



Application of Restorative Justice in Case of Traffic Accident What Unage Children Do in the Legal Area of the Kudus Polres

Hendri Nunpia Dinka Barus^(✉)

Police Officer of the Republic of Indonesia, Jakarta, Indonesia
hendri.barus@gmail.com

Abstract. Traffic accidents are one of the most common types of crime in people's lives because they are influenced by technological advances and are one of the biggest causes of death in Indonesia. The involvement of minors as perpetrators demands special treatment from the point of view of state law and religious law. The settlement of traffic accident cases carried out by minors in the jurisdiction of the Kudus Police is entirely carried out by applying restorative justice. This study aims to analyze the application of restorative justice in cases of traffic accidents committed by minors in the jurisdiction of the Kudus Police and to find out the obstacles and solutions. This study uses a sociological juridical research method with descriptive analysis specifications based on primary data and secondary data. Primary data was obtained by means of interviews and secondary data obtained by literature study and then analyzed qualitatively. The research problems were analyzed by law enforcement theory, accountability theory and restorative justice theory. Based on the results of the study it can be concluded; 1) Kudus Police in resolving traffic accident cases involving minors is carried out through a diversion mechanism according to the mandate of the law in the form of restorative justice. 2) Obstacles faced by investigators include who will accompany children who are in conflict with the law at the time of examination and or mediation, if they do not have parents and or are far from their parents and are still pursuing primary or secondary education and the involvement of many parties who are still involved. Administrative problems in the bureaucracy. 3) An effective solution has been found that has been implemented by the Kudus Police and has been proven to produce results so that all traffic accident cases involving minors at the Kudus Police can be carried out by applying restorative justice.

Keywords: Traffic Accidents · Minors · Restorative Justice

1 Introduction

The national development that has been carried out is a sustainable development effort to realize a just and prosperous society in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia.¹ In the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3) states that the State of Indonesia is a legal state based on Pancasila and the 1945 Constitution which contains the meaning of all actions, patterns of behavior of citizens which must also be synchronized with the norms set by the state.²

The state is required to be present and ensure that the implementation of law enforcement does not deviate from the purpose of the law itself, because on the one hand the state must be able to enforce the law to ensure security and order, but on the other hand the state must also be able to protect the rights of its citizens as mandated in the Preamble to the Constitution. 1945 which states that the government of the Republic of Indonesia has an obligation to protect its citizens. Efforts to enforce criminal law are carried out within the framework of the criminal justice system, namely a system in society to control and overcome crime problems. Tackling is an effort to control crime so that it is within the limits of community tolerance, which consists of four institutional components, namely the police, prosecutors, courts and correctional institutions with the aim of preventing people from becoming victims of crime, resolving criminal cases that do occur, and trying to prevent criminals from committing crimes repeat the crime.³

Road traffic and transportation are things that are very close to the community. Almost every time people carry out traffic activities with various interests. The history of road traffic and transportation in Indonesia has gone through various periods since the Dutch Government to the present. At that time, vehicles were needed to speed up human activities and the speed of vehicle users was relatively low so that they did not cause many problems, but along with the times and science, the use of motorized vehicles increased.⁴

For criminal acts, especially in traffic accident cases involving children aged 12 to 18 years, Law Number 35 of 2014 concerning Child Protection is enforced which uses Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. as well as considering Law Number 4 of 1979 concerning Child Welfare.

In the case of a child who accidentally makes a mistake causing another person to die, it is a crime as stipulated in Article 359 of the Criminal Code (KUHP), whereas if a child accidentally makes a mistake causing another person to be seriously injured or injured is also a criminal offense as stipulated in Article 360. Because of the consequences of

¹ Andri Winjaya Laksana, Ida Musofiana, Pandangan Kritis Terkait Pertanggungjawaban Korporasiperbankanterhadap Tindak Pidana Pembobolan Rekening Nasabah, *JPM: Jurnal Purnama Media*, Vol 1 No 1, Agustus 2022, Page 50-64

² Batara Pareto Deddi, Jawade Hafidz, and Andri Winjaya Laksana, The Domination of National Criminal Law in Law Enforcement of Illegal Fishing by Foreign Ship in Indonesian Waters, *Ratio Legis Journal* Vol 1 No 3, September 2022, Page. 314-321

³ MARjono Reksodiputro dalam Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer*, Kencana, Jakarta, 2011, page. 2-3.

