

RECONSTRUCTION OF CRIMINAL LAW POLICY AGAINST TRAFFIC VIOLATIONS BY CHILDREN BASED ON JUSTICE

Kurnianto Seco Hariyono
Anis Mashdurohatun
Widayati
Ahmad Rofiq MA

ABSTRACT

Developing countries such as Indonesia, awareness of order on the highway is still low so that violations are found by road users, especially motorcyclists and car drivers. This is a trigger for a traffic accident. In addition, nowadays it is not only adults who commit traffic violations but also children. Their level of awareness in traffic is still low, it can be seen from Police data that there are still high numbers of junior high and high school students who violate traffic throughout the year. The purpose of this research is to find and reconstruct criminal law policies against traffic violations by children based on the value of justice. The research method in this study uses a constructivist paradigm, with a sociological juridical research approach, descriptive research specifications, primary and secondary data sources, data collection methods using literature studies and field studies, data analysis using qualitative. The results of the study indicate that the weakness in the aspect of legal substance is that traffic law enforcement is more inclined to repressive efforts, where the implementation includes prosecution of traffic violations and investigation of traffic accidents. In the aspect of the legal structure, the certainty of law enforcement officials in handling cases and the speed is still not optimal, this has a more real impact, when compared to an increase in mere negative sanctions. From the aspect of legal culture, not every activity or business that aims to make citizens obey the law results in such compliance. 3) Reconstruction of criminal law policies against traffic violations by children based on the value of justice lies in Article 5 paragraph 1 and Article 10 paragraph two letter d of Law no. 11 of 2012.

Keywords: Reconstruction, Traffic Violations, Children, Justice.

INTRODUCTION

For modern countries like Indonesia, the desire to effectively guarantee the rights of citizens and regulate the orderly state administration has encouraged every country to adopt constitutionalism.¹ Indonesia is a legal state that adheres to the principle of legality in its criminal justice system. The principle of legality is explained in Article 1 paragraph (1) of the Criminal Code which states that "An act cannot be punished, except based on the strength of the provisions of the existing criminal legislation." Before the comparison is made from the sound of the article, it is clear that the principle of legality applies to the criminal justice system in Indonesia, meaning that an act can only be punished if there are rules that regulate the act in advance.

Humans are dynamic creatures and cannot stay silent for long. They always want to move, move, and do activities. In modern times, human activities are greatly helped by the existence of technology that facilitates the movement of each individual. This technology is a motorized vehicle found as a means of transportation, so humans do not have to bother with heat or rain when traveling. Travel time becomes shorter and more enjoyable. Although it brings a number of advantages, the presence of motorized vehicles also brings other consequences including the provision of adequate roads, regulation of vehicle movement, and the problem of traffic accidents. Developing countries such as Indonesia, awareness of order on the highway is still low so that violations are found by road users, especially motorcyclists and cars, for example walking in the opposite direction, crossing red lights and not wearing helmets, this is a trigger for a traffic accident.

The problem of traffic attitude is a common phenomenon in big cities in developing countries. This problem is often associated with the increasing number of urban residents which results in increased activity and density on the highway. Diverse vehicle traffic and the increase in the number of vehicles that are faster than the increase in road infrastructure which results in various traffic problems such as congestion and traffic accidents. Traffic accidents are still a serious problem in developing and developed countries. The death rate according to WHO has reached 1,170,694 people worldwide. This amount is equivalent to 2.2% of all deaths in the world and reaches the ninth of the ten causes of death.

In Law Number 22 of 2009 concerning Road Traffic and Transportation, all provisions regarding drivers are regulated. Article 1 number 23 of this law stipulates that a driver is "a person who drives a motorized vehicle on a highway who already has a driving license". As for the driver's requirements, it is regulated in Chapter VIII, namely Article 7, in Article 80 the same chapter also regulates the classification of driving licenses (SIM) consisting of SIM A, SIM B I, SIM B II, SIM C, and SIM D.

Seeing traffic problems that often cause many problems in society, including the many violations that we can encounter in our daily lives, ranging from violations of traffic signs to existing rules, so that they can disrupt order in society, especially regarding the problem of using the means of transportation.

The cause lies in factors such as drivers and other road users, poor road construction, vehicles that do not meet the requirements, unclear traffic signs, and so on. The highway, for example, is a means for humans to establish relationships between places, using various types of vehicles, both motorized and not. Roads have an important role in the economic, political, socio-cultural, defense, security and legal fields, and are used for the greatest prosperity of the people.

¹ Adhe I smail A, *Constitutionalism Concept in Implementation of Indonesian State Administration*. Journal of Sovereign Law Volume 4 Issue 2, June 2021 ISSN: 2614-560X.

