control and the family as the front gate in aspects of fulfilling children's rights in Indonesia as well as discourse for the world of education, parents, and society. And to put the position of the child according to their rights, it needs to be understood by all parties so that the rights of the child and the obligations that are their responsibilities can be fulfilled and obtained by a child. The following is the description in chapter III concerning the Rights and Obligations of Children in Law Number 23 of 2002:

"Every child has the right to be able to live, grow, develop and participate fairly in accordance with human dignity, and to receive protection from violence and discrimination.

**Article 5** Every child has the right to a name as personal identity and citizenship status.

Article 6 Every child has the right to worship according to his religion, to think and to express himself according to his intelligence level and age, under the guidance of his parents.

Article 7

- 1) Every child has the right to know his parents, to be raised and cared for by his own parents.
- 2) In the event that for some reason the parents cannot guarantee the child's growth and development, or the child is neglected, the child has the right to be cared for or adopted as a foster child or adopted child by another person in accordance with the provisions of

the prevailing laws and regulations.

Article 8 Every child has the right to receive health services and social security in accordance with their physical, mental, spiritual and social needs.

Article 9

- 1) Every child has the right to receive education and teaching in the framework of personal development and the level of intelligence according to his interests and talents
- 2) In addition to the rights of children as meant in paragraph (1), children with disabilities are also entitled to receive special education, while children who have excellence are also entitled to special education.

Article 10 Every child has the right to state and hear his opinion, receive, seek, and provide information according to his intelligence level and age for the sake of self-development in accordance with the values of decency and propriety.

Article 11 Every child has the right to rest and take advantage of free time, associate with children of the same age, play, recreation, and create according to their interests, talents and intelligence level for self-development.

Article 12 Every child with a disability has the right to receive rehabilitation, social assistance and maintenance of a level of social welfare.

Article 13

- 1) Every child, while in the care of a parent, guardian, or any other party responsible for care, has the right to receive protection from treatment of:
  1. discrimination;
  2. exploitation, both economic and sexual;
  3. neglect;
  4. cruelty, violence, and persecution;
  5. injustice; and
  6. other mistreatment
- 2) In the event that a parent, guardian or child caregiver takes all forms of treatment as referred to in paragraph (1), the perpetrator will be subject to a weighted sentence.

Article 14 Every child has the right to be cared for by his own parents, unless there is a valid reason and / or legal rule indicating that the separation is in the best interest of the child and

is the last consideration.

Article 15 Every child has the right to get protection from:

1. abuse in political activities;
2. involvement in armed disputes;
3. involvement in social unrest;
4. involvement in incidents that contain elements of violence; and
5. involvement in war.

Article 16

- 1) Every child has the right to receive protection from being subjected to abuse, torture, or the imposition of inhuman sentences.
- 2) Every child has the right to obtain freedom according to law.
- 3) Arrest, detention, or child imprisonment is only carried out if it is in accordance with applicable law and can only be done as a last resort.

Article 17 Every child who is deprived of his / her liberty has the right to:

1. receive humane treatment and be separated from adults;
2. obtain legal aid or other assistance effectively in every stage of the legal remedy in effect; and
3. self-defend and obtain justice before an objective and impartial juvenile court in closed sessions to the public.
4. every child who is a victim or perpetrator of sexual violence or who is in conflict with the law has the right to be kept confidential.

Article 18 Every child who is a victim or perpetrator of a criminal act has the right to legal aid and other assistance.

Article 19 Every child is obliged to:

1. respect for parents, guardians, and teachers;
2. loving family, community, and cherishing friends;
3. love the motherland, nation and country;
4. performing worship in accordance with the teachings of their religion; and
5. carry out noble ethics and morals.

Based on the explanation above, it is clear that there is a violation of the rights of children who drive motorized vehicles because this is clearly endangering themselves, especially to families and the environment that have a tendency to support this practice. In several situations it is found that minor using motorbikes

are the reason for the economic efficiency requested by their parents. In addition, the reason is that the school is not too far, which makes parents allow their children to ride motorbikes. In addition to environmental support with an indifferent attitude, there are even some people who deliberately provide motorbike storage facilities near schools, this portrait explains that there is still a lack of understanding from the community, the environment and the family for the fulfilment of children's rights to safety, growth and development as well as health and social and legal impacts that can occur on them. Various ways have been made by the government to prevent and take preventive measures to optimize it. Starting from the socialization of the fulfilment of children's rights, the dangers of driving a motorized vehicle at the age of a child and preparing all infrastructure to facilitate children going to school, such as school buses, children's zones, of course this effort will be maximized if all parties can cooperate and understand on child protection aspects.

