

Implementation of Investigation and Investigation of Child Activities of Criminal Accidents in Traffic Accidents

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Abstract.

The purpose of this study was to find out and analyze the implementation of investigations and investigations of child offenders in the hit and run traffic accident. To find out and analyze the obstacles to the Implementation of Investigation and Investigation of Child Accidents in Traffic Accidents and the efforts to overcome them. To find out and analyze the implementation of investigation and investigation problems, the age limit of children who can be accounted for and cannot be in accordance with the law on the juvenile criminal justice system against child offenders. This study uses a sociological juridical approach, with descriptive analysis research specifications. The data used in this study is secondary data obtained through literature study which is then analyzed qualitatively. The results of this study are the Implementation of Investigations and Investigations of Child Perpetrators of Traffic Accidents in Hit and Run are the investigator goes to the scene of the case and takes a photo shoot/takes a photo of the state of the crime scene and then makes a real sketch or picture of a traffic accident on the power of an oath of office. The sketch or drawing has an accident. The obstacles are: The evidence (motor vehicle) driven by the hit-and-run perpetrator does not have a police number. The time of the incident in the case of a hit-and-run accident. Lack of public awareness to witness accidents. The solution is: Look for evidence at the crime scene to the fullest. Provide socialization and education to the community in schools, universities. Make an Emergency Call. Implementation of Investigation and Investigation Problems, Age Limits of Children who can be Accounted for and cannot be in accordance with the Law on the Criminal Justice System of Children Against Child Perpetrators is that the criminal responsibility of children is measured from the level of conformity between the moral and psychological maturity of the child and the delinquency committed by the child, the state of the physical condition, children's mental and social concerns. The existence of an age limit is intended so that there is protection and guidance for children, because children are human resources and become the nation's next generation. Keywords: Accident; Child; Crime; Investigation; Traffic.

1. Introduction

Indonesia is a constitutional state, as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Soehino emphasized that the state is a forum for a nation to achieve the ideals or goals of its nation. The state and law, since then people have been thinking about the goals of the state or society in which it was formed. The aim of the state is to organize the welfare and happiness of its people, or to organize a just and prosperous society.¹

Every child must get coaching from an early age, children need to get the widest opportunity to be able to grow and develop optimally, both physically,

¹Soehino, (2005), *Ilmu Negara*, Liberty, Yogyakarta, p.146

mentally and socially. Moreover, childhood is a period of formation of character, personality and character of a human being, so that their lives have strength and ability and stand strong in life.²

Road Traffic and Transportation has a strategic role in supporting development and national integration as part of efforts to promote public welfare as mandated by the 1945 Constitution of the Republic of Indonesia so that roads are one of the most supportive infrastructures for the needs of people's lives for the smooth running of the community in carrying out a daily activity, because the highway as a means for humans to establish relationships between places, by using motorized vehicles or other vehicles. Driving by car or by motorbike in big cities that have super busy traffic flows, of course, is not easy and comfortable.

Traffic in Indonesia is regulated in laws and regulations, namely Act No. 22 of 2009 concerning Road Traffic and Transportation, where these regulations are made to ensure security, order and welfare in society which need to be determined regarding prohibited and required actions. Meanwhile, the violation of these provisions is punishable by criminal sanctions. The frequent occurrence of traffic violations, both intentional and unintentional, may be due to the fact that the sanctions imposed on the perpetrators of traffic violations are too light, so it is not surprising that more and more traffic violations are occurring.³

There are some new developments that have not been accommodated by traffic regulations. For example, the various alarms that should be more. Although some rules have been accommodated through Regional Regulations (Perda). Many provisions were left behind due to the development of society, apart from many customary laws, they became unenforceable. For example, the need to survive at night for motorized or motorized vehicles hardly applies to goods and tricycles. Repression against them is almost never carried out, or if it does, it causes an uncomfortable reaction for the officers themselves.⁴

The decline in the image of the National Police in the eyes of the public is an important issue which until now continues to imprison the Police in carrying out their duties and authorities as guardians of security and public order, carrying out law enforcement, and providing guidance, protection and creating security, order and smooth traffic in serving the community.⁵

²Maidin Gulton, (2008), *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak di Indonesia*, Refika Aditama, Bandung, p.1

³Muhammad Dani Hamzah, 2018, *Penegakan Hukum Pada Kasus Tindak Pidana Kecelakaan Lalu Lintas Yang Menyebabkan Hilangnya Nyawa Orang*, Jurnal Daulat Hukum, Vol. 1. No. 1, ISSN: 2614-560X

