

Research Article

Criminal Liability of Parents for Traffic Accidents by Minors

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Abstract: The purpose of this study is to analyze the settlement of criminal cases on the liability of parents for negligence that results in minors becoming perpetrators of traffic accidents. This type of research is normative legal research with a statutory approach, a case approach and a conceptual approach. The analysis used in this study is a descriptive analysis. has not explicitly regulated the criminal liability of parents for accidents committed by children, although Civil Code Article 1367 has provided a basis for civil liability, and the new Criminal Code through Article 37 opens up opportunities for the application of the principle of vicarious liability. This study recommends the need to reconstruct the Indonesian criminal law regulation which explicitly establishes a model of parental criminal responsibility based on the principle of vicarious liability and the principle of Radbruch legal certainty, without overriding the principle of child protection in the SPPA Law.

Keywords: Criminal Liability; Law; Minors; Traffic; Vicarious Liability.

1. Introduction

Violations of these traffic rules often lead to accidents that result in minor injuries, serious injuries, and even fatalities. In traffic criminal law, two forms of error are known, namely intentionality (*opzet*) and negligence (*culpa*). Intentionality refers to an act that is done with intention, while negligence or forgetfulness includes an act that is unintentional, but the consequences can be foreseen or should have been anticipated by the perpetrator. *Culpa* is divided into *onbewuste schuld* (unconscious forgetfulness) and *bewuste schuld* (conscious forgetfulness), where the most important element in *culpa* is the perpetrator's lack of prudence and awareness of the consequences that can arise from his actions.

In the context of traffic accidents involving minors, liability is not only limited to the child as the driver, but also includes the negligence of a parent who gives permission to his child to drive a motor vehicle without meeting legal requirements, such as the possession of a Driver's License (SIM). Law Number 22 of 2009 Article 310 has regulated sanctions for drivers who, due to their negligence, cause accidents that result in injuries or deaths. However, in the case of minors, parents who allow and allow their child to drive without rights can also be categorized as the party responsible for the negligence.

In civil law, parents can be held accountable for the actions of their minor children, as stipulated in Article 1367 of the Civil Code (KUHPercivil). This article affirms that a person is not only responsible for his own actions, but also for the actions of those under his responsibility. Specifically, parents are responsible for the harm caused by their children who are minors and are in their care. In other words, if a minor causes an accident, the parent may be subject to an obligation to compensate the victim based on the principle of civil liability.

The implementation of special juvenile justice has provided space for the implementation of diversion widely. Diversion, as an effort to shift the settlement of children's cases from the criminal justice process to the out-of-court process, aims to protect children from the negative impact of the justice system. However, the effectiveness of diversion in preventing the recurrence of violations by children, including traffic accidents, is still a matter of debate. Data shows that the number of traffic accidents involving minors remains high. For example, based on data from the IRSMS Korlantas Polri, from August 1 to 21, 2023, 42,080 motorists were involved in accidents, of which 6,004 were under 17 years old or 14.5% of the total number of accidents that occurred. The high number of accidents

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shows that the implementation of diversion has not been fully effective in encouraging parents to be more responsible in supervising and guiding their children regarding traffic safety. Therefore, legal remedies and stricter law enforcement are needed against violations involving minors.

In modern criminal law, the concept of substitute criminal liability itself is still limited to command responsibility and corporate criminal liability, so often in the context of the actions of parents who, due to their negligence, do not cause accidents and cause accidents, cannot be subject to criminal sanctions. However, the idea of vicarious liability, as stated in Article 37 of the new Criminal Code which reads: "Everyone can be held accountable for Criminal Acts committed by others", this rule has opened up opportunities for the expansion of criminal liability in certain situations. This principle allows a person to be held accountable for the actions of another party who is within the scope of his order or authority. Even if they do not commit a criminal act directly, a person can be held responsible if his negligence allows the criminal act to occur. Therefore, in the context of traffic accidents by minors, the principle of vicarious liability can be the basis for demanding criminal liability of parents who are negligent in supervising and preventing their children from driving.

