

## **Related Case Of Current Process Of Claiming Oleh Children Through Restorative Justice In The Way Of Law Polres Binjai**

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### **Abstract**

*Traffic accidents involving juvenile perpetrators often raise controversy in the implementation of criminal law, causing much polemic. The view that the legal process should be carried out and enforced without the rule of law and law enforcement is that the "passage" that includes the delict of guilt, that is, at the time of driving the vehicle to cause the occurrence of an accident and resulting death of the victim, should still be processed legally. The large number of traffic accidents involving minors is a serious concern for parents and governments. The State of Indonesia guarantees a basic principle of the application of the law to the child, which we can see in Article 16, Paragraph 3, of the Act No. 35 of 2014 on the Protection of the Child, which states that "arrest, detention, or criminal imprisonment is only carried out when it is in accordance with the applicable law and can only be done as a last resort. The concept of restorative justice in the settlement of traffic accident cases is intended to realize a shift of the criminal settlement process out of the criminal court process and resolved through the process of divorce. The police action in settling the traffic accident case by a minor child is to begin with the operation of the Place of Evidence of Things (TCP), to make news of the event, to carry out the investigation process, and to give time to the victims and perpetrators to punch. From this process begins the restorative justice, so that if the victim and the perpetrator are willing to peace and the offender is willing to pay damages, the parties make a peace declaration*

**Keywords : Binjai Resort Police, Restorative Justice, Traffic Accident, Child Offender**

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## **INTRODUCTION**

According to Law No. 22 of 2009 concerning Road Traffic and Transportation, in Article 1, paragraph 24, traffic accidents are unexpected and unintentional road events involving vehicles with or without other road users that result in loss of life and/or property. The background for making this regulation is the high number of accidents that occur every day. And by reducing the number of violations, it is hoped that the number of accidents can be reduced and traffic safety will increase. Children as perpetrators of traffic accidents have been the biggest contributors to traffic accidents as of late. This ultimately boils down to guaranteeing protection for children and accountability for the children themselves. By paying attention to applicable positive law and aspects of the child's interests as the perpetrator of traffic accidents on the road, Various efforts have been made, such as using special helmets for motorcycle riders and seat belts for car drivers, but in reality, there are still many traffic accidents to this day. Despite the use of these various protectors, vigilance and awareness of the factors contributing to the accident itself must still support them. The lack of traffic order is something that is striking in Indonesia today. People seem to drive carelessly on the highway, which results in many traffic accidents and quite a few fatalities. Every motorised vehicle driver does not want to obey the signs or markings on the road.

Traffic accident cases involving minors often cause controversy in the application of criminal law, giving rise to many polemics. The opinion that the legal process must continue to be carried out and must be enforced without discrimination (rule of law and law enforcement), because "negligence," which includes the offence of culpability or negligence, namely when driving a vehicle that causes an accident and results in the death of the victim, must still be processed legally. . Many customary laws in Indonesia can be used as restorative justice in an effort to seek peaceful resolution of conflicts outside of court, even though in reality they are still very difficult to implement because their existence is not recognised by the state or codified in national law.

As a result of the criminal justice system, which tends to be offender-oriented, a solution concept outside the criminal justice system is needed. The solution offered is the resolution of criminal cases in the context of restorative justice. The concept of a restorative justice approach is one that focuses more on the conditions for creating justice for perpetrators and victims. The concept of restorative justice is a concept of resolving problems or conflicts that occur by involving parties who have an interest in the criminal act that occurred (victim, perpetrator, victim's family, perpetrator's family, community, and mediator).

Through restorative justice, the basis for the solution is to achieve balance between the victim and the perpetrator of the crime, and then the criminal process can be carried out flexibly so that it is not limited to the need for justice. One such solution is the example of minors. The goal of restorative justice is to restore the consequences of children's violations and efforts to improve children's morals so that children no longer repeat their actions. Imprisoning a child can disrupt his physical, mental and psychological development. In fact, many victims' families demand the most severe punishment because of their unwillingness to give death to those closest to them, even if by chance. Even before peace is achieved, it is very difficult to achieve.

