

The Implementation of Diversion against Children Who Became Actors in Traffic Accident Crime Cases

Ardatama Bayu Ramadhan^{*)}

^{*)} Faculty of Law, Universitas Islam Sultan Agung Semarang, Indonesia, E-mail:
ardaa1998@gmail.com

Abstract. *The authentic hadith by Muttafaqun Alaih mentions "Kullu mauludin yuladu" alal fitrah ", every child who is born is pure and clean (fitrah). Child protection is an act of legal guarantee for children. Act No. 11 of 2012 concerning the Juvenile Criminal Justice System presents the concept of diversion and restorative justice which aims to provide protection for children as perpetrators in traffic accident criminal cases. This study aims to find out the implementation of diversion against child perpetrators in traffic crime cases by the Grobogan police traffic accident unit, obstacles encountered by investigators from the Grobogan traffic police traffic unit in carrying out diversion against child perpetrators in traffic crime cases and to find out how investigators Overcoming Obstacles Encountered in the Implementation of Diversion Against Child Actors in Traffic Crime Cases. The research method used in this study is the sociological juridical method. The research specification that the writer uses is descriptive qualitative. Data collection techniques are carried out through an interview process with related parties by going directly to the object.*

Keywords: *Accidents; Crime; Diversion.*

1. Introduction

Children are an integral part of the survival of humans and a nation and state. The presence of children makes one's life beautiful and a blessing from Allah. Every child is protected by the state for survival, growth and development as well as protection from violence and discrimination. The best interests of children should be internalized as the best interests for the survival of mankind. Every child must be guided from an early age, by being given the widest possible opportunity for children to grow and develop optimally both physically and mentally and socially. Guidance for every child must be obtained from an early age, as wide as possible opportunities are needed for children to be able to grow and develop optimally both physically, mentally and socially. More importantly, childhood is a period of

character formation,¹

The authentic hadith by Muttafaqun Alaih states "*Kullu mauludin yuladu 'alal fitrah*", Every child born into the world is in a pure state (fitrah). Children are a mandate and a gift from God Almighty, in whom dignity and worth as a complete human being are attached. Children with all their limitations are helpless, as well as adults (parents) who are the determinants of bright or gloomy fate and the future destiny of children.²

There are two main reasons children must be protected, firstly because children are the next generation of the nation and the future of the nation and secondly children must continue to be protected because community groups are naturally weak. Various laws and regulations have been made to protect children's rights from all forms of violence and discrimination, including children in conflict with the law.

The problem that often arises in children is that elementary to high school children are allowed to drive their own vehicles. Under the relevant regulations, children are not allowed to drive their own vehicles, as there are various tried and tested elements. This is related to the mental condition of children who are bad at controlling their feelings on the road and using good judgment when they get unexpected events. Moreover, in carrying out the responsibility for an activity carried out is still limited.

The most common way of caring for children who struggle with the law is closely related to policing. The first step is policing inspection. Before conducting an exam, an examiner must meet the requirements of a pediatric specialist. In completing the exam, look for evidence and examine the state of the child's experience. Young people are a substitute resource for the state because they cannot be separated from the resilience of the state and the state. According to Gunawan, "Young people play a fundamental role in determining the direction of this country and this country."³

In the Indonesian Constitution, children play an important role which is very expressly stated that the state guarantees the freedom of every child for resilience, development and improvement as well as security from crime and discrimination. Every child must receive training from the start by getting the widest possible opportunity to grow and develop ideally. According to Gultom, "Apart from that, youth is a period of forming one's personality, character and

¹Muhammad Ali al-Hasyimi, *Being an Ideal Muslim*, (Yogyakarta: Mitra Pustaka, 1999), 127

²Abu Sangkan, *Learn from Allah*, (South Jakarta, 2006), 313

³Sunaryati Hartono, *Research on Indonesian Law at the End of the 20th Century*, (Bandung: Alumni, 1994), 105

character, so that one's life has strength and capacity and stands firm in pursuing life.⁴

The state of Indonesia is a state of law, one of the characteristics stated explicitly by Stahl is that a state of law recognizes an acknowledgment of human rights.⁵As a country, Indonesia has a constitution named the 1945 Constitution of the Unitary State of the Republic of Indonesia. In the 1945 Constitution of the Republic of Indonesia, the state framework and system of government of the Republic of Indonesia are regulated by the 1945 Constitution of the Republic of Indonesia which emphasizes that "Indonesia is a unitary state in the form of a republic". It was also emphasized that Indonesia is a constitutional state with people's sovereignty. Thus, the State of Indonesia is a constitutional state, based on democracy and in the form of a unitary republic.⁶

A penal system related to criminal sanctions is one of the rules of the rule of law. Criminal law must be recognized as a law of special sanctions, criminal law can limit human freedom by imposing prison sentences or corporal punishment, even spending human life. Criminal law contains sanctions for violating the rule of law which are far more severe than the consequences of sanctions regulated in other laws.⁷

Criminal itself is a social control institution that is related to and reflects the values and structure of society, so that it is a symbolic reform or a violation of the "common conscience" or collective conscience. Criminal law, which is the punitive style of social control and as a political product, is supposed to be a sublimation of all societal values that are summarized and formulated and implemented by officials in the criminal justice system.⁸

M. Sholehuddin mentions 3 philosophical perspectives on punishment, namely:⁹

1. Existentialism perspective on punishment. Adhering to this view argues that "Individual existence is characterized by freedom. One of the adherents of this view is Albert Camus who said that "Absolute freedom never exists, freedom in its implementation must always be associated

⁴Maidin Gulton, Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia, (Bandung: Refika Aditama, 2008), 1

⁵Maidin Gulton, Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia, (Bandung: Refika Aditama, 2008), 1

⁶Hanif Nurcholih, Theory and Practice of Government and Regional Autonomy, (Jakarta: Grasindo, 2007), 100

⁷Nandang Sambas, Renewal of the Juvenile Criminal System in Indonesia, (Yogyakarta: Graha Ilmu, 2010), 1

⁸Ibid., 4

⁹Marlina, Penitensier Law, (Bandung: Refika Aditama, 2011), 35

with attention to individual freedom. Criminal law is a means to maintain and increase individual freedom in society. The right to guard and maintain that freedom is left to the state to punish.

