

Empirical juridical review of traffic accident by Underages (study of accident cases in the east banjarmasin region)

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Abstract: Traffic accident is an incident on the road that is unexpected and unintentional involving vehicles with or without other road users which results in loss and/or loss of property. Underage are children under 17 years of age. Most of the traffic violators who are caught in raids are generally dominated by minors and do not have a driver's license (SIM). This study aims to discuss the empirical juridical review of traffic accidents committed by minors (case study of accidents in the East Banjarmasin region). The method used in this research is empirical juridical method. The results of the study show that the sanctions for traffic accidents committed by underage given by the Banjarmasin Police, especially the East Banjarmasin area, are to provide punishment or sanctions and legal processes that take place in cases of violation of the law. In the provisions for imposing action sanctions, based on not being 14 (fourteen) years old as stipulated in Article 69 paragraph (2) of Law No. 11 of 2012 that children who are not yet fourteen (14) years old can only be subject to action sanctions, while the provisions for criminal sanctions given to children based on the age above 12 (twelve) years and up to 18 (eighteen) years. Some of the efforts made by the Banjarmasin Police included making banners containing appeals. Collaborating with Jasa Raharja and the Department of Transportation in socializing the traffic safety awareness program. Visiting schools to provide information about the proper use of vehicles and the need to comply with traffic rules on the roads.

Keywords: Accident, Minors, Banjarmasin

1. Introduction

Highways are an important means for human life because all kinds of human activities today cannot be separated from using highway mobility. Most of the frequent traffic accidents are caused/caused by human error and negligence. Driver/rider disobedience to traffic regulations is the main cause of traffic accidents, in addition to the poor personal character of the driver/rider such as wanting to win alone, not caring about other people so that other people become difficult because of it, besides that, another cause is wanting to win. profit as much as possible even if it means harming other people (Mayasari, 2020)

Article 229 Law no. 22 of 2009 concerning Road Traffic and Transportation (hereinafter referred to as the LLAJ Law) states that: "A traffic accident is an unexpected and unintentional event on the road involving a vehicle with or without other road users which results in loss and/or loss of property. If the violation gives rise to criminal consequences attached to the violation, then the violation is a criminal act."

The criminal consequences referred to in the article above are in the form of criminal prosecution before a court and the imposition of criminal sanctions if proven guilty. Apart from that, the perpetrator can also be sued civilly in the form of compensation for losses suffered by the victim (Henky, 2021) Andi Hamzah, explained that in various types of mistakes, where the person who makes the mistake causes harm to other people, then he must pay compensation. Basically, for every traffic accident that is proven to contain criminal elements based on the provisions of the LLAJ Law, the perpetrator must be legally processed in accordance with the criminal justice process. The mechanism for resolving criminal cases in the LLAJ Law can be seen in Chapter XX concerning Criminal Provisions. This means that all traffic accident cases that meet the criminal elements according to Law no. 22 of 2009 concerning the LLAJ Law, legal processes must be carried

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out in accordance with the criminal justice system which includes: investigation, prosecution, examination and settlement and handover of the case.

In terms of traffic development, it can be positive or negative for people's lives. Traffic development is positive when there are good rules that are implemented in accordance with applicable regulations. Meanwhile, negative is when the rules are not implemented properly so that they can have an impact on traffic safety and security. The risks that are often experienced with motorized vehicles are collisions and accidents which often cause fatalities to humans themselves (Hamdan, 2018)

According to general understanding, a traffic accident is an unexpected and unintentional event involving a vehicle with or without other road users, which results in human and property casualties. Accident comes from the root word *woe*. According to the Big Indonesian Dictionary, *woe* is (always) getting into trouble, misfortune, distress and so on; poor; unlucky, and an accident is an incident (event) that causes someone to suffer harm. (GIN, 2022). Land use conditions, weather and wind conditions and traffic management are some components of the environment that influence the occurrence of accidents. (RYAN, 2020)

