

**Legal protection against children who are passed on in the transportation of two -
wheeled vehicles on the highway**

**Proteção legal contra crianças repassadas no transporte de veículos de duas rodas na
rodovia**

**Protección legal contra los niños que son fallecidos en el transporte de vehículos de dos
ruedas en la carretera**

Received: 11/18/2020 | Reviewed: 11/18/2020 | Accept: 11/24/2020 | Published: 11/29/2020

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Abstract

The research objective was to analyze and find the urgency and concept of legal protection for children in two-wheeled motorized vehicle transportation on the highway. This study uses a normative research method with a statutory approach, a conceptual approach, a comparative approach, a philosophical approach. There are clear rules regarding legal protection for children who take a ride in two-wheeled motorized vehicle transportation on the highway. Children often become victims of the misunderstanding of the parents/community who ride a

child under 12 years old with a two-wheeled motorized vehicle on the road, parents/community don't realize the risks posed by mistreatment by piggybacking children under 12 (twelve) years old with two-wheeled motorized vehicles on the highway. With the existence of clear rules governing legal protection for children as passengers in two-wheeled motorized vehicle transportation, it's hoped that parents/the community will realize and understand the safety of the child's soul.

Keywords: Legal protection; Two-wheeled motorized vehicles; Highway.

Resumo

O objetivo da pesquisa foi analisar e encontrar a urgência e o conceito de proteção legal para crianças no transporte rodoviário de veículos motorizados de duas rodas. Este estudo usa um método de pesquisa normativo com uma abordagem estatutária, uma abordagem conceitual, uma abordagem comparativa, uma abordagem filosófica. Existem regras claras sobre a proteção legal de crianças que viajam em veículos motorizados de duas rodas na rodovia. As crianças muitas vezes se tornam vítimas do mal-entendido dos pais / comunidade que conduzem uma criança menor de 12 anos em um veículo motorizado de duas rodas na estrada, os pais / comunidade não percebem os riscos representados por maus-tratos por crianças menores de 12 anos (doze) anos com veículos motorizados de duas rodas na rodovia. Com a existência de regras claras que regem a proteção legal de crianças como passageiros no transporte de veículos motorizados de duas rodas, espera-se que os pais / a comunidade percebam e compreendam a segurança da alma da criança.

Palavras-chave: Proteção legal; Veículos motorizados de duas rodas; Rodovia.

Resumen

El objetivo de la investigación fue analizar y encontrar la urgencia y el concepto de protección legal de los niños en el transporte de vehículos motorizados de dos ruedas en la carretera. Este estudio utiliza un método de investigación normativo con un enfoque estatutario, un enfoque conceptual, un enfoque comparativo, un enfoque filosófico. Existen reglas claras con respecto a la protección legal para los niños que viajan en vehículos motorizados de dos ruedas en la carretera. Los niños a menudo se convierten en víctimas de la incomprensión de los padres / comunidad que viajan a un niño menor de 12 años con un vehículo motorizado de dos ruedas en la carretera, los padres / comunidad no se dan cuenta de los riesgos que plantea el maltrato de niños menores de 12 años (doce) años con vehículos motorizados de dos ruedas en la carretera. Con la existencia de reglas claras que gobiernan la protección legal de los niños

como pasajeros en el transporte de vehículos motorizados de dos ruedas, se espera que los padres / la comunidad se den cuenta y comprendan la seguridad del alma del niño.

Palabras clave: Protección legal; Vehículos motorizados de dos ruedas; Autopista.

1. Introduction

Two-wheeled motorized transportation is the prima donna for people in Indonesia, one of the reasons people prefer two-wheeled vehicles because they can avoid congestion and the price is more affordable than four-wheeled motorized vehicles.(Sipil et al., 2017) Looking at the data from the Indonesian Motorcycle Industry Association (AISI), statistics on the domestic distribution of two-wheeled motorized vehicles as of June 2020 reached 167,992 units, motor vehicle sales increased by 7 (seven) times from May 2020 which only recorded 21,851 units.(<https://www.100kjp.com/motonews/5084-Naik-Motor-Bonceng-Anak-Di-Bawah-Umur-Akan-Didenda-Rp3-Juta>, n.d.) Due to the increasing number of motorized vehicles the higher the number of motor vehicle accidents. In Law Number 22 of 2009 concerning Road Traffic and Transportation, Article 105, Article 106 and in the Criminal Code do not clearly regulate how parents/communities carry/ride children under the age of 12 (twelve) years in motorized two-wheeled vehicles on the great road.

