

Diversion For Children in Conflict with The Law in Traffic Accident Crimes in Solok Selatan Regency (Research Study at Solok Selatan District Prosecutor's Office)

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Abstract. *This study aims to analyze the implementation of diversion in resolving criminal acts of traffic accidents committed by children in South Solok Regency in the context of legal certainty and what are the obstacles and solutions to the implementation of diversion in resolving criminal acts of traffic accidents committed by children in South Solok Regency in the context of law enforcement. The research method used to analyze is the Sociological Juridical Research Method. The sociological juridical approach is an approach that emphasizes research that aims to obtain empirical legal knowledge by going directly to the object. Sociological juridical research is legal research using secondary data as its initial data, which is then continued with primary data in the field or on the community, examining the effectiveness of a regulation and research that wants to find a relationship (correlation) between various symptoms or variables, as a data collection tool consisting of document studies or library materials and interviews that are associated with the Theory of Law Enforcement and Progressive Theory. Referring to the description above, in an effort to uphold restorative justice based on the theory of Law Enforcement and Progressive Legal Theory, a criminal case resolution that follows the concept of restorative justice has the essence of unfair treatment for both victims and perpetrators. The existence of unfair legal regulations for both victims and perpetrators, with the aim of creating the principle of legal certainty. The existence of very detrimental and disproportionate treatment of suspects, defendants, and convicts, compared to the need to protect the rights of others in a just perspective as in the intent and purpose of Progressive Law. The rights of victims or perpetrators are not protected effectively, efficiently and proportionally by the state. The existence of unfair or less fair treatment for victims due to laws that are not conducive or laws that do not provide protection for the rights of the victims themselves, the regulations of which are still unclear.*

Keywords: *Accident; Crimes; Conflict; Diversion.*

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1. Introduction

Indonesia is a country whose control of government power is based on law. The 1945 Republic of Indonesia Law in Article 1 paragraph (3) has explained that Indonesia is a country of law which is contained in the welfare state concept, namely the government's obligation to carry out the State's mission, as stated in the fourth paragraph of the opening of the 1945 Constitution.¹

Law is basically regulatory, coercive and protective. However, the presence of law itself is a series that is implemented by and for the community so that the community can live in peace without any threat to themselves. Equality before the law or Equal Justice Beneath the Law means "all humans are equal in the eyes of the law" or the principle where everyone is subject to the law in the same trial. Simply put, it means that all humans are equal and equal before the law. Equality before the law is one of the most important principles in modern law. It has become one of the pillars of the Rule of Law doctrine movement which has also spread to developing countries.²This system is a manifestation of the rule of law (*rechtsstaat*) so that it requires the presence of equal treatment for everyone before the law (equality of being equal to the law).³

Nowadays life has advanced very rapidly, progress has occurred in various sectors of life in society. This progress is certainly accompanied by the increasing movement or movement of people from one place to another. Of course, to facilitate this movement, fast, safe, and practical transportation is needed. What is meant by transportation is the movement of people or goods from one place to another using a vehicle driven by humans or machines.

Transportation plays a very important role in the life of the nation and state, especially for the smooth running of development. It can be said that the success of development is very dependent on the role of the transportation sector. In this regard, the importance of transportation in Indonesia has increased the number of vehicles and drivers or road users, which has also had an impact on traffic order patterns. This is related to public awareness of how to be orderly in traffic.

This problem of consciousness is an important object of study for the discipline of legal sociology.⁴Public legal awareness can affect the occurrence of traffic violations in Indonesia. Not a few people only think about individual interests, so they use transportation and means of transportation without thinking about others or the public interest. One of the causes is because transportation users do not know the rules and discipline in traffic or even consider these rules unimportant, with the existence of urgent interests, especially traffic order on the highway. This not only has an impact on order, but also endangers the safety of road users and will increase the number of traffic accidents. In this case, the government has also tried to overcome it by regulating traffic violations in Law Number 22 of 2009

¹Sumaryono and Sri Kusriyah, The Criminal Enforcement of the Fraud Mode of Multiple Money (Casestudy Decision No.61 / Pid.B / 2019 / PN.Blora). *Journal of Legal Sovereignty*: Volume 3 Issue 1, March 2020, p.237

²JM Walukow, The Realization of the Principle of Equality Before the Law for Prisoners in Correctional Institutions in Indonesia. *Lex et Societatis*, Vol 1 No.1. 2013, p. 164

³Lilik Mulyadi, *Criminal Procedure Law*, Citra Aditya Bakti, Jakarta, 2007, p. 20

⁴Fuady Manir. *Contemporary Sociology of Law*. Bandung: Citra Aditya Bakti, 2007, p. 75

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concerning Traffic and Road Transportation.

Nowadays, traffic violations are the problem that causes most accidents and lack of legal awareness. Differences in the level of knowledge and understanding of the rules result in a gap that has the potential to cause problems in traffic, both between road users and between road users and officers tasked with enforcing the law on the highway.⁵

Traffic violations that occur routinely can cause the risk of accidents, material losses, injuries, and even loss of life. Road users with large numbers who often pass through the highway every day can cause problems in traffic, one of which is traffic accidents.

Traffic accidents are unlawful acts that are included as one of the elements of a criminal act. It can be seen that traffic accidents and traffic violations have different concepts but can be related to each other. Traffic violations can be interpreted as an action by drivers in driving a means of propulsion, namely motorized or non-motorized vehicles, and pedestrians who violate existing and applicable traffic laws and regulations.

