



Criminal Responsibility of Underage Drivers Causing Death from the Perspective of Positive Law and Islamic Criminal Law

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Abstract: This research aims to examine the issue of minors driving motor vehicles resulting in death, through two distinct legal perspectives: Islamic Criminal Law and Positive Law. The study specifically focuses on understanding the criminal responsibility of minors under both frameworks, highlighting the contrasting approaches in determining age limits for criminal liability. In Islamic Criminal Law, minors under the age of 15 or 18 are considered not fully responsible, whereas Positive Law holds individuals under the age of 18 and unmarried accountable. This research explores the legal implications of this discrepancy and the phenomenon of minors being accused and detained in legal cases. Additionally, the study addresses the distinction between Positive Law, which operates as a vertical relationship with the state, and Islamic Criminal Law, which represents a horizontal relationship with accountability to Allah. The aim is to analyze how Islamic Criminal Law, often criticized as inhumane or outdated by some, contrasts with the more state-centric Positive Law, especially in a multi-religious and diverse country like Indonesia. The research adopts a normative-empirical legal approach, combining both theoretical legal analysis and empirical investigation to explore these perspectives on criminal responsibility.

Keywords: Accountability, Criminal, Minor

1. Introduction

In the modern era, human activities are greatly assisted by technology that facilitates the movement of each individual. That technology is motor vehicles as a means of transportation, so people do not need to be troubled when traveling. Although it brings numerous benefits, the presence of motor vehicles also brings other consequences, including the provision of adequate roads, the regulation of vehicle movement, and traffic accident issues. In developing countries like Indonesia, awareness of road discipline is still low, resulting in violations by road users. Additionally, there is a phenomenon where many parents currently give personal vehicles to their children who have not yet reached adulthood as permitted by national regulations. Human activities are greatly assisted by modern technology. One of these modern technologies is the existence of motor vehicles as a means of transportation to make it easier for people to travel. Although there are positive aspects, there are also negative sides to motor vehicles, one of which is traffic accidents. In Indonesia, people's awareness of driving is still low, leading to violations by road users, and what is prevalent now is parents allowing their underage children to ride motor vehicles. According to regulations in Indonesia, children under the age of 17 are not allowed to ride motor vehicles. The fatal accident involving Ahmad Abdul Qodir Jaelani Alias Dul, who was only 13 years old at the time, became one of the cases of minors riding motor vehicles. (Anggraeni, 2019)

The issue of traffic behavior has become a common phenomenon in big cities and developing countries. This issue is often associated with the increasing global population and the rise in activ-

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ities on the roads. The rapid increase in the population and the rise in the number of vehicles compared to the development of road infrastructure has resulted in various traffic problems such as congestion and traffic accidents. Law No. 14 of 1992 on traffic and transportation regulates all provisions regarding drivers in Chapter VI Article 18, which states that "every motor vehicle driver is required to have a driver's license." Regarding traffic accidents, it is regulated in Chapter VI, Section Four, Article 28, which states, "motor vehicle drivers are obliged to be responsible for the losses suffered by passengers and/or the owners of goods and/or third parties, which arise due to negligence or mistakes or errors of the driver in operating the motor vehicle." Seeing the traffic problems that often cause many issues in society, including the numerous traffic violations we encounter in daily life, which disrupt public order, especially in the use of transportation (Rahmadi & Ui, 2011).

Traffic violations are the cause of traffic accidents. Especially the human factor as road users who do not comply with traffic regulations. However, aside from human factors, there are also non-human factors such as brake failure, tire blowouts, and others. Law enforcement officials, in this case, emphasize that Article 45 of the Criminal Code stipulates that children under 16 years old who commit criminal acts will be returned to their parents, guardians, or caregivers and will not be subjected to any sanctions. Traffic police play a role as preventers (*politie toezicht*) and as enforcers (*politie dwang*) in their political function. In addition, traffic police also perform regulatory functions, such as regulations regarding the obligation for motor vehicles to be equipped with warning triangles. And the structured function, especially in terms of licensing or granting, is issuing driver's licenses. (Wulandari, 2012)

This research is crucial because it investigates the relationship between law enforcement, parental responsibility, and the increasing trend of underage drivers, which leads to traffic accidents. Recent data shows that teenagers aged 16-19 are three times more likely to be involved in fatal accidents compared to adults, with teen drivers accounting for 8.1% of those involved in fatal accidents in the U.S. in 2021, despite representing only about 6% of the total driving population. In Indonesia, accidents involving underage drivers have also increased, with more than 25% of fatal accidents in several urban areas involving young drivers. While previous studies have focused on traffic violations in general, few have addressed legal loopholes or the role of parents in allowing their children to drive. Additionally, this study aims to explore the socio-economic factors that drive underage driving behavior in developing countries like Indonesia, where law enforcement is often weak. The legal approach used in this research is a comparative legal analysis to assess traffic regulations in Indonesia, such as those outlined in Law No. 14 of 1992, which requires drivers to have a driver's license, as well as provisions in Article 28 concerning driver responsibility. This research will also identify legal gaps and propose recommendations to strengthen regulations to prevent the rise of accidents involving underage drivers.

