

# Criminal Acts Handling Of Traffic Offences By Children: To Provide Legal Protection Against Children In Konawe, Indonesia

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**Abstract.** The concern of passing law No. 11 the year 2012 in the System of Justice for Juveniles (SPPA) in place of law number three of 1997 about the Children's Court has aimed to realize a court that protects the children's interests come first, in addition to the substance in the SPPA Law regulate diversion provisions as a means to realize restorative justice. To realize this goal, in the SPPA Law's Article 9 paragraph (2), the violation formed by the criminal act, the diversion agreement does not have to acquire the victim's and/or their family's approval, as well as the child's and their family's willingness. This is juridical-normative legal research applying the theoretical review collection method and descriptive-qualitative analysis. The conclusion is that the Crime of Traffic violation by Children does not apply to the System of Justice for Juveniles. In the future, there is a need for improvements to the legal substance as the basis for imposing fines in crimes of traffic violation by children and vicarious liability doctrine in practice in this type of criminal case.

**Keywords:** Handling, Criminal Act, Traffic Violation, Children, Legal Protection.

## 1. Introduction

Based on the record of data in Transportation Ministry, In 2016, there were 106,573 traffic accidents in Indonesia, with motorbikes accounting for 73.9% of them. Most of the victims were around 15-60 years. Students aged 10-19 years were the second most victims of accidents. In 2016 the number of younger victims reached 14,214 people [1].

Therefore taking action to reduce traffic accidents must be the top priority, since traffic violation is one of the causes of traffic accidents, especially those committed by children.

The interest of law No. 22 of 2009 Traffic and Road Transportation, the sanction for a criminal violation is imprisonment or a fine. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) as the legal basis for legal proceedings for children who commit criminal acts (including traffic violations), in article 71 paragraphs (1) and (2) of the SPPA Law there is no criminal fine against children who commit criminal acts, so that in substance there is a legal vacuum for children who commit traffic violation. Even though Traffic and Road Transport Law determines 2 (two) sanctions for traffic violations, imprisonment or fine, SPPA Law does not accommodate fine for children but it is changed by training job as stated under Paragraph 71 of Article (3), only if the sanctions are cumulative between criminal and fines, they are not alternative as in the Traffic and Road Transport Law.

In addition, for children who commit traffic violation, a diversion process must be conducted, in accordance with Article 9 paragraph (2) of the SPPA Law concerning criminal act of violation, diversion agreement in non-criminal action does not necessarily get a consent from the offender and/or their family, as well as the kid's and his family's willingness.

Furthermore, this research discussed about the program implemented by the Traffic Unit of the Konawe Resort Police and the Judges of the Unaaha District Court in implementing legal action upon traffic violations by children in Konawe Regency and the application of the concept vicarious liability in traffic violations by children.

## **2. Method**

The research approach is normative juridical law experiment using a case approach. With a case approach, this study tries to build legal arguments with a concrete case perspective with the aim of finding the truth value that occurs in law enforcement entrenched on the principles of justice by examining traffic handling violations by children. Then conduct a review of the judge's consideration in making a decision. Furthermore, it is analyzed qualitatively and formulates the concept of substitute liability in criminal acts of traffic violations by children.

## **3. Result And Discussion**

### **3.1 Imposition Of The Law On Traffic Violations By Children In Konawe Regency.**

Criminal act or often called *strafbaar feit* is divided into two forms; violations (*overtredingen*) and crimes (*misdrijven*). Theoretical distinction between crime and violation has been still clearly undefined. An act can be violation if it is against the law and only be acknowledged after the law (*wet*) proving violation. Meanwhile, people eventually realize it is a crime since it is regulated by the law, which is called *wetsdelict* (law offense) [2].

Traffic violation is included in the *wetsdelict* category (law offenses), after the determination that an act is a traffic violation crime following the 2009 Traffic and Road Transportation Law Number 22 regulate it as a transportation violation.

It is uncomplicated case according to Article 211's guidelines of the Criminal Procedure cipher regarded as fast proceeding. Traffic violation is tackled by investigators by notifying the defendant (traffic violators) about the day, date, time and place where he must appear before a court and this is properly recorded and sent by the investigator [3]. Shortly, investigator provides a ticket (proof of violation) and determine the day and date of the trial in the evidence of the violation.