⁴*Police against Child of Criminal Doer of a Traffic Accident Who Caused Death (Case Study in Traffic Accident of Police Traffic Unit of Cirebon City Police Jurisdiction)*, Jurnal Daulat Hukum Volume 3 Issue 1, ISSN: 2614-560X

⁵Riyanto, Umar Ma'rif and Sri Kusriyah, 2020, *Implementation Of Police Role In Countermeasures Of Traffic Criminal Acts Of Traffic Violations In Efforts To Establish Police Images As Community Guidelines*, Jurnal Daulat Hukum Volume 3 Issue 2, ISSN: 2614-560X

Traffic accidents often occur in people's lives, even the perpetrators are often minors. This is due to a lack of legal awareness and supervision from parents so that children are allowed to drive a motor vehicle before having a driver's license.⁶

The fatality rate of a traffic accident is measured by the consequences of the existing accident. The more victims who die as a result of the accident, the higher the fatality of the traffic accident. This fatality rate is measured by certain coefficients. Similarly, in taking steps to reduce the number of accidents, the fatality rate of an accident must also be reduced, of course by paying attention and prioritizing the safety factor in driving by complying with the applicable rules.⁷

The purpose of this study was to find out and analyze the implementation of investigations and investigations of child offenders in the hit and run traffic accident. To find out and analyze the obstacles to the Implementation of Investigation and Investigation of Child Accidents in Traffic Accidents and the efforts to overcome them. To find out and analyze the implementation of investigation and investigation problems, the age limit of children who can be accounted for and cannot be in accordance with the law on the juvenile criminal justice system against child offenders.

2. Research Methods

This research is a legal research that uses an Empirical Juridical approach or commonly referred to as Sociological Jurisdiction. This research is based on normative legal science (laws and regulations), but does not examine the system of norms in laws and regulations, but observes how the reactions and interactions occur when the norm system works in society.⁸The research specification is a description of the various problems that become the object of research and provides a conclusion that is not general in nature. The data used in this study is secondary data obtained through literature study which is then analyzed qualitatively.

3. Result and Discussion

3.1. Implementation of Investigation and Investigation of Child Perpetrators of Traffic Accident and Run

Every case of a traffic accident that occurs on the highway, of course, has legal consequences for the driver of the vehicle. The legal provisions relating to fatal accidents that result in injury or death of a person are generally the Criminal Code and in particular are regulated in Act No. 22 of 2009 concerning Road Traffic and Transportation. People often think that traffic accidents that cause injuries and deaths are always the absolute fault of the driver of the vehicle concerned.

⁶Preliyanto Puji Utomo, Umar Ma'ruf, and Bambang Tri Bawono, 2020, *Application Of Act No. 22 Of 2009 As A Traffic Accidents Countermeasures Management In The Blora Police Law Area*, Jurnal Daulat Hukum Volume 3 Issue 2, ISSN: 2614-560X

⁷Dadik Purnomo, Jawade Hafid, 2018, *Peran Sat Lantas Polres Rembang Dalam Menekan Angka Kecelakaan Lalu Lintas*, Jurnal Daulat Hukum Vol. 1. No. 1, ISSN: 2614-560X

⁸Mukti Fajar ND and Yulianto Achmad, (2010), *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta, p.47.

Meanwhile, according to the applicable legal theory that a person's fault is seen from the actual incident factor, what factors caused the traffic accident. This can be expressed from the chronology of events,

KUHP, an article that can be used to ensnare motorized vehicle drivers resulting in death in a traffic accident is Article 359 of the Criminal Code, which reads, "Anyone who because of his mistake (negligence) causes another person to die, is threatened with a maximum imprisonment of five years or a maximum imprisonment of five years." Then there are more specific laws and regulations that regulate more specifically, in detail and firmly again about traffic on highways/tolls and traffic accidents, including regulating negligence/negligence in driving a vehicle to cause injury and death, namely Act No. 22 of 2009 concerning Road Traffic and Transportation. In the LLAJ Law.