In legal norms, if a citizen commits a violation of legal provisions, the state has the right to impose sanctions in accordance with the laws and regulations that have been formulated, whether principal criminal sanctions, additional criminal sanctions or special criminal sanctions for crimes that have been regulated by law.⁶ Criminal law enforcement in the context of traffic violations aims to enforce the rules and regulations set to maintain traffic safety and smoothness. The punishment given to traffic violators is expected to provide a deterrent effect and encourage the public to comply with existing regulations.

The root of the problem always stems from the lack of awareness and habits of road users. This lack of discipline and disobedience is reflected in traffic behavior by driving vehicles exceeding the speed limit, breaking through traffic lights, not using driving equipment and incomplete motor vehicle documents. The implementation of tickets is one effort to minimize these problems. It can be said that a ticket is a law enforcement in the form of a letter of evidence of violations in the enforcement of traffic violations imposed by the Police in this case the law enforcement function in the scope of traffic is the Police Traffic Unit to road users who commit violations.⁶

To reduce the number of road accidents, high awareness is needed for road users in maintaining their safety, especially regarding driving speed to be adjusted to the existing road design, as well as existing signs to be obeyed. Vehicle speed is the dominant factor causing road accidents, if the driver has a vehicle capable of reaching a speed of 150 km / h when on a public road adjusted to the road design, whether or not the vehicle is driving at high speed.⁷

Regarding the legal norms governing road traffic, it has long been regulated in Law Number 22 of 2009 concerning Road Traffic and Transportation. Law Number 22 of 2009 was formed

⁵Bido Arsanu, Ahmad Yulianto Ihsan. Law Enforcement Against Traffic Violators (Case Study at the East Java Regional Police Traffic Unit, Surabaya in 2022). *Journal of Legal Transparency*. Vol. 5 No. 2, 2022, p. 87

⁶Hasiholan, Christian Tarapul Anjur, Navanya Gabriel Cuaca, and Hans Christoper Krisnawangsa. Legal Protection for Vehicle Owners Against Traffic Violations Based on Electronic Ticketing. *Spectrum Hukum*, Vol 18 No 2, 2021, p. 18.

⁷Dewi Keumalasari, And Tarmizi. Law Enforcement Against Traffic Violations That Violate Speed Limits (A Study in the Jurisdiction of Banda Aceh City). *Jim in Criminal Law*, Vol 2 No 3, 2018. p. 449

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to replace Law Number 14 of 1992 concerning Road Traffic and Transportation because it was considered no longer appropriate to the conditions, changes in the strategic environment, and the needs of organizing road traffic and transportation. We can see this in Law Number 22 of 2009 concerning Road Traffic and Transportation. The formation of Law Number 22 of 2009 concerning Road Traffic and Transportation is expected to make the community more orderly in traffic so that it can reduce the number of accidents and other traffic problems.

Traffic violations are a criminal act. According to Moeljatno, a criminal act is "an act prohibited by law and subject to criminal penalties for anyone who violates it". The imposition of sanctions on a person who commits a crime is not merely to make the perpetrator suffer, but according to Remmelink "is intended to uphold legal order, protect the legal community. maintaining social order for the most part depends heavily on coercion.¹⁰ The law makers hope that with the criminal sanctions, road users will be more disciplined and orderly in driving.

The development of the law enforcement system and methods in Indonesia shows a tendency to follow the development of social justice, especially the development of the principle of restorative justice which reflects justice as a form of balance in human life, so that deviant behavior from perpetrators of crimes is considered as behavior that eliminates balance. Thus, the case resolution model carried out is an effort to restore this balance, by burdening the perpetrators with the obligation to consciously admit their mistakes, apologize and restore the damage and losses of the victim to their original state or at least resemble their original condition, which can fulfill the victim's sense of justice.

The concept of law enforcement in the criminal law enforcement system in various countries that adopt the principle of restorative justice and along with the emergence of various problems in the law enforcement process in Indonesia such as over capacity Correctional Institutions, increasing case backlogs, the number of law enforcers that is not balanced with the development of cases, court costs that are unable to support the increase in cases and so on, have an impact on changes in the legal culture of society, especially the perspective of Indonesian society towards the criminal law enforcement process, especially for child perpetrators.⁸

The definition of a child, if examined further in terms of chronological age according to the law, can vary depending on place, time and for what purpose, this will also affect the limits used to determine the child's age.⁹ Regarding the definition of a child or the criteria for someone to be categorized as a child can be seen from several different opinions. From Islam for example, a person's maturity or commonly called baligh cannot be determined based on a certain age, but is seen from the physical and mental development of the person. For girls, the criteria for baligh or adulthood can be seen when they have had their period or menstruation, while boys are considered baligh or adults if they have had wet dreams. Determination of the criteria for adulthood in Islam is seen from signs of physical changes in both boys and girls.

⁸Circular Letter of the Chief of Police Number: SE/8/VI/2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases, Jakarta, July 27, 2018.

⁹Abdussalam, Child Protection Law, Restu Agung, Jakarta, 2007, p. 5

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In 1990, the Indonesian government ratified the Convention on the Rights of the Child (CRC) or better known as the UN-CRC (United Nations Convention on the Rights of the Child) which is a human rights agreement that guarantees children's rights in the civil, political, economic, social, health, and cultural fields which was ratified in 1989 by the UN, then the Indonesian government adapted this convention into Law Number 23 of 2002 concerning child protection which was later revised in Law Number 35 of 2014 concerning child protection.