Traffic violations are committed by people who are legally adults and children. If it is done by an adult, the main procedural law is the Criminal Procedure Code (KUHAP) and if it is done by a child, the procedural law is as contained in the SPPA Law. The most important update to Law Number 3 of 1997 about Juvenile Court was replaced by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). that was previously applicable is the diversion process.

According to Marlina, diversion is the the power of law enforcement personnel who are able of continuing or stopping the case, take certain actions in accordance with their policies [4].

Normatively, the meaning of divergence is stated in the first article of seventh point of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), that is transferring settlement of child cases from the legal system for criminals to another criminal justice system.

Based on the data obtained about traffic violations committed by children, the Konawe Police Traffic Unit delegated the case to the Unaaha District Court without diversion mainly to avoid fatalities involving children. Repressively, the Konawe Police Traffic Unit had taken pre-emptive actions (actions that prioritized appeals to avoid problems, so that they did not raise intentions) and preventive (prevented to avoid problems, so there were no opportunities).

**Table 1.** Information about the prosecution of criminal offenses of traffic violations by the Konawe Resort Police Traffic Unit are as follows:

Period (Months)	Number of Violations Judges' Decisions	Number of Age of Offenders				
		<17	18-27	28-50	51-70	>70
1 January	310	35	211	57	7	0
2 February	491	59	257	163	12	0
3 March	145	23	154	72	2	0
4 April	267	21	135	105	6	0
5 May	673	35	356	265	16	1
6 June	284	41	144	97	2	0
<b>Total</b>	<b>2170</b>	<b>214</b>	<b>1257</b>	<b>759</b>	<b>45</b>	<b>1</b>

Source of data: Data on Cases at the Konawe Police, Period January – June 2018

Based on these data, in January there are 35 cases committed by children and delegated to the Unaaha District Court, in February as many as 59 (fifty nine), in March as many as 23 (twenty three), in April as many as 21 (twenty one), in May as many as 35 (thirty five) and in June as many as 41 (forty one).

Traffic violations committed by children during the January-June 2018 in the Konawe Police District were 214 (two hundred and fourteen). Compared to other violators it was quite high, percentage of 9.7%. (Nine point seven percent). Then as many as 214 (two hundred and fourteen) or 100% (one hundred percent) of traffic violations by children were transferred to the Unaaha District Court.

Furthermore, the Unaaha Court Judge, imposed a criminal fine on children who committed Traffic Violations in the Konawe Police Legal Area during January-June 2018. The average value for each traffic violation crime is Rp. 39,000, - (thirty-nine thousand rupiahs) for each 1 (one) type of violation and Rp.1,000,- (one thousand rupiahs) for court fees, with details as follows:

**Table 2.** Case Data at the Unaaha District Court in 2018.

Months	Number of Violations Judges Decisions	Criminal	Comparison Value of Fines with Adults
1 January	35	All Criminals Fine	Equal
2 February	59	All Criminals Fine	Equal
3 March	23	All Criminals Fine	Equal
4 April	21	All Criminals Fine	Equal
5 May	35	All Criminals Fine	Equal
6 June	41	All Criminals Fine	Equal
<b>Total</b>	<b>214</b>	<b>All Criminals Fines</b>	<b>Equal</b>

The delegation of criminal acts of traffic violations by children to the Unaaha District Court is not extent to seventh article in the first paragraph and second paragraph relating to the Juvenile Criminal Justice System, Law No. 12 of 2012. Based on the law of SPPA, threat of traffic violation is a fine or confinement for no longer than 1 (one) year, the threat of criminal in a traffic violation crime is clearly under 7 (seven) years in prison and finds the criterias for diversion. as stipulated in the Law of SPPA.

In addition to diversion, discretion can also be exercised, guided by and paying attention to the principles of police discretionary authority, especially regarding repressive and preventive actions. This principle is a sub-principle of obligation [5], and the police must be able to judge for themselves personally. The self-assessment is still bound by its obligations. Among others, based on the guiding idea of necessity (notwending, noodzakelijk), the guiding idea of the problem as a benchmark (sachlich; zakelijk), the guiding idea of as a measure (zweckmassig; doelmatig) and the guiding idea of balance (everedig).

The law basics for the use of discretionary license is legal and justified by international and national law so that all parties can be protected, both officers, the community, especially children, and other related parties are [6]: International instruments as contained in The Child's Rights Convention, The Beijing Rules and The Riyadh Guidelines.

