



## Children's Liability in Traffic Criminal Actions (Case Study Decision Number: 273 / Pid.Sus / 2019 / PN Gsk)

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### Abstract

This study aims to analyze the court decision number: 273 / Pid.Sus / 2019 / PN Gsk. The method used is normative legal research. The data used is secondary data, including books, scientific journals, research results, and laws and regulations. The data obtained were then analyzed normatively qualitatively. The results of this verdict indicate that first, the defendant M Nastain Bin Kariyanto was proven legally and proven to have committed a criminal act of "Driving a motor vehicle because his negligence resulted in a traffic accident which resulted in another person's death. The defendant's responsibilities are as follows; the defendant is candid, confesses and regrets his actions, the defendant has apologized and made peace with the victim's family, the defendant is polite during the trial, the defendant is not complicated in giving testimony, the defendant admits that he has never acted before, The defendant provided compensation in the amount of Rp. 5,000,000.00 plus motorcycle repair money, because the defendant was able to take responsibility, the defendant had to be declared and therefore sentenced to punishment under what was applicable. Second, the defendant was found guilty and sentenced to criminal law, so based on Article 222 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), Article 310 Paragraph (4) of Law of the Republic of Indonesia Number 22 of 2009 concerning Traffic and Road Transport.

**Keywords:** Children; Accountability; Criminal act

### Abstrak

Penelitian ini bertujuan untuk menganalisis putusan pengadilan nomor: 273/Pid.Sus/2019/PN Gsk. Metode yang digunakan adalah penelitian hukum normatif. Jenis data yang digunakan adalah data sekunder yang meliputi buku-buku, jurnal ilmiah, hasil penelitian dan peraturan perundangan. Data yang diperoleh selanjutnya dianalisis secara normative kualitatif. Hasil putusan ini menunjukkan bahwa pertama, terdakwa M Nastain Bin Kariyanto telah terbukti secara sah dan meyakinkan bersalah melakukan tindak pidana "Mengemudikan kendaraan bermotor karena kelalaiannya mengakibatkan kecelakaan lalu lintas yang mengakibatkan orang lain meninggal dunia. Adapun tanggungjawab terdakwa sebagai berikut, Terdakwa berterus terang, mengaku bersalah dan menyesali perbuatannya, Terdakwa sudah meminta maaf dan berdamai dengan keluarga korban, Terdakwa bersikap sopan selama dipersidangan, Terdakwa tidak berbelit belit dalam memberikan keterangan, Terdakwa mengaku belum pernah dihukum sebelumnya, Terdakwa memberikan santunan sejumlah Rp. 5.000.000,00 di tambah dengan uang perbaikan sepeda motor, bahwa oleh karena terdakwa mampu untuk bertanggung jawab, maka terdakwa harus dinyatakan bersalah dan oleh karena itu dijatuhi pidana sesuai dengan apa yang dilakukannya. Kedua, Terdakwa terbukti bersalah dan dijatuhi pidana maka berdasarkan Pasal 222 Undang-undang Nomor 8 Tahun 1981 tentang Kitab Undang-Undang Hukum Acara Pidana (KUHP), Pasal 310 Ayat (4) Undang-undang Republik Indonesia Nomor 22 Tahun 2009 Tentang Lalu Lintas dan Angkutan Jalan.

**Kata Kunci :** Anak; Pertanggungjawaban; Tindak Pidana

## **I. Introduction**

In principle, law enforcement officials can take any violation of the criminal law rules without any complaint or report from the injured party. The forms of violations committed by the Indonesian people in their daily lives are traffic violations. In Law Number 22 of 2009 concerning Road Traffic and Transportation, all provisions concerning drivers are regulated. Article 1 point 23 of this law determines that a driver is a motorized vehicle on the road that already has a driving license.