The comparison of the first research of the child as a witness must get his right to the best interest of the child and respect for the child. Protection guarantees that are obtained not only from Law Number 11 of 2012 concerning the Criminal Justice System for Children, but also receive protection from Law Number 13 of 2006 concerning the protection of witnesses and victims.(Wiwik, 2020)

The Second Comparative Research emphasizes the protection of children with Law Number 23 of 2002 Article 68 which has not been maximized so that it must provide special protection for child victims of kidnapping, sale and trafficking of children as referred to in Article 68 which is carried out by the Government and the community through surveillance efforts protection, prevention, care and rehabilitation. And every person is prohibited from placing, permitting, carrying out, ordering or taking part in kidnapping, selling or trading as intended.(Akbar, 2012)

The third research comparison emphasizes that legal protection for minors who are victims of exploitation as artists is still lacking and is not recognized as parents who are supposed to protect children by giving everything for growth and development both physically and psychologically. Indonesia has a set of laws and regulations in place that

clearly state the prohibition of involving children in work. The problem now is, even though there are laws and regulations that prohibit the involvement of children in work, in reality there are still many children who have bad luck and work as artists who are far beyond their abilities. Even though there are already laws that regulate children's rights, these laws are not yet organized and have not been directed in their regulation, because of a number of laws regulating children's rights and prohibition of child exploitation, there is no harmonization in their implementation so that the government, law enforcers and society find it difficult to implement it and the parents lack knowledge of education and the needs of children's rights.(Hidayat & Mahyani, 2017)

While this research, the author focuses more on the legal protection of children who are carried in motorized two-wheeled vehicle transportation on the highway which has not been clearly regulated in Law Number 22 of 2009 concerning Road Traffic and Transportation Article 106 paragraph (5) (e) During an inspection of a motorized vehicle on the road, every person driving a motorized vehicle is suspected of hitching a ride on a child under the age of 12 (twelve) years old must show a child's identity card. Article 310 paragraph (4), namely Every person who drives a two-wheeled motorized vehicle on the highway carrying passengers under 12 (twelve) years is subject to imprisonment and/or a fine.

In relation to the legal protection of children in the transportation of two-wheeled motorized vehicles on roads that haven't been regulated in the legislation in Indonesia, it shows that there is still a legal vacuum regarding these regulations. The vacuum of norms is one of the legal problems that can be used as material for conducting legal research.(Tjandra, 2020) By understanding the urgency and the concept, it is hoped that it will be able to contribute ideas to legislators, in this case the legislative body, so that in the future there are legal rules that can protect child safety in motorized two-wheeled vehicle transportation on the highway.(Lewokeda, 2019) Based on the above background, it can be argued that there is a problem of the urgency of legal protection for children in two-wheeled motorized vehicle transportation on the highway and the concept of legal protection for children in two-wheeled motorized vehicle transportation on the highway.

2. Method

This research is a normative legal research using the statutory approach method, conceptual approach, comparative approach, philosophical approach (Michael & Feninlambir, 2015).

3. Research Results and Discussion

The Urgency of Legal Protection for Children in Two-Wheeled Motorized Vehicle Transportation on the Highway

The imbalance between road capacity and an increase in vehicles, both two-wheeled and four-wheeled motorized vehicles and other road transportation on the highway, has resulted in an increase in violations that have a negative impact on society. To prevent traffic violations from increasing, it's necessary to have a rule of law which is a safeguard in order to achieve traffic order. (Sadewa, 2015) The rule of law is one of the rules needed to anticipate legal problems, including laws governing road traffic problems. (Ura, 2017)

Based on data from the Central Statistics Agency per 2018 the number of two-wheeled motorized vehicles reached 120,101,047 units while the length of the road according to the asphalt surface was 329,926 KM, not asphalt 212,384 KM, every year the number of two-wheeled motorized vehicles increased, causing two-wheeled motorized vehicles to be recorded as contributors. The largest number of road traffic accidents, with 35,980 accidents in the second quarter of 2019, decreased from the previous period in the first quarter of 2019, 36,358 accidents, the victims of which were minors. (<https://lokadata.beritagar.id/chart/preview/jumlah-kecelakaan-di-indonesia-triwulan-i-dan-ii-2019-1564645899>, n.d.) As many as 11.68% of victims of traffic accidents using two-wheeled motorized vehicles are aged 0-14 years. (<https://bisnisnews.id>detail>berita>, n.d.)

The phenomenon of carrying/carrying a small child while driving a two-wheeled motorized vehicle on the highway is now becoming more common. In fact, some parents/society already think that this is something normal or reasonable to do, even though they may already know the risks they are facing. Sadly again, parents/society seem to ignore the safety side of children when driving with a two-wheeled motorized vehicle. Examples that are often encountered on the highway, such as carrying/piggybacking children in the front position, standing, and some even carrying/carrying three children at once in a two-wheeled motorized vehicle without caring and neglecting children's safety. (Fahlevi, 2015)

Placing minors in the front/rear seats is strictly not justified in the aspect of traffic safety for two-wheeled motorized vehicles. In the event of an accident, placing a child in the front/rear position is a form of negligence that cannot be tolerated, for a two-wheeled motorized vehicle it will certainly have an impact from a health perspective because the child is constantly hit by the wind. In the Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation, it's not stated in detail what age children can be

carried/carried on a two-wheeled motorized vehicle, with the maximum age of carrying/driving a two-wheeled motorized vehicle. However, what happens is that there is an omission from law enforcement officials, parents/the community do not have an understanding and do not realize that the habit/negligence of carrying/carrying a child on the road will have fatal consequences in the event of an accident which will result in minor injuries or serious injuries that can even be snatched lives.(Utomo, 2016).