The parties responsible for the safety of road use have made every effort to prevent traffic accidents. Various regulations have been drawn up and implemented along with counseling, the quality of vehicles and roads has been improved, and various activities have been carried out to prevent falls. The main review of traffic regulations is to enhance the smoothness and safety of all traffic on the roads. Identification of the problems encountered on the road revolves around traffic. Traffic problems, conventionally revolve around traffic jams, traffic violations, traffic accidents, patience and environmental pollution. The state of traffic jams means obstacles to the process or movement of road users that occur in one place. Obstacles can occur within reasonable limits, but may be in a relatively short time limit. In addition, the movement of the vehicle may stop altogether or stagnate.

Law enforcement officers, in this case the Traffic Police, act as a deterrent (*politie toezicht*) and as an enforcer (*politie dwang*) in political functions. In addition, the traffic police also perform regulatory functions (for example, regulations regarding the obligation for certain motorized vehicles to be equipped with a safety triangle) and bestuur functions, especially in terms of licensing or startingstiging (for example, issuing a driving license).²

However, most drivers are aware of the dangers faced when driving a vehicle that exceeds the maximum speed. But in reality, not a few drivers who do that. In the face of conflict, a person usually does what is called a displacement which is manifest as a transfer of targets for aggressive behavior. Anxiety arises as a result of a feeling of danger from outside, which is sometimes only an assumption from the person concerned. It is not uncommon for humans to use their defense mechanisms to overcome their worries, such as acting out, in which the individual concerned performs impulsive actions. This kind of behavior can occur in drivers, who then drive their vehicles illegally.

Therefore, it is not an exaggeration to suggest several ways of enforcing traffic rules which, according to experience, will be more efficient. The usual way is called periodic reinforcement (periodic reinforcement) or partial reinforcement (partial reinforcement). This method is applied when certain behaviors are not always rewarded or punished. If a driver is used to taking a certain highway route, then there is a tendency to exceed the maximum speed. This is because the driver considers himself to be familiar with this part of the highway. If at certain places of the road a highway patrol officer is placed, then he does not have the opportunity to violate the maximum speed limit. However, if the placement of officers is done on a regular basis, the driver knows when he has to comply with the regulations and when he can violate these provisions. By applying the method of periodic reinforcement, we want to create an impression on the driver that there are officers everywhere, so that he will be more careful in driving his vehicle, even if officers are sometimes placed on the highway there is an impression that the officer is always there. This method aims to produce well-behaved drivers. The second method is usually called conspicuous enforcement, which usually aims to prevent drivers from driving dangerous vehicles. In this way it is intended as a way to place a police car or other vehicle prominently, so that the driver sees it as clearly as possible. This will usually prevent someone from breaking the rules. "This method aims to maintain the safety of human souls and of course, that both methods require adequate facilities and capable and skilled human resources.

Nowadays, it is not only adults who commit traffic violations but also children who are still, their level of awareness in traffic is still low, it can be seen from Police data that there are still high numbers of junior high and high school students who violate traffic throughout the year. The public must obey the law, because if they do not obey the law, especially if they violate the criminal law, the apparatus can take action. A criminal act is an act that is prohibited by a statutory regulation, where the prohibition is accompanied by the threat of sanctions in the form of certain crimes for anyone who violates the prohibition.³

The police is a subsystem in the criminal justice system that is sufficient to determine the success and work of the entire system in providing services to the public.⁴ The function of the police is one of the functions of the state government in the field of maintaining security and public order, law enforcement, protection, shelter and service to the community.

The data above shows that traffic accidents always occur, even touching tens of thousands of victims. Responding to this problem, the role of parents should be dominant, in many cases we find it so easy for parents to allow their children to drive vehicles and not be limited to the environment where the child lives. But there are some parents who also allow bringing vehicles on the streets, even though if viewed from any perspective it is not justifiable for a student to bring a vehicle because they are not old enough and do not have a Driving License (SIM). Teachers and parents should be firm in addressing this problem that if there are students who do not comply with school regulations, they will be subject to sanctions or need to form a special team with the police to monitor the rules issued by the school. Another concrete action that can be taken is to announce through the media the school students are the most traffic violators.

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that the state of Indonesia is a state of law, implies that all life arrangements of the nation, society and state are based on law. In addition, delinquency and crimes committed by children have been regulated separately in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, along with the provisions governing the protection of children's rights. The implementation of Law Number 11 of 2012, cannot be separated from the Convention on the Rights of the Child (KHA) and Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. Because the purpose of Law Number 11 of 2012 is to respect, protect and fulfill the rights of children, especially children who are in conflict with the law, including children in conflict with the law. Achmad Ali stated that the law is a set of rules or rules that are arranged in a system, which determines what is allowed and what cannot be done by humans as citizens of society in social life, which originates from the community itself or from other sources, which are recognized as valid by the community. the highest authority in the community, and is actually enforced by the citizens of the community (as a whole) in their lives, and if these rules are violated it will give the highest authority the authority to impose external sanctions. In general, it can be interpreted that the purpose of law is the direction or target to be achieved by the law in

² Soerjono Soekanto, 1989, *Suatu Tinjauan Sosiologi Hukum Terhadap Masalah-masalah Sosial*, Citra Aditya Bakti, Bandung, page. 58

³ Ardito, Y P, Umar Ma'ruf dan Aryani Witasari. *Implementation of Criminal Action Prosecution Online in Realizing Principle of Fast Prosecution, Simple & Low Cost*, Jurnal Daulat Hukum, Volume 4 Issue 2, June 2021 ISSN: 2614-560X.