Child protection is a field in national development, ignoring the issue of child protection also means ignoring national development. Because children are human resources for the development of a country where development begins as early as possible so that children can contribute maximally to the development of the nation and state.

The Juvenile Justice System is all elements of the criminal justice system related to handling cases of children in conflict with the law. Police, Prosecutors, Courts, Community Guidance or Correctional Centers, Advocates or legal aid institutions, Special Child Development Institutions (LPKA), Temporary Child Placement Institutions (LPAS) and Social Welfare Institutions (LPKS) as institutions or agencies that handle cases of children in conflict with the law (ABH) starting from when children come into contact with the justice system, determining whether the child will be released or processed to the juvenile court to the stage when the child will be placed in choices, from being released to being included in a punishment institution in the corridor of restorative justice. Law Number 11 of 2012 concerning the juvenile criminal justice system, all of which state the general principles of child protection, namely non-discrimination, the best interests of the child, a life that respects and grows and develops. The presence of these regulations has formulated protection for children's rights, but in reality they have not received very beneficial treatment for the best interests of the child.¹⁰

Children have specific rights that are different from the rights of adults, this is because children are very vulnerable to violence and exploitation.¹¹ The forms of crime and criminal acts that are often committed by children include fighting, theft, drug trafficking, sexual harassment, abuse, traffic violations, traffic accidents where the perpetrators are children. Various cases of criminal acts involving children who have to face the law are actual and factual problems as social and criminal symptoms that have caused concern among parents in particular and society in general as well as law enforcement.¹²

Rapid development of transportation will indirectly increase the risk of traffic problems, one of which is traffic accidents. According to Law Number 22 of 2009 concerning traffic and road transportation in Article 1 Point 24, the definition of a traffic accident is an unexpected and unintentional event on the highway involving vehicles with or without other road users

¹⁰Yul Ernis, Diversion and restorative justice in resolving juvenile crime cases in Indonesia, Scientific Journal of Legal Policy, Vol.10, No.2 July 2016, p.164.

¹¹Nur Rochaeti, Implementation of Restorative Justice and Legal Pluralism in the Juvenile Criminal Justice System in Indonesia, Journal of Legal Issues, Vol.44 No.2, April 2015, p.150.

¹²Ulang Mangun Sosiawan, Restorative Justice Perspective as a Form of Protection for Children in Conflict with the Law, DE JURE Legal Research Journal, Vol.16 No.4 December 2016 p. 428.

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that results in human casualties and/or property losses.

Traffic accidents generally occur due to various causal factors such as negligence of road users, vehicle unworthiness, and unworthiness of roads and/or the environment in addition. The indiscipline of the community in traffic has resulted in many high traffic violations and the ownership of private vehicles is increasing day by day, this will indirectly trigger traffic accidents. According to Article 229 of Law Number 22 of 2009 concerning Traffic and Road Transportation, the form of traffic accidents is divided into 3 categories as follows:

1. Minor traffic accidents are accidents that result in damage to vehicles and/or goods.
2. Moderate traffic accidents are accidents that result in minor injuries and damage to vehicles and/or goods.
3. A serious traffic accident is an accident that results in death or serious injury.

Throughout 2023 in South Solok Regency, there were 35 traffic accidents with 24 children being the drivers of vehicles, and in 2024, there were 34 traffic accidents with 17 children being the drivers.¹³Based on the data above, it shows that the number of children involved in traffic accidents is quite large, both as perpetrators who cause traffic accidents and as victims of traffic accidents. This is due to various factors, one of which is the lack of parental supervision of children who are allowed to drive freely on the highway.

Regarding the application of criminal sanctions that will be imposed on children as perpetrators of traffic accidents, Asep Syarifuddin Hidayat emphasized that "the application of criminal sanctions applied to children must not be the same as the punishment imposed on adult perpetrators."¹⁴This is because there are differences seen from the mental, psychological and desires of children are not the same as adults. If a traffic accident occurs whose perpetrator is suspected of being a child, then the justice used is a special justice, namely juvenile justice.

According to Hadi Supeno, many serious things must be considered regarding the criminalization of children because:

1. In the judicial process, there tends to be human rights violations and there is a lot of evidence showing that there are practices of violence and torture against children who enter the judicial system.
2. The child's perspective has not yet colored the judicial process.
3. Prisons, which are used as a place to punish children, have proven to not be the right place to guide children to achieve the desired process of adulthood.
4. During the judicial process, children in conflict with the law lose their basic rights such as communication with their parents, the right to education, and the right to health.
5. There is a stigma attached to children after the completion of the judicial process, which will make their psychological and social development difficult in the future.¹⁵

¹³Then South Solok Regency on January 8, 2025

¹⁴Asep Syarifuddin Hidayat, Samul Anam, Muhammad Ishar Helmi, "Legal Protection for Children as Narcotics Couriers" Journal of Social and Cultural Affairs, UIN Syarif Hidayatullah Jakarta, Vol.5 No.3, 2018, p. 4.

¹⁵Hadi Supeno, Criminalization of Children, Gramedia Pustaka, Jakarta, 2010, p. 21.