This research is conducted to determine the punishment for minors who drive motor vehicles resulting in death under positive law and Islamic criminal law. (Rauf, 2021).

2. Materials and Methods

Methodology comes from the words *methodos* and *logos*. *Methodos* means "the way to" and *logos* means "knowledge." So, methodology is simply defined as the science of a way or path to reach a predetermined goal.

a. Research Approach

The type of research used by the author in this study employs a normative-empirical legal approach (normative-empirical). The approach taken is based on primary legal materials by examining theories, concepts, fundamental legal principles, and regulations related to this research. This approach is also known as the library approach.

b. Nature of the Research

The nature of this research is descriptive analysis. Descriptive in nature means that this research is expected to provide a detailed and systematic picture of the problems to be studied. The analysis is intended to be based on the description; the facts obtained will be analyzed carefully to address the issues.

c. Data Source

Primary Data Namely, binding legal materials. Namely, the primary sources of this research are the Qur'an, Hadith, and the Criminal Code (KUHP), while the secondary data Secondary sources obtained from documents in the form of formal notes and by collecting and reviewing various literature such as books, notes, and documents or dictations available in the editorial office. In this research, the author uses textbooks and documents that explain one and/or several legal issues, legal journals, articles, newspapers, and so on.

d. Data Collection Techniques

The data collection techniques were obtained in the form of secondary data and primary data, which were conducted through library research. The data collection method used by the author in this research is the document method. By examining primary bibliographic materials such as the Qur'an, the Criminal Code, and laws. This research uses the Qur'an, Hadith, and the Criminal Code (KUHP) as primary sources because all three provide the foundational legal framework relevant to both Islamic law and national law. The Qur'an and Hadith are the primary sources of Islamic law, offering guidance on moral and legal principles directly related to the research topic, particularly concerning traffic violations and criminal offenses, while the KUHP is the primary source of criminal law in Indonesia, regulating traffic violations and other crimes. This study ensures that the secondary data used is accurate and relevant by selecting credible sources, such as textbooks, legal journals, academic articles, and trustworthy legal documents. These sources were chosen for their relevance to the research topic and their ability to provide necessary insights for analysis. In selecting sources, this study prioritizes credibility, relevance, currency, and comprehensiveness. The Islamic legal analysis technique involves examining the Qur'an and Hadith to identify relevant Islamic legal principles concerning driver responsibility and negligence, and comparing them with Indonesian positive law, such as the KUHP. Using fiqh principles, this research aims to analyze how Islamic law can be applied to contemporary issues, such as underage drivers and traffic accidents.

In addition, to complement the primary data, secondary sources such as Islamic legal rules and positive law, as well as legal works related to traffic accident crimes in Islamic law, are also used.

e. Data Analysis

The data that has been successfully collected through this literature study will subsequently be analyzed qualitatively. Because the data that has been successfully collected is monographic or in the form of case studies, it cannot be organized into a classification structure. (Danielt, 2014)

3. Results and Discussion

3.1 Description of Positive Legal Responsibility Regarding Children's Liability as Traffic Accident Perpetrators

As explained in the previous chapter, juvenile criminal offenses as traffic violators causing death to victims are regulated in Law Number 22 of 2009 concerning Traffic and Road Transportation Article 326. If the violation is committed, it is classified as an offense. Law Number 11 of 2012 concerning the Juvenile Justice System Article 1 point 1 states that the juvenile criminal justice system regulated in Law Number 11 of 2012 is a system concerning the process of resolving cases of "children in conflict with the law." That in the classification of juvenile justice in the Traffic Law as follows:

a. Classification of Minor Offenses

Written in Law No.22 of 2009 article 275 paragraph 1, "anyone who stores materials or objects that they know are intended to commit one of the crimes based on article 264 No.2-5, shall be punished with imprisonment for a maximum of nine months or a fine of up to four thousand five hundred rupiah."

b. Classification of Moderate Violations

Written in Law Number 22 of 2009 concerning traffic and road transportation, Chapter XX on criminal provisions, Article 281 states, "Every person who drives a motor vehicle on the road without a driver's license as referred to in Article 77 paragraph (1), 'Every person who drives a motor vehicle on the road is required to have a driver's license corresponding to the vehicle being driven,' shall be punished with imprisonment for a maximum of 4 months or a fine of up to Rp.1,000,000.00 (one million rupiah)."

