

The Implementation of Diversion in the Settlement of the Violent Theft by Children

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Abstract. *The purpose of this study is to find out and analyze the application of diversion in solving criminal acts of theft by violence committed by children. To find out and analyze the obstacles faced by investigators in implementing diversion to resolve the crime of theft with violence committed by children and the solutions. This research is normative legal research by analyzing and describing the application of diversion in solving violent laundering crimes. Therefore, this research is a descriptive analysis research that aims to provide a comprehensive explanation regarding this matter, both in the Criminal Code, the RKUHP and other related laws and regulations. The obstacles are that not all law enforcement officers have attended SPPA training, the threat of a case that carries a maximum penalty of 9 years in prison and the attitude of victims who want to be paid higher for commercial purposes. The solution is to be active in carrying out the task, understand the Best Interests Principle for the Child and the Judge in determining the diversion agreement and not just accept the victim's statement asking for excessive or inappropriate compensation.*

Keywords: Application; Diversion; Theft; Violence.

1. Introduction

Childhood is the most important phase in the whole process of growing into an adult human being. Every child in their growth and development goes through various things that will be remembered for the rest of their life by imitating every action that the child sees, so that it will have an impact on their behavior in adulthood. One of the goals of the Republic of Indonesia in the Preamble of the 1945 Constitution of the Republic of Indonesia is to advance public welfare, the Indonesian government wants to advance the welfare of every citizen, including regarding the welfare of children. Article 28 B paragraph (2) of the 1945

Constitution of the Republic of Indonesia emphasizes that every child has the right to survival, growth and development and is entitled to protection from violence and discrimination.

Act No. 35 of 2014 concerning Child Protection jo. Act No. 23 of 2002 