Meanwhile, in normative provisions. Article 16 paragraph (1) letter l of Law Number 2 of 2002 relating to the Indonesian National Police contains the discretion. Indonesia is authorized to take additional steps in accordance with responsible law

In addition to diversion and discretionary provisions, based on the opinion of GP Hoefnagels quoted by Barda Nawawi Arief, explains that crime prevention are as follow [7]:

1. Application law of criminal;
2. Avoiding punishment through prevention;
3. Convincing civilization's perspective over crime and sanction/electronic media.

Crime avoiding consists of 3 (three) elements; Pre-Emtif, Preventive and Repressive [7].

While the imposition of fine over traffic violations by children according Agus Maksum Mulyohadi, SH, MH explained [8]:

"The rationale for imposing a fine to the child who commits a traffic violation is consideration that the child already has capability to be responsible for the action and as the deterrent effect he will not repeat his action and not to end the hope and future potential of the child and based on community's sense of fairness, especially in Konawe. This criminal fine is more effective because job training will be demanding to be applied as an alternative to a fine as stated the SPPA Law that the fine is Rp. 39,000, - (thirty-nine thousand rupiahs) for 1 (one) type violation, either 1 (one) day or more, besides the child who commits a traffic violation is underage and not ready to be employed. In addition to that, the child is not necessarily to be present in the trial.

Based on the interview, the Judge at Unaaha District Court in giving a fine decision on traffic violations by children for it is more effective compared to job training as fine substitution as stated in the SPPA Law and children themselves were still underage to be employed. Not only juridical aspect but also sociological and psychological aspects were determined by judges for imposing fine for Traffic Violation by Children.

Juridically (if we have a positivism view), the application of fine imposition which is not stated in the Child Criminal Justice System Law (UU SPPA) clearly cannot be used. Fines are indeed contained in Article 10 of the Criminal Code. If the criminal provisions in the Criminal Code are compared to SPPA Law, then the principle of *lex specialis derogat legi generalis*, implies that specific regulation of law will override the general one. Therefore,

based on Paragraph (2) of Article 63 of the Criminal Code, If a crime is covered by a general criminal cipher, a specific criminal code also applies to that crime. then just the specific thing will be applicated. Thus, the criminal provision of this case refers to the SPPA Law.

Meanwhile, if we compare the SPPA Law with Law No. 22 of 2009 the LLAJ Law which regulates fines, then with the SPPA Law (UU No. 12 of 2012) *Lex posteriori derogat legi priori* is applicable with the notion that a new law amends or repeals a previous law governing the same subject. This principle applies to 2 (two) regulations governing the same problem in the same hierarchy. So, if there is a problem that is regulated in a law then it is regulated again in a new law, even though the new law does not revoke or nullify the adoption of the previous legislation, the old law which regulates matters same does not apply [9].

Considering the previous description, the procedural law in criminal acts of traffic violations by children refers to the SPPA Law. Apart from *lex specialis derogat legi generalis* principle and *lex posteriori derogat legi priori principle*, is also based on Article 102 letter a which states that children's cases must be carried out based on the procedural law of SPPA therefore, Young people who commit crimes (either in the form of crimes or violations) must be guided by the SPPA Law. Furthermore, Article 71 of the SPPA Law does not regulate fines for children who commit traffic violation, so they cannot be subject to fines.

With the imposition of the case, the judge has made a legal discovery (Rech vinding). Recht vinding the creation of laws by judges and other law enforcement officials in common regulation over concrete legal events that the findings become the basis for making decisions. Van Apeldorn states that the judge who is in charge of this case must be guided by principles:

1. Adjusting the law with concrete facts
2. In capability to add to the law if necessary.

Judges make laws whenever the law was old and deteriorated by society. Judges as law enforcers and justice are lawmakers who can determine legal or non-legal regulation as if they hold legislative power, called the former of the Act.

Relating to Judicial Power, Law of the Republic of Indonesia No. 48 of 2009, as stated in fifth article in the first paragraph , Judges and constitutional judges have a duty to investigate, adhere to, and comprehend the societal sense of fairness and legal principles. Thus the judge is not a mouthpiece of the law (*la bouche des lois*).

The judge ensures the independence of the judiciary. As state administrators in the judicial field, judges are applicators, enforcers, and inventors. When deciding cases, as law enforcers, judges in the judicial process apply the law for the sake of public and legal certainty. If the law to be applied is not found, the Judge seeks (finds) or creates law, and provides legal solutions in the dispute or case he is handling [10].