c. Classification. Classification of Serious Violation Types Written in the 2009 Law on Traffic and Road Transportation

Chapter XX on criminal provisions, Article 275 states that every person who commits an act that causes disruption to the function of traffic signs, pedestrian facilities, and road user safety devices as referred to in Article 28 paragraph (2) "Every person is prohibited from committing acts that cause disruption to the function of road equipment as referred to in Article 25 paragraph (1)" shall be punished with imprisonment for a maximum of 1 month or a fine of up to Rp.250,000.00 (two hundred fifty thousand rupiah).

That thus, the analysis of the classification of the child as a traffic violator causing the victim's death can be seen as a moderate classification because the child has violated Law Number 22 of 2009 concerning Traffic and Road Transportation Chapter XX on criminal provisions article 281 and article 77 paragraph (1). (Lancang, 2020) (Kurniawan, 2020)

3.2 Criminal Responsibility of Minors as Perpetrators of Traffic Accidents Causing Death

Underage drivers have become a recurring issue in several areas and a shared problem that has yet to find an appropriate solution. Besides violating the law, the risk of accidents poses a threat that must be heeded. The child can be prosecuted based on the actions he/she committed under the Traffic Law Number 22 of 2009 Article 275 and Article 281, which state:

Article 275, Every person who commits an act that causes disruption to the function of Traffic Signs, Road Markings, Traffic Signal Devices, Pedestrian Facilities, and Road User Safety Devices as referred to in Article 28 paragraph (2) shall be punished with a maximum imprisonment of 1 (one) month or a fine of up to Rp. 250,000.00 (two hundred fifty thousand rupiah). Anyone who damages Traffic Signs, Road Markings, Traffic Signal Devices, Pedestrian Facilities, and Road User Safety Devices so that they do not function as intended in Article 28 paragraph (2) shall be punished with imprisonment for a maximum of 2 (two) years or a fine of up to Rp. 50,000,000.00 (fifty million rupiah).

Article 281, Every person who drives a Motor Vehicle on the Road without a Driver's License as referred to in Article 77 paragraph (1), "Every person who drives a Motor Vehicle on the Road is required to have a Driver's License according to the type of Motor Vehicle being driven," shall be punished with imprisonment for a maximum of 4 (four) months or a fine of up to Rp. 1,000,000.00 (one million rupiah). In cases involving children, there is an alternative method for resolving cases through diversion. Diversion is the transfer of a child's case from the criminal justice process to an alternative process outside the criminal justice system. Diversion is carried out to keep children away from the judicial process with the aim of preventing children from being stigmatized as children in conflict with the law. The category of children who can be held criminally responsible are those aged 12 and under 18 years (Kurniawan, 2020).

3.3 Legal Protection for Children as Perpetrators of Traffic Accidents Resulting in Fatalities

The form of legal protection from the government for children in conflict with the law is through the enactment of Law Number 11 of 2012 on the Juvenile Criminal Justice System. In this law, there are alternative methods for resolving cases, which are carried out through diversion. Diversion is the transfer of a child's resolution from the criminal justice process to a process outside the criminal justice system. Diversion is carried out to keep children away from the judicial process with the aim of preventing children from negative stigmatization associated with being in conflict with the law. However, in this case, diversion as regulated cannot be carried out because the conditions for diversion as regulated in Article 7 paragraph 2 of Law Number 11 of 2012, namely being threatened with imprisonment of less than 7 (seven) years and not being a repeat offender, are not met.

Law Number 11 of 2012 on the Juvenile Criminal Justice System was enacted as a replacement for Law Number 3 of 1997 on the Juvenile Court. The Child Court Law aims to protect and nurture children in conflict with the law so that they can have a long future ahead of them and be given the opportunity to undergo rehabilitation, thereby achieving their identity to become independent, responsible, and useful for themselves, their families, society, the nation, and the state. However, in practice, children tend to be positioned as objects and their treatment tends to be detrimental to them. Moreover, the Law on Juvenile Courts is no longer in line with the legal needs of society and has not comprehensively provided special protection to children who come into conflict with the law. Thus, a paradigm shift is needed in handling children who come into conflict with the law,

based on the roles and duties of society, the government, and other state institutions that are obligated and responsible for improving the welfare of children and providing special protection to children who come into conflict with the law.