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Criminalization is the imposition of a criminal penalty on the perpetrator and is the final law. Thus, if there is a conflict in society, then the best resolution is carried out by always prioritizing deliberation from both parties in dispute or Diversion which is carried out outside the court, and resolution through the criminal justice process is the last legal effort and the use of criminal law should be avoided.

2. Research Methods

The research method used to analyze is the Sociological Juridical Research Method. The sociological juridical approach is an approach that emphasizes research that aims to obtain empirical legal knowledge by going directly to the object. Sociological juridical research is legal research using secondary data as its initial data, which is then continued with primary data in the field or on the community, examining the effectiveness of a regulation and research that wants to find a relationship (correlation) between various symptoms or variables, as a data collection tool consisting of document studies or library materials and interviews.¹⁶

3. Results and Discussion

3.1. Implementation of diversion in resolving criminal acts of traffic accidents committed by children in South Solok Regency in the context of legal certainty is linked to the Theory of Law Enforcement and Progressive Theory.

Referring to the Theory above, the description of the findings or research results below are taken from court decisions that have permanent legal force. To describe or illustrate how the implementation of diversion in resolving criminal acts of traffic accidents committed by children in South Solok Regency in the context of legal certainty and how the obstacles and solutions to the implementation of diversion in resolving criminal acts of traffic accidents committed by children in South Solok Regency in the context of law enforcement are connected with restorative justice, namely the Description of the Diversion Deliberation Process at the South Solok District Attorney's Office

In the diversion deliberation, the position of the Prosecutor is as a facilitator who is assisted by a community assistant as a deputy facilitator. In its implementation, the diversion deliberation at the South Solok District Attorney's Office is guided by Government Regulation No. 65 of 2015 concerning guidelines for the implementation of diversion and handling of children under 12 (twelve) years of age and Supreme Court Regulation No. 4 of 2014 concerning guidelines for the implementation of diversion in the Juvenile Criminal Justice System.

Before discussing the process of implementing diversion deliberations, we should know which parties must be present, namely:

- 1) Children, namely children who are in conflict with the law or children who are perpetrators of criminal acts.
- 2) Parents are father or mother and/or other family members trusted by the child.
- 3) Guardians are people or bodies who in reality exercise parental authority over children.

¹⁶Amiruddin, 2012, Introduction to Legal Research Methods, Jakarta: PT. Raja Grafindo Persada, p. 34

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- 4) Victims are children who experience physical, mental and/or economic suffering caused by criminal acts.
- 5) A companion is a person or entity who in reality exercises custody as a parent over a child.
- 6) Community counselors are functional law enforcement officials who carry out community research, supervision and mentoring of children inside and outside the criminal justice process.
- 7) A professional social worker is someone who works, either in a government or private institution, who has social competence and profession as well as concern in social work obtained through education, training, and/or experience in social work practice to carry out service tasks and handle children's social problems.
- 8) Social welfare workers are people who are professionally educated and trained to carry out service tasks and handle social problems and/or people who work in either government or private institutions, whose scope of activities is in the field of child social welfare.

The procedures for implementation are as follows:

- a. The diversion deliberation is opened by the diversion facilitator by introducing the parties present, conveying the intent and purpose of the diversion deliberation, as well as the deliberation rules to be agreed upon by the parties present.
- b. The diversion facilitator explains the duties of the diversion facilitator.
- c. The diversion facilitator explains the summary of the charges and the community counselor provides information about the child's behavior and social circumstances and provides suggestions for obtaining a resolution.
- d. Diversion facilitators are required to provide ABH with the opportunity
- e. Professional social workers provide information about the social circumstances of child victims and provide advice on how to find a solution.
- f. If deemed necessary, the diversion facilitator can call community representatives or other parties to provide information to support the resolution.
- g. If deemed necessary, the diversion facilitator can hold separate meetings (caucuses) with the parties.
- h. The diversion facilitator translates the results of the deliberation into a diversion agreement.
- i. In drafting a diversion agreement, the diversion facilitator pays attention to and directs that the agreement does not conflict with the law, religion, local community propriety, morality, or contain things that cannot be carried out by the child or contain bad intentions.

If the diversion deliberation succeeds in reaching an agreement, the diversion agreement letter is signed by the child and/or parent/guardian, victim, child victim and/or parent/guardian, investigator, community counselor and social worker. The entire diversion implementation process is recorded in the diversion minutes.

That the actions of children as regulated and threatened with criminal penalties in Article 310 (4) of Law Number 22 of 2009 concerning Traffic and Road Transportation in conjunction with Law Number 11 of 2012 concerning the Child Justice System

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That from the description of the Traffic Accident Crime above, it explains that there is a lack of legal awareness in the community. The current traffic situation, especially in big cities, is characterized by quite high community mobility, the increase in vehicles is quite rapid but is not balanced by the addition of road facilities and infrastructure, in addition, the low legal awareness of the community in complying with traffic regulations are some of the factors that influence the failure to realize a safe, orderly and smooth traffic system.¹⁷