⁴ Nurfiti A T, Sri Endah Wahyuningsih dan Arpangi. *The Police Role in Investigating the Crime of Child Murder as a Result of Infidelity Relationships*. Law Development Journal ISSN : 2747-2604 Volume 3 Issue 1, March 2021, (86 – 92).

regulating society. In many books on Legal Studies, the discussion of the purpose of law is often separated from the discussion of the function of law.

The relationship between the purpose of law and the function of law is a very close relationship. The first thing that needs to be known, of course, is the purpose of the law, because only what is the purpose of the law has been determined, we can also determine the functions that the law must carry out in order to achieve its goals.⁵

RESEARCH METHOD

The research method in this study uses a constructivist paradigm⁶, with a sociological juridical research approach⁷, descriptive research specifications, primary and secondary data sources, data collection methods using literature studies and field studies, data analysis using qualitative.⁸

RESEARCH RESULTS AND DISCUSSION

A. Criminal Law Policy Against Traffic Violations by Children in Several Countries

Criminal law policy is basically the whole of the regulations that determine what actions are prohibited and included in criminal acts, as well as how the sanctions are imposed on the perpetrators with the aim of overcoming crime.

Criminal law policy or penal policy is a legal regulation that is formulated and determined by the competent bodies as a guideline (positive law) for the community and law enforcers with the aim of preventing and overcoming a crime or in other words a criminal act.⁹

The problem that deserves attention in big cities is the traffic problem. This can be seen from the number of traffic accidents that continue to increase every year, the development of traffic can cause positive or negative effects on life in society. Every year the number of vehicles continues to increase and not a few people violate traffic regulations so that the government and the police must be stricter and stricter on traffic problems, this is to reduce or suppress the level of traffic accidents. Traffic accidents can be caused by many things, bad vehicle drivers, careless pedestrians, unfit roads such as potholes, vehicle damage, vehicles that are no longer suitable for use, drivers who do not obey traffic signs cross.¹⁰

As it is known that the problem of child delinquency has a negative impact, especially actions or actions that disrupt order and security, especially in traffic. The actions of these children are generally contrary to social norms and legal provisions that apply in society. These various violations are naturally still a challenge for law enforcement officials in dealing with this problem. For this reason, it is necessary to take appropriate, fast and controlled steps as well as coordinated with various parties so that efforts to prevent and overcome child delinquency can be resolved.

Criminal law policies against traffic violations by children in several countries can be seen from the table below:

Table 5.1.
Criminal Law Policy Against Traffic Violations By Children In Several Countries

Country	Strength	Weakness
America	The punishment of children in America has similarities and differences with the criminal system in Indonesia, the similarity lies in the procedural law, namely in the American juvenile court both use a single judge, when in trial children are accompanied by lawyers, parents, in the American juvenile court there is what is known as Pre Trial Justice, so in this Pre Trial Justice the child is determined by the jury whether this child deserves to be punished or not.	The United States does not recognize the existence of reduced sentences, if the child commits a crime that carries a death penalty or life imprisonment, the child is almost certainly sentenced to death or life imprisonment, all this is because the United States has not ratified the Convention on the Child. America is the only country that can criminalize a 12-year-old for life without parole. This also applies to traffic violations committed by children
England	In the UK, the police have long carried out diversion efforts and transferred children to non-formal processes, such as in the case of handling children who have committed crimes	Criminal liability is given to children aged 10 (ten) years

⁵ Achmad Ali, 1997, *Menguak Takbir Hukum*, PT. RajaGrafindo Persada, Jakarta, pp. 55

⁶ Agus Irawan Yustisianto, Sri Endah Wahyuningsih, & Anis Mashdurohatun, Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value, *Sch Int J Law Crime Justice*, Dec, 2022; 5(12): 513-519

⁷ Anis Mashdurohatun, Gunarto & Adhi Budi Susilo, The Transfer Of Intellectual Property Rights As Object Of Fiduciary Guarantee, *Jurnal Akta*. Volume 9 No. 3, September 2022.

⁸ Anis Mashdurohatun, Danialsyah, Reconstruction of Mediation in Environmental Disputes Settlement Based on Pancasila Justice, Volume.24 Issue 3. *Journal Of Law And Political Sciences*, 2020, pp. 123-138.

⁹ Barda Nawawi Arif, 2008, *Bungan Rampai Kebijakan Hukum Pidana Perkembangan Konsep KUHP Baru*, Kencana Prenadamedia Grup, Jakarta.