2. The perspective of socialism in punishment according to this understanding stems from the interests of the state rather than individuals. This understanding was used by the Soviet State where the Soviet criminal law established state interests and ideology as the basis for authority to convict, this view emphasized the state aspect rather than its individual citizens.

3. The perspective is reviewed from the Pancasila perspective. The Indonesian state adheres to this view, the Indonesian philosophy is Pancasila which demands balance and harmony between the interests of the individual, society and the state. Criminal responsibility cannot be immediately distinguished from the perpetrators of crimes because basically the crime itself cannot be separated from the reality of the life of a society. According to this understanding, punishment or Indonesian criminal law must be oriented towards the interests of the individual perpetrators of crime and the interests of society towards victims of crime.

An integrated criminal system as well as various joints of law enforcement unite and the implementation of the system is in accordance with what is aspired to. The responsibility of the criminal system must start from the prevention of crime, the creation of crimes by criminals, and other stages up to the reintegration of criminals as whole human beings in society and the strong role of law enforcement in it.

Discussion of children and their protection will never stop throughout the history of life, because children are the next generation of the nation and the successor of development, namely the generation that is prepared as the subject of implementing sustainable development and controlling the future of a country, including Indonesia. Indonesian child protection means protecting the potential of human resources and developing complete Indonesian people, towards a just and prosperous society materially and spiritually based on Pancasila and the 1945 Constitution of the Republic of Indonesia.¹⁰

According to Hadi Supeno, in general, in the span of the history of human life, there are 2 types of children's values that are dominant in our society, namely children as historical values and children as economic values. Children as a historical value perspective that considers children solely as objects of scope to give vent to the wishes of their parents, children are conditioned from the start to be what their parents want, which results in them losing parental rights which has

¹⁰Nashriana, *Criminal Law Protection for Children in Indonesia*, (Jakarta: PT. Raja Grafindo Persada, 2011), 1

the potential for violence and discrimination to occur. Children are considered an economic value because children will help support the economic life of the family so that it allows a lot of bad social life to occur.¹¹

Protection in society is a benchmark for the civilization of a nation and therefore must be pursued according to the capabilities of the homeland and the nation. Child protection activities are an act of legal guarantee for children. Legal certainty must be sought in the continuity of child protection and preventing abuse that has a negative impact on the implementation of child protection activities. Child protection activities have two aspects, the first relates to policies and laws and regulations governing the protection of children's rights and the second aspect concerns the implementation of these policies and regulations.¹² Special protection for children who commit criminal acts also needs to be included in special laws and regulations that regulate the settlement of child cases.

Children who commit crimes are referred to as children in conflict with the law in Act No. 11 of 2012 in Article 1 number 3, namely children who are 12 years old but not yet 18 years old. Protection for children in the form of national laws and regulations can be seen from the birth of Article 330 BW which provides limits on minors, articles 45,46,47,72 of the Criminal Code, Article 153 explicitly stated by the Criminal Code, Act No. 16 of 2019 concerning Amendments to Act No. 1 of 1974 concerning Marriage, Act No. 4 of 1979 concerning Child Welfare, Act No. 12 of 1995 concerning Correctional Institutions, Act No. 39 of 1999 concerning Human Rights, Act No. 23 of 2002 as amended by Act No. 35 of 2014 concerning Child Protection, Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, Ratification of the Convention on Children's Rights in Presidential Decree No. 36 of 1990 and other regulations. The laws and regulations above are still not qualified in resolving children's handling. One of the weaknesses is that there is no strict regulation of the obligations of law enforcement officials to prevent children from entering formal justice early.

In 2018-2021 at the Grobogan Police, there were 460 traffickers aged 10-20 years. In 2018 there were 109 people and in 2019 there was an increase of 64 people. From 2019 to 2020 there was a decrease of 41 people and from 2020 to 2021 there was another decrease of 86 people. The number of accident perpetrators aged 10-20 years is not yet stable, indicating that minors are still the perpetrators of accidents. This usually occurs due to a lack of parental supervision and the child gets permission from the parents to drive their own vehicle.

Birth of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System gives a

¹¹Hadi Supeno, *Criminalization of Children Offers a Radical Idea of Juvenile Justice Without Punishment*, (Jakarta: PT. Gramedia Pustaka Utama, 2010), 21

¹²Nasriana, *Op. Cit.*, 3

different color related to the legal protection of children in Indonesia. Act No. 11 of 2012 concerning Juvenile Criminal Justice presents the concept of diversion and restorative justice which aims to provide protection for perpetrators of crime, victims and society in general as a form of settlement of cases.

Based on Article 1 number 7 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, diversion is the transfer of settlement of child cases from processes outside of criminal justice. The concept of diversion is based on the fact that the judicial process for children of criminal offenders through the criminal justice system causes more harm than good. The main reason is that the courts have stigmatized the behavior of children for their actions as children are considered evil, so it is better to prevent them from leaving the criminal justice system.

restorative justice is a conflict resolution process by involving parties who have an interest in criminal acts that occur starting from victims, perpetrators, families of perpetrators and victims, the community, and law enforcement officials or other elements deemed important in them to be involved in conflict resolution (Article 1 point 6 of Act No. 11 of 2012). Restoration of justice is a diversion process that aims for recovery not for retribution, but the retributive system is still very familiar to use by law enforcement officials. Both of these concepts in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System should be prioritized in juvenile justice as a settlement of cases before children enter formal justice.

The enactment of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System replaced the position of Act No. 3 of 1997 concerning Juvenile Courts. This is an initiative of the government to provide even better legal protection in line with developments and the needs of society and especially children. Act No. 11 of 2012 concerning the Juvenile Criminal Justice System was ratified on July 30 2012 which was implemented 2 years after being enacted, which means that 2014 was the beginning of the birth of the intended juvenile justice system. It is a big task for legislators to convey the idea of diversion and restorative justice in the midst of a criminal justice system that still adheres to a retributive system.

Criminal law recognizes two types of acts, namely crimes and violations. Crime is an act that is not only contrary to the law but also contrary to moral values, religious values, and society's sense of justice. For example stealing, killing. Violation is an act that is only prohibited by law, such as a driver who does not have a driver's license, a driver who is a minor, and so on.