Based on the above problems, the author is interested in a deeper and comprehensive analysis of how cases are resolved and parents are held accountable for traffic accidents by minors.

2. Method

This type of research is normative legal research or juridical research. Normative legal research is research that is carried out by examining literature materials. The approaches used in this study are the statutory approach and the case approach as well as the conceptual approach. Where the issue of the problem is studied and analyzed through laws and regulations related to the legal issue to be solved and analyzes the case which is one of the objects that is the focus of this research. The approach in this study is understood as the "way of view" used by researchers in conducting studies and analysis, in English translated as "research approach". The analysis used in this study is Descriptive data analysis using a Qualitative approach to secondary data and primary data. The descriptive includes the content and structure of positive laws and court decisions in this study, starting from general explanations and then withdrawn to more specific explanations.

3. Discussion

The Urgency of Criminal Law Regulation for Traffic Accidents by Minors Based on the Case Settlement Model.

The study was carried out through two case resolution models that apply in Indonesia, namely the Diversion Model as regulated in the SPPA Law and the Parental Accountability Model as regulated in the Civil Code. This analysis uses two theoretical frameworks, namely Restorative Justices Theory and Vicarious Liability Theory. Through this theoretical approach, it can be seen how the characteristics of each model affect the selection of case settlement mechanisms and the urgency of criminal regulation in the context of child protection and justice for victims.

Diversion Model according to Restorative Justices

The Diversion Model required by Article 7 paragraph (1) of the SPPA Law is a form of transfer of case settlement from the state judicial process to a deliberative process involving the parties. This model is very much in line with the principles of Restorative Justice Theory, as both place the recovery process as the primary goal, not retribution or punishment that is detrimental to the child's development. This emphasis on recovery is important because accidents committed by children often occur due to negligence influenced by psychological limitations and thinking maturity.

Restorative Justice views criminal acts as violations against individuals and social relationships, so that settlement is carried out by prioritizing the dialogue process and the recovery of victims' losses. In the context of children involved in traffic accidents, this approach provides space for perpetrators, victims, families, and the community to find a solution that is considered the fairest. The addition of this participatory mechanism provides an opportunity for victims to gain clarity and recovery, and for the perpetrator's child to understand responsibility for his actions without having to face the psychological pressure of

the formal justice process. The Diversion Model fulfills the principles of Restorative Justice through the following things.

1) Focus on Coaching (Children)

Diversion is designed to prevent children from formal judicial proceedings that can cause social pressure and stigma. This approach provides a coaching space for children to improve their behavior in a more educational way, in accordance with the basic goal of Restorative Justice which wants to create positive behavior change and prevent the recurrence of criminal acts or recidivism. Coaching in Diversion is carried out through mutual agreement so that children are not only placed as guilty parties but also as individuals who must be guided so that they can grow up to be a responsible part of society.

2) Victim Recovery.

Through the Diversion mechanism, children are given the obligation to participate in the recovery of victims' losses, for example through the provision of compensation or restitution that is adjusted to the family's abilities and circumstances. This shows that Diversion not only sides with child perpetrators, but also ensures that victims receive the attention they deserve. This mechanism provides a more humane sense of justice for victims because they are involved in negotiations, not just waiting for a formal court decision.

The urgency of regulating criminal law through the Diversion Model departs from the need to achieve a balance between the interests of law enforcement and the protection of children's future. Cases of traffic accidents involving children are often the result of ignorance, lack of parental supervision, and a lack of children's ability to understand risks. Therefore, the SPPA Law directs children's cases to be resolved through Diversion so that the process does not damage their psychological development. The main reason for Diversion to be very urgent can be seen from the following things.

1) Special Needs of Children

Children cannot be equated with adults in terms of criminal liability. The principle of *Geen Straft Zonder Schuld* cannot be applied absolutely because the child does not yet have the psychological and cognitive maturity to fully understand the consequences of his actions. Children's criminal accountability standards require a deeper assessment of their mental, social, and emotional condition, so coercive and punitive mechanisms are not appropriate for their development.