¹⁰ Rozi Fahrur, 2011, *Kelalaian Pengemudi Kendaraan Bermotor Yang Menyebabkan Hilangnya Nyawa Orang Lain Dalam Pasal 310 Undang-Undang No. 22 th. 2009 tentang Lalu Lintas dan Angkutan Jalan Dalam Perspektif Fiqh Jinayah*, Tesis, Fakultas Syariah dan Hukum Program Studi Jinayah Siyash UIN Sunan Kalijaga, page. 39.

	that endanger others. The first record of special treatment for children for their crimes was in 1833, namely by conducting an informal process outside the court. Subsequently, a judicial separation for children was made which was regulated in the Children Act of 1908.	
Japan	Japan has long included diversion provisions in the handling of children as criminals. Japan is one of the safest countries in the world.	The difference between child offenders and children who violate the law lies in the age limit before 14 (fourteen) years and after 14 (fourteen) years.

The table above shows that in the United States, there is no reduced sentence, if the child commits a crime that carries a death penalty or life imprisonment, the child is almost certainly sentenced to death or life imprisonment, all this is because the United States has not ratified the Convention on the Child. . America is the only country that can criminalize a 12-year-old for life without parole. It is clear that there are weaknesses that are certainly not suitable if applied in Indonesia.

The United Kingdom state police have long made efforts to diversion and divert children to non-formal processes such as in the case of handling children who commit crimes that endanger others. The UK made judicial separation for children regulated in the Children Act of 1908.

The state of Japan requires that the difference between children who commit crimes and children who violate the law lies in the age limit before 14 (fourteen) years and after 14 (fourteen) years.

Based on the table in several countries above, what is suitable and needs to be adopted is from the UK, in the UK the police have long made diversion efforts and diverted children to non-formal processes such as in the case of handling children who use toys that endanger others. The first record of special treatment for children for their crimes was in 1833, namely by conducting an informal process outside the court. Subsequently, a judicial separation was made for children as regulated in the Children Act of 1908. As for the age of children in the UK it is 10 years, while in Indonesia it is 12 years. Thus, it can be said that the most successful country in implementing restorative justice is England.

However, it is possible to adopt from other countries such as the Netherlands, where in the Netherlands children who commit crimes are told to choose to return to their parents or be financed by the state.

B. Reconstruction of the Value of Criminal Law Policy Against Traffic Violations by Children Based on the Value of Justice

Lately, the types of traffic violations that are usually carried out by children are regarding SIM ownership, vehicles that do not comply with predetermined standards, not obeying road signs or markings, not equipping themselves with letters, and not using helmets, even the most common is children. The vehicle carries a high-speed vehicle and often conducts wild races on the highway; therefore, it can cause traffic accidents, these accidents are not only materially detrimental but can also cause fatalities.

The reconstruction of criminal law policies in criminal cases with child perpetrators, according to Erna Sofwan Syukri,¹¹ provides an understanding of punishment which is defined as an effort to awaken the perpetrators of criminal acts to regret their actions, and return them to be good citizens, obey the law, uphold moral values. , social and religious, so as to achieve a safe, orderly and peaceful society. Given the specificity of the child's behavior and actions, efforts must be made so that the punishment of children, especially the imposition of imprisonment, is a final measure if other efforts are not successful. Criminal sanctions that can be imposed on children who are perpetrators of criminal acts must basically still refer to the principles set out in the Beijing Rules and also the Convention on the Rights of the Child, in particular with regard to:¹²

1. Place the best interest of the child as the main thinking base in determining sanctions;
2. Derivate of liberty is only a measure of the last resort.

For this reason, it is better to look for alternatives to imprisonment, such as by imposing a fine or a conditional sentence. Many types and types of criminal sanctions are determined by this Draft Criminal Procedure Code, but it is not yet known whether the provisions contained in this draft are good or not, because these provisions can still be changed to suit existing circumstances, situations and conditions. The most important is that children in conflict with this law can immediately learn about the real relationship between their actions and the social reactions that arise as a result of their actions.

Sentencing for children is a limitation of freedom and is the toughest thing for children. Because the punishment for restricting freedom is the heaviest crime, this punishment is imposed as a last resort (*ultimum remedium*). In addition, the conditions are also determined in detail, so that the judge can choose the right reason for imposing a criminal restriction on independence. compared to other crimes. Normatively, the juvenile justice system relies on Law no. 3 of 1997 concerning Juvenile Court. When referring to this regulation, although the Police agency is still the first institution that will act in dealing with juvenile delinquency, there is a legal requirement that the Police request a community research report made by a correctional officer from the Penitentiary Office. Correctional officers in conducting community research play an important role in the fate of children who are caught in the Juvenile Justice System. However, the community research should be a scientific analysis that can be justified, such as a doctor's diagnosis of a patient.

Therefore, it is necessary to improve the community research instruments used by community officers, as well as to increase the professionalism of the community officers who carry them out. In the community research, it must at least be

¹¹ Erna Sofwan Syukrie, Pemahaman Visi dan Misi Pengadilan Anak Dalam Sistem Peradilan di Indonesia, Lokakarva Reformasi Nasional Dalam Pelaksanaan Sistem Peradilan Anak Yang Berpihak Kepada Anak dan Keadilan, Jakarta 25-26 Pebruari 2004, page. 34.