- "Everyone who drives a Motorized Vehicle due to his negligence causes a Traffic Accident with damage to the Vehicle and/or goods as referred to in Article 229 paragraph (2), shall be sentenced to a maximum imprisonment of six months and/or a maximum fine of IDR 1 million."
- "Everyone who drives a Motorized Vehicle which due to his negligence causes a Traffic Accident with minor injuries and damage to the Vehicle and/or goods as referred to in Article 229 paragraph (3), shall be sentenced to a maximum imprisonment of one year and/or a maximum fine of IDR million."
- "Everyone who drives a Motorized Vehicle due to his negligence causes a Traffic Accident with serious injuries as referred to in Article 229 paragraph (4), shall be punished with imprisonment for a maximum of five years and/or a fine of a maximum of IDR 10 million."
- "In the event of an accident as referred to in paragraph (3) which results in the death of another person, the punishment shall be a maximum imprisonment of six years and/or a maximum fine of IDR 12 million." Of the four elements in Article 310 of the LLAJ Law, it is generally the third element that takes more time to be proven.

Through investigations, law enforcement officers, in this case the police, should have to prove that there was an element of negligence. For the two rules above, if in the case of an accident it results in the death of a person. So according to the law that must be imposed on the driver of the vehicle is a criminal offense regulated in the LJAJ Law, in this case in accordance with the provisions referring to Article 63 paragraph (2) of the Criminal Code which states that, "If an act is included in a general criminal rule, also regulated in special criminal rules, then only the special ones are applied."

Implementing educative criminal sanctions is indeed not easy, many things may become obstacles in its implementation. The basis of criminal law itself is to provide sanctions for perpetrators of criminal acts which aim to provide a deterrent effect for perpetrators of these crimes, by revoking people's rights to their lives, freedoms or property rights. The invasion of these basic rights is

justified in order to preserve society and protect fundamental rights from interference by others.⁹

Sanctions of imprisonment or confinement mostly leave a deep traumatizing effect on a child's development. In the case of children, the sentence of imprisonment is the last option and must be decided very carefully with careful consideration by taking into account the interests of the child that there is no other adequate alternative to rehabilitate children who are perpetrators of criminal law violations. This of course will affect the psychological development of children who commit crimes. According to Bagir Manan, prisons are not the best place to train criminals, instead prisons are often referred to as crime high schools.¹⁰

Regarding the responsibility of the driver who causes traffic accidents, in the community the term "hit and run" is known, namely driving a vehicle and being involved in an accident, but not stopping the vehicle and not providing assistance to the victim. In addition to being subject to Article 310 of the LLAJ Law, the driver who causes the hit-and-run is also subject to Article 312 of the LLAJ Law which reads:

Everyone who drives a Motorized Vehicle involved in a Traffic Accident and with intentionally did not stop the vehicle, did not provide assistance, or did not report a Traffic Accident to the nearest National Police of the Republic of Indonesia as referred to in Article 231 paragraph (1) letter a, letter b, and letter c without good reason, shall be punished with imprisonment for a maximum of 3 (three) years or a fine of a maximum of IDR75,000,000.00 (seven) fifty five million rupiah).

Implementation of the Investigation and Investigation of Child Perpetrators in the Traffic Accident Hit and Run is the investigator goes to the scene of the case and takes a photo shoot/takes a photo of the state of the crime scene and then makes a real sketch or picture of a traffic accident on the power of an oath of office. The sketches or drawings of the occurrence of an accident include: a) Drawings of the road where the accident occurred; b) Drawing of the direction of the vehicle as the cause/subject of the accident; c) Drawing of the direction of the vehicle that is the object of the accident; d) Pictures of the vehicle before the accident, during the keel and after the accident; e) The identity of the vehicle involved in the accident.

3.2. Barriers to the Implementation of Investigations and Investigations of Child Accidents in Hit and Run Traffic Accidents and efforts to overcome them

A hit and run is a collision event, which crashes away leaving the victim.¹¹The act of leaving the victim who was hit by the driver of the vehicle is an inhumane, immoral act and can be said to be a cowardly act. Because when the victim needs

⁹ Ifdal Kasim ed, (2001), *Proses Hukum Bagi Orang yang Didakwa Melakukan Kejahatan, dalam Hak Sipil dan Politik*, Esai-Esai Pilihan, Jakarta, p.180.

¹⁰ Bagir Manan, (2007), *Kekuasaan Kehakiman Indonesia dalam UU No.4 tahun 2004*, Yogyakarta, Press, p. 312.