2) Stigma Prevention

The formal criminal justice process has the potential to damage a child's future because it can cause a negative label that is difficult to remove. Meanwhile, Diversion provides a more constructive approach by restoring disturbed social relationships and preventing children from being trapped in a negative environment. Prevention of stigma is an important part of child protection, because children who have been criminally processed tend to experience social and psychological obstacles in adulthood.

Thus, criminal arrangements involving children in traffic accident cases are very important to ensure that the legal process carried out is not only punitive, but prioritizes the value of education and rehabilitation. This approach is in line with the main goal of juvenile justice which wants to create a more humane justice process, in accordance with the needs of child development and substantive justice for victims.

Liability Model According to Vicarious Liability

Vicarious Liability is a doctrine that places a person as a party responsible for the actions of others because of certain legal relationships, such as the relationship between parents and children. In the context of traffic accidents committed by children, this liability arises due to negligence in supervision that should be carried out by parents. This doctrine focuses more on the recovery of losses through civil mechanisms as regulated in the Civil Code, so that the orientation is on compensation for real losses experienced by the victim. Vicarious Liability does not question the fault of the child perpetrator criminally, but looks at the legal relationship and negligence of the party who should be responsible, namely the parents.

The urgency of civil settlement through the Parental Accountability Model can be seen from the importance of providing legal certainty for victims and ensuring that losses that arise can be adequately recovered. In many cases, the victim recovery process cannot rely on child perpetrators due to their limited economic capabilities and legal standing. Therefore, this civil mechanism is an important instrument to ensure the protection of victims' rights in the form of compensation.

- 1) **Compensation Guarantee**
 Traffic accidents often result in material and immaterial losses, such as medical expenses, vehicle damage, loss of income, and psychological trauma. The child who is the perpetrator clearly does not have the financial ability to bear the loss. Through a civil arrangement that imposes liability on parents, victims have the certainty that there are parties who are legally obliged to provide compensation in accordance with the provisions of the Civil Code. An additional explanation that can be given is that this mechanism ensures that the victim is not left to bear the losses alone, as well as ensuring that there is a balance between the losses suffered and the recovery received.
- 2) **The Balance of Justice**
 The Parental Accountability Model reflects the principle of Commutative Justice, which is a balance between the losses incurred and the compensation awarded. This principle shifts the burden of compensation to parties who have a legal relationship with the child perpetrator and who are socially and morally obliged to supervise the child's behavior. A relevant additional explanation is that this mechanism is not intended to punish parents, but to ensure that the victim's losses are recovered through a party that is realistically capable of compensating. This approach maintains a balance between the interests of the victim and the obligations of the perpetrator's family without interfering with legal protection for the child involved in the accident.

Based on the analysis of the two models, the urgency of regulating criminal law for traffic accidents committed by minors can be concluded as follows:

Table 1. Analysis of the Urgency of the Solution Model.

Urgency Aspect	Diversi Model (restorative)	Vicarious Liability Model
Main Objectives	Child Construction and Protection	Victim Compensation Guarantee
Social Needs	Restoring social relationships and preventing children from becoming recidivists	Ensuring victims are compensated for losses
Legal Necessity	Ensuring special treatment (Diversion) in accordance with the SPPA Law	Upholding the principle of substitute liability for oversight negligence
Setting Properties	Education and Prevention (Children's Future)	Compensatory and Corrective (Victim Loss)

Source: Processed by the Author (2025)

The regulation of criminal law for traffic accidents by minors is very urgent because it must be able to bridge two conflicting interests: the need for the state to punish and prevent crime (the criminal aspect) and the state's obligation to protect and nurture children (the child protection aspect).

- 1) **Criminal Urgency (SPPA Law)**

Criminal regulation is still needed as a basis for law enforcement, but it must be placed in a special framework in the form of a diversion mechanism. This approach aims to prevent the formal application of criminal sanctions that can create stigma and interfere with child development. The urgency is present because every legal action directed at children must focus on the principles of Restorative Justice and the best interests of children, so that the case settlement process becomes more educational and does not cause adverse social impacts.