¹² *Ibid*

concluded whether the child who is submitted to the Juvenile Justice System is categorized as a primary deviant or has become a secondary deviant. This status is important so that the judge can later give the right decision for the child. Although in practice community research reports are used in the Juvenile Justice System.

For a judge who will decide criminal sanctions for children who do this act requires deep considerations. In addition to the judge's belief, the important determining factor here is the existence of community research reports made by litmas and correctional officers. The litmas clearly states the personal data of children and other important factors. This Litmas cannot be ignored and must be considered by the judge before deciding on a child case. So that the imposition of criminal sanctions is appropriate. This happens because there is no perception among them. Besides there is no common perception among apparatus in the juvenile justice system, laws and regulations related to the implementation of the juvenile justice system have not shown synchronization between one another where the tendency of judges in child cases to impose imprisonment rather than take action against children in conflict with the law reflects more understanding of retaliation in punishment rather than understanding of rehabilitation or resocialization. Whereas the teachings of penology in criminal law always emphasize that punishment is the ultimatum remedium and not as the main choice.

Policy steps in an effort to minimize the use of imprisonment for children do not only begin when the child is placed in a correctional institution, but also includes before the criminal justice process is applied to a child. Even before the crime committed by the child occurred. This is stated by the author to show that at the policy stage, the Government (policy makers) should start from:

- a. Policy determination at the formulation stage, the objectives of which are:
 - 1) Formulating a crime that can be categorized as a child crime;
 - 2) Provide the basis for the operation of components in the Criminal Justice System.¹³
- b. Policy determination at the application stage. At this stage, the policies needed are policies that are oriented towards the creation of the Juvenile Criminal Justice System as a unified and integrated system,¹⁴ which will be able to minimize the use of imprisonment for children.
- c. Policy in execution stage. At this stage the policy that should be formulated is a policy that is oriented to the fulfillment of the rights of children sentenced to imprisonment as the realization of the judge's decision.

The Restorative Justice model is based on the Due Process. Model of the Criminal Justice System, which highly respects the legal rights of each suspect, such as the right to be suspected and treated as an innocent person if the Court has not found him guilty, the right to defend himself and the right to receive a punishment that is proportional to the offense that has been committed. In the case of children who violate the law, they are entitled to assistance from their lawyers during the judicial process. In addition, the interests of the victims should not be ignored. However, it is still necessary to pay attention to the human rights of children as suspects. These children should as much as possible be kept away from the usual punishments for adult criminals. Actions that can be taken against children who have been found guilty are, for example, the provision of conditional sentences.

In the Restorative justice model, the proportionality of punishment for children is very important. This model is very visible in the provisions of The Beijing Rules and in the United Nations Regulations for the Protection of Children who are deprived of their Freedom. When sharing efforts that previously had to be done seriously to prevent children from being faced with the judicial process, their rights as suspects and their rights as children must be protected.

In the future, it is hoped that cases of children involved in the legal process and brought in the judicial process, are limited to serious cases, beyond that children's cases will be resolved through non-formal mechanisms based on standard guidelines. Forms of non-formal handling can be done by requiring children who are in conflict with the law to attend education or training at certain institutions, work socially, work under the supervision of volunteers, be involved in activities in their community and so on. In connection with this, extensive cooperation with various communities must be established that can assist this activity. In the end, non-formal handling can be carried out properly if it is balanced with efforts to create a conducive justice system.

Referring to Article 39 of the Convention on the Rights of the Child which states parties must take appropriate steps to promote spiritual and physical recovery and reintegration into society. Recovery and reintegration as mentioned above must be carried out in an environment that fosters the health, self-respect and dignity of the child concerned. It is undeniable that the involvement of children in delinquency is closely related to environmental conditions in which children in particular live or family environment. In cases where children are in conflict with the law, the family environment or place of residence of the child has so far not received attention. The family and the neighborhood where they live are involved only in the process of completing the data on the preparation of the Litmas by the Bapas officers. Ideally, it is necessary to carry out an intervention program for the child's environment to prepare for the integration of the child back into his family. An explanation of the rights and obligations of parents to provide protection for children must be socialized.

This is important because how good the coaching is done in the institution, if the family and community environment refuses to accept the child back after undergoing coaching at the institution, it can be a trigger for children to repeat violations of the law and prevent "recidivism" in the case of children, then as the intervention program implemented oriented to the provision of skills, training and in particular the availability of employment opportunities for children who are out of the judicial process or sentencing institutions, have proven to be the most effective. This program will of course be successful if it is supported by the respect of the community and families who support these children, not the other way around, treating them as petty criminals or as outcasts, by placing a stigma on every step the child takes.