Restorative justice is regulated by Republic of Indonesia State Police Regulation Number 8 of 2021 concerning the handling of criminal acts based on restorative justice. This regulation mandates that the National Police of the Republic of Indonesia must carry out criminal investigations by prioritising restorative justice, which emphasises the restoration and balance of protection and interests of victims and perpetrators of crimes who cannot be punished, which is a legitimate demand of society. This regulation also mandates that the National Police of the Republic of Indonesia has the authority, according to Article 16 and Article 18, to respond to developments in the legal needs of society in accordance with the sense of justice of all parties. According to Law on the State Police of the Republic of Indonesia Number 2 of 2002 concerning the Police, this concept requires a new formulation in the application of criminal law that takes into account the existing norms and values of society as a solution and provider of legal certainty, especially the common good and a sense of justice. The purpose of making this regulation is so that cases that occur, for example, traffic accidents, are resolved using restorative justice in a systematic manner, including peace between the two parties as evidenced by a peace agreement signed by the parties and also the fulfilment of the rights of the victim and the responsibility of the perpetrator in the form of returning goods, compensating for losses, compensating for costs incurred as a result of criminal acts, and/or compensating for damage caused as a result of criminal acts.

Restorative justice is a paradigm shift that provides a solution to handling child delinquency problems. It considers that the criminal justice system does not fulfil substantive justice, so it needs to be taken into consideration in handling child delinquency problems because this approach involves all parties in the resolution process sitting together. deliberation. The aim of restorative justice is to restore what has occurred as a result of child delinquency as well as efforts to improve children's morals so that children no longer repeat their actions. Child imprisonment can disrupt a child's physical, mental and psychological development. In reality,

many of the victims' families demand the most severe punishment because they are unwilling to let someone close to them die in a crash, even if it is done accidentally, so that peace is very difficult for the child to achieve.

Based on data from the Binjai Police, the incidence of traffic accidents by child perpetrators in the jurisdiction of the Binjai Police has decreased from year to year. However, despite this, the settlement of traffic accident cases outside of court has also decreased. The data on traffic accident cases that have occurred, whether they have been prosecuted or processed during the last three years, are as follows:

**Table 1. Data on the Number of Traffic Accident Cases by Child Perpetrators in the Binjai Police Area from 2020 to 2023**

NO	YEAR	NUMBER OF CAUSES	RJ PROCESS
1	2020	67	60
2	2021	46	32
3	2022	35	15
4	2023	24	12

One example of a traffic accident case involving a child perpetrator that occurred at the Binjai Police Station in 2021 resulted in death. Traffic accident on Jalan Diponegoro, which resulted in one perpetrator with minor injuries and one victim dead, namely with the initials KM (16 years) and PT (75 years). This traffic accident occurred when the victim was walking to a shop and was hit by a motorcycle rider who lost control. It is known that the victim is a grandfather suffering from dementia (a term for a disease that affects memory, thinking and the ability to carry out daily activities). After being hit by the grandfather, he became unconscious, was immediately taken to the nearest hospital for first aid, and was reported to have died on the spot. In this case, the child perpetrator applied for a case resolution through restorative justice by the Binjai Police.

The violations that have been committed by the perpetrator. First, negligence in traffic results in traffic accidents with damage to goods or vehicles in accordance with Article 310, paragraph (1) of Law Number 22 of 2009, paragraphs (2) and (3), where paragraph (2) regulates that the criminal act that has been committed is negligence in traffic, which causes accidents with minor injuries and damage to goods/vehicles and paragraph (3) regulates that negligence in traffic causes accidents with serious injuries. The majority of traffic accidents are caused by errors and negligence. human (human error). However, if we study in depth the concept of restorative justice through diversion, the idea of diversion is contained in Article 7 Paragraph 1 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which mandates that at the level of investigation, prosecution and examination of juvenile cases in district courts, diversion must be attempted. This article is contrary to the aim of juvenile criminal justice with restorative justice and does not yet reflect full restorative justice. Law enforcement by the police is closely related to discretion, namely decisions that are not strictly regulated by legal rules.

## RESEARCH METHODS

The nature of the research used by the author in writing this law is descriptive analysis because this research describes in detail the social phenomena that are the subject of the problem. A descriptive study is intended to provide as precise data as possible about people, conditions or other symptoms. The type of legal research is judicious empirical, which, in other words, is a type of sociological legal research and can also be called field research, namely studying applicable legal provisions and what happens in reality in society.