Traffic violations are regulated in statutory regulations, namely in Law Number 22 of 2009 concerning Road Traffic and Transportation. A traffic accident's legal consequence is that there is a punishment for the person who made the incident or the cause of the incident and may also be accompanied by a civil suit for the material loss caused. The large number of traffic accidents involving minors is a serious concern for parents and the government. The lax driving discipline and parental control have made many minors roam freely in motorized vehicles, making them vulnerable to becoming perpetrators and victims of traffic accidents.<sup>1</sup>

According to Law Number 35 of 2014 concerning Child Protection, when a legal incident occurs, whoever (includes a child) must be responsible proportionally under the positive law that governs it. Likewise, if there is an accident with the legal consequence of the victim being seriously injured or lightly injured, the victim dies, the loss of human life committed by a child, the lawmaker tries to provide a deterrent effect and learning to the child, without forgetting the fundamental rights of a child. Child criminal responsibility is measured by the level of suitability between the child's moral and psychological maturity and the child's delinquency, the physical, mental, and social condition of the child is a concern. In this case, consider various components such as moral and psychological conditions and the sharpness of the child's mind in determining responsibility for their delinquency.<sup>2</sup>

In the Gresik Regency area, we often encounter traffic violations committed by minors dominated by students. This student has been driving a motorized vehicle and does not have a SIM (driving license). Besides not having a SIM, students who are still categorized as children often change their vehicle shape (modification) to look nicer or cooler. That modification starts from removing the motorbike's rearview mirror, replacing the original color of the motorbike with a color that does not match the STNK, replacing a standard motorcycle exhaust with a racing exhaust, even replacing vehicle tires with a smaller size, and driving a vehicle at high speed. The impact of replacing motorbike spare parts that are not under predetermined conditions will be harmful to the rider.<sup>3</sup>

What happened was an accident by the defendant named M. Nastain Bin Kariyanto, who was driving a Viar No. 3-wheeled motorcycle with registration number: W 4284 KS runs from the west to the east at a speed of about 40-50 km/hour. Then Siti Fatimah Binti Maimun and Lailatus Saidah passed the case using a Yamaha Mio with registration number: W 4354 JF, suddenly. In front of the defendant, a four-wheeled vehicle stopped and turned on the right turn signal. The defendant was shocked and immediately took a bow to right through the road markings. Along with the defendant, suddenly, from the opposite direction (east to west), there was a Yamaha Mio motorcycle with the registration number. W-4354-JF, traveling at medium speed, immediately hit the front right side of the body of the Viar motorcycle vehicle driven by the defendant. As a result of the accident, Lailatus Saidah and Siti Fatimah suffered fractures of their thigh bones, right leg, and right hand and were taken to the Ibnu Sina Gresik Regional Hospital and while under medical treatment at the Ibnu Sina Gresik Hospital, Siti Fatimah suffered a brain failure which resulted in death.<sup>4</sup>

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<sup>1</sup> D. G. Costa, *Analisis Risiko Kecelakaan Pengguna Sepeda Motor*, Simposium XV FSTPT. (Bekasi: Sekolah Tinggi Transportasi Darat, 2012), 34.

<sup>2</sup> Republic of Indonesia, Law No. 22 of 2009 concerning Road Traffic and Transportation.

<sup>3</sup> Hadi Setia Tunggal, *UU RI Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak* (Jakarta: Harvarindo, 2013), 3.

<sup>4</sup> Romli Atmasasmita, *Problema Kenakalan Anak-Anak Remaja* (Bandung: Armico, 1983), 40.

## II. Research Problems

Based on this limitation, the problem formulation is as follows:

- a. How is the responsibility of children in the case of decision number 273/PID.SUS /2019 /PN.Gsk?
- b. How is the judge's consideration in the case of decision number 273 / PID.SUS / 2019 / PN.Gsk?