One factor in traffic violations is caused by the individual himself, in this case a minor who uses a motor vehicle or drives a motor vehicle. In law no. 22 of 2009 concerning road traffic and transportation is regulated in article 77 paragraph 1 that: "Every person who drives a motorized vehicle on the road is required to have a driving license (SIM) according to the type of motorized vehicle being driven." And to get a SIM it is regulated in article 81 that: "To obtain a driving license as referred to in article 77, everyone must meet the age, administrative, health requirements and pass an exam." (Rohani dkk., 2020). This can be seen from the low level of public awareness which has resulted in an increase in the number of traffic violations that occur. In practice, in the field, it is seen that there are a number of traffic accident cases that are not resolved through court, but are resolved amicably by the parties (Saputra, 2018) "Especially for minor traffic accidents, where a peaceful agreement is reached between the victim and the perpetrator, this agreement is considered as a case resolution process and will end the dispute or problem between the victim and the perpetrator." (Gazali, 2022)

This research was conducted in the Banjarmasin Police area, South Kalimantan. In general, based on the results of preliminary studies, the number of traffic accidents in South Kalimantan has increased during 2019 (Alkaff, 2023). It is stated that traffic accidents have increased due to low traffic awareness among drivers. Based on data from the South Kalimantan Police Traffic Directorate, there were 523 accident cases recorded in 2019. (Rahmani dkk., 2019). Compared to 2018, the number of accidents was only 485 cases. This is of concern to all parties, that traffic accidents have increased significantly (Azizirrahman dkk., 2015). Most of the victims who died from traffic accidents were ordinary citizens and worked as private employees, entrepreneurs and students. There were 375 people who died, while 113 people were seriously injured, in contrast to 753 people with minor injuries.

According to data collected, Banjarmasin traffic accident cases increased during 2019. Cases of traffic accidents that occurred in the jurisdiction of Banjarmasin Police, South Kalimantan during 2019 based on data from the Banjarmasin Police Traffic Unit experienced an increase compared to 2018. Traffic accidents in 2019 with 22 people dying as a result of collisions. Meanwhile, in 2018 there were traffic accidents in this city with 10 people dying. There was an increase in traffic accident cases in 2019, doubling compared to 2018. The increase in the number of accident cases that occurred in the Banjarmasin area in 2019 reached 95 percent. (Simanjuntak, 2020)

Most traffic accidents are caused by human factors or driver negligence when driving, in other words human error. Apart from the number of accidents which has increased during 2019, existing data also shows that violations have also increased (Enggarsasi & Sa'diyah, 2017). Traffic violations: The number of motorists ticketed during

raids in 2019 was 25,058 traffic violators. Meanwhile, in 2018, there were 18,412 traffic violations committed by motorists. Most traffic violators caught in raids are generally minors and do not have a driving license (SIM). (Anisarida & Santosa, 2019)

Every year there are always traffic accidents involving minors in the Banjarmasin Police area. Traffic violations committed by minors are something that should not be tolerated and/or considered trivial where a child is the young generation who is the successor to the nation's ideals who must grow and develop optimally both physically, mentally and in his social environment. Benefits for the field of research to the existing literature on the legal and social aspects of traffic accidents involving minors in Indonesia, especially in the Banjarmasin area. It will provide empirical data and juridical analysis of the sanctions, legal processes, and prevention efforts for minors who cause accidents. It will also identify the gaps and challenges in the current legal system and the implementation of the law no. 22 of 2009 concerning road traffic and transportation. Benefits for the policy and practice, this research will inform and influence the policy and practice of the relevant stakeholders, such as the police, the transportation department, the social welfare agencies, the schools, the parents or guardians, and the minors themselves. It will provide recommendations for improving the traffic safety and welfare of minors and their victims, such as increasing public awareness, enforcing the minimum age requirement for driving, providing educational and mentoring programs for minors and their parents or guardians, and strengthening the collaboration among the stakeholders. Benefits for the society and the environment, this research will have positive impacts for the society and the environment, such as reducing the number and severity of traffic accidents involving minors, enhancing the accountability and responsibility of minors and their parents or guardians, protecting the rights and interests of the victims, and promoting the rule of law and justice.

Based on this description, the researcher wants to examine it more deeply through research entitled "EMPIRICAL JURIDICAL REVIEW OF TRAFFIC ACCIDENT BY UNDERAGES (Study of Accident Cases in the East Banjarmasin Region).