⁴ Feriansyach, *Sejarah Singkat Regulasi Lalu Lintas dan Angkutan jalan di Indonesia*, (<http://feriansyach.wordpress.com>).

the child's actions which due to his mistake (negligence) cause another person to die or be seriously injured or injured.⁵

On the other hand, based on the principle of *ultimum rimidium* which is adhered to in Indonesia that other measures can be taken against criminal threats, then this matter can be abolished. Efforts to resolve crimes that occur in people's lives are not only carried out through law enforcement efforts alone, but also through the application of restorative justice which is different from the conventional criminal justice system, where this application focuses on the direct participation of perpetrators, victims and the community in the process of resolving criminal cases. Restorative Justice, offers different views and approaches in understanding and dealing with a crime. In the view of restorative justice, criminal acts are basically the same as in the view of criminal law, but in the process of seeking justice that occurs in a criminal case involving victims, perpetrators and the community in efforts to repair, reconcile and guarantee the continuity of these repair efforts.⁶

Police Discretion Authorization can determine the forms of diversion in a child case. Discretion is the authority possessed by the police to stop the investigation of cases by releasing suspected children, or to carry out diversion with the aim that children are prevented from further legal proceedings. Diversion can be said as an unconditional transfer of cases of children suspected of committing criminal acts from the formal process.⁷

Traffic accident data involving children, namely under the age of 18 in the jurisdiction of the Kudus Police for the period 2018 to d. March 2021 shows that 381 children have become victims and 193 children have become perpetrators. Based on data from the Accident Unit at the Kudus Police Traffic Unit, it shows that; in 2018 there were 116 children who became victims and 73 children who became perpetrators, in 2019 there were 141 children who became victims and 65 children who became perpetrators, in 2020 there were 120 children who became victims and 39 children who became perpetrators, while from January 2021 to. March 2021 there were 4 children who became victims and 16 children who became perpetrators.⁸

2 Research Methods

The approach method used in this research is the juridical empirical approach, which is research that examines or traces people's attitudes and attitudes towards the applicable law.⁹ Sources of data used are primary and secondary data. Primary data refers to data or facts and legal cases obtained directly through research in the field, including information

⁵ R. Soesilo, *Kitab Undang-Undang Hukum Pidana*, Sukabumi: Bogor-Politeia 1996, page. 248.

⁶ Jonlar Purba, *Penegakan Hukum Terhadap Tindak Pidana Bermotif Ringan Dengan Restorative Justice*, Jala Permata Aksara, Jakarta, 2017, page. 55.

⁷ *Ibid.*

⁸ Interview With IPDA Firman Abit, S.Tr.K, Kanit Laka Satlantas Polres Kudus, Kudus.

⁹ Nur Indah Setyoningrum and Anis Mashdurohaturun, Restorative Justice in Children's Criminal Jurisdiction System through Diversion, *Law Development Journal*, Volume 2 Issue 4, December 2020, Page 573–581

from respondents related to the object of research and practices that can be seen and related to the object of research.¹⁰

3 Results and Discussion

Satjipto Raharjo stated that nowadays there is a growing body of literature showing how small a corner the law occupies in the midst of the vast universe of order, even talking about "order without law." This situation is possible because of the creativity of the people themselves in giving birth or creating social norms. Social rules created in such a spontaneous way have a much higher speed than the creation of laws through legislation which can take years.¹¹

This statement further shows that in the creation of order, the existence of law is not everything, especially law in the sense of the form of state power which is especially for that in this case the legislature. It is important to pay attention to the dynamics of the working of the concept of restorative justice in Indonesia in the context of criminal law which has not provided sufficient regulatory basis and its application in the process of investigation, prosecution and trial court hearings.

The problems mentioned above are interesting to discuss. This is due to: First, when social dynamics demand changes in law, while the law has not yet responded to these social changes, whether or not the general even international trend can become the basis for legal practice, so that it will have an impact on the emergence of theoretical debates to support or reject it. Second, the criminal justice process, both at the level of investigation, prosecution and court hearings, involves institutions and individuals with diverse interests, so that the possibility of influencing the implementation of the concept of restorative justice cannot be ruled out.

The frequent occurrence of dissatisfaction with the implementation of criminal law enforcement carried out by law enforcement officials, both by perpetrators and victims of criminal acts, makes mediation one of the alternatives offered, considering that mediation between criminal offenders and their victims is expected to be able to seek and find an agreement that is closest to the will and interests of victims and perpetrators of crime.¹²

Criminal mediation is an alternative to conflict resolution between perpetrators and victims of criminal acts which is expected to restore balance of interests, especially victims who have been harmed by the actions of perpetrators of criminal acts. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution regulates mediation but does not regulate it to be applied to criminal cases.¹³

¹⁰ Agus Irawan Yustisianto, Sri Endah Wahyuningsih, Anis Mashdurohatun, Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value, *Scholars International Journal of Law, Crime and Justice*, Vol 5 No. 12, Page 513-519

¹¹ Satjipto Rahardjo, *Biarkan Hukum Mengalir; Catatan Kritis Tentang Pergulatan Manusia Dan Hukum*, Kompas, Jakarta, 2007, page. 29.

¹² Interview With IPDA Fiman Abit, S.Tr.K selaku Kepala Unit Kecelakaan Lalu Lintas Satuan Lalu Lintas Polres Kudus.