Discovering legal provision has to apply principle of *Res Judicata Pro Veritate Habetur* which is related to action of judge in examining and deciding that the case must be true, regardless of the contents or another issued decision. Judges are expected to be able to realize law goal, hope, and desire of justice seekers, because the law provides protection for human interests. So that Human interests can be safeguarded, but the law needs to be followed. If there is a violation of the law, then the law must be enforced by considering 3 (three) elements; legal certainty (*rechtssicherheit*), expediency (*zweckmassigkeit*) and justice (*gerechtigkeid*) [11]. However, whenever the convict is a child, protective principle, justice and the greatest benefit of children must be certainly provided in his legal discovery as the legal politics of the emergence of the SPPA Law

Ensuring legal certainty in law enforcement and uniformity for implementation needs improvements for example legal substance, SPPA Law, regarding criminal imposition fines on children who commit traffic violations. If fine is regarded as the best solution for children in

criminal acts of traffic violations rather than job training as contained in the SPPA Law, improving the norms in the SPPA Law needs to be done.

### **3.2 Vicarious Liability in the Crime of Traffic Violations by Children**

Punishment is the main topic of criminal law. Requisitions of punishment for perpetrators must be criminal act and mistake (*schuld*). Meanwhile, There is no defense or excuse for committing a crime; rather, the offender must be able to bear responsibility in order to be found guilty and condemned.

Criminal acts, mistakes and the imposition concern 3 (three) main topics. Helbert L. Packer stated: "These three concepts symbolize the three basic problems of substance on the criminal law: 1. What conduct should be designated as criminal law, 2 What determinations must be made before a person can be found to have committed a criminal offense 3. What should be done with persons who are found to have committed criminal offense (what action should be taken for a person who has committed a crime) [12].

Requisition of mistakes (*schuld*) in sentencing, responsibility follows the principle for imposing a crime on the perpetrator, apart from the existence of elements of a criminal act, the perpetrator of a crime must also have an element of error. This condition is reasonable, because it is clearly unfair to impose a sentence on a person who has no fault [13].

One of the major tenets of the criminal justice system is the concept of "no crime without fault" (*geen straf zonder schuld*).

However, as an exception, the "strict liability" and "vicarious liability" principles may be used in some circumstances.

In the first instance, the offender can only be punished because his conduct satisfied the requirements for a crime to be committed, while in the second a person's criminal responsibility is deemed appropriate to be extended to the actions of his subordinates who do work or acts for him or within the limits of his orders [14].

Substitute liability (vicarious liability) already exists in Article 1367 of the Civil Code. In this piece of writing, people can't only be adhered accountably for his own movements, but also for actions to others who commit acts against the law if that person is under his responsibility. In addition to being responsible for someone's actions, they can also be responsible for objects that are under their control if the unlawful act causes harm to others.

There are 3 (three) theories related to responsibility for unlawful acts committed by others, namely the theory of superior responsibility (*respondeat superior*, a superior risk bearing theory), the theory of substitute responsibility that is not from superiors over people in dependents and the theory of substitute responsibility for the goods under their responsibility [15].

In civil law, concept of Vicarious Liability does not apply immediately; there are restrictions on the imposition of responsibility. This limitation is conducted in Article number 1367 in fifth paragraph of Civil Code, that argues this responsibility ends if parents, school teachers or head master prove that they cannot prevent the actions of those for whom they are responsible for. So that if they can prove that they have prevented the unlawful act, then those who are responsible for the losses incurred are the parties who commit the unlawful acts themselves.

In legal of crime, the concept of Vicarious Liability has been applied to Corruption Eradication Act. Article 20 paragraph (2) of Law Number 20 of 2001 concerning Amendments to Law 31 of 1999 Concerning the Crime of Corruption contains the provisions for vicarious liability in the event that a criminal act of corruption is committed by a

corporation if the crime is committed by good people because relationship either in work or other within the corporate environment, individually or collectively [16].

In addition to corrupt behavior is illegal under Law No. 26 of 2000. concerning the court of Human Rights, article 42 paragraph (1) has also implemented substitute liability for military commanders or someone who acts like that can be imposed for unlawful acts who are in command under the Human Rights Court's authority, the replacement responsibility is due to the obligation of the Military Commander to handle one-side party, yet it is neither effectively nor properly.