- 2) **Civil Urgency (KUHPerdata)**

Civil regulation also has an equally important role, because the losses experienced by the victim should not be ignored just because the perpetrator is a child. Through the application of the principle of Vicarious Liability, the law ensures that there is a financially responsible party, namely parents. This approach provides a guarantee that the victim's material and immaterial losses continue to receive a proper recovery, so that the victim's rights are still legally protected.

Overall, the regulation of criminal and civil law in traffic accident cases involving children is very necessary to maintain a balance between the protection of the child's future and the fulfillment of the rights of victims. The Diversion Mechanism ensures a more educational and social-recovery-oriented process, while the application of civil liability through the Vicarious Liability principle ensures proper compensation for victims. The combination of the two makes the settlement of the case fairer, more useful, and still provides certainty for all parties.

Ideal Model of Settlement According to Legal Objective Theory

The following is the author of the ideal model of settlement according to the theory of legal objectives, This analysis aims to examine two models of criminal case settlement involving minors as perpetrators, as regulated in the Indonesian legal system, through the lens of the theory of legal objectives (Rechtsphilosophie) developed by Gustav Radbruch. Radbruch formulated three fundamental values that became the goals of law, namely Justice (Gerechtigkeit), Utility (Zweckmäßigkeit), and Legal Certainty (Rechtssicherheit). Law plays an important role as the main foundation in the administration of the state and as a tool of social control, which aims to create order, justice, and the welfare of society as a whole. The selection of a model for resolving juvenile criminal cases must be able to answer the challenge of balancing Radbruch's values.

The two case solving models analyzed include;

- 1) The First Model is in the form of a Diversion mechanism based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System
- 2) The second model is in the form of a mechanism for Parental Civil Liability as stipulated in Article 1367 of the Civil Code.

These two models are used side by side in Indonesian legal practice and are often considered together in cases of traffic accidents committed by children. The two models do not negate each other, but rather complement each other because each regulates different legal aspects. The comparative analysis of these two models was carried out based on the three legal objectives stated by Radbruch, namely Justice, Utility, and Legal Certainty. These three objectives are indicators in assessing the extent to which the settlement of child criminal cases has met the expected value of a legal system. These three goals can be seen as a tendency to which model is better able to meet legal needs that at the same time protect children's rights and guarantee victims' rights. Among them:

First, from the aspect of Justice (Gerechtigkeit), the Diversion Model based on the SPPA Law is oriented towards the form of Substantive Justice and Distributive Justice. This can be seen from the focus of its enactment which prioritizes the best interests of the perpetrator (children) and protection through a restorative approach. Justice is understood as an effort to restore relationships and compensate for losses through agreements, not through retribution. This approach assesses the social context, age, and psychological condition of the child so that the decision taken is more in accordance with the character of the child as a special legal subject. On the other hand, the Civil Liability mechanism based on the Civil Code leads to Commutative Justice, which provides a balance between the losses suffered by the victim and the obligation of compensation imposed on parents as parties who bear legal responsibility. This form of justice is more material because it is measured through financial compensation for unlawful acts.

Second, from the aspect of Usefulness (Zweckmäßigkeit), the Diversion Model shows a very high level of Usefulness because it provides direct benefits to children by avoiding stigma, educational barriers, and the possibility of repetition of criminal acts. This model also benefits society because it helps reduce the burden on the formal justice system which often takes time and costs. Radbruch views a law as beneficial if it can create constructive social change and prevent greater conflicts in the future. Meanwhile, the Civil Liability Model has a Medium Benefit Level because the benefits are more focused on the victim. The civil liability mechanism provides certainty that victims' losses can be recovered through compensation, but do not resolve the criminal or child development aspects. Thus, its usefulness is limited because it only touches on one side of legal interests.