The formation of the Child Criminal Justice System Law serves as a replacement for the Child Court Law, aimed at achieving a justice system that guarantees the protection of the best interests of children in conflict with the law as the nation's successors. Regarding children who come into conflict with the law, according to Arief Gosita, as quoted by Nashriana, there are several children's rights that must be collectively fought for their implementation, namely:

a. The rights of the victim's child before the trial

The right to receive services due to mental, physical, and social suffering. The right to have their report attended to with a responsive and sensitive follow-up without compensation (cooperative). The right to obtain protection against actions that cause harm, mental, physical, and social suffering from anyone (various threats, persecution, extortion, for example). The right to obtain a companion, advisor in preparing oneself to participate in the upcoming trial with pro bono assistance. The right to obtain facilities to facilitate the examination as a reporter, witness/victim.

b. The rights of the victim's child.

The rights of child victims during the trial The right to receive facilities to attend court as a witness/victim (transport, counseling). The right to receive protection from harmful actions that cause mental, physical, and social suffering (various types of threats, persecution, murder, for example). The right to express opinions, the right to compensation for losses and suffering, the right to request a closed trial. after the trial The right to receive protection against harmful actions, which cause mental, physical, and social suffering, various threats, persecution, and murder, for example.

c. The right to services in the fields of mental, physical, and social well-being.

Regarding cases of traffic violations causing fatalities committed by children. Children have two roles, namely as perpetrators and as victims, considering that the punishment given to children is lighter compared to adults. In the examination process, both investigators, prosecutors, and judges still look at the existing evidence; if the evidence is sufficient, the child is still considered the perpetrator. (Rahmadhan, 2020)

3.4 Criminal Responsibility of a Child as a Traffic Accident Perpetrator Resulting in Death According to Islamic Law

The capacity to bear legal burdens or ahliyah al wujub is the suitability of a person to receive rights and be subject to obligations. The experts in usul divide ahliyah al wuju>b into two levels: Ahliyah al wuju>b na>qishatau refers to the capacity to be subject to law in a limited manner; Ahliyah al wuju>b ka>milahatau refers to the capacity to be subject to law in a complete manner. The suitability of a person to be held accountable for all their actions according to the law is called ahliyah al-ada' or the capacity to perform legal duties. The act can be in the form of speech or actions that have legal consequences. Ahliyah al-ada' consists of three levels, each of which is linked to the age limit of a human being, namely: (a) Adi>m a1. Adi>m al-ahliyahatau completely incapable, which means a person from birth until reaching the age of tamyiz around 7 years old. They are

not burdened by the law because they are considered to lack reason and also do not have the ability to carry it out. (b) Ahliyah al-ada' na>qishah or the ability to perform legal actions in a weak manner, which refers to humans who reach the age of tamyiz (approximately 7 years) until the age of maturity. This weakness is due to their intellect still being weak and not yet fully developed. If connected with the law, some of his actions have been subject to legal consequences while others have not. Actions of a discerning person related to criminal acts that cause harm to others will be prosecuted and required to provide compensation in the form of property and will not be subjected to corporal punishment. Therefore, the punishment of qisas for murder, flogging or stoning for adultery, or amputation for theft is not applied. He is only charged with the blood money for murder or ta'zir, which is imposed on his wealth or his parents. (c) al-ada' ka>milah or capable of acting perfectly according to the law, which means a person who has reached adulthood. (Khoeriyah, 2014).

3.5 Criminal Acts or Offenses That Have Been Established

a. Hudud

The imposition of severe penalties as determined by the Qur'an and Hadith, such as adultery, drunkenness, and apostasy from Islam.

b. Qisas

Imposing the same punishment that the perpetrator inflicted on the victim, for example, if the perpetrator takes someone's life, then he must be executed, unless the victim's family forgives the perpetrator, in which case the perpetrator will only be fined, known as diyat or a fine as a substitute for the punishment. The conditions for the perpetrator to receive the qisas punishment are that the perpetrator is an adult, the perpetrator is not insane or has a sound mind, and the perpetrator is not the victim's parent. The person who was killed has the same status, for example, if a slave kills another slave, then qisas can be imposed.

c. Ta'zir

Punishment that is not determined by Allah in terms of degree and form in the Qur'an and Hadith is left to the discretion of the ulil amri or judge. (Surya, 2019).

3.6 Legal Protection for Children as Perpetrators Causing Victims' Deaths from the Perspective of Islamic Law

Children, according to Islam, have a form of protection, which is preventive in nature so that children do not become naughty. This means that children commit acts prohibited by religion and applicable law; another form of protection is to prevent children from becoming targets of others' crimes. If a child has already committed a crime (becoming a delinquent), then in the view of fiqh, it has been arranged that the child should be given special treatment appropriate to the nature of children. Children who commit mistakes (crimes) are given warnings, advice, guidance, and direction to steer their conscience towards the right path. Threats and warnings are given when the child makes a mistake for the first time.