¹³ Material criminal law is actually the starting point for the administration of justice, while other fields of law, namely formal criminal law (law of criminal procedure) and criminal law enforcement, are essentially a continuation of the operationalization of the substantive criminal law. start. Projections of Indonesia's Material Criminal Law in the Future. Professor Inauguration Speech. Semarang. February 24, 1990

¹⁴ The Criminal Justice System contains a systemic movement of its supporting subsystems, namely the Police, Prosecutors, Courts and Correctional Institutions (Penitentiary) which as a whole and constitutes a totality. Muladi, Kapita Selektta Sistem Peradilan Pidana, BP-UNDIP, Semarang, 1995 p. vii.

Freedom after completing training in institutions does not always bring happiness to children. Children who feel giddy or awkward don't know where to go. Returning to parents' homes is not easy, apart from families who are not ready to accept them back, the newly released child does not have transportation costs to return home. Children whose parents live far from the institution where they are being nurtured face great difficulties. If they still want to go home without spending money, they must present a letter of release from the institution, so that they can be free to not pay the transportation fare. Here it is clearly seen that the child is faced with a difficult choice where his identity as an individual who has just finished undergoing training must be informed to other parties who are not interested in knowing it.

The reconstruction of the value of criminal law policies against traffic violations by children who previously had no justice, but now must be based on the value of justice.

C. Reconstruction of Criminal Law Policy Norms Against Traffic Violations by Children Based on the Value of Justice

The problem of traffic attitude is a common phenomenon in big cities in developing countries. This problem is often associated with the increasing number of urban residents which results in increased activity and density on the highway. Diverse vehicle traffic and the increase in the number of vehicles that are faster than the increase in road infrastructure which results in various traffic problems such as congestion and traffic accidents. Traffic accidents are still a serious problem in developing and developed countries. The death rate according to WHO has reached 1,170,694 people worldwide. This amount is equivalent to 2.2% of all deaths in the world and reaches the ninth of the ten causes of death.

Traffic policies in Indonesia are regulated in Law No. 22 of 2009 concerning Road Traffic and Transportation, where these regulations are made to ensure security, order and welfare in society which need to be determined regarding prohibited and required actions. Meanwhile, the violation of these provisions is punishable by criminal sanctions. The frequent occurrence of traffic violations, both intentional and unintentional, may be due to the fact that the sanctions imposed on traffic violations are too light, so it is not surprising that there are more and more traffic violations. The legal consequence of a traffic accident is the existence of criminal sanctions for the maker or the cause of the incident and can also be accompanied by civil claims for material losses incurred.

Seeing traffic problems that often cause many problems in society, including the many violations that we can encounter in our daily lives, ranging from violations of traffic signs to existing rules, so that they can disrupt order in society, especially regarding the problem of using the means of transportation.

The problem is that when the accident was committed by a child, resulting in injuries and even death, there are many considerations if the child should be punished. Therefore, it is necessary to make various efforts to provide guidance and protection for children, both regarding institutions and legal instruments that are more adequate. The existence of a law on children certainly shows that children do need to be protected. Indonesia as a state of law regulates children in a number of laws and regulations, some of which are Law Number 4 of 1979 concerning Child Welfare, Law Number 11 of 2012 concerning the Child Criminal Justice System. A child who accidentally makes a mistake that causes other people to be injured and even to death is a crime.

Good and fair legal settlements are always part of the consequences for accidents that occur. In this settlement, it must be seen how the form of protection for children who are in conflict with the law, especially in accidents that cause injuries and even death, so that the rights and obligations of the parties are still fulfilled and protected as well as possible. What is more important is how the child who is in conflict with the law can still recover from the incident that happened to him and can continue his life without being bound by deep trauma due to the traffic accident that happened to him.

The cause lies in factors such as drivers and other road users, poor road construction, vehicles that do not meet the requirements, unclear traffic signs, and so on. The highway, for example, is a means for humans to establish relationships between places, using various types of vehicles, both motorized and not. Roads have an important role in the economic, political, socio-cultural, defense, security and legal fields, and are used for the greatest prosperity of the people.

The parties responsible for the safety of road use have made every effort to prevent traffic accidents. Various regulations have been drawn up and implemented along with counseling, the quality of vehicles and roads has been improved, and various activities have been carried out to prevent falls. The main review of traffic regulations is to enhance the smoothness and safety of all traffic on the roads. Identification of the problems encountered on the road revolves around traffic. Traffic problems, conventionally revolve around traffic jams, traffic violations, traffic accidents, patience and environmental pollution. The state of traffic jams means obstacles to the process or movement of road users that occur in one place. Obstacles can occur within reasonable limits, but may be in a relatively short time limit. In addition, the movement of the vehicle may stop altogether or stagnate.

Law enforcement officers, in this case the Traffic Police, act as a deterrent (*politie toezicht*) and as an enforcer (*politie dwang*) in political functions. In addition, the traffic police also performs regulatory functions (for example, regulations regarding the obligation for certain motorized vehicles to be equipped with a safety triangle) and bestuur functions, especially in terms of licensing or startingstiging (for example, issuing a driving license).¹⁵

However, most drivers are aware of the dangers faced when driving a vehicle that exceeds the maximum speed. In reality, not a few drivers who do that. In the face of conflict, a person usually does what is called a displacement which is manifest as a transfer of targets for aggressive behavior. Anxiety arises as a result of a feeling of danger from outside, which is sometimes only an assumption from the person concerned. It is not uncommon for humans to use their defense mechanisms to overcome their worries, such as acting out, in which the individual concerned performs impulsive actions. This kind of behavior can occur in drivers, who then drive their vehicles illegally.