¹¹ Language Center Dictionary Drafting Team, 2008, *Indonesian Language Dictionary IV Edition*, Language Center of the Ministry of National Education, Jakarta, p. 1582.

help, the perpetrator just leaves the victim. In fact, it is possible that the victim who was hit and run was in a state of light or serious injury, and even died.¹²

The provisions regarding hit-and-run are regulated in Article 312 of Act No. 22 of 2009 concerning Road Traffic and Transportation which reads as follows: Everyone who drives a motorized vehicle is involved in a traffic accident and intentionally does not stop the vehicle, does not provide assistance, or does not report a traffic accident to the nearest Indonesian National Police as referred to in Article 231 paragraph (1) letter a, letter b, and letter c without any justifiable reasons, shall be punished with imprisonment for a maximum of 3 years or a fine of a maximum of IDR 75,000,000, (seventy five million rupiah).¹³

The hit-and-run traffic accident caused significant material and social losses. The hit-and-run case in traffic is a crime that can cause anxiety and raise concerns that are quite disturbing and cause harm to victims and the public who do not know or have been victims of hit-and-run where the perpetrators are not responsible. So the handling of this crime must be handled seriously by the police in order to resolve this violation case.

Barriers to the Implementation of Investigations and Investigations of Child Accidents in Hit and Run Traffic Accidents are:

- The evidence (motor vehicle) driven by the hit-and-run perpetrator does not have a police number or what is commonly found evidence (motor vehicle) is not the name of the first owner, but the perpetrator is the umpteenth owner of the motorized vehicle evidence.
- Time of occurrence in the case of hit-and-run accidents, the time and place of the incident also affect, namely between those that occur during the day and those that occur at night and cases that occur in areas far from community settlements.
- Lack of public awareness to be witnesses to accidents, so they do not provide information which makes it difficult to know what happened. Not many people are willing to take the risk to report a crime if they, their family and their property are not protected from threats that may arise because of Reports done.
- No witnesses.

Efforts to Barriers to the Implementation of Investigations and Investigations of Child Perpetrators in Traffic Accidents in Hit and Run are:

- Look for evidence at the crime scene to the fullest.
- Provide socialization and education to the community in schools, universities by providing knowledge of disciplined traffic procedures, causes of accidents and following traffic standards.
- Make an emergency call so that the community responds quickly in reporting or reporting any accidents that occur, carrying out intensive treatment in traffic accident prone areas by conducting raids, patrols, making traffic signs, and banners that read about traffic.

¹² Ahmad Miftahul Farid, (2012), *"Tabrak Lari Dalam UU No. 22 Tahun 2009 Tentang Lalu Lintas dan Angkutan Jalan Dalam Perspektif Hukum Pidana Islam"*, Program Sarjana Institut Agama Islam Negeri Walisongo, Semarang, p. 4

¹³ Act No. 22 of 2009 concerning Road Traffic and Transportation.

3.3. Implementation of Investigation and Investigation Problems, Age Limits of Children who can be Accounted for and cannot be in accordance with the Law on the Child Criminal Justice System Against Child Perpetrators

There is a minimum age limit and a maximum age limit for the child to be subject to criminal sanctions. The child's age limit is the maximum age grouping as a manifestation of the child's ability in legal status, so that the child changes status to become an adult or becomes a legal subject who can be independently responsible for the actions and legal actions taken by the child.¹⁴In setting the age limit for children, psychologists and some scholars have different views and opinions.

Aristotle (384 – 322 BC) divided the developmental period of 21 years into three septenia (3 periods times 7 years). The division is as follows (Bimo Wologito, 1978:6):¹⁵

- 0 - 7 years, referred to as childhood, playtime.
- 7 - 14 years, childhood, study period or low school period.
- 14-21 years, adolescence or puberty, the transition from children to adults.

The age limit in the legislation when viewed in customary law in Indonesia will be different. Age is not a measure of whether a child is considered an adult or not. In Indonesian customary law, the age limit for being called a child is pluralistic. In terms of the criteria for stating that someone is no longer called a child and has grown up, there are various terms, for example: "*kuat gawe*", "*akil baliq*", "*menek bajang*", and so on.¹⁶In each region in Indonesia, the size of a child's maturity when viewed from the customary law will vary, but in general there are several things that can be used as guidelines to determine the age limit of a child.

In Indonesia, since the Juvenile Court Law was established, it has provided strict limits on the age limit for punishment of children in Indonesia. In Article 4 it is stated that:

- The age limit for juvenile delinquents who can be submitted to the juvenile court is at least 8 years old but has not yet reached the age of 18 years and has never been married.
- In the event that a child commits a crime at the age limit as referred to in paragraph (1) and can be submitted to a court session, after the child concerned has exceeded the age limit but has not yet reached the age of 21 years, it is still submitted to the juvenile court.