Then, the researcher also determined the data collection method used in this research. Interviews are used as a data collection technique if the researcher is going to carry out a preliminary study to find problems that must be researched, and also if the researcher wants to know things from sources in more depth, which in this case The researcher conducted an interview with the traffic head of the Binjai Police. Lastly, as in normative legal research, the researcher also takes a case approach, where the researcher will take a social problem that occurs in society and then build a legal argumentation construction based on previous logic and legal approaches to see to what extent the relationship between previous approaches and concrete conditions in the field

## **RESULT AND DISCUSSION**

In criminal cases committed by children, Indonesia has special laws that regulate the procedures for resolving child cases, especially in cases where children are perpetrators of crimes. The need for a special regulation is based on the need for legal protection for children, which must be differentiated from crimes committed by adults or legal professionals. This is in accordance with the Convention of the Rights of the Child as ratified by the government through Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention of the Rights of the Child. Article 28B, paragraph 2, of the 1945 Constitution (UUD 1945) states that children are the future of a nation. Protection of children's lives is a form of necessity for a nation to guarantee the rights of every child to be able to live, grow and develop. In criminal cases, children are often found in legal trouble, either as suspects or victims of a criminal act. Criminal cases are generally rigid and take a long time to resolve, so it is necessary to resolve child crimes that have the principle of prioritising the best interests of the child and providing restorative justice.

Based on Article 1, point 3, of the Juvenile Criminal Justice System Law, what is meant by a child in this law is a child in conflict with the law who is 12 (twelve) years old but not yet 18 (eighteen) years old and is suspected of committing a criminal act. The "core" of the juvenile justice system is prioritising restorative justice, namely the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator or victim, and other related parties to jointly seek a fair solution by emphasising restoration back to its original state and not revenge. Based on this, the term diversion appeared in the Juvenile Justice Law. What is a diversion? Diversion, based on Article 1 point 7 of Law No. 11 of 2012 concerning Juvenile Justice, is the transfer of the resolution of children's cases from the criminal justice process to a process outside of criminal justice.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Indonesia does include the principles of restorative justice in handling children involved in the criminal justice system. Restorative justice, or restorative justice, is an approach that emphasizes restoring relationships damaged by criminal acts, not just taking action against the perpetrator. The following are several aspects of restorative justice regulations in this law :

1. This article mandates that the handling of children involved in the juvenile criminal justice system is carried out by considering the principles of restorative justice and children's rights.
2. This article gives the judge the authority to consider community involvement in resolving children's cases. This may include involving families, schools or local communities to reach better solutions.
3. This article states that in handling children in court, the judge may decide to hold a restorative justice conference as an alternative to the formal justice process.

4. This article provides a legal basis for judges to impose educational sanctions and direct children to a better path in life, in accordance with the principles of restorative justice.

According to PERMA 4 of 2014, diversion deliberation is a deliberation between parties involving children and their parents or guardians, victims and/or their parents or guardians, community counsellors, professional social workers, representatives and other involved parties to reach an agreement on diversion through an approach to restorative justice. Meanwhile, the facilitator is a judge appointed by the Chief Justice to handle the child's case in question. Diversion is the transfer of processes to a long and very rigid child-case resolution system. Mediation, dialogue or deliberation is an inseparable part of diversion to achieve restorative justice. Therefore, there is a need for events and procedures in the system that can accommodate case resolution, one of which is using a restorative justice approach through a legal reform that does not just change the law but also modifies the existing criminal justice system so that all objectives that are desired by the law are achieved. One form of restorative justice mechanism is dialogue, which among the Indonesian people is better known as "deliberation for consensus." So diversion, especially through the concept of restorative justice, becomes a very important consideration in resolving criminal cases committed by children.