The Concept of Legal Protection for Children in Two-Wheeled Motorized Vehicle Transportation on the Highway

The public interest is the assurance of children's safety as a gift given by God, while the state's interest is the guarantee of the safety of the nation's future generations. By making, adding to the Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation in the chapter of sanctions "Anyone who deliberately or due to negligence hitches a ride/carries a child under the age of 12 using a two-wheeled motorized vehicle on the highway threatened with imprisonment for a maximum of 1 (one) year ".

In determining the legal rules related to hitchhiking for children using a two-wheeled motorized vehicle on the highway as a manifestation of providing legal protection for children in road transportation, the *Rule, Opportunity, Capacity, Communication, Interest, Process, and Ideology* (ROCCIPI) method was used by Robert. B Seidman, Aan Seidman and Nalin Abeyeesekere.(Seidman, 1978) ROCCIPI is an identification of seven factors that often cause problems related to the enactment of laws and regulations.

The ROCCIPI agenda categories proposed by Robert B. Siedman can be explained as follows:(Trijono, 2012)

- (1) *Rule*, which means that the rules must be clearly defined and not multiple interpretations;
- (2) *Oppurtunity*, the rules must leave no opportunity for disobeying;
- (3) *Capacity*, regulations must know the conditions that are in the person who is the subject of the regulation;
- (4) *Communication*, regulations must be announced and socialized in an orderly manner, so that they are easily recognized by the public;
- (5) *Interest*, regulations must provide benefits, both for regulators and communities affected by regulations;
- (6) *Process*, regulations must be based on processes that encourage people to comply with laws and regulations;

(7) *Ideology*, regulations contain the values adopted by society, including mental attitudes, views and religious understanding.

In relation to the legal protection of children in road transportation, the rules or norms of "Everyone Prohibited from Riding a Child Using a Two-Wheeled Motorized Vehicle on the Highway" based on the previous descriptions can be used as a reference for the ROCCIPI method.

In general, the rules or norms proposed in this study using the ROCCIPI method can be seen, including:

- (1) From the *rule* point of view, it's clear that it's prohibited to ride a child using a motorbike will not cause multiple interpretations, because it is certain that the definition of a child being meant and also the definition of a motorcycle is clearly in the Law of the Republic of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation which is currently still applies.
- (2) From the *opportunity* side, because it involves violations, there should be no opportunity not to comply with the prohibition.
- (3) In terms of *capacity*, the regulated violations will provide opportunities for parents / communities to be more aware of the importance of safety for children's souls.
- (4) In terms of *communication*, it's easier to recognize the prohibition of carrying a child on a motorbike because it has been included in the regulations relating to road traffic and transportation.
- (5) From the point of view of *interest*, the prohibition of riding on a child using a motorbike will provide benefits for parents, society, and the state because the goal is to provide protection for children.
- (6) In terms of the *process*, prohibiting ride on a child using a motorbike will increase awareness to parents / the community about the importance of maintaining children's safety by not riding on a motorbike.
- (7) From an *ideological* perspective, the prohibition of riding on a child using a motorbike doesn't contradict the values contained in Pancasila as a way of life and the legal basis of the Indonesian nation. There is a solution to be presented as a legal finding suitable for the ideological values of the Indonesian nation.

To provide legal protection for children in road transportation, the concept of rules is proposed so that they can be included in the transportation law, namely Law of the Republic

of Indonesia Number 22 of 2009 concerning Road Traffic and Transportation which is currently in effect in Indonesia.(Sumampow, 2013).

As for the concept of the rule, namely, "Everyone is prohibited from carrying a ride on a child using a two-wheeled motorized vehicle on the highway", the existing rules must contain restrictions on children who aren't allowed to ride on a two-wheeled motorized vehicle, and restrictions on the child's age, weight, and the child's height, it is also necessary to limit the specifications of the motorbike used to ride the child.

4. Conclusion

Children as the nation's next generation must be protected both physically and psychologically by the government and parents/communities so that their rights can be fulfilled in the constitution. Parents/the community must be given awareness of the habit of driving with a child using a two-wheeled motorized vehicle on the road, which of course will have a risk to the child's mental safety when an accident occurs.

The concept of legal protection for children using motorized two-wheeled vehicle transportation on the highway through the Traffic and Transportation Law by adding in Law Number 22 of 2009 concerning Road Traffic and Transportation in Article 106 paragraph (5) (e) when an inspection of a motorized vehicle is being conducted on the road, every person driving a motorized vehicle suspected of hitching a ride on a child under the age of 12 (twelve) is obliged to show a child's identity card.

The establishment of legal norms that are appropriate to the conditions of the community must be carried out. thus, the child who is piggybacking will have optimal legal protection.

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