## III. Research Methods

This study uses a normative juridical approach. The normative juridical approach method is a research method that looks at the legal aspect, namely that the law is conceptualized as what is written in the legislation made by the competent State Institution or the law is conceptualized as existing rules or norms and is a benchmark for human behavior that is considered appropriate in apply existing norms. This study is a research that looks for legal aspects in Decision Analysis number 273 / PID.SUS / 2019 / PN.Gsk. The type of research used by the research is descriptive. Descriptive research is research in detail or in-depth. In a sense, the research is carried out to reveal all or various aspects of the research objectives.<sup>5</sup> This research's data source is secondary data, which comes from primary legal materials: Criminal Code, Traffic Law, Child Protection Act. Secondary legal materials are legal materials related to primary legal materials and help analyze and understand primary legal materials, including literature and references.

## IV. Research Results And Discussions

### 1. The responsibility of the child in the case of decision number 273 / Pid.Sus / 2019 / PN Gsk

The child's responsibility is seen from 2 aspects, namely the deliberate aspect and the negligent aspect. The above aspects are the basis of provisions in determining someone who commits a criminal act that cannot be held accountable.<sup>6</sup> Understanding that a person can be held accountable for his actions, with these two aspects does not experience problems, both his mental state and mental capacity. In connection with the responsibility of a child who is still a minor, apart from age being an important thing, a child can be held accountable, but these two aspects are also a measure of a child who has committed a criminal act to be held accountable. Meanwhile, seen from the criminal responsibility of minors outside the Criminal Code.<sup>7</sup>

In the victim's opinion, the next opinion is that the child's behavior must be continuously monitored because it is hazardous for other road users, but the child must still be aware of his mistakes and be responsible. Likewise, the child's parents should not escape their supervision of the child. Suggestions from Bapas are that children are not sentenced to punishment but are given guidance in Social Welfare Organizing Institutions (*Lembaga Penyelenggaraan Kesejahteraan Sosial*, LPKS) in addition to making peace between the victim's family and the child's family and finding the best way. The criminal sanctions imposed on children must be based on truth, justice, and the child's welfare. Imposing a crime or action is an action that must be responsible and beneficial for the child.<sup>8</sup>

In the above case, the defendant was cooperative in the case. However, the compensation for the defendant was not under Article 310 paragraphs 2,3 and 4 of Law No. 22 of 2009, which in Article 310 paragraph 2, Everyone driving a motorized vehicle who due to his negligence

<sup>5</sup> Subekti, *Kamus Hukum* (Jakarta: Pradnya Paramita, 1983), 74.

<sup>6</sup> Suwardjoko P. Warpani, *Pengelolaan Lalu Lintas dan Angkutan Jalan* (Institute Teknologi Bandung), 1.2002.

<sup>7</sup> E.Y. Kanter, Dkk, *Asas-asas Hukum Pidana di Indonesia dan Penerapannya* (Alumni: Jakarta, 1982).

<sup>8</sup> Wagiyati Soetodjo, *Hukum Pidana Anak* (Bandung : PT Refika Aditama, 2006), 63-65.

resulted in a Traffic Accident with the victim minor injuries and damage to vehicles and/or goods as referred to in Article 229 paragraph (3), shall be punished with imprisonment of up to 1 (one) year and/or a maximum fine of Rp. 2,000,000.00 (two million rupiah). Paragraph 3 Every person is driving a Motor Vehicle which due to negligence results in a Traffic Accident with the victim being seriously injured, as referred to in Article 229 paragraph (4), shall be punished with imprisonment of 5 (five) years and/or a maximum fine of Rp.10,000,000. 00 (ten million rupiahs). Furthermore, paragraph 4 In the event of an accident as referred to in paragraph (3), which results in another person's death, the punishment shall be maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 12,000,000.00 (twelve million rupiah). the defendant should have provided compensation heavier than Rp. 5,000,000.00. As stated in article 310 paragraph 3, Any person who drives a Motor Vehicle which due to negligence results in a Traffic Accident with the victim being seriously injured, as referred to in Article 229 paragraph (4), shall be punished with imprisonment of 5 (five) years and/or a fine. A maximum of Rp.10,000,000.00 (ten million rupiahs). It is said that the serious injury victim can be sentenced to a maximum imprisonment of 5 years and a maximum fine of Rp. Ten million million while the result of the defendant's negligence causes a death victim, as stated in paragraph 4 as referred to in paragraph 3, which results in another person dying, is punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR 12,000,000.00.