¹³ Arief Badra Nawawi, *Aspek Kebijakan Mediasi Penal Dalam Penyelesaian Sengketa Di Luar Pengadilan*, Makalah Seminar Nasional Pertanggungjawaban Hukum Korporasi Dalam Konteks Good Corporate Governance, Program Doktor Ilmu Hukum Universitas Diponegoro, Inter Continental Hotel, Jakarta, 27 Maret 2007, page. 2.

The process towards determining diversion by the court begins with receiving and preparing a Police Report and then issuing an Investigation Warrant and investigators implementing diversion by seeking restorative justice. The investigator then sent a letter to the Correctional Center (BAPAS) with the aim of assisting child offenders and conducting community research and accompanying them during investigations. The investigator also sent a letter to the Legal Counsel to assist the child offender during the investigation. The diversion system in the form of restorative justice is carried out and attended by parties, namely the victim accompanied by family funds or village officials and or legal advisers, while the perpetrators are present accompanied by family and village officials as well as Correctional Centers and legal advisors.

If a diversion agreement is reached as criminal responsibility in the form of compensation, compensation and funding or social work and the victim has agreed to it, then an agreement is made which contains that the case is resolved amicably and will not sue through legal channels, the investigator then sends a diversion agreement letter and minutes of diversion to the district court to obtain a decision on the determination of diversion, the contents of which order the investigator to stop the investigation.

If a diversion agreement is not reached, it means that the victim is still suing and the investigator will continue the case according to the existing legislation and the investigator must also send a Notice of Commencement of Investigation (SPDP) to the Prosecutor's Office to carry out the legal process in accordance with Law Number 11 of 2012 concerning Criminal Justice Child. In this case the investigator is not obliged to make a detention if there is a guarantor.

Settlement of traffic accident cases involving minors is often constrained by several things, among others:

a. Obstacles From the Actor's Family

- 1) There are cases of traffic accidents committed by minors who do not have a family and/or live with their siblings and/or are left far from their parents (both parents work as migrant workers abroad) create a separate obstacle in terms of who will accompany them in examination and mediation process.
- 2) There is a constraint on who will pay compensation for the diversion agreement if the family of the minor who is the perpetrator of a traffic accident comes from a poor family and/or does not have a family and/or his/her siblings are not willing or unable to pay the compensation demanded by the victim. This makes the results of mediation meaningless for both parties.
- 3) There are obstacles when traffic accident cases committed by minors are still students so that the inspection and/or mediation schedule is carried out after school hours are over or does not interfere with children's rights to learn and adjust the school's own activities so that of course this will make this process carried out outside of school hours. School and outside office hours of the parties (institution/office).

b. Obstacles from the Victim's Family

- 1) There is a narrow understanding of the perpetrators so that the perpetrators are uncooperative towards the victims, and sometimes this attitude is supported by their parents who do not understand efforts to resolve traffic accident cases committed by minors through diversion in the form of restorative justice.

- 2) There is an attitude of not wanting to forgive the perpetrators and even insisting on demanding that the child perpetrators be processed according to the law resulting in a prolonged conflict, this happens because the majority of people, especially the families of the victims, still think that children who are in conflict with the law must be punished just like adults. This happened because the victim's family did not accept the injuries suffered by the victim. This makes it difficult for investigators to carry out a peace process in child cases because of the strong influence of the victim's family who oppose the diversion process.
 - 3) There was a passive response from the victim's family so they tended not to attend when invited to a diversion meeting. This happened because actually the victim's family wanted the process to continue through the courts, so when they were invited to hold the deliberation they could not attend.
 - 4) There are those who take advantage of the diversion process as a mode of extortion from the victim. In the event that the victim suffers a loss, both material loss and physical injury, the victim's family will ask for compensation in a large amount. This bargaining for compensation can hinder the achievement of a diversion agreement.
- c. Obstacles From Bureaucracy

In Article 8 paragraph (1) of the SPPA Law it is emphasized that the settlement of juvenile criminal cases by means of deliberation apart from involving the child and his parents/guardians, victims and/or their parents/guardians must also involve social counselors and professional social workers.

4 Conclusion

The application of diversion by investigators as a form of solving juvenile criminal cases through a restorative justice approach at the Kudus Police in general is in accordance with the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Diversion is carried out by way of deliberation by involving victims, children, BAPAS and the community/related parties in finding solutions to repair, reconcile and reassure the heart that is not based on retaliation. In terms of discretion, the implementation of diversion is in accordance with the provisions of Article 16 paragraph (1) letter 1 Law No. 2 of 2002 concerning the National Police which states that in the context of carrying out tasks in the field of criminal proceedings, the Indonesian National Police has the authority to carry out other actions according to applicable law responsible.

Obstacles encountered by investigators in applying diversion as a form of settlement of accident cases involving underage perpetrators at the Kudus Police come from the perpetrators, the victims and other relevant institutions/agencies. To overcome these obstacles, investigators approached the families of the perpetrators and the families of the victims and coordinated with agencies/agencies and other related parties so that they could maximize efforts to resolve in a restorative justice manner through diversion.

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