On this matter The Head of the South Solok District Attorney's Office received a Letter of Notification of Commencement of Investigation (SPDP) on December 7, 2023 from the investigators of the South Solok Police, then a Letter of Order for Appointment of a Public Prosecutor was issued to follow the progress of the investigation of the criminal case Number: PRINT-259/L.3.25/Eku.1/12/2013 (P-16) dated December 7, 2023, after the case files were received and received by the Research Prosecutor, the research prosecutor then conducted a study on the case files and if they were complete, they would be declared complete P-21 as stated in the Letter of the Head of the South Solok District Attorney's Office concerning Notification of the results of the criminal case investigation in the name of Child RAJU RAHMADAN violating Article 310 paragraph (4) of Law No. 22 of 2009 which was complete dated March 4, 2024 and continued with Phase II. In Phase II, the Prosecutor is obliged to protect the best interests of the Child. Children are part of the citizens who must be protected because they are the generation of the nation who in the future will continue the leadership of the Indonesian nation. Every child, in addition to being required to receive formal education such as school, is also required to receive moral education so that they can grow into figures who are useful to the nation and state. In accordance with the provisions of the Convention on the Rights of the Child which was ratified by the Indonesian government through Presidential Decree Number 36 of 1990, then also stated in Law Number 4 of 1979 concerning Child Welfare and Law Number 23 of 2002 concerning Child Protection and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, all of which put forward general principles of child protection, namely non-discrimination, the best interests of the child, survival and growth and development and respect for child participation.

Legal protection for children can be carried out as an effort to protect the various freedoms and human rights of children. This protection of children also includes interests related to the welfare of children. Protection of children in conflict with the law (ABH) is a shared responsibility of law enforcement officers. Not only children as perpetrators, but also children as victims and witnesses. Law enforcement officers involved in handling ABH should not only refer to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System or other laws and regulations related to handling ABH, but prioritize peace rather than the formal legal process that began to be enforced 2 years after the SPPA Law was enacted or August 1, 2014 (Article 108 of Law No. 11 of 2012).

On when the Diversion Deliberation was held at the South Solok District Attorney's Office with the Prosecutor as a mediator in the deliberation forum, attended by both parties, both the Victim, the Child in conflict with the law accompanied by the child's parents, attended

¹⁷Danu Anindhito and Ira Alia Maerani. Khaira Ummah Law Journal: Legal Policy on Traffic Violations by Children in the East Java Regional Police Area, Vol 13 No.1. 2018

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by Bapas as a community mentor and also attended by Peksos, but the diversion agreement could not be implemented due to the inability of ABH and ABH's family to fulfill the request for a sum of money, namely IDR 10,000,000 as a form of condolence money submitted by the victim's family to ABH and family, as stated in the Diversion Effort Minutes (DV-2), Diversion Effort Minutes (DV-3), Diversion Minutes (DV4), Diversion Minutes (DV-5), Diversion Agreement (DV-6), Service Note (DV-7), Service Note (DV-8), Service Note (D-9), Service Note (DV-10) dated March 4, 2024.¹⁸

On during stage II which carried out the diversion process, but did not obtain a peace agreement, so that the traffic accident case committed by ABH was transferred by the Public Prosecutor to the Koto Baru District Court with Case Number: 3/Pid.Sus-Anak/2024/PN Kbr, with a single indictment, namely Article 310 (4) of the Republic of Indonesia Law Number 22 of 2009 concerning traffic and road transportation in conjunction with the Republic of Indonesia Law Number 11 of 2012 concerning the Child Criminal Justice System. At the trial level, the judge implemented Diversion against both parties, both ABH and the parents and the victim, but also did not obtain a peace agreement so that the trial process continued until the evidence, charges and verdict. The case has obtained permanent legal force or inkrah with decision number 3/Pid.Sus-Anak/2024/PN Kbr dated April 30, 2024, the contents of which are as follows:

- 1) Declaring that Raju Ramadhan bin Muhammad Qodri, nicknamed Raju, has been proven legally and convincingly guilty of committing a crime "due to his negligence in driving a motor vehicle which resulted in the death of another person" as referred to in the single indictment of the Public Prosecutor.
- 2) Therefore, imposing a criminal penalty on the child with a prison sentence of 1 (one) month.
- 3) It is determined that the child does not have to serve the prison sentence unless later there is a judge's decision that determines otherwise because the child committed a crime before the 8 (eight) month probation period ended and unless the child does not fulfill the special condition of not driving a motor vehicle for 1 (one) year.

From the several descriptions above, we can draw a common thread about the will of the Child Criminal Justice System Law to be implemented by seeking diversion in order to create restorative justice. As mentioned in the chapter of this research, diversion is a means or instrument of the concept of restorative justice that promises many improvements in the development of the modern criminal justice system. The concept of restorative justice is indeed very tempting, especially if in its implementation all of its objectives are truly achieved.

However, based on the research conducted by the author at the South Solok District Attorney's Office, the ideals of the law makers have apparently not been fully achieved. The law may have attempted to adjust its rules to realize restorative justice in the application of diversion. However, in its implementation, the element of recovery emphasized in restorative justice, which should also have the meaning of improving or curing child

¹⁸Results of the interview with the Head of Criminal Investigation at the South Solok District Attorney's Office, Mr. Moch. Taufik Yanuarsyah, SH, MH, on Tuesday, May 20, 2025.

perpetrators, seems less effective because children during the diversion process only follow formalities. This is supported by several reasons that the author will review one by one referring to the Juvenile Criminal Justice or diversion and how it is practiced in the field.