During diversion deliberations, if the diversion agreement is not fully implemented by the parties based on the report from the community counsellor at the correctional centre, then the judge will continue to examine the case in accordance with the Juvenile Criminal Justice Procedure Law. The judge, in handing down his decision, is obliged to consider the implementation of some of the diversion agreements. If deemed necessary, the diversion facilitator can summon community representatives or other parties to provide information to support the resolution and/or hold a separate meeting (caucus). A caucus is a separate meeting between a diversion facilitator and one of the parties known to the other party. Settlement of juvenile criminal cases through diversion can also be described as a system where the facilitator organises the settlement process of the conflicting parties to reach a satisfactory resolution, as in restorative justice. Traditions and mechanisms for consensus deliberation are a concrete manifestation of strengthening the laws that have existed in society for a long time. Thus, the essence of restorative justice is healing, moral learning, community participation and attention, dialogue, a sense of forgiveness, responsibility and making changes, all of which are guidelines for the restoration process from a restorative justice perspective.

Diversion efforts do not always reach an agreement, but the things that will be considered in the agreement are the articles on the violation committed by the child and the child's age. The idea is that between the victim and the child in conflict who have the potential to not reach an agreement, the Binjai City Police, in assisting with diversion, needs to make every effort possible so that both parties in conflict can reach an agreement on diversion, the result of which will be to avoid child crime. In accordance with the jurisdiction for handling children in conflict with the law, the age limit used for children is in accordance with Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, namely, children are those who have reached the age of 12 to 18 years and have never been married. Meanwhile, there are things that need to be taken into consideration in implementing diversion if you want to reach an agreement, namely: first, the nature and conditions of the action. The first consideration for diversion is the seriousness of the act. Is it light, medium, or heavy? The background of the action can be a consideration for previous violations. If the child has previously committed minor legal violations, diversion and discretion must still be taken into consideration.

Diversion seeks to provide justice in cases of children who have already committed criminal acts and reaches law enforcement officials as law enforcers. The aim of diversion is to avoid detention, avoid being branded or labelled as a criminal, improve life skills for perpetrators so that perpetrators are responsible for their actions, prevent repetition of criminal acts, and

promote necessary interventions for victims and perpetrators without having to go through a formal process. It will also prevent children from participating in the justice system process. This diversion programme will keep children away from the negative influences and implications of the justice process. Differences in understanding regarding guidelines for implementing diversion affect communication between the Binjai City Police and other law enforcers, such as the prosecutor's office. Therefore, cooperation and communication, both formal and informal, are needed regarding the implementation of diversion for children involved in traffic accidents in the jurisdiction of the Binjai Police. In Indonesia, the regulation of diversion is contained in the provisions of Law No. 11 of 2012 concerning the juvenile criminal justice system, namely the transfer of the resolution of children's cases from the juvenile criminal justice process to a process outside the juvenile criminal justice system (Article 1, point 7 of the SPPA Law). The obligation to carry out diversion is regulated in Articles 6 to 15 of the SPPA Law.

Different understandings regarding the handling of children in conflict with the law mean that law enforcers interpret the contents of several articles in statutory regulations differently, giving rise to differences of opinion in how to handle them. If there are often multiple interpretations regarding certain articles in the guidelines for implementing diversion, for example, different interpretations regarding the conditions for carrying out diversion are contained in Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that "diversion is carried out in the event that a criminal offence is committed that carries a penalty of imprisonment of less than 7 (seven) years and is not a repetition of a criminal offence.

## CONCLUSION

Traffic accident cases in the jurisdiction of the Binjai City Police are dominated by accidents caused by children and teenagers. Cases like this are quite difficult to handle because they are hampered by child protection laws and the obligation to pay attention to the child's mental and physical condition. For this reason, the Binjai City Police took a diversion approach to resolve the case through investigation and encourage agreement between the families of the perpetrator and the victim. This is done on the principle of children's rights, which pays attention to children's growth and development. In addition, the strategy for resolving traffic accidents involving child perpetrators using a diversion approach in the Binjai City Police Legal Area is to hold outreach about diversion among the community, an effort to unite thoughts between the victim and the child in conflict with the law in order to reach an agreement and establish intensive communication. with other law enforcement officials.

The obstacle in implementing the resolution of traffic accidents involving child perpetrators in the Binjai City Police Legal Area is the community's understanding of diversion, the thinking between the victim and the party in conflict with the law in order to reach an agreement and different understanding in handling children in conflict with the law, among others. law enforcement officers.

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