Explanation of Act No. 22 of 2009 explains that the enactment of Act No. 22 of 2009 concerning Road Traffic and Transportation replaced the old Act No. 14 of 1992, has brought important changes to the arrangement of the National transportation system, traffic and road transport in Indonesia. In this Law, the development of road traffic and transportation is carried out jointly by all relevant

agencies or (stakeholders) as follows:

- a. Government affairs in the field of road infrastructure, by the ministry responsible for roads;
- b. Government affairs in the field of traffic and road transportation facilities and infrastructure, by the ministry responsible for the field of traffic and road transportation facilities and infrastructure;
- c. Government affairs in the field of traffic and road transport industry development, by the ministry responsible for industry;
- d. Government affairs in the field of traffic and road transport technology development, by the ministry responsible for technology; And
- e. Government affairs in the field of registration and identification of motorized vehicles and drivers, law enforcement, operations, traffic management and engineering, as well as traffic education by the Indonesian National Police.

In principle, any violation of the rules of criminal law can be taken by law enforcement officials without any complaints or reports from the aggrieved party. The forms of violations that are often committed by Indonesian people in their daily lives are traffic violations, so that every time an orderly traffic operation is carried out on the main roads by the traffic police, especially traffic violations committed by children.

Traffic violations are included in the scope of criminal law regulated in Act No. 22 of 2009 as a substitute for Act No. 14 of 1992 concerning Road Traffic and Transportation. As regulated in article 105 of the Traffic Law, everyone who uses the road must:

- a. Behave in an orderly manner; and/or
- b. Prevent things that can hinder, endanger the security and safety of road traffic and transportation, or that can cause road damage.

Traffic accidents occur due to an imbalance in the number of vehicles with existing road facilities, especially regarding the expansion of highways.¹³This hampers human activities such as congestion and traffic accidents. One of the triggers for traffic accidents is lack of discipline in driving which shows that there is no good ethics.

Even more so in accidents involving minors, for example the one that occurred in early June 2022. The case of a truck driver who was still a student hit a woman to death at the Grobogan gas station, Central Java.

¹³Soerjono Soekanto (ed), Inventory and Analysis of Traffic Laws, (Jakarta: CV. Rajawali, 1984), 2

Based on the problems above, the authors are interested in further researching the implementation of diversion against children who become perpetrators of criminal acts. So the author wants to write with the title "Implementation of Diversion Against Child Traffic Offenders at the Investigative Level".

2. Research Methods

The approach method used in this study is the sociological juridical method. The sociological juridical approach is research that aims to obtain legal knowledge empirically by going directly to the object. Sociological juridical research, which in other words is a type of sociological legal research and can also be called field research, which examines the legal provisions that apply and what happens in the reality of society, is legal research using secondary data as initial data, which is then followed by primary data in the field or to society.

3. Results and Discussion

3.1. Implementation of Diversion Against Children Who Became Actors in Traffic Accident Crime Cases at Grobogan Police

Immanuel Kant, explained that law is the whole of the conditions under which the free will of one person can adapt to the free will of another, obeying legal regulations regarding freedom.¹⁴The law functions as a protection of human interests, so that human interests are protected, the law must be implemented. The implementation of the law can take place normally, peacefully, but it can also occur due to violations of the law. In this case, the law that was violated must be upheld. It is through law enforcement that this makes reality. In enforcing the law, there are 3 elements that must be considered, namely: legal certainty (*rechtssicherheit*), expediency (*zweckmassigkeit*) and justice (*gerechtigkeit*).¹⁵

Soerjono stated that Law Enforcement is a process that includes the stages of investigation, investigation, prosecution, examination in district court hearings, legal action and execution. In addition, law enforcement also implies the overall activities of law enforcement officers towards upholding the law, justice and protection of human dignity, order and tranquility and legal certainty in accordance with the 1945 Constitution. Law enforcement is associated with protecting society against crime. of course related to the issue of criminal law enforcement. The purpose of enacting criminal law is as a means of criminal politics, namely for "public protection" which is often also known as "social

¹⁴CSTKansil, Introduction to Indonesian Law and Legal Studies, Jakarta: Balai Pustaka, 34

¹⁵Sudikno Mertokusumo, Chapters on Legal Findings, Yogyakarta : PT Citra Aditya Bhakti, 1

defense".¹⁶

The state has many law enforcement agencies, but the state agency that is considered to have the most extensive law enforcement function for civil society is the police. The police are considered as a representation of the state in carrying out escorts to every rule made by the state. Police work is law enforcement work in optima forma, often referred to as the living law because it deals directly with the public and is forced to have the ability to interpret written laws in real life.¹⁷

Article 13 of the Police Law states that the Police is the foremost institution in law enforcement efforts having the authority to include a series of investigations, searches, arrests, examinations and transfer of cases to the prosecutor's office for trial in court. With this sequence of activities it appears that the police is an institution that holds the main function of law enforcement. In addition, the police are also required to serve social purposes in the form of maintaining security and order as well as providing protection, protection and service to the community.

One of the tasks assigned to the police is handling traffic problems, both preventive and repressive. The police are required to maintain traffic order as well as enforce the traffic criminal law. This role is a vital role, so that it is used as a basis for consideration for the formation of Act No. 22 of 2009 concerning Road Traffic and Transportation.

Act No. 22 of 2009 concerning Road Traffic and Transportation is defined as "movement of vehicles and people in road traffic space", while what is meant by road traffic space is infrastructure designated for the movement of vehicles, people and/or goods in the form of roads and supporting facilities.