#### B. Child Violations and Sanctions

Before the authors discuss violations committed by children, several theories about violations and sanctions are explained. According to Wirjono Prodjodikoro, the definition of violation is: "overtreding" or violation means an act that violates something and is related to the law, meaning nothing but an act against the law. [6] Meanwhile, according to Bambang Poernomo, the violation is *political-on recht* and crime is *crimineel-on recht*. The *political-on recht* is an act that does not obey the prohibitions or requirements determined by the state authorities. [4]

In the criminal law system, criminal acts can be divided into two groups, namely crimes and violations. Substantially, these two terms have no clear differences because both are offenses or actions that can be punished. [5] The division of criminal acts was carried out because according to Memorie van Toelichting (in WVS in the Netherlands) it was a basic division (principle), that the division of criminal acts in crimes and violations was based on differences in what was called legal offense and what was

called constitution offense.

For a person who is suspected of committing a criminal act, first of all it must be proven whether the act he has committed has fulfilled the statutory formulation or not. Even though the act has fulfilled the elements stipulated in the law, it does not automatically mean that the person must be punished, because it must also be seen regarding the ability to be responsible. If deemed unable to take responsibility, then that person is free from all legal claims.

In general, criminal acts committed by children are not based on evil motives (evil will / evil mind), so children who deviate from social norms, towards them social experts are more to give the meaning as "naughty child" or with the term "Juvenile Delinquency". [6] With these terms, he can avoid being categorized as criminals.

The definition of sanction is a suffer that is given or inflicted on purpose by someone after an offense, crime and mistake has occurred. [7] According to the Big Indonesian Dictionary, sanctions are acts of punishment to force someone to obey the rules or obey the law. Sanctions (punishment) are the giving of unwanted (painful) results to minimize unwanted behaviour. [8] Sanctions are one of the indicators that improve the course of the educational process in explaining one's behaviour, so that in the future it can be overcome. [9]

From several research conducted, one of the most famous was released by Elizabeth Sowell, a neuropsychologist from the University of California, Los Angeles. In 2003, through the journal *Nature Neuroscience*, Sowell said that the adolescent brain has not developed properly. The part of the brain, called the frontal lobe, is not fully connected to the nerves. As quoted from npr.org, this part of the brain functions to regulate planning, organization, and anticipation. Three things are very important when you are on a vehicle on the highway. When this part is perfect, then one can "wisely" drive on the road. It can also better anticipate threats on the streets. Another study suggests that the nerves in this area will not even be complete until a person is middle age. [10]

If you look at traffic violations committed by children and take some of the above understanding, then to solve this problem it is necessary to make adjustments to the applicable law. Actions against traffic violations committed by children are not absolutely the responsibility of the children only in the actions they do, considering that there is an obligation of supervision from parents to children that has been regulated by law, then in the case of traffic violations and violations that can lead to criminal acts such as traffic accidents, it is the parents who have the biggest share due to the negligence and ignorance of the parents who let the children who are not yet fit to drive and drive motorized vehicles freely on the streets, although in this case the responsibility of the parents does not replace the criminal responsibility of the child as the offender.

#### C. Restorative Justice through Diversion

After the enactment of Law No.11 of 2012 concerning the Juvenile Criminal Justice System, legal settlement of children in conflict with the law has increasingly emphasized the values of justice, welfare, and upholding the protection of human rights for children. This is clearly seen from the previous law, namely Law Number 3 of 1997, the nuances of restorative justice as mandated in the law become a formulation that truly brings novelty and harmony in the context of solving juvenile crimes. In its implementation and its objective, the settlement in this law is no longer intended for mere retaliation, but rather emphasizes restoration to its original state between the victim and the perpetrator. The fair settlement which is packaged in the form of restorative justice is then implemented in the form of transferring the settlement of cases outside the criminal justice system which is then known as diversion. Diversion is used as the basis for the basic idea to eliminate the negative impact of the criminal justice system which always produces negative stigma on children which then labels children according to the actions that occur to them, this can be seen in the problematic of child criminalization in Law Number 3 of 1997.