1. Achieving peace between victims and Children in Conflict with the Law (ABH)

In practice, peace between victims and perpetrators is difficult to achieve, but based on the results of interviews¹⁹ The author at the Solok Selatan District Attorney's Office almost all diversion agreements failed due to material compensation issues. In fact, the biggest factor causing the failure of diversion there was the misalignment of opinions about compensation between the perpetrator and the victim. So that the achievement of this peace occurred not because of awareness between the parties but because of financial reasons. According to the Head of the Koto Baru District Court, one of the obstacles to achieving the goal of diversion is the culture of society that finds it difficult to forgive if there is a loss they get if so the restorative justice approach that is attempted shifts slightly towards retributive justice. This means that this goal has not been achieved as in the case of the position that has been described above.

In the implementation of diversion, what can be seen as the child's responsibility for his actions against the victim is the provision of compensation. However, this responsibility has completely failed because the ones paying the compensation are their parents. In the sense that the child only needs to follow the diversion process as a formality until it is finished without participating much. This was also acknowledged by Mrs. Misnawati, who is one of the prosecutors at the South Solok District Attorney's Office, who is often involved in child cases. According to her, diversion does not have a deterrent effect at all for children because the ones paying the compensation are their parents.²⁰ According to the author, such compensation actually has a fatal effect on the mindset of the child who is dealing with the law. As if the mistake he made could be resolved with money. It is indeed very dilemmatic, on the one hand the victim demands compensation for the child's mistake who basically cannot earn his own money, so the parents have to pay, so that the child does not go to prison which has a bad effect on him. However, on the other hand, the compensation system also does not guarantee that the child will be better in the future.

Talking about Diversion in the context of law enforcement that leads to restorative justice, the opportunity to take approaches to a conflict or a crime in society is more emphasized on the aspect of recovery and win-win solutions in accordance with Progressive Legal Theory. Therefore, the author can say that restorative justice is actually an approach that emphasizes a condition or condition of creating justice and/or balance for society in a community or a particular community group based on the Theory of Legal Certainty and progressive legal theory. Referring to this description, the true nature of Diversion based on restorative justice itself is an approach to restore a damaged condition to its original state without sacrificing one party.

In fact, the essence of restorative justice in resolving a crime using the Theory of Legal Certainty and Progressive Legal Theory has been formulated in the formulation of the second

¹⁹Interview with the Head of Criminal Investigation at the South Solok District Attorney's Office on May 20, 2025

²⁰Interview with Mrs. Misnawati as a Prosecutor at the South Solok District Attorney's Office, on May 20, 2025.

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and fifth principles of Pancasila, there is the phrase "justice". This shows that justice itself must be upheld and upheld by every citizen of Indonesia. Therefore, the enforcement of justice in community life has a very important meaning as an effort to build a high and dignified national civilization. Therefore, the author is of the opinion that a country will not advance its civilization if it is not based on a just life. Referring to this description of understanding, in the author's opinion, the law functions as a protector of human or community interests, the law creates order and balance so that the justice expected by society is achieved, namely to raise self-esteem, and guarantee human happiness and welfare.

Based on the brief descriptions above, the essence of restorative justice can be concluded or interpreted as an effort to restore justice for victims and perpetrators of criminal acts as has been done by the South Solok District Attorney's Office in the case of a traffic accident committed by ABH Raju. In its development, the essence of the settlement using the Diversion mechanism through the restorative justice approach itself began to be adopted or applied in our criminal justice system, so that there was a shift in meaning from the essence of restorative justice itself to a process or a systematic settlement technique for criminal acts or a criminal act that emphasizes more on the principle of recovery for losses experienced by victims and/or society as a result of an act of the perpetrator that is considered detrimental to the victim or damaging a way of life in a society or a group.

The settlement process using the Diversion mechanism through a restorative justice approach as an alternative to resolving criminal acts, especially in this writing, is a traffic accident crime that directly involves the victim, the perpetrator, the victim's family, the perpetrator's family and community leaders and the local government to play an active role in finding a win-win solution as a form of effort to restore the original state without sacrificing one of the parties involved in the settlement with the Diversion mechanism through restorative justice or what is often known in the Juvenile Criminal Justice System in Indonesia with the Diversion concept.

The reference for the Diversion mechanism in the SPPA Law based on restorative justice refers to the opinion of Artidjo Alkostar, who is not very thorough in equating restorative justice and restorative justice and states that restorative justice is a method of recovery that involves perpetrators of crimes, victims and their communities in the criminalization process by providing an opportunity for perpetrators to realize their mistakes and repent so that the perpetrators can return to their community life, not very deep. In the author's opinion, law enforcement through the Diversion mechanism is associated with restorative justice, which has a different nature from the concept of restorative justice. The author's assessment is based on the theory of Legal Certainty and Progressive Theory. According to the theory of Law Enforcement, law as a behavioral order that regulates humans and is a coercive order that prioritizes the principles of legal certainty, benefit, and justice. Restorative justice occurs when the enforcement of justice itself has not achieved the ideals of dignified justice, namely justice that is in accordance with the soul of the nation (Volkgeist), namely Pancasila. The parties, especially the victims of the crime themselves who feel the consequences of a crime or a crime, need to deliberate to reach a consensus based on the spirituality of Pancasila.

Referring to the description above, in an effort to uphold restorative justice based on the theory of Law Enforcement and Progressive Legal Theory, then a criminal case resolution

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that follows the concept of restorative justice has the essence of unfair treatment for both victims and perpetrators. The existence of unfair legal regulations for both victims and perpetrators, with the aim of creating the principle of legal certainty. The existence of very detrimental and disproportionate treatment of suspects, defendants, and convicts, compared to the need to protect the rights of others in a just perspective as in the intent and purpose of Progressive Law. The rights of victims or perpetrators are not protected effectively, efficiently and proportionally by the state. The existence of unfair or less fair treatment for victims due to laws that are not conducive or laws that do not provide protection for the rights of the victims themselves, the regulations of which are still unclear.