Normatively, the duties and powers of the police are related to the traffic justice process, including guidance in the field of traffic, investigation of criminal acts in the field of traffic and road transportation. The police also have the authority to conduct an examination of the correctness of information regarding the fulfillment of technical requirements and roadworthiness of motorized vehicles. In carrying out the task of enforcing the traffic criminal law, the Police are subject to special rules for carrying out legal actions. This provision is contained in the Criminal Procedure Code, Act No. 2 of 2002 concerning the Indonesian National Police (hereinafter referred to as the Police Law), the LLAJ Law and the moral rules that serve as guidelines that must be obeyed. Therefore it is impossible for the police

¹⁶Arief Barda Nawawi, *Several Aspects of Criminal Law Enforcement and Development Policy*, Bandung: PT. Citra Aditya Bakti, 11

¹⁷Fachrizal Afandi, *Police of the Republic of Indonesia Resort Malang City in Traffic Accident Cases*, Faculty of Law, University of Brawijaya Malang, 2

to work rigidly because of demands to quickly respond to social phenomena rather than acting rigidly according to written regulations. The Police Law has the authority or authority possessed by the police to carry out deviant acts in accordance with the situation and considerations of conscience.

The Grobogan Police is an agency that is in charge of and responsible for securing and protecting every citizen in its jurisdiction. In accordance with their respective functions and duties, each function also has different responsibilities. In handling various matters concerning traffic (traffic administration (services for SIM, STNK, BPKB), information (signs and markings), accidents and crowds on the highway) is the responsibility of the Grobogan Police traffic unit (Satlantas).

Brigadier Dian Dwi Septianingrum explained that from 2018, the number of accident cases in Grobogan Regency reached 521 cases with 163 deaths and 533 minor injuries. This number is higher than in 2019 where there were 718 cases with 146 deaths and 772 minor injuries, while in 2020 there were 554 cases with 123 deaths and 578 minor injuries.

Table1. Traffic accident data at the Grobogan Police

YEAR	AMOUNT
2018	521
2019	533
2020	718

Source: Grobogan Police

In a criminal case, especially concerning traffic, criminal sanctions are imposed in a judicial process, starting from the stage of investigation, prosecution to trial. According to the view of the theory of Utilitarianism or Consequentialism in the Ethical Theory of Legal Punishment, an action is morally justified only insofar as its consequences are positive for as many people as possible. Punishment as an action against someone who violates the law can be morally justified not primarily because the perpetrator of the crime or violation has been proven guilty against the law, but because the punishment has positive consequences for the convict, the victim and also other people in society.

The traffic unit (Satlantas) of the Grobogan Police in dealing with accidents adheres to procedures according to applicable regulations. Every action taken by officers must be based on existing procedures. The procedures for handling traffic accidents are based on the Republic of Indonesia National Police Regulation No. 15 of 2013 concerning How to Handle Traffic Accidents, namely:

- a. Arrive at the scene immediately;
- b. Helping victims;
- c. Take the first action at the scene of the case;
- d. processing the crime scene;
- e. Manage the smooth flow of traffic;
- f. Securing evidence; And
- g. Conduct case investigations.

Brigadier Dian Dwi Septianingrum said that the handling of accidents by the police is a service provided to people in need. Accident handling swiftly and swiftly in an accident is a demand that must be met by officers, in order to get a better image in society.

According to First Brigadier Dian Dwi Septianingrum, in principle, any violation of criminal law rules can be taken by law enforcement officials without any complaints or reports from the aggrieved party. The forms of violations that are often committed by Indonesian people in everyday life are traffic violations. So that every time an orderly traffic operation is carried out on the highway carried out by the traffic police (Polantas), there are bound to be many cases of traffic violations, especially traffic violations committed by children.

According to First Brigadier Dian Dwi Septianingrum, the Police in carrying out their duties must always be guided by the law and provide legal sanctions to violators, but it is also possible for the police to take action to free a violator from the legal process, such as the discretionary authority of the police as stipulated in Article 18 paragraph (1) and (2) Act No. 2 of 2002 concerning the Indonesian National Police, the article reads that for the public interest, Indonesian National Police officials in carrying out their duties and authorities can act according to their own judgement. Implementation as referred to in paragraph 1 can only be carried out in very necessary circumstances by taking into account laws and regulations as well as the Indonesian National Police Professional Code of Ethics.

The definition of Handling Traffic Accidents according to Article 1 number 5 of the Regulation of the Head of the National Police of the Republic of Indonesia No. 15 of 2013 concerning Procedures for Handling Traffic Accidents, which means a series of activities carried out by Polri officers in the field of traffic after a traffic accident on the road which includes activities to visit the TKP immediately, help the victim, take the first action at the TKP, process the TKP, regulate the smooth

flow of traffic, secure evidence, and conduct Traffic Accident investigations.

A traffic accident is an event caused by negligence where the incident can actually be prevented. Prevention can start from the correct traffic accident investigation process starting from the TKP to the P-21 process (submission of files), correct data collection, accurate analysis and through consistent implementation of traffic accident analysis (Traffic Accident Analysis). Implementation of Traffic Accident Analysis is used to determine the accuracy of the causes of accidents from various aspects: humans, vehicles, roads or the environment. Based on the Traffic Accident Analysis activity, the Traffic Unit will be able to reconstruct accident cases that have caused many victims,

The Republic of Indonesia Police in accordance with Republic of Indonesia Act No. 22 of 2009 concerning Road Traffic and Transportation (LLAJ) is the right of the police to enforce and carry out these regulations as they should. According to Satjipto Rahardjo, the ideal police figure throughout the world is a policeman who is compatible with society.¹⁸With this principle, society expects police to be compatible with their community, who change from antagonistic police (police who are insensitive to these dynamics and carry out a policing style that is contrary to their society) to police who are protagonists (open to the dynamics of societal change and willing to accommodate them to in their duties).

Traffic violations as conveyed by the Law Enforcement Unit (Gakkum) of Satlantas Ipdpa Pandu, accident investigators at the Grobogan Police Traffic Unit, gave an example that in early June at the Kaliceret gas station, Grobogan Regency, a truck driver with the initials DDS who turned out to be underage hit a woman with the initials RCF (19 years old) was standing waiting for his friend to refuel. Without any sudden suspicion from behind the truck with number B-9174-RY hit the woman. This incident left the victim with a fracture to the right hip, a fracture to the right thigh, and a lacerated wound to the left leg. Then the victim was taken to PKU Muhammadiyah Gubug Hospital. On the way to the hospital, the victim died.

First Brigadier Dian Dwi Septianingrum explained that in handling the DDS case, when the investigation process was carried out, it turned out that he was still 17 years old. & truck drivers.