Diversion, according to Marlina, is the authority of law enforcement officers who handle criminal cases to take action to continue the case or stop the case, take certain actions according to their policies. The aim of diversion is to find a way to deal with legal violations outside the court or the formal justice system. There are similarities between the goals of discretion and diversion. The implementation of diversion is motivated by the desire to avoid negative effects on the psyche and development of children by their involvement with the criminal justice system. The implementation of diversion by law enforcement officials is based on the authority of law enforcement officers called discretion. [11]

In regard of efforts in increasing the effectiveness and efficiency of handling and resolving traffic violations cases through the application of diversion, it is quite relevant and urgent from a philosophical, theoretical, and sociological perspective. From a philosophical perspective, through the application of diversion, the actualization of restorative justice is more guaranteed. [12]

The application of settlement in children's cases must be carried out specifically. This is because the nature of the child is seen from the age of the children who do not have maturity both physically and mentally so that the child is not able to distinguish what is good and right, and tends to do things spontaneously without thinking. So in the implementation of the application of sanctions or criminal cases involving children, a special standard is required as regulated in Law Number 11 of 2012 with regard to children's rights which are regulated both in conventions and laws.

Children are the most important factor in the progress and development of a country. Children are the embryo of a country's human resources. As the nation's next generation who has an important role, a child with a strong mentality and sufficient intellectual abilities is required to carry on a great national ideal. So in the settlement of children's cases must really pay attention to the condition of the child in the future, not apart from the problem of violations and child crimes, it can be used as a basis that Diversion is the answer to the goal of solving

children's cases fairly.

Applying diversion requires certain requirements. Diversion only can be carried out by looking at the age of the child, the nature of the act, whether this is the first time it has been committed or is it a form of repetition, is applied in minor crimes, the consent of the victim and the agreement of the parties, and the willingness of the community to support the diversion process.

#### D. Traffic Regulations in Indonesia

Indonesia is one of the countries with the highest traffic accident victims in Southeast Asia, looking at the very high number of motor vehicle riders and the number of motor vehicle production in Indonesia. In Law Number 22 Year 2009 concerning Road Traffic and Transportation, it is stipulated that: "every person using the road is obliged to behave in an orderly manner; and/ or prevent things that can hinder, endanger the security and safety of traffic and road transportation.

As stated in Article 77 of Law Number 22 Year 2009 concerning Road Traffic and Transportation, every motorized vehicle driver is required to have a SIM (Driving License). By having a child driver on the street, it is certain that a child who is still a minor does not have a SIM. However, this does not seem to be a problem when someone is found driving a motorized vehicle without a SIM. Because the settlement is quite short, through the court in a short way. Punishment generally only pays a fine. However, it is a public secret among Indonesians who do not want to bother going to trial in court, but rather make illegal peace with the police, by giving some money certainly.

In this journal, the author tries to find the substance problem of traffic violations committed by children. Author sees that there are errors or inaccuracies in the application of the sanctions given to traffic offenders committed by children, due to social reality that occurs are as follows:

- a. The majority of violations are committed at the age of 17 (seventeen), where at this age they cannot be subject to fines as stipulated in the Traffic Law.

- b. There is parent's role who tend to violate children's rights and economic problems that lead to neglect of child safety. Of course, the sanctions in the Traffic Law cannot solve the problem, because children are still under the supervision of parents and parents are obliged to protect children in accordance with the mandate of the law.
- c. The neglect by the community and law enforcement officials in certain cases shows the participation of the community in supporting activities such as caring for motorbikes around schools and renting motor vehicles that are not regulated.
- d. Government policies that need to be developed more to address the problem of traffic violations committed by children.
- e. Some police officers are still misguided in implementing actions against children who commit traffic violations. This is because the entire case files are never qualified based on age. Instead, it was processed immediately and the whole was subject to sanctions in the form of payment of a fine. This is certainly contrary to the breath of the Law on the Criminal Justice System for Children, where the handling of children in conflict with the law must prioritize the application of restorative justice, where children who violate are prosecuted by promoting diversion.