2. Materials and Methods

The type of research used in this research is qualitative. (Sugiyono, 2020) In this research, the research combines normative legal research and empirical legal research. This research uses a case approach method which is carried out by examining cases related to legal issues which are used as topics of discussion in a writing (Patilima, 2005). The regulation that has a correlation with the problem that researchers are studying is Law Number 22 of 2009 concerning Road Traffic and Transportation, which is regulated in Article 1 Number 23 of this law which determines that a driver is "a person who drives a motorized vehicle on a highway that has been have a driving license." The research location in question is the area or place that is the object of conducting the research. The place used as a means of conducting research in Banjarmasin City is the Banjarmasin Police, in this case the East Banjarmasin area. The research variables used are traffic accident data from 2018 to 2023. Meanwhile, the research object is children under the general population. In general, research usually differentiates between data obtained directly from the Banjarmasin Police and from literature studies. Data obtained directly from the Police is called primary data or basic data, in legal research secondary data is also used.

3. Results and Discussion

3.1. General Description of the Traffic Police Unit

Traffic Police Unit is tasked with carrying out traffic tours, traffic community education (Dikmaslantans), registration and identification services for motorized vehicles and drivers, investigating traffic accidents and enforcing laws in the traffic sector. Traffic Police Unit is tasked with carrying out traffic tours, traffic community education, registra-

tion and identification services for motorized vehicles and drivers, investigating traffic accidents and enforcing laws in the traffic sector. Traffic Police Unit in accordance with Article 59 paragraph (3) of the Regulation of the Head of the National Police of the Republic of Indonesia Number 23 of 2010 concerning Organizational Structure and Work Procedures at the Resort Police Level and Resort Police, carries out functions, namely: (1) Police traffic development; (2) Fostering community participation through cross-sectoral cooperation, Dikmaslantans, and assessing problems in the traffic sector; (3) Implementation of police operations in the traffic sector in the context of law enforcement and security, safety, order, smooth traffic (Kamseltibcarlantans); (4) Administrative services for registration and identification of motorized vehicles and drivers; (5) Implementation of highway patrols and enforcement of violations as well as handling traffic accidents in the context of law enforcement, as well as ensuring traffic safety and security on highways; (6) Security and rescue of road users; And (7) Care and maintenance of equipment and vehicles. (Santoso, 2023)

Traffic Police is a part of the National Police that is needed by the community to achieve peace, especially regarding traffic. Services to the community in the traffic sector will affect the quality of people's lives because in modern society like today, traffic is the main factor supporting productivity. The number of problems or disturbances in traffic such as traffic accidents, traffic jams, and criminal acts related to motorized vehicles are problems that disturb society.

3.2 Sanctions for traffic accidents committed by minors given by the Banjarmasin Police, especially the East Banjarmasin area

Based on the research results, it is known that there is an increase in the accident rate from 2018 to 2023 at the East Banjarmasin Police. This is supported by the following statement by Mr. Permadi from the Head of the East Banjarmasin Police Traffic Unit as follows:

"There was an increase in the number of accidents, especially in 2018 to 2019. However, in 2020-2022 there was a decrease due to large-scale restriction factors during the Covid-19 pandemic. "But in 2023 we will start to see an increase again, although it is still in the middle of 2023 because there are no longer restrictions on people's activities, and most people use vehicles on the road to carry out various daily activities."

From this statement it can be seen that there is an increase in the accident rate in the East Banjarmasin Police traffic unit area. This is because people who carry out various economic activities use vehicles for transportation and use roads. Increased use of vehicles on the highway has the potential to increase accident rates because many people, including children under the general age, often do not obey traffic signs. As quoted from the following informant's statement:

"One of the causes of accidents is the lack of awareness of road users to obey traffic signs. Especially children under the general public who often commit traffic violations." From this statement it can be explained that one of the factors that might cause traffic accidents is the lack of awareness of road users, in this case children under the general public, to obey traffic signs so that accidents cannot be avoided. This is supported by the results of distributing questionnaires to 10 informants, namely underage children who use vehicles every day regarding several factors that contribute to accidents involving underage children and to identify steps that can be taken to prevent such accidents so that they can be handled as early as possible so as to reduce accidents in traffic. According to research results, the causes of accidents involving minors include: (1) because underage children do not understand traffic rules due to lack of knowledge in driving. (2) Lack of adult supervision in supervising children. (3) Do not have complete driving requirements and driving license (SIM). In accordance with the formulation in Law Num-

ber 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it is stated that a child is someone who is not yet 18 (eighteen) years old and this also includes children who are in the womb. A child is someone who has not reached the age of 18 or has never been married, and is still under the authority of their parents as long as their authority has not been revoked. Also included in the definition of a child is a child who is still in the womb. Children need to be protected, especially to ensure their growth, their rights as children, and avoid violence and discrimination wherever the child is. (Eleanora & Sari, 2020). In positive law in Indonesia, a child is defined as a person who is not an adult (*minderjarig/ person underage*), a person who is under age or underage (*minderjarig heid/ inferiority*) or also commonly referred to as a child who is under the supervision of a guardian (*minderjarige onder vordij*). Understanding children in relation to children's delinquent behavior is usually done based on age level, meaning at what age level someone can be said to be a child (Bagus dkk., 2021)

The law and legal responsibility for minors involved in accidents is criminal prosecution with rehabilitation supervision by special institutions. The case is not processed according to applicable law and peacefully in a family manner. By giving punishment that is appropriate to the action that has been taken.

In the opinion of respondents who have given answers, there are several things that can cause accidents, namely:

- a. Caused by slippery roads
- b. Not focused
- c. Driving a motorbike recklessly
- d. Lack of knowledge about traffic regulations
- e. Lack of concentration
- f. Not following the rules
- g. Bad weather conditions

Criminal responsibility for a minor, as the subject of the perpetrator who commits a criminal act, means that the child can be held criminally responsible through a separate process that is not the same as processing an adult. This is based on the provisions of Law No. 11 of 2012 in Article 2 in the implementation of the Juvenile Criminal Justice System which is carried out based on the principles of protection, justice, non-discrimination, best interests of children, respect for children's opinions, survival and growth and development of children, guidance and mentoring of children. proportional, deprivation of liberty and punishment as a last resort, and avoidance of retaliation.

In criminal responsibility for minors which is regulated in the Criminal Code and outside the Criminal Code. in the criminal responsibility of children as regulated in the Criminal Code by looking at an act regulated by law. As a basis, it is based on principles relating to criminal responsibility, namely, the principle of legality and the principle of error. (Setyowati dkk., 2018)

One of the factors causing traffic accidents is a lack of supervision by parents and those responsible for giving permission to drive four-wheeled or two-wheeled vehicles without having a driver's license (Yulanda Dewi, 2023) This resulted in a child committing two violations at once, namely not meeting the requirements to drive a vehicle on public roads because he did not have a driver's license, as regulated in Article 77 paragraph (1). These regulations are binding on every driver who will drive a vehicle on the highway. The stated regulations aim to reduce the number of traffic accidents on the road, especially for minors who do not yet have a driver's license. The second violation committed by a child is a criminal violation, because it has taken the life of another person and caused loss of property (Batubara dkk., 2023)

Treatment of children needs to be differentiated because at that time the child's blood, body and soul are undergoing development. Thus, it can be said that the child is in an unstable condition. So there is something different when we talk about children. Children are not adults, therefore they cannot be compared to miniature adults, because

they must be given different treatment, also because children themselves are in their growth period and there must be protection from the start. This is what causes differences in treatment of children. Children's courts were established as a guidance and protection effort in order to ensure the physical, mental and social growth and development of children as a whole, harmonious and balanced. Therefore, provisions regarding the administration of courts for children are carried out specifically. However, the applicable procedural law (KUHAP) is also applied in juvenile court proceedings, unless otherwise stipulated in Law Number 3 of 1997.