For the handling of DDS perpetrators, Iptu Gunawan then reported to Head of Traffic Unit AKP Winarno to further contact the relevant agencies before conducting an examination of DDS perpetrators who were minors so that based on the provisions in Act No. 11 of 2012 concerning the Juvenile Criminal Justice

¹⁸Satjipto Rahardjo, 2000, Towards a Professional Independent Indonesian Police, Jakarta: Labor Foundation, 10.

System, the examination process should be accompanied by parents, Binmas officers from LAPAS and strive for a diversion process at the investigation level.

investigatorLaka Then the AP Aiptu Nadi case explained that based on the Chief of Police Regulation No. 15 of 2013 concerning Procedures for Handling Traffic Accidents, Investigators are given the authority/discretion to provide a better alternative to imprisonment (Diversion) to protect the interests of the child's future. But unfortunately, more law enforcement officers have a legalistic paradigm which is only guided by written law and is on the grounds that they are trained for it. In fact, the law itself also provides flexibility in handling DDS. Nadi explained that not all law enforcement officials have a legalistic paradigm, as evidenced by the many peaceful efforts made by the Grobogan Police Accident Unit and the Women and Children Protection Unit which carried out more action sanctions than criminal sanctions.

The police is the gateway for children who are in conflict with the law, which means that it starts with the arrest, investigation until the child is named a suspect and then detained by the police. For this reason, in carrying out their duties and authorities, the Indonesian National Police must first prepare special police/investigators who have the interest, responsibility, ability, attention and dedication in handling children dealing with the law as agreed in the Joint Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia, the Attorney General. Republic of Indonesia, Head of the National Police of the Republic of Indonesia, Minister of Law and Human Rights of the Republic of Indonesia, Minister of Social Affairs of the Republic of Indonesia, and State Minister of Women's Empowerment and Child Protection of the Republic of Indonesia NUMBER: 166 A/KMA/SKB/XII/2009; NUMBER: 148 A/A/JA/12/2009; NUMBER: B/45/XII/2009; NUMBER: M.HH-08 HM.03.02 Year 2009; NUMBER :10/PRS-2/KPTS/2009; NUMBER : 02/Men.PP and PA/XII/2009 Concerning Handling of Children in Conflict with the Law.

Based on the joint decision signed by the 6 (six) State Agencies, this became the basis for accident investigators, the Grobogan Police then, together with the Women and Children Protection Unit, carried out the investigation process into traffic crimes committed by DDS. Nadi explained that DDS was charged with Article 359 of the Criminal Code concerning Negligence Causing the Loss of Human Life. Article 310 paragraph (2) Act No. 22 of 2009 concerning LLAJ, besides that it also violates Article 359 of the Criminal Code concerning Negligence Causing the Loss of Human Life.

During the process of handling the case that befell DDS, DDS was accompanied by officers from the Purwodadi LAPAS, Suparni explained that his presence in the capacity as a companion was a mandate from Act No. 11 of 2012 concerning the

Juvenile Justice System. This is to ensure that DDS as a child who is in conflict with the law can fulfill his rights as a perpetrator.

Traffic violations that are committed intentionally or by negligence, are required to be held accountable for actions because intentional or negligence is an element of error, which is contained in Article 310 paragraph (2) UULLDAJ. As mandated by Act No. 11 of 2012 concerning the Juvenile Justice System, Iptu Gunawan then tried to provide an opportunity for the DDS family as perpetrators with accident victims caused by DDS's mistake to carry out the diversion process.

One of the manifestations of national law renewal is the creation of new legal provisions needed to meet the demands of societal development, so that they are deemed appropriate and fair. The renewal of the juvenile justice system is the drafting of new laws and regulations because the old laws and regulations, namely the Juvenile Court Law, are deemed no longer appropriate to developments and the legal needs of society and have not comprehensively provided legal protection to children.

Correctional institutions, which were formerly called prisons, are not only inhabited by thieves, robbers, fraudsters or rapists, but also by users, couriers, drug dealers and dealers, as well as gamblers and bookies. Apart from that, with the intensive enforcement of laws to eradicate KKN and other "white collar crimes", the inmates of correctional institutions are also increasingly diverse, including former state officials, bank directors, intellectuals, professionals, bankers, businessmen, who have high professionalism and competence. Inhabitants of correctional institutions also vary widely, both in terms of age and the length of their sentences, from only three months to life sentences and death sentences.

When viewed from the concept of child protection, based on the description above, it can be concluded that imprisonment is not the best solution in deciding children in conflict with the law, considering the negative impact it has on children's development, so diversion is the best effort at this time.

Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, the term restorative justice is known as Restorative Justice, which means a settlement process involving perpetrators, victims, their families and other parties involved in a crime, jointly seeking a solution to the crime and the implication by emphasizing recovery rather than retaliation.

The idea of restorative justice is included in Article 5 of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, that the juvenile criminal justice system must prioritize restorative justice, including:

- 1) Investigation and prosecution of juvenile crimes which are carried out in accordance with the provisions of laws and regulations, unless otherwise stipulated by this law;
- 2) Trials of children conducted by courts within the general court environment;
- 3) Guidance, guidance, supervision, and/or assistance during the process of executing a crime or action and after serving a crime or action.

Suparni explained that the understanding that keeping children away from the criminal justice process is important because this is part of efforts to protect children's rights as stated in the Convention on the Rights of the Child article 37 (b), The Beijing Rules (point 6 and article 11 point (1), (2)), (3), and (4)) are given opportunities for diversion or diversion of cases from the formal justice process.

A child has not fully been able to account for his mistakes. Suspended sentences will be more beneficial than other forms of punishment, while giving a strong warning that the parents/guardians/foster parents will be held accountable for their behavior. Incorrect handling in the process of controlling children, can lead to negative child mentality or psychology and is dangerous for the creation of young generations for the future.

It is undeniable that every traffic accident always causes consequences that can cause harm to oneself and others. The consequences arising from a traffic accident contain a violation which can be resolved in a civil manner, namely by the existence of an amicable settlement and compensation for losses arising from the traffic accident.