Therefore, it is not an exaggeration to suggest several ways of enforcing traffic rules which, according to experience, will be more efficient. The usual way is called periodic reinforcement (periodic reinforcement) or partial reinforcement (partial reinforcement). This method is applied when certain behaviors are not always rewarded or punished. If a driver is used to taking a certain highway route, then there is a tendency to exceed the maximum speed. This is because the driver considers himself to be

¹⁵ Soerjono Soekanto, 1989, *Suatu Tinjauan Sosiologi Hukum Terhadap Masalah-masalah Sosial*, Citra Aditya Bakti, Bandung, page. 58

familiar with this part of the highway. If at certain places of the road a highway patrol officer is placed, then he does not have the opportunity to violate the maximum speed limit. However, if the placement of officers is done on a regular basis, the driver knows when he has to comply with the regulations and when he can violate these provisions. By applying the method of periodic reinforcement, we want to create an impression on the driver that there are officers everywhere, so that he will be more careful in driving his vehicle, even if officers are sometimes placed on the highway there is an impression that the officer is always there. This method aims to produce well-behaved drivers. The second method is usually called conspicuous enforcement, which usually aims to prevent drivers from driving dangerous vehicles. In this way it is intended as a way to place a police car or other vehicle prominently, so that the driver sees it as clearly as possible. This will usually prevent someone from breaking the rules. "This method aims to maintain the safety of human souls and of course, that both methods require adequate facilities and capable and skilled human resources.

Nowadays, it is not only adults who commit traffic violations but also children who are still, their level of awareness in traffic is still low, it can be seen from Police data that there are still high numbers of junior high and high school students who violate traffic throughout the year.¹⁶

The concept of a restorative justice approach is an approach that focuses more on the conditions for creating justice and balance for the perpetrators of crimes and the victims themselves. Procedures and criminal justice mechanisms that focus on punishment are transformed into a process of dialogue and mediation to create an agreement between the settlement of criminal cases that is fairer and more balanced for the victims and perpetrators. Conventional justice mechanisms recognize the existence of restitution or compensation to victims, while Restoration has a broader meaning. Restoration includes restoring the relationship between the victim and the perpetrator. Restoration of this relationship can be based on a mutual agreement between the victim and the perpetrator. The victim can convey about the loss suffered and the perpetrator is also given the opportunity to make up for it, through compensation mechanisms, peace, social work, or other agreements.

Law enforcement officers, especially from the beginning of handling cases where the perpetrators are children, should be able to act according to procedures and objectively find the initial source of the incident, not only on the location but also the background of why the incident happened. Perja 15 of 2020 received a positive response from the public, especially legal practitioners and justice seekers. Why not, the Prosecutor, who usually prosecutes the defendant in court, has stopped him this time. To stop prosecution based on this restorative justice must meet strict conditions.¹⁷

The concept of restorative justice is important when compared to the conventional criminal system, because there are clear differences between the two. The concept of conventional punishment provides little limitation or space for victims and perpetrators to play an active role in resolving their own criminal cases, while in the concept of restorative justice, the active role of perpetrators and victims becomes the basis in resolving criminal cases themselves.¹⁸

Indonesia as a country that has ratified the Convention on the Rights of the Child (Convention on the Rights of the Child) through Presidential Decree Number 36 of 1990 is bound by the obligation to provide protection for children, including providing special protection to children in conflict with the law. One form of protection is to implement a special criminal justice system for children in conflict with the law. Article 40 paragraph (1) of the CRC states that "States parties recognize the right of every child who is declared as an accused or recognized as having violated the criminal law to be treated in a manner that is in accordance with increasing the respect and dignity of the child, which reinforces the child's respect again. to the human rights and freedoms of others and which takes into account the age of the child and the desire to promote the reintegration of the child and the return of the child to a constructive role in society".¹⁹ This State obligation is also reaffirmed in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, that the objectives of juvenile justice are: the criminal justice system for children/adolescents will prioritize the welfare of adolescents and will ensure that any reaction to juvenile offenders will always commensurate with the conditions both for the violators of the law and for the violations of the law.

The implementation of restorative justice in the diversion policy in the investigation of criminal acts committed by children is currently carried out based on Law Number 11 of 2012 concerning the Juvenile Justice System.²⁰ The Juvenile Criminal Justice System must prioritize a restorative justice approach, and diversion must be pursued with the aim of achieving peace between victims and children. In addition, resolving child cases outside the judicial process; prevent children from deprivation of liberty; encourage people to participate; and instill a sense of responsibility in children. Therefore, an approach with a restorative model of settlement or called restorative justice is more appropriate to be applied in dealing with child offenders.