Third, from the aspect of Legal Certainty (Rechtssicherheit), the Civil Liability Model has a high level of Legal Certainty because the legal basis is clear, firm, and written in the Civil Code. This provides certainty for victims to demand compensation from the parents of children who commit unlawful acts. This model provides clarity on who is responsible and how the compensation mechanism should be implemented. The Diversion Model also has a high level of Legal Certainty because its existence is expressly regulated in the Law on the Juvenile Criminal Justice System which requires every law enforcement officer to seek

Diversion in children's cases. This normative obligation ensures that Diversion is not just an option, but a settlement mechanism that must be pursued according to the order of the law. The nature of deliberation in its implementation does produce a variety of room for agreement, but the variation in the outcome does not reduce the certainty regarding the legal obligation to carry out Diversion as the first step in resolving the case.

Here is a summary of the comparison of the two models:

Table 2. Analysis of the Settlement Model Through Legal Objective Theory.

Purpose of Radbruch's Law	First Model, Diversion (SPPA Law)	The Second Model, Civil Liability (KUHPercivil)
Justice	Noun	Vocative
Benefits	High (For Children & Society)	Medium (For Victims)
Legal Certainty	High (Compulsory Diversion)	High (Strict Norm)

Source: Processed by Researcher (2025)

The two models of child settlement actually both seek to meet the three goals of Radbruch's law, but have different points of emphasis.

- 1) The Diversion Model prioritizes Substantive Usefulness and Justice because it aims to protect children's future and restore social conditions. This approach is very much in line with the principle that the law must have a real positive impact on vulnerable subjects. This model requires the active participation of various parties so that the results are more in line with the needs of children and victims.
- 2) The Civil Liability Model emphasizes Legal Certainty and Commutative Justice because it provides clarity on the obligation to compensate and restore victims' rights. This mechanism provides firmness in accountability, but has limited scope because it does not directly touch the aspect of child development. This model focuses more on material recovery, so its role in creating long-term benefits is relatively limited.

In the context of solving the problem of minors as perpetrators of traffic accidents, the Diversion Model is closer to the legal goal that emphasizes the balance between justice, utility, and certainty. When viewed through the theory of legal objectives, Diversion becomes more ideal because this mechanism not only seeks to achieve justice for victims and society, but also ensures long-term benefits through a coaching approach that is in accordance with the child's psychological development. Diversion provides a space for restorative resolution and gives children the opportunity to improve themselves without neglecting the rights of the victim. On the other hand, the Civil Liability Model, although it has a strong level of legal certainty, its scope only touches the civil realm and does not provide an element of coaching for children as perpetrators. Therefore, when viewed from the legal objective that emphasizes the balance of justice and usefulness, Diversion reflects the ideals expected in handling children's cases.

4. Conclusion

The ideal law enforcement in the criminal process of an agreement with a series of lies, in simple terms, can be distinguished between the position of default and criminal acts in an agreement, namely it can be examined from bad intentions (*mens rea*) from the beginning of the parties to the agreement. An agreement is a criminal act of fraud, elements must be fulfilled such as, the existence of lies since the birth of the agreement, the victim gives achievements because he was deceived, real losses arise because of the lie, the malicious intentions of the perpetrator (*mens rea*) from the beginning, not just a breach of promise. Therefore, the ideal law enforcement against the crime of agreement with a series of lies must at least pay attention to three main aspects, namely certainty, justice and utility. Meanwhile, the ideal model of law enforcement can start from, (1) regulatory reconstruction to clarify the norms in the Criminal Code regarding the difference between default and fraud, (2) standardization of investigations, in this case developing technical guidelines for the special investigation of cases of agreements with lies so that the apparatus has a uniform size, (3) strengthening the role of prosecutors, intended to give more measurable discretionary authority to prosecutors to sort out cases that are criminally feasible or sufficiently resolved Civilly, (4) Optimization of Restorative Justice, as one of the efforts to encourage peaceful settlement in small cases without eliminating the rights of victims, while still providing criminal sanctions in cases with a wide impact, (5) Legal Education for the community, which means that the public needs to be educated about the risks of agreements with lies, as well as the available legal channels, so that they do not easily become victims.

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