Aron explained that peace is an agreement by which both parties, by handing over, promising or withholding an item, end a case that is hanging or prevent a case from arising. By achieving peace, in the event of a traffic accident, peace is not in the nature of a decision taken on the judge's responsibility, but rather in the nature of an agreement between the two parties on their own account.

Table2. The data for the children of the perpetrators of accidents are then at the Grobogan Police

NO	2018	2019	2020	2021
1.	521	718	554	564

Suparni really appreciates the diversion efforts carried out by the Grobogan Police Traffic Accident Investigators in the settlement of traffic crime cases committed

by DDS considering that DDS himself is a minor who in carrying out the investigation process is required by Act No. 11 of 2012, the diversion process must be carried out first. Diversion is a transfer of settlement of cases of children who are suspected of committing certain crimes from the formal criminal process to an amicable settlement between the perpetrators of the crime and the victim facilitated by the family or the community, the child's Community Advisor, the Police, the Prosecutor and the Judge.

Based on Suparni's litmas records, it is known that DDS is a child who has a broken home background because DDS lives with his mother because DDS's father has died. At the time of the incident DDS was carrying out his duties as a truck driver to help earn a living to meet the needs of his family. DDS was unable to escape as he had hit a woman and was confronted by many people.

According to narrative DDS, he was afraid of being caught in a legal case because he didn't have a driver's license, so he wanted to try to run away, but he still felt very guilty for causing harm to other people. DDS said that when he was immediately secured by officers at the Grobogan Police to carry out an investigation by the Laka Then unit, when it was discovered that he was underage the investigator then contacted his mother and requested the arrival of a companion from the Purwodadi LAPAS.

Gunawan explained that during the diversion process the accident investigator then only became an intermediary where the DDS family of the perpetrator of the crime with the victims, namely the victim with the initials RCF which caused the victim to experience a fracture to the right hip, a fracture to the right thigh, and a torn wound on the left leg. . Gunawan also explained that based on Article 7 paragraph (2) diversion must be pursued at the level of investigation, prosecution and examination of child cases at the District Court. The word "must be endeavored" implies that child law enforcers from investigators, prosecutors, and also judges are required to make efforts so that the diversion process is carried out. If they do not carry out diversion, the investigator may be subject to criminal sanctions as stipulated in Article 96 of Act No. 11 of 2012. During the 30 days of its implementation to produce a diversion agreement. This is also different from previous laws and regulations which only imply the implementation of this diversion as an implementation of law enforcement discretion.

The Grobogan Police Accident Investigators together with the Women and Children Protection Unit prioritize peaceful efforts or use diversion methods in handling DDS cases rather than legal processes because it is better to prioritize the best interests of the child.

The implementation of diversion in the investigation process, especially against child perpetrators of Laka Laka Crimes, is not only applied to DDS but has been

applied to all other criminal acts where it is known that the perpetrators are minors. Diversion is carried out with the consideration of fulfilling the provisions in Act No. 11 of 2012 and to provide educative justice for minors. If the peace route carried out by the police does not find common ground between the two parties, then in accordance with the criminal provisions, the examination for the transfer of files to be delegated to the court.

The diversion process in the case of past crimes committed by DDS, explained by Suparni, was carried out through deliberations involving children and parents, victims, social counselors, and Professional Social Workers based on a Restorative Justice approach (Article 8 paragraph (1)). This clarifies the relationship between diversion and restorative justice, in which diversion is a process of restorative justice involving all parties involved. The law on the juvenile justice system prioritizes the consent of victims and/or their families to divert.

Settlement by diversion in the DDS case was finally achieved after the DDS family was willing to give responsibility for the perpetrator's actions. After there was a peace agreement and a diversionary settlement, the Police Chief through the Head of Traffic and the Grobogan Traffic Police investigators then issued an SP3 (Instruction to Stop Case Examination) in the DDS case.

3.2. Obstacles Encountered by Investigators from the Traffic Accident Unit of the Grobogan Police in the Implementation of Diversion Against Children Who Become Perpetrators in Traffic Accident Crime Cases

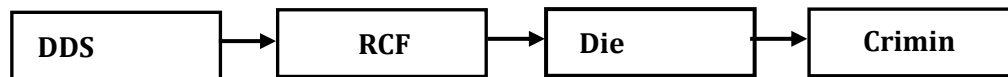
Criminal liability can only occur if someone has previously committed a crime. When can someone be said to be responsible? A person can be responsible if that person is able to distinguish between actions, is able to determine the will to perform an action and is aware of the actions he has committed.

Mistakes not only determine whether or not the perpetrators' actions can be held accountable, but also the perpetrators can be punished. The mistake that determines the accountability of the perpetrator is the perspective of the mistakes made by the perpetrator. While the mistakes that determine the punishment of the perpetrator is a future perspective, in this case the future of the perpetrator. Errors must be linked to both the preventive function and the repressive function of criminal law. The preventive function refers to the accountability of the perpetrator's actions. To formulate the guilt of the perpetrator (unlawful nature) in criminal law. Meanwhile, the perpetrators' punishment can be directed at the repressive function of criminal law, in this case the perpetrator's mistakes become the basis and measure for the imposition of punishment on the perpetrators of criminal acts.

Traffic accidents committed by children that cause the loss of other people's lives

or injuries include criminal acts in the category of violations that can be resolved peacefully and can also be resolved peacefully.

Below can be shown the accident chart as follows:



The chart above can be explained that the driver's DDS, RCF is a victim. The chart explains that the DDS truck driver hit a woman with the initials RCF causing her to die. In a reality like this, an act arises, namely a criminal act.

Criminal acts in the form of injuries to the point of death suffered by RCF can be resolved in court, but before the investigation process is carried out the Police first bring together the families of the two parties involved to make peace (carry out a diversion process). This is done solely not to defend the perpetrators of these violations but to see how the physical, mental and social development and the future of the child (perpetrator) if resolved criminally. If the peace route carried out by the police does not find common ground between the two parties, then in accordance with the criminal provisions, an examination for the transfer of files to be transferred to court will be carried out.

Gunawan explained that Polri as a law enforcement apparatus is given a mandate by law to enforce the law, on the other hand Polri is also given space to carry out police discretion based on its own judgment for the public interest.