If mistakes have been made repeatedly, then a punishment needs to be given, but when imposing threats and punishments, one must consider the limits of reasonableness according to the level of psychological development. According to Mahmud al-Khal'awi as quoted by Jamilia Su-

santi, the process of disciplining and punishing children can create new problems. Therefore, both parents must think about the right way to educate their child and the most effective method for administering punishment when the child does something wrong. Punishment is the last resort; punishment should only be given when the child is unaware and continues to make mistakes. Education and punishment with violence will make children stressed, punishment will diminish their spirit, make them lazy, encourage them to lie out of fear of the punishment they will receive, and teach them to deceive. Finally, it instills bad morals in the child. If a child is a victim of crime, then the family, society, and state have the right to provide assistance. In Islam, efforts to rehabilitate (wayward) children are encouraged. The form of handling can be adjusted according to the reasons that cause the child to commit an offense. Especially nowadays, there are many new causes that trigger crimes against children. Examples include the factor of information openness, the factor of technological development, and the factor of the environment.

Regarding children as traffic violators causing accidents that result in fatalities, these children should rightly receive protection to prevent them from becoming delinquent and to ensure they do not commit similar violations again. In addition to preventive protection, they should also receive protection from the crimes of others. Children as traffic violators causing fatalities do not solely commit violations without the negligence or carelessness of their parents. In Islamic law, a child who violates traffic laws and causes a fatal accident is given advice, warnings, and directed not to commit unlawful acts again and to become a good child. However, if the child repeatedly makes mistakes and does so intentionally, then the child can be punished. However, in giving threats and punishments, it is necessary to consider the limits of reasonableness according to the level of their psychological development. (Alfitrah, 2021).

3.7 The Accountability of a Child as a Perpetrator Can Be Compared Between Islamic Law and Positive Law

Islamic legal accountability is the capacity to bear legal burdens or *ahliyah al-wujub*, which is the suitability of a person to receive rights and be subjected to obligations. If a child has committed a crime (becoming a delinquent), then, in the view of *fiqh*, it has been arranged that the child should be given special treatment appropriate to the nature of children. Children who commit mistakes (crimes) are given warnings, advice, guidance, and direction to steer their conscience towards the right path. Threats and warnings are given when the child makes a mistake for the first time. If the mistake has been repeated multiple times, then a punishment needs to be given, but when giving threats and punishments, one must consider the appropriate limits of fairness.

while the responsibility of positive law. The child can be punished based on the actions he committed under the Traffic Law Number 22 of 2009 Article 275 and Article 281. If violated, it can be classified as an offense under the Child Justice System Law Number 11 of 2012 Article 1 point 1, which states that the juvenile criminal justice system regulated in Law Number 11 of 2012 is a system concerning the process of resolving cases of "children in conflict with the law with a prison sentence of under seven years." Whereas detention can only be carried out if the threat of imprisonment is seven years or more. This means that, logically, for a child who undergoes diversion (with a criminal threat of less than 7 years), it is impossible and certainly not permissible to detain them. Detention is only for those with a criminal threat of more than 7 years. (Shelemo, 2023).

4. Conclusions

Criminal Responsibility for Children as Traffic Offenders in Traffic Accidents Causing Death to Victims According to Positive Law and Islamic Criminal Law In positive law, if a child as a traffic violator causes the victim's death, they fall into the category of children who can be held criminally responsible, specifically children aged 12 and under 18 years. Charged under Article 275 or 281 of the Traffic Law. For imprisonment that can be imposed on a child, the maximum duration is ½ (one-half) of the maximum prison sentence for adults. In Islamic law, a child who is mumayyiz will not be subjected to corporal punishment. However, the criminal responsibility will be in the form of a demand for compensation, which will be charged to the property of both parents.

Legal Protection for Children as Traffic Offenders Causing Fatalities from the Perspective of Positive Law and Islamic Criminal Law The form of legal protection from the government for children in conflict with the law is through the establishment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which includes alternative methods for resolving cases through diversion. However, in cases where a child as a traffic offender causes the victim's death, diversion is not carried out. Whereas his position as a victim is taken into consideration by the judge in deciding the case. In Islamic law, child protection is provided to prevent the child from engaging in prohibited actions. In addition, children also receive protection from being targets of other people's crimes. Children who violate traffic rules and cause fatalities are given warnings, advice, guidance, and direction to ensure they move towards the right path. A child as a victim of someone else's crime, then the family, society, and state are obliged to provide assistance.

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