The main principle of implementing the concept of diversion is persuasive action or a non-penal approach and providing opportunities for someone to correct mistakes. Diversion officers demonstrated the importance of obedience to laws and regulations. Officer conduct diversion by means of a persuasive approach and avoid arrest using force and coercion.

The consideration of implementing diversion is based on the reason for providing justice to the offender who has already committed a criminal act and providing the opportunity for the offender to improve themselves. Diversion is also an effort to persuade people to obey and enforce State laws. Its implementation still considers the sense of justice as a top priority in addition to providing opportunities for offender to take non-criminal

routes.

The objectives of Diversion in the Criminal Justice System Law are to:

- Achieve peace between victims and perpetrators;
- Resolving children's cases outside the court process;
- Prevent children from being deprived of their liberty;
- Instil a sense of responsibility to children.

If we look at the spirit of the Convention on the Rights of the Child and the Child Protection Law, children are not to be punished, they must be given a continuous guidance and coaching, so that they can grow and develop as completely healthy and intelligent normal children, according to the expectations of the nation and the State. In addition, children are a gift from God Almighty as a candidate for the nation's future generations who are still in physical and mental development, so there is an obligation to continue to provide the best for them.

Certain social conditions and the absence of parental supervision make children experience difficult situations which trigger them to commit illegal acts. Even so, children who break the law are not eligible to be punished, moreover to be put in prison.

## V. CONCLUSION

Traffic violations committed by children cannot be subject to sanctions in the Traffic Law because the application of sanctions for traffic offenders by children is not in accordance with the provisions of Law Number 11 of 2012 concerning the Criminal Justice System for Children and Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children Under 14 (fourteen) years old. Actions against child offenders who commits a criminal offense with a fine, must be replaced with a sanction in the form of an action, including: returned to parents, given to someone and others. With the application of electronic tickets, it obligates all traffic offenders to pay fines, including minors. For the application of criminal sanctions against children who commit

traffic violations, judges must consider all matters relating to the child, such as the child's condition, family conditions, environmental conditions, and also reports from local social institutions, so that in determining the imposition of sanctions in accordance with the conditions and child's background. Law enforcement officials have not yet implemented the Juvenile Criminal Justice System Law, especially in handling traffic violations committed by children. Thus, it is necessary to have the same perception regarding the handling of children who commit traffic violations, especially towards police officers at an early stage. This common perception must be carried out in the form of socialization of Law Number 11 of 2012 concerning the Child Criminal Justice System and Government Regulation Number 65 of 2015 concerning the implementation of diversion. Considering the number of traffic violations committed by children is quite high. By prioritizing the embodiment of the concept of restorative justice, the application of diversion for children who commit traffic violations can be carried out effectively.

In Law Number 11 Year 2012 concerning the Juvenile Criminal Justice System, the procedural law for juvenile justice is regulated in Chapter III starting from Article 16 to Article 62, meaning that there are 47 articles that regulate child criminal procedural law. As a form of guaranteeing the protection of children's rights, investigators, public prosecutors, and judges are obliged to provide special protection for children who are examined because the crime they have committed, in this case is traffic violations in emergency situations as well as special protection and implemented through imposition of sanctions without any weighting (Article 17). If the criminal act, in this case traffic violation, is committed by a child who is under 14 (fourteen) years old, the investigator, social counsellor and professional social worker will decide to: (a) hand it back to the parent / guardian; or (b) participating in educational, coaching, and mentoring programs in government agencies or social welfare administering institutions in agencies dealing with social welfare, both at the central and regional levels, for a maximum of 6 (six) months. According to the provisions of Law 11 of 2012 concerning the Criminal Justice System for Children, diversion

option can be taken to cases of violations committed by minors. If it is related to the provisions of Perma No. 12 year 2016, diversion is can be pursued by involving law enforcement officials, community social workers, parents of children, victims if any and community leaders.

Based on the explanation of the various regulations above, it can be seen that there has been an error in the application of the law in traffic violations by children. Of course, this needs to be addressed immediately, in the author's view, for offenders who are under 18 (eighteen) years old, the handling must be resolved by means of diversion.

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