Suparni revealed that there were obstacles faced by the police during the DDS case diversion process, namely that there were victims' families who actually did not want to forgive the perpetrators because the losses suffered by the victims were very large. So that the victim's family demands a fairly large nominal compensation where the perpetrator's family who comes from an ordinary family finds it difficult to meet the demands of the victim's family. To overcome this obstacle, Suparni provided an alternative solution that the peace that was reached in the settlement of the DDS case would not necessarily make DDS free from responsibility, but DDS would be subject to the obligation to provide the agreed compensation and participate in social work according to the provisions determined by the Purwodadi LAPAS office. fortunately this proposal was accepted by the family.

Gunawan also revealed that another obstacle faced by investigators in the diversion process was that there was still a negative stigma from society, especially victims towards law enforcement officials in applying the concept of restorative

justice, because not a few victims had negative prejudice against investigators/assisting investigators who wanted to resolve criminal cases that befell them. through peaceful means with the perpetrators, many victims thought that the investigators were defending and paid for by the perpetrators.

3.3. Efforts of Investigators from the Traffic Accident Unit to Overcome Obstacles in the Implementation of Diversion Against Children Who Become Actors in Traffic Accident Crime Cases

According to Gunawan, the implementation of diversion by Indonesian National Police investigators, especially related to diversionary settlement of criminal cases where the perpetrators are minors according to Gunawan, cannot always be carried out properly, this is because there is still negative prejudice towards the Indonesian Police investigators/assistant investigators who want to resolve criminal cases that befell victims. through peaceful means with the perpetrator, it is not uncommon for the victim/victim's family to think that the investigator is defending and being paid by the perpetrator.

To overcome the obstacle of negative perceptions of the Police regarding the diversion process of the Laka Then crime case with children as perpetrators, what investigators did according to Gunawan was to hand over the implementation of mediation to be carried out by the DDS family with the families of the victims with the help of Mrs. Suparni from LAPAS Purwodadi as the mediator between the parties in deliberation.

Regarding the constraints that there are still many negative perceptions, according to Suparni, various efforts need to be made to socialize the handling of children with legal conflicts through the Restorative Justice model. This underlies the values in the convention on the rights of the child, namely the welfare approach, in which young offenders are as far away from the process of punishment as possible by the criminal justice system.

Gunawan explained that one of the effective ways of implementing diversion was that the police had to create a special team that had been trained in dealing with crimes committed by children, both ordinary crimes and past crimes. So that the Police can directly handle the problem and mingle with the community. So that they can know directly the problems that occur in society and find solutions and ways out by using the mediation approach of restorative justice through the diversion mechanism.

Gunawan explained that the implementation of diversion often encountered obstacles, namely the victims who were not willing to reconcile with the perpetrators before the demands for compensation were fulfilled even though it was known that the nominal demands for compensation were difficult to fulfill by

the perpetrator's family. In overcoming these obstacles, the investigator together with the child's companion from LAPAS must provide understanding to the victim's family regarding diversion and the purpose of diversion and punishment related to the offender being a minor.

According to Gunawan, this explanation is intended to avoid negative stigma and negative prejudice from the families of victims and perpetrators that investigators are defending one of the parties. Because based on legal provisions in the process of investigating cases, investigators cannot side with one of the parties because investigators must be guided by the applicable provisions in handling criminal cases, especially those involving minors.

4. Conclusion

The efforts of the Grobogan Police Traffic Accident investigators to overcome obstacles in the diversion process, the investigators handed over the implementation of mediation to be carried out by the families of the perpetrators of the crime with the families of the victims with the help of companions from LAPAS Purwodadi, from the Grobogan Regency Women and Children Handling Network (JPPA), KPAI, Advocates, and RT, RW and Village Head as intermediaries.

5. References

Abd Ar-Rahman Al-Jazairi, *Al-Fiqh Ala Al-Madzahib al Al-Arba'ah*, chapter V, Beirut: Dar Al-fikr. As quoted in Ahmad Wardi Muslich, *Islamic Criminal Law*

Abdoerraoef, *Al-Qur'an and Law Studies*, Jakarta: Crescent Star, 1970

Abdul al-Qadir Audah, II, *Op.Cit.*, p.159. as quoted in Ahmad Wardi Muslich, *Islamic Criminal Law*.

Abdul Aziz Dahlan et al. *Islamic Law Encyclopedia. Volume II*, Jakarta: PT. New Ichtiar can Hoeve, 2001.

Abdul Qodir, *op.cit.*, 774. As quoted in Mahrus Ali, Syarif Nurhidayat, *Settlement of SERIOUS Human Rights Violations In Court System & Out Court System*.

Abdul Qodir, *op.cit.*, p. 774. As quoted in Mahrus Ali, Syarif Nurhidayat, *Settlement of SERIOUS Human Rights Violations In Court System & Out Court System*.

Act No. 1 of 1974 concerning Marriage

Act No. 11 of 2012 concerning the Juvenile Criminal Justice System

Act No. 12 of 1995 concerning Correctional Institutions

Act No. 3 of 1997 concerning Juvenile Courts

Act No. 35 of 2014 concerning Child Protection

Act No. 39 of 1999 concerning Human Rights

Act No. 4 of 1979 concerning Child Welfare

Ahmad Wardi Muslich, Introduction and Principles of Islamic Criminal Law.,
Jakarta: Sinar Graphic, Cet-II, 2006.

Al-Hasyimi, Muhammad Ali. (1999). Become the Ideal Muslim. Yogyakarta: Library
Partners.

Arist Merdeka Sirait et al, Protect Me Who Is Torn to Torn, A Guidebook for
Children in Need Special Protection (CNSP) JK-LPK, Jakarta, 2004

Atsamamita, Romli. (1996). Existentialism and Abolitionism Perspective Criminal
Justice System. Jakarta: Bina Cipta.

Bagir Manan, Law Enforcement in Criminal Cases, www.websitelaw.com,

CSTKansil. (1984). Introduction to Indonesian Law and Legal System. Jakarta: Balai
Pustaka.

Dahlan Thaib, et al. (2010), Theory and Constitutional Law. Jakarta: Rajawali Press.

Djamil, M. Nasir. (2013). Children Are Not To Be Punished. East Jakarta: Sinar
Graphic.