Juvenile justice is regulated based on Law Number 3 of 1997 concerning Children's Courts, stating that:

- a. The age limit for delinquent children who can be sent to juvenile court is at least 8 (eight) years but they have not reached the age of 18 (eighteen) years and have never been married.
- b. Law enforcement officers who play a role in the child trial process, namely the investigator is the child investigator, the public prosecutor is the child public prosecutor, and the judge is the child judge. (vide Article 1 points 5,6 and 7)
- c. Judges, Public Prosecutors, Investigators and Legal Advisors as well as other officers in juvenile trials do not wear togas or official clothing. (vide Article 6)
- d. To protect the interests of children, in principle, examinations of children's cases are carried out in closed hearings, except in certain cases that can be carried out in open court, for example cases of traffic violations and on-site examinations.

In Law Number 11 of 2012 concerning the child protection system, in the general provisions of Article 1 paragraph (3) it is stated that: "a child who is in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve years old, but not yet 18 years old). (eighteen) years old, who is suspected of committing a criminal act"

There are two countermeasures carried out by the Banjarmasin Police Traffic Unit, namely: preventive countermeasures and repressive countermeasures.

- a. Preventive efforts are efforts made to prevent the occurrence of traffic violations committed by minors. To overcome these traffic violations, the police have an important role. Several forms of preventive efforts carried out by the Banjarmasin Police Traffic Unit include the polsanak program, pks program, Police go to campus program, safety riding program, Kamseltibcar program, traffic park program, saka bhayangkara program, organized community program, unorganized community program ,driving school program. Specifically for minors, the program carried out is the POLSANAK program which aims to introduce traffic etiquette from an early age to children by teaching traffic rules and regulations at school. It is hoped that minors can become pioneers when passing traffic.
- b. Repressive measures, namely countermeasures after a traffic violation occurs. This repressive effort places more emphasis on the penal route. After a violation occurs, action is taken as a legal process. In this case, the Banjarmasin Police give a ticket as an action taken after a traffic violation occurs, the ticket is given according to the violation committed. The traffic violations most often committed by minors are violations of Article 281 of Law no. 22 of 2009 concerning Road Traffic and Transportation, namely regarding driving licenses with a maximum imprisonment of 4 months and a maximum fine of IDR 1,000,000 (one million rupiah) but in practice the Banjarmasin Police do not use the applicable law. Traffic violations regarding driving licenses are subject to a fine of IDR 35,000 (twenty five thousand rupiah).

Children who break the law and cause accidents are not punished criminally but must be given guidance and guidance or entered into a rehabilitation institution. Law enforcement against traffic violations committed by minors takes the form of a sympathetic warning up to the imposition of a ticket. Meanwhile, the countermeasures provided are in the form of preventive and repressive efforts.

3.3 Efforts made by the Banjarmasin Police to prevent traffic accidents committed by minors, especially in the East Banjarmasin area

Several efforts have been made by the Banjarmasin Police, including making banners with appeals to road users to use complete attributes when driving and also obey traffic signs. One effort is to put up banners on roads that are prone to accidents. The Banjar Police Traffic Unit installed banners containing traffic safety appeals at a number of points in areas prone to accidents on Saturday, November 6 2021. These appeal banners were also installed in public places that are easy to see and read by road users so that they are more concerned and more careful and Increase traffic alertness when driving. This activity is an effort to increase public awareness and is expected to reduce the occurrence of traffic accidents. To increase awareness of underage children, the Banjarmasin Police also conducted outreach to schools. One of them is the "Police goes to School Hari Bhayangkara 76th" program. In commemoration of the 76th Bhayangkara Day in 2022, the South Kalimantan Traffic Unit of the Banjar Police carried out the Police Goes To School activity at the Fajar Harapan Social Home for the Blind (PSBN) which is located at Jl. Gen. A. Yani Km.37 Number 08 Sungai Pering Village, Martapura District. This activity aims to provide an understanding of traffic regulations to people with disabilities in order to minimize traffic accidents in the jurisdiction of the Banjar Police.