If the perpetrator of the crime is committed by a child under the specified minimum age limit or is not yet 8 years old, Article 5 of the Juvenile Court Law affirms that:

- In the event that a child has not reached the age of 8 (eight) years of age, commits or is suspected of committing a crime, then the child may be examined by an investigator.

¹⁴ Maulana Hassan Wadong. (2000). *Pengantar Advokasi dan Hukum Perlindungan Anak*. Grasindo. Jakarta, p. 24

¹⁵ Bimo Wologito. (1978). *Kenakalan Remaja (Juvenile Delinquency)*. Fakultas Psikologi UGM. Yogyakarta, p. 6

¹⁶ Irma Setyowati Soemitro. (1990). *Aspek Hukum Perlindungan Anak*. Bumi Aksara. Jakarta, p. 16

- If according to the results of the examination, the investigator is of the opinion that the child as referred to in paragraph (1) can still be fostered by his parents, guardian or foster parents, the investigator shall return the child to his parents, guardian or foster parents.
- If according to the results of the examination, the investigator is of the opinion that the child as referred to in paragraph (1) cannot be fostered by his parents, guardian or foster parents, the investigator submits the child to the Ministry of Social Affairs after hearing the considerations of the community advisor.

So there are 2 (two) alternatives that can be taken, namely, first if the child can still be fostered then it is handed over to the parents, guardian or foster parents, the second is submitted to the Ministry of Social Affairs if the child can no longer be fostered by the parents, guardian or foster parent. Furthermore, Lela B Cost in stated that:¹⁷ "Children under the age of 7 are under the age of responsibility and therefore cannot be punished".

This grouping is intended to identify with certainty the factors that are the causes of children's responsibility in the following matters:¹⁸

- Authority is responsible for children.
- Ability to carry out legal events.
- Legal services for children who commit crimes.
- Maintenance process grouping.
- Effective coaching.

Based on the age limit above, this means that children who commit crimes under the age of 12 cannot be prosecuted and brought before the court. Article 20 of the SPPA Law and in the event that a criminal act is committed by a child before the age of 18 (eighteen) years and is submitted to a court hearing after the child in question exceeds the age limit of 18 (eighteen) years, but has not yet reached the age of 21 (twenty one).) years, the child is still submitted to the juvenile court.

Implementation of Investigation and Investigation Problems, Age Limits of Children who can be Accounted for and cannot be in accordance with the Law on the Child Criminal Justice System Against Child Perpetrators. The limitation in terms of age will greatly affect the legal interests of the child concerned. The criminal responsibility of children is measured by the level of conformity between the moral and psychological maturity of the child and the delinquency committed by the child, the physical, mental and social conditions of the child are of concern. The existence of an age limit is intended so that there is protection and guidance for children, because children are human resources and become the nation's next generation.

4. Conclusion

Implementation of the Investigation and Investigation of Child Perpetrators in the Traffic Accident Hit and Run is the investigator goes to the scene of the case and takes a photo shoot/takes a photo of the state of the crime scene and then

¹⁷ Shanty Dellyana. (1988). *Wanita dan Anak di Mata Hukum*. Yogyakarta, Liberty. p. 56

¹⁸ Maulana Hassan Wadong. (2000). *Pengantar Advokasi dan Hukum Perlindungan Anak*. Grasindo. Jakarta, p. 26

makes a real sketch or picture of a traffic accident on the power of an oath of office. The sketch or drawing has an accident. The obstacles are: The evidence (motor vehicle) driven by the hit-and-run perpetrator does not have a police number. The time of the incident in the case of a hit-and-run accident. Lack of public awareness to witness accidents. The solution is: Look for evidence at the crime scene to the fullest. Provide socialization and education to the community in schools, universities. Make an Emergency Call. Implementation of Investigation and Investigation Problems, Age Limits of Children who can be Accounted for and cannot be in accordance with the Law on the Criminal Justice System of Children Against Child Perpetrators is that the criminal responsibility of children is measured from the level of conformity between the moral and psychological maturity of the child and the delinquency committed by the child, the state of the physical condition, children's mental and social concerns. The existence of an age limit is intended so that there is protection and guidance for children, because children are human resources and become the nation's next generation.

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