Fachrizal Afandi, Police of the Republic of Indonesia Resort Malang City in Traffic
Accident Cases, Faculty of Law, University of Brawijaya Malang

Government Regulation no. 43 of 1993 concerning Road Infrastructure and Traffic

Gulton, Maidin. (2008). Legal Protection of Children in the Juvenile Criminal Justice
System in Indonesia. Bandung: Refika Aditama.

Hamzah, Andi (1986). Anthology of Criminal Law and Criminal Procedure. Jakarta:
Ghalia Indonesia.

Hamzah, Andi. (2008). Principles of Criminal Law. Jakarta: Rineka Cipta.

- Haraha, M. Yahya. (2009). Discussion of Problems and Application of KUHP (Investigation and Prosecution). Jakarta: Sinar Graphics.
- Hartono, Sunaryati. (1994). Indonesian Legal Research at the End of the 20th Century. Bandung: alumni.
- Ibn Rushd Al-Qurtubi, Bidayah Al-Mujtahid, Juz II, Beirut: Dar Al-Fikr. As quoted in Ahmad Wardi Muslich, Islamic Criminal Law
- Johanes Gea, "Diversion as One of the Best Alternative Solutions for Cases of Children in Conflict with the Law", (Thesis of the University of Indonesia Law Study Program, Depok, 2011), accessed from <http://www.lontar.ui.ac.id/diversion> November 2, 2015 at 20.15 WIB
- KHA Wikipedia, <http://www.wikipedia.org>, accessed on 26 March 2015. Abdul Azis Dahlan et al. Islamic Law Encyclopedia. Volume II, Jakarta: PT Ichtiar Baru can Hoeve, 2001
- Mahrus Ali, Sharif Nurhidayat. (2011). Settlement of Serious Human Rights Violations In Court System & Out Court System. Jakarta: Gratama Publishing.
- Mamudji, Soerjono Soekanto and Sri. (1998). Normative Legal Research A Brief Overview. Jakarta: Rajawali Press.
- Marjono Reksodiputro, "Indonesian Criminal Justice System (looking at crime and law enforcement within the limits of totality)". Speech inaugural acceptance of permanent professorship in law at the Faculty of Law, University of Indonesia, 1993
- Marlina. (2010). Introduction to the concept of diversion and restorative justice in criminal law. Medan: USU Press
- Marlina. (2011). Penitential Law. Bandung: Refika Aditama.
- Marpaung, Leden. (2005). Principles of Criminal Law Practice Theory. Jakarta: Sinar Graphics.
- Mohammad Yakup, Implementation of Police Discretion in the Traffic Unit at
- Moleong, Lexy. (2004). Qualitative Research Methodology. Bandung: PT. Rosdakarya youth.
- Muldi. (2002). Capita Selecta of the Criminal Justice System. Semarang: Diponegoro Publishing Agency.

- Mulyadi, Lili. (2005). *Juvenile Court in Indonesia, Theory, Practice and Problems*, Mandar Maju, Bandung.
- Mulyadi, Mahmud. (2018). *Police in the Criminal Justice System*. Medan: USU Press.
- Nasriana. (2011). *Criminal Law Protection for Children in Indonesia*. Jakarta: PT. King of Grafindo Persada.
- National Police Headquarters of the Republic of Indonesia Police Academy, *Traffic Technical Function*, Semarang: Main Competency, 2009.
- Nawawi, Arief Barda. (1998). *Several Aspects of Criminal Law Enforcement and Development Policy*. Bandung: PT. Image Aditya Bakti.
- Novie Amalia Nugraheni, "Educative Criminal System for Children as Offenders", (Thesis, Master of Law in UNDIP)
- Nurcholis, Hanif. (2007). *Theory and Practice of Government and Regional Autonomy*. Jakarta: Grasindo.
- Poernomo, Bambang. (2002). *In the Principles of Criminal Law*. Jakarta: Ghalia Indonesia.
- Poerwadar Minta. (2002). *Indonesia Dictionary*. Jakarta: Balai Pustaka.
- Polresta Malang Environment, Unpublished thesis*, Malang Faculty of Law, 2002.
- Preamble to the Convention on the Rights of the Child, approved by the General Assembly of the United Nations on 20 November 1989,
- Presidential Decree No. 36 of 1990 concerning Ratification of the Convention on the Right of the Child (Convention on the Rights of the Child)
- Prodjodikkoro, Wirdjono. (2005). *Principles of Criminal Law*. Jakarta: Sinar Graphics
- Saleh, Roselan. (1987). *Indonesian Criminal System*. Jakarta: Bina Literacy.
- Sambas, Nandang. (2010). *Renewal of the Juvenile Criminal System in Indonesia*. Yogyakarta: Science Graha.
- Santos, Topo. (2003). *Grounding Islamic Criminal Law: Shari'a enforcement in Discourse and agenda*, Jakarta: Gema Insani Press.

Satjipto Rahardjo, 2000, Towards a Professional Independent Indonesian Police, Jakarta: Labor Foundation

Singarimbun. Masri and Sofian Effendy. (1995). Survey Research Methods. Jakarta: LP3ES.

S'Lee Arthur Hinsaw II, Juvenile Diversion: An Alternative to Juvenile Court, Journal of Dispute Resolution, Volume 1993, Article 3.

Soekanto, Soerjono. (1984). Introduction to Legal Research. Jakarta: UIPress.

Soekanto, Soerjono. (1984). Inventory and Analysis of Traffic Laws. Jakarta: CV. Eagle.

Sri Endah Wahyuningsih et al, Implementation of Restorative / Restorative Justice in Completion of Traffic Accident Crimes Committed by Children at the Rembang Police, Vol. 12, Khaira Ummah Law Journal, 2017.

Supeno, Hadi. (2010). Criminalization of Children Offers a Radical Idea of Juvenile Justice Without Punishment. Jakarta: PT. Main Library Gramedia.

Wahyudi, Setya. (2011). Implementation of the Idea of Diversion in Reforming the Juvenile Criminal Justice System in Indonesia. Yogyakarta: Genta Publishing.

www.unicef.org/magic/media/.../CRC_language_indonesia_version.pdf. accessed on 28 April 2015.