## **2. Judges considerations in deciding case number 273 / Pid.Sus / 2019 / PN Gsk**

The defendant, M. Nastain Bin Kariyanto, drove the Viar No. 3-wheeled motorcycle. Pol: W 4284 KS runs from the west to the east at about 40-50 km/hour. Then Siti Fatimah Binti Maimun and Lailatus Saidah passed the scene of the case using a Yamaha Mio with registration number: W 4354 JF suddenly; in front of the defendant, there was a four-wheeled vehicle that was stopped in the middle of the road and turned on the right turn signal, the defendant was shocked and immediately took a bow too right through the road markings. Along with the defendant, suddenly from the opposite direction (east to west), there was a Yamaha Mio motorcycle with registration number W-4354-JF, traveling at medium speed, and immediately hit the front right side of the body of the Viar motorcycle vehicle driven by the defendant. As a result of the accident, Lailatus Saidah and Siti Fatimah suffered fractures of their thigh bones, right leg, and right hand and were taken to the Ibnu Sina Gresik Regional Hospital and while under medical treatment at the Ibnu Sina Gresik Hospital, Siti Fatimah suffered a brain failure which resulted in death.

In this case, the judge considered the factor of negligence, namely in this case, the defendant drove the viar carelessly so that the defendant hit the victim. Traffic accidents resulted in the death of the victim and a criminal offense<sup>9</sup>. The sanctions imposed on drivers who are negligent in driving their vehicle are not only in the form of a crime, but there is also a liability in assisting heirs in medical expenses and or funeral costs. As stated in Article 235 of Law no. 22 of 2009 concerning Road Traffic and Transportation states that "If the victim dies as a result of a traffic accident, the driver, owner and/or public transportation company is obliged to assist the victim's heirs in the form of medical expenses and/or funeral costs without dropping the lawsuit. criminal."

The judge, in passing the decision number: 273 / Pid.Sus / 2019 / PN Gsk based on article 310 paragraph (3) and paragraph (4) of the Road Transportation Traffic Law. Besides, judges also refer to the Child Protection Law Article 26 paragraph (1) of Law Number 3 of 1997 concerning Children's Courts (Law on Children's Courts) in conjunction with Article 79 paragraph (2) of Law Number 11 of 2012 concerning the Child Justice System. Thus, a child who drives a motorized vehicle due to his negligence, which results in another person's death, will

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<sup>9</sup> Bambang Hartono, "Penyelesaian Perkara Melalui Diversi Sebagai Upaya Perlindungan Anak Pelaku Tindak Pidana", *Pranata Hukum*. 10(1), (2015): 75-85.

be punished with imprisonment of half of the adult penalty (six years), namely a maximum of three years imprisonment and/or a fine of Rp. 6,000,000, - (six million rupiah).

In the Civil Code in articles 421 and 426 of the Civil Code, there are two types of maturity: full maturity and maturity for the individual (limited) legal acts. Both must meet the requirements stipulated by law. For full maturity, the condition is fully 20 years old. Meanwhile, for limited maturity, the condition is that they are already fully 18 years old. Besides, criminal law also recognizes the differences between minors and adults. What is called adult age if we are 21 years old or not 21 years old, but already or have been married.

The penal code for children and its programs applies only to those who are under 18 years of age, who, according to civil law, are not yet mature. Those who are 17 years old and who have been married are no longer included in the penal code for children. Meanwhile, according to the Criminal Code, it is clearly stated in Article 45, which reads, "In prosecuting a person who is underage (*Minderjaring*) for committing an act before the age of 16 ..." It is mentioned here when someone who is under 16 years old is considered unable to be responsible. In the context of not being able to take legal actions. In this case, the suspect, M. Nastain bin Karyanto is 19 years old, which in the Road Traffic and Transportation Law can be said to be an adult if he is 17 years old, including making a SIM (Driving License). However, the verdict states that the suspect is categorized as a minor, categorized as an adult (at least 17 years old).