Apart from that, in other efforts to improve services, the Head of the Banjarmasin Police Accident Unit is also collaborating with Jasa Raharja as follows. Banjarmasin Police Chief Inspector Indra Permadi explained in his interview as follows: "The Banjarmasin police traffic unit also collaborates with raharja services, for example by helping to procure banners, banners containing appeals to motorists to obey traffic"

The Banjarmasin Police Traffic Unit has established a good partnership relationship and is in synergy with Jasa Raharja and also coordinates regarding the acceleration of the issuance of police reports, especially for victims of traffic accidents which are guaranteed by Jasa Raharja. Head of PT Jasa Raharja South Kalimantan Branch, Benjamin Bob Panjaitan, explained that Jasa Raharja's main task is to provide basic protection to traffic accident victims by collecting and managing funds from the community, namely the Compulsory Passenger Accident Insurance Fund (DPWKP) and Mandatory Contributions to the Road Traffic Accident Fund. (SWDKLLJ). Hopefully, road safety outreach activities for students will have a positive impact on reducing traffic accidents among students. This socialization aims to ensure that students as the nation's next generation always prioritize safety when traveling considering the high number of accidents involving students.

4. Conclusions

Sanctions for traffic accidents committed by minors given by the Banjarmasin Police, especially the East Banjarmasin area. The form of sanctions against minors who take the lives of others is to impose punishments or sanctions. The law and legal responsibility for minors involved in accidents is criminal prosecution with rehabilitation supervision by special institutions. Meanwhile, if the child is under 12 years old, the child cannot be held criminally responsible and be returned to his parents or included in educational, coaching and mentoring programs at government agencies or LPKS in agencies that handle social welfare, both at the central and regional levels. maximum 6 months. Parents and

guardians are responsible for damages, caused by minor children, who reside with them and over whom they exercise parental or guardian authority.

The legal process that takes place in cases of law violations by children is indeed different from cases of law violations by adults, because the rationale for administering punishment by the state is that every citizen is a responsible being and is able to account for all his actions. Children who commit criminal acts cannot be given sanctions or criminal sanctions as long as the child is not yet 12 (twelve) years old. In the provisions regarding the application of sanctions and criminal sanctions to a minor, the judge has the right to determine the severity of the crime that has been committed by the child. In the provisions for imposing action sanctions, based on not being 14 (fourteen) years old as regulated in article 69 paragraph (2) of Law No. 11 of 2012 that children who are not yet fourteen (14) years old can only be subject to action sanctions, while the provisions for criminal sanctions which is given to children aged over 12 (twelve) years and up to 18 (eighteen) years. Based on the description above, the Banjarmasin Police in handling problems involving underage children who commit traffic violations resulting in road accidents are by identifying the child's age first, checking the completeness of the driving license, imposing retributive sanctions and also summoning the parent or guardian, who is responsible for the minor.

Efforts made by the Banjarmasin Police to prevent traffic accidents committed by minors, especially in the East Banjarmasin area. Several efforts were made by the Banjarmasin Police, including making banners containing appeals. Collaborating with Jasa Raharja and the Transportation Department in socializing traffic safety awareness programs. Visiting schools to provide information about the proper and correct use of vehicles and the need to obey traffic rules on the road.

This article implies that the current legal system in Indonesia does not adequately address the issue of traffic accidents committed by minors, especially in the East Banjarmasin area. It also implies that there is a lack of awareness and education among minors and their parents or guardians about the consequences and responsibilities of driving vehicles on the road. Furthermore, this article implies that there is a need for more collaboration and coordination among the police, the transportation department, the social welfare agencies, and the schools to prevent and handle such accidents effectively and humanely.

This article contributes to the existing literature on the legal and social aspects of traffic accidents involving minors in Indonesia. It provides a detailed and comprehensive analysis of the sanctions and legal processes for minors who cause accidents, as well as the efforts made by the Banjarmasin Police to prevent and reduce such incidents. This article also contributes to the policy and practice recommendations for improving the traffic safety and welfare of minors and their victims. It suggests some measures such as increasing public awareness, enforcing the minimum age requirement for driving, providing educational and mentoring programs for minors and their parents or guardians, and strengthening the collaboration among the relevant stakeholders. Some suggestions that can be given are the need to increase public awareness regarding how to drive safely on the road. Especially for underage children who are basically not allowed to drive vehicles if they are under 17 years of age as regulated by law. Regarding underage motorized vehicle drivers, Law No. 22 of 2009 concerning Road Traffic and Transportation, states that drivers can get a driver's license if they meet the minimum age requirement of 17 years.

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