In essence, restorative justice has a literal meaning, namely restorative justice or justice that restores as the goal of Law Enforcement and Progressive Law. Actually, in the conventional criminal justice process, restitution or compensation for victims of crime is known. Therefore, restoration itself has a very broad meaning. The meaning of restoration can include efforts to restore damaged relationships or relationships that have been damaged between the victim and the perpetrator. Therefore, in the framework of Restorative justice, efforts to restore damaged relationships can be carried out on the basis of a mutual agreement between the victim and the perpetrator themselves. At this level, if it is connected to justice, the victim as the injured party can convey the losses experienced or suffered and the perpetrator must be given an opportunity to atone for it or restore the damaged condition, through a compensation mechanism, peace mechanism or social work, or other agreements agreed upon by both parties as has happened at the South Solok District Attorney's Office between ABH and the victim in the form of recovery efforts in the form of condolence money to the victim of Rp. 10,000,000.

The settlement of a crime by using the Diversion mechanism based on restorative justice within the framework of Law Enforcement and Progressive Law has a very noble goal, namely to encourage the creation of a fair trial and encourage the parties, be it the victim, perpetrator, victim's family, perpetrator's family or community leaders or local government leaders who participate in it to be able to formulate a recovery solution that does not sacrifice both parties, as in the example of the case at the South Solok District Attorney's Office as a form of effort to restore the relationship that has been broken due to a criminal act by ABH as a form of realizing law enforcement and progressive law.

Recovery efforts in the form of compensation or damages must have a meeting point and must be proportional to the loss and suffering of the victim so that the victim feels that the suffering he experienced is cared for by the perpetrator. Therefore, the perpetrator at this stage must show sincerity and humility and be willing to apologize to the victim so that the essence of restorative justice is created which is oriented towards concern for fellow human beings as the basic concept of progressive law, as a form of responsibility from the perpetrator to repair and/or restore the damaged order in accordance with the intentions of sincerity and humility of the perpetrator. This recovery effort itself as happened in the case of a traffic accident committed by ABH victims in terms of benefits for community life, namely the guarantee of balance in local community life, but the Diversion did not obtain an agreement from both parties.

If referring to the purpose of the presence of restorative justice which is not restorative justice which has a noble purpose, namely empowering victims or restoring them, so that the

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perpetrators are encouraged to pay attention to efforts to restore or repair the damaged situation. Therefore, restorative justice has a very important role in meeting or restoring the material needs, emotional needs, and social needs of the victims themselves.

Thus, the success of restorative justice is largely measured by how much loss the perpetrator has restored to the victim and not by how much punishment or sanction the judge has imposed on the perpetrator. Thus, the main essence of restorative justice or which is not the same as restorative justice efforts in traffic accident crimes carried out by the South Solok District Attorney's Office is as much or as much as possible the efforts of the South Solok District Attorney's Office in removing or avoiding the perpetrator from the criminal process by emphasizing efforts to restore the losses experienced by the victim with a restorative justice approach based on the Theory of Law Enforcement and Progressive Theory in order to achieve justice for the community.

Based on the description above, it is known that the most prominent characteristic of restorative justice which is not the same as the essence of restorative justice is that a crime is placed or positioned as a symptom that arises in social society and becomes part of social action and not just a violation of criminal law but a social violation occurs in society itself. Therefore, a crime will be seen as an act that harms others and damages social relations or social order in society. Thus, this characteristic is certainly very different from the characteristics in criminal law which emphasizes a crime as a state problem.

This means that the crime is only the state that has the right to punish or impose criminal sanctions, although in fact in a traditional community that exists and grows and develops in society can also provide sanctions in the form of customary sanctions as a form of recovery. Therefore, referring to the description of the differences in characteristics above, the author can argue that the imprisonment system or the criminal system when viewed from the side of restorative justice is an outlet for hatred from society which is then accepted and implemented by the state in the form of punishment for perpetrators of crimes.

Referring to this description, the true essence of restorative justice in resolving traffic accidents based on law enforcement and progressive legal theory is to provide justice to victims in the form of restoring the victim's condition because according to restorative justice, the criminal process may not necessarily provide justice to victims. Therefore, efforts towards restorative justice or restorative justice within the framework of justice for society actually already exist in correctional institutions, although they are still not very prominent. For example, implementing a period and pattern of guidance as an effort to equalize or restore the relationship between children in conflict with the law and victims so that the ABH can be accepted back into their community.

Based on the descriptions above, the author can broadly conclude that the essence of resolving traffic accidents using a restorative justice approach or what is often known in the criminal justice system, especially in the Prosecutor's Office, namely restorative justice in law enforcement is an effort to divert from the criminal justice process to a resolution through deliberation and consensus, which is basically the soul and noble values of the Indonesian nation, to resolve a problem or issue in a family way in order to reach a consensus.

This is the most fundamental turning point, namely human welfare and happiness within the framework of justice. Therefore, the author also concludes that the restorative justice

approach is a legal breakthrough step in developing non-custodial efforts or a step based on local wisdom that exists and grows in the life of society, nation and state. At this point, the essence of restorative justice is to explore positive values and practices that exist and develop in the life of society that are in line with the enforcement of the meaning of human rights.