Based on the description above, the researchers are interested in reconstructing criminal law policies against traffic violations by children based on the value of justice as follows:

Table. 5.2

Summary of Criminal Law Policy Reconstruction Against Traffic Violations by Children Based on the Value of Justice

No.	Construction	Weakness	Reconstruction
1.	Article 5 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which reads: Paragraph 1:	<ul style="list-style-type: none"> Children as the next generation of the nation, have the right to grow and develop for their 	Reconstruction in Article 5 Paragraph 1, by adding the sentence "with attention to the interests of the child" in the last sentence of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

¹⁶Interview with Agus Tri Handoko, Laka Unit Polrestabes Semarang, on June 29, 2022, at 10.00 WIB..

¹⁷ Interview with Transiswara, Main Prosecutor of the Pratama Kejari Semarang City, on August 2, 2022, at 10.30 WIB.

¹⁸ Interview with Dhayita Daneswari, Central Java Police Investigator, on July 1, 2022, at 10.30 WIB.

¹⁹ Attachment to Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child.

²⁰ Interview with Sarwedi, S.H., M.H., Semarang District Court Judge, on August 3, 2022, at 10.30 WIB.

	The Juvenile Criminal Justice System must prioritize a Restorative Justice approach.	future, for that it is necessary to pay attention to the interests of children	So Article 5 reads: Paragraph 1: The Juvenile Criminal Justice System must prioritize a Restorative Justice approach by taking into account the interests of the child.
2	<p>Article 10 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which reads: Paragraph 1: Diversion Agreement to complete the act criminal acts in the form of violations, criminal acts minor, victimless crime, or value the victim's loss is not more than the minimum wage value local province as referred to in Article 9 paragraph (2) can be carried out by investigators together with the perpetrator and/or his family, the Advisor Community, and can involve figures Public.</p> <p>Paragraph 2: Diversion Agreement as referred to in paragraph (1) is carried out by the Investigator on the recommendation of Community Advisors can take the form of: a. reimbursement of losses in the event of a victim; b. medical and psychosocial rehabilitation; c. handover to parents/guardians; d. participation in education or training in educational institution or LPKS a maximum of 3 (three) months; or e. community service for a maximum of 3 (three) months.</p>	<ul style="list-style-type: none"> • • Not yet highlighting the role of parents in assisting children who commit crimes • • There is no social work sanction • • There is no handling of child traffic violations 	<p>Reconstruction of Article 10 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System by adding sentences to the second paragraph of letters d, e and f. So Article 10 reads: Paragraph 1: Diversion Agreement to complete the act criminal acts in the form of violations, criminal acts minor, victimless crime, or value the victim's loss is not more than the minimum wage value local province as referred to in Article 9 paragraph (2) can be carried out by investigators together with the perpetrator and/or his family, the Advisor Community, and can involve figures Public.</p> <p>Paragraph 2: Diversion Agreement as referred to in paragraph (1) is carried out by the Investigator on the recommendation of Community Advisors can take the form of: a. reimbursement of losses in the event of a victim; b. medical and psychosocial rehabilitation; c. handover to parents/guardians; d. participation in education or training is accompanied by parental participation in educational institution or LPKS at least 3 (three) months, maximum 6 (six) months; and must be followed by the parents of the child who commits a crime during the period during which the child is undergoing education and training or e. community service and social work for a maximum of 6 (six) months. f. application of restorative justice in handling traffic crimes by children.</p>

CONCLUSION

Weaknesses in criminal law policies against traffic violations by children currently exist in three aspects, namely legal substance, legal culture, and legal structure. Weaknesses in the aspect of legal substance that traffic law enforcement is more inclined to repressive efforts, where the implementation includes taking traffic violations and investigating traffic accidents. In the aspect of the legal structure, the certainty of law enforcement officials in handling cases and the speed is still not optimal, this has a more real impact, when compared to an increase in mere negative sanctions. From the aspect of legal culture, not every activity or business that aims to make citizens obey the law results in such compliance. There is a possibility that the activity or effort may even result in an attitude of action that is contrary to its purpose. For example, if obedience to the law is carried out by only presenting negative sanctions in the form of punishment if the law is violated, then maybe the community members only obey when there are officers. Therefore, it is necessary to educate the public, especially children and parents so that children do not take legal actions. Reconstruction of criminal law policies against traffic violations by children based on the value of justice. Reconstruction in Article 5 Paragraph 1, by adding the sentence "with attention to the interests of the child" in the last sentence of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Furthermore, Article 10 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System by adding a sentence in the second paragraph letters d, e and f. And Article 9 paragraph (2).

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Kurnianto Seco Hariyono
Sultan Agung Islamic University, Semarang Indonesia

Anis Mashdurohatun
Sultan Agung Islamic University, Semarang Indonesia

Widayati
Sultan Agung Islamic University, Semarang Indonesia

Ahmad Rofiq MA
UIN Walisongo Semarang, Indonesia.