When it comes to the bond between parents and kids, parents responsibility to their children is in 1367 Civil Code article, for parents or guardians if their child cause harm to others, the caregivers will be held accountable. It is also mentioned in Article 26 paragraph (1) of Law no. 35 of 2014 concerning Amendments to Law no. 23 of 2002. Parents or guardians are given responsibility by the state for nurturing, maintaining, providing education, protecting, growing and developing their children according to their abilities, talents and interests by providing good personality education and instilling morals, so that the child becomes a person who grows well na[17].

However, not all of a child's acts that are against the law can be held accountable to their parents; there still needs to be limitations in order to instill a sense of responsibility in youngsters. For instance, the Juvenile Justice System Law's articles 7 and 9 paragraph 2 can define specific crimes that can be prosecuted in accordance with the vicarious liability principle, namely, a criminal offense with a maximum sentence of seven years. Second, the action is not being repeated. Third, the crime is a minor infraction with no victims, the value of the victim's loss is not greater than the value of the local provincial government, and the crime is in the form of a violation [17]. In Criminal Code Bill, the principle of vicarious liability is contained in Article number thirty eight in the second paragraph of the 2008 Criminal Code concept, the piece of writing states that " Everyone may be held liable for crimes done by others if it is determined by law.

As previously mentioned, regulation of vicarious liability in the Concept Criminal Code is indeed an exception to the principle of "no crime without error" as well as a manifestation of the idea of balance and complement to the *Geen Straft Zonder Schuld* principle, which is described in the Elucidation of Article 38 paragraph (2) of the Draft Criminal Code/RKUHP 2008 which reads as follows:

The clauses in this sentence constitute an exception to the rule that there is no crime without guilt. The emergence of this exception is a refinement and intensification of the normative principle of juridical morals, which holds that in some circumstances, a person's responsibility is judged to extend to the actions of others who work for him as his subordinates. Therefore, even if a person does not really commit a crime, they may still be held legally responsible if the activity of the person in that position is viewed as a criminal act. As an exception, the application of this provision shall not apply to any circumstances not expressly provided for by law [18].

In criminal acts of traffic violation by children, it is possible to apply substitute liability that the parents of children who commit traffic violation are imposed to the fines. It is according to the provision that parents are accountable for nurture, educate and protect children as stipulated in paragraph 1 of Article 26 of Law No. 35 of 2014 amending Law No. 23 of 2002 on the protection of children.

The application of substitute responsibility in criminal acts of traffic violations by children needs to be determined and regulated in provisions of regulation and the law, especially in law of SPPA, as a basis for father and mother to be accountable to the actions of

criminal of traffic violations by children on the basis of the tenet of substitute responsibility. In addition, it is also regulated in the SPPA Law, certain conditions that can be used as an excuse for parents to be released from substitute liability; if the parents can prove that they have prevented the children to commit the crime, but the children eventually do the crime, the children absolutely are responsible (strict liability)

#### 4. Conclusion

Criminal acts handling of traffic violations by children in Konawe Regency is not conducted according to the SPPA Law, diversion process and the imposition of fines are not applied even though in the SPPA Law there is no criminal fine imposed to children. The imposition of the fine is a form of legal discovery (*Rech vindning*) which means law formation by judges/other law enforcement officers for the implementation of accustomed regulation to specific legal occurrences that finding will become the basis for making decisions. Judges as law enforcers and law makers can determine what is law and what is not. However, to ensure legal certainty in law enforcement and uniformity in the application of the law, there is improvement needs to be done in term of legal substance, the SPPA Law, regarding the imposition of criminal fines on children who commit traffic violations. If fines are seen as the best means for children in criminal acts of traffic violations rather than job training as contained in the SPPA Law, improvement norms in the law of SPPA is vital.

Substitute liability is possible to be implemented in traffic violation by children. Parents or caregiver will be responsible for the fines if their children commit this kind of crim. It is because parents are mandated to nurture, educate and protect children as In accordance with Article 26(1) of Law No. 35 of 2014 Concerning Amendments to Law No. 23 of 2002 Concerning Child Protection. The application of substitute responsibility in criminal acts of traffic violations by children needs to be determined and regulated in the provisions of laws and regulations, especially in law of SPPA, as a basis for parents and children who commit traffic violations which is based on the principle of substitute responsibility. In addition, according to SPPA Law, can make excuse to be released from substitute liability if they can prove that they have prevented the crime of traffic violation; but if the children do it, they are absolutely responsible for the crime (*strict liability*).

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