The restorative justice approach in resolving traffic accidents at the South Solok District Attorney's Office according to the author's conclusion also aims to prevent traffic accident perpetrators from the criminal process which is sometimes felt to be unable or not yet reflect the values of justice as the core of justice. Thus, efforts to enforce criminal law should not only focus on the consequences of the crime that occurred as the main focus of attention, but what is very important and should not be ignored or underestimated in the law enforcement process in order to ensure the creation of justice for the community are the factors that cause someone to commit a crime or a crime. Thus, the target or objective of the criminal justice process according to the restorative justice perspective is to demand accountability from the perpetrator or perpetrator of the crime for the act and its consequences, namely restoring or restoring to its original state the suffering of the rights of the person who was violated or the victim as in the position before the violation or traffic accident occurred which caused losses to the victim, both in terms of material and immaterial aspects.

3.2. Obstacles and solutions to the implementation of diversion in resolving criminal acts of traffic accidents committed by children in South Solok Regency which lead to restorative justice

Diversion in Article 6 of the SPPA Law aims to achieve peace between victims and children, resolve children's cases outside the judicial process, prevent children from being deprived of liberty, encourage the community to participate, and instill a sense of responsibility in children. In addition, the goal to be achieved in the diversion process is the realization of restorative justice, for children as perpetrators and for victims. Restorative justice is a diversion process, both perpetrators, victims, community counselors and parties involved in traffic accident cases together seek solutions to find the best way to create a situation that can improve, and calm the heart and is not based on retaliation. Based on data on the implementation of Diversion in traffic accident cases involving children as perpetrators that occurred in the jurisdiction of the South Solok District Attorney's Office, it was recorded that not a single case could be resolved through Diversion. Of the number of traffic accident cases involving children as perpetrators, the settlement process through Diversion is carried out less than the Restorative Justice process which is easier than Diversion. In practice, the implementation of diversion often encounters obstacles because the implementation of diversion is a practice of resolving disputes in children that has only recently been implemented in the legal process of the juvenile criminal justice system in Indonesia. Settlement of cases outside the court through deliberation has actually been practiced in Indonesia for a long time, but only in the realm of the criminal justice system, especially in the juvenile criminal justice system. So that in its implementation it often faces various obstacles.

The implementation of Diversion in traffic accident cases carried out by the South Solok District Attorney's Office cannot be separated from various obstacles faced. These obstacles

include the absence of Community Guidance personnel to conduct community research; Lack of community understanding of Diversion; The Diversion Agreement is more oriented towards the satisfaction of the victim's family regarding compensation. The community tends to pay less attention to the essence of the objectives of the Diversion. In determining its agreement, the community, especially the victim's family, tends to focus more on the agreement on the value of compensation compared to the objectives of Diversion which are oriented towards the principle of the best interests of the agreement for the child. So that it has a "transactional" nuance, meaning that the Diversion agreement will occur if the value of compensation proposed by the victim's family is approved by the perpetrator's parents. The actions of the ABH are conveyed and explained in the Diversion forum to be known by all parties present at the Diversion deliberation. Furthermore, the Community Guidance conveys the results of the Community Research on the child's family and social background conditions to be used as a consideration together with the Diversion participants in making decisions. After that, they only listen to the wishes of the perpetrator's parents and the victim's parents/family. Then it resulted in an agreement in the form of parents/guardians willing to provide compensation to the victim in the form of death benefits agreed by both parties, children are given guidance at the Child Welfare Institution (LKSA) to get guidance or returned to parents to be fostered and supervised intensively and supervision and guidance by local community leaders. This is done in order to restore the child's condition after the accident.

4. Conclusion

1. Children are a mandate from God Almighty who are inherent in the dignity and honor of a whole human being. The rights of every child must be upheld without the child asking. ABH cases brought to the court process are only serious cases, they must also always prioritize the principle of the best interests of the child, and the sentencing process is the last resort (Ultimum Remedium) without ignoring the rights of the child. 2. Child cases can be resolved through non-formal mechanisms based on standard guidelines. Forms of non-formal handling can be carried out with diversion as a mediation process facilitated by law enforcement at every level to achieve restorative justice that can be resolved by requiring children in conflict with the law to attend education or training at certain institutions such as other actions carried out with recovery for children and victims, or if forced to punish children's rights must not be ignored. So that in the end non-formal handling can be carried out properly if balanced with efforts to create a conducive justice system. 3. In fact, diversion can also be described as a system where the facilitator regulates the process of resolving the conflicting parties to achieve a satisfactory resolution as restorative justice. The tradition and mechanism of consensus are real manifestations in strengthening the law that has lived in society since long ago. Thus, the core of restorative justice is healing, moral learning, community participation and attention, dialogue, forgiveness, responsibility and making changes, all of which are guidelines for the restoration process in the perspective of restorative justice in accordance with Progressive Theory 4. When all related parties must prepare the facilities and infrastructure to respond and support the implementation of the Child Criminal Justice System Law. There is no other choice, all parties must concentrate and be serious in preparing human resources, facilities and infrastructure to support the Child Criminal Justice System with case resolution through the Diversion mechanism, especially

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law enforcement and the community as the last bastion in the process of resolving children in conflict with the law.

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