The defendant was also responsible for the loss suffered by the victim in cash amounting to Rp. 5,000,000.00 (five million rupiahs), and the witness also received a loss of Rp. 2,000,000.00 (two million rupiahs) but get the victim given to the witness. As stated by Article 310 paragraph (4) of Law 22 of 2009 concerning road transportation, "In an accident as referred to in paragraph (3) which results in the death of another person, shall be punished with imprisonment of up to 6 (six) years and/or a maximum fine of Rp. 12,000,000.00 (twelve million rupiah). " Then the judge in deciding this case against the defendant was based on the Child Protection Law so that the defendant only paid compensation / a fine of Rp. 5,000,000.00 (five million rupiah) and was imprisoned for 1 (one) 10 (months).

The Panel of Judges is guided by the purpose of the punishment, which is not merely retaliation for an act, but more than that it is also corrective, preventive, and educational in nature as well as based on observations during the trial and based on legal facts that the defendant's actions were not caused deliberately (*dolus*) but was caused due to negligence (*culpa*) but due to his carelessness in driving in the sense that the defendant did not intend to touch the victim but due to his accident, the verdict to be handed down to the defendant according to the Panel of Judges was appropriate. It was deemed fair and reasonable under his deeds.<sup>10</sup>

In deciding the verdict, the defendant should be subject to criminal charges and greater compensation under Article 310 paragraph (4) of Law Number 22 the Year 2009 concerning Road Transportation Traffic because the defendant lost his life and serious injuries to the victims it could be burdensome. Punishment and compensation to the defendant. Judges provide criminal sanctions and compensation based on Article 26 paragraph (1) of Law Number 3 of 1997 concerning Children's Courts in conjunction with Article 79 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Justice System. Thus, a child who drives a motorized vehicle due to his negligence, which results in another person's death, will be punished with imprisonment of half of the adult penalty (six years), namely a maximum of three years imprisonment and/ or a fine of Rp. 6,000,000, - (six million rupiah).

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<sup>10</sup> Jamilia Susanti, "Tinjauan Hukum Islam Pertanggungjawaban Pidana Terhadap Anak Di Bawah Umur" accessed December 5, 2019.

## V. Conclusions

The child's responsibility in compensation arising from negligence, traffic accidents that resulted in a minor even though the compensation has been paid cannot abort the criminal proceedings for the child who caused the traffic accident. Under Article 310 paragraph (4) of Law RI no. 22 of 2009 concerning traffic and public transportation where the defendant should be compensated under Article 310 paragraph (4) of Law Number 22 of 2009 concerning traffic and public transportation and Article 26 paragraph (1) of Law Number 3 of 1997 concerning Juvenile Court (Child Court Law) in conjunction with Article 79 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Justice System. Thus, a child who drives a motorized vehicle due to his negligence, which results in another person's death, will be punished with imprisonment of half of the adult penalty (six years), namely a maximum of three years imprisonment and/or a fine of Rp. 6,000,000, - (six million rupiah).

The judge's consideration in deciding the case number 273 / PID.SUS / 2019 / PN.Gsk, The judge in making this decision, should have been given compensation and criminal sanctions under Article 310 paragraph (4) of Law Number 22 of 2009 concerning Traffic and road transportation where the sentence is six years and the maximum compensation is Rp. 12,000,000.00 because the defendant has lost the life of another person and seriously injured the victim.

## VI. Suggestions

- a. Investigators who handle children's cases can do diversion and restorative justice so that their rights as children are still fulfilled by not doing formal law against children who have committed criminal acts.
- b. The judge gave compensation sanctions under Article 310 paragraph 4 of Law number 22 of 2009 because the victim died and was seriously injured. Even though the defendant was still a minor and was included in the child protection law, the judge should still impose compensation sanctions under Article 310 paragraph 4 of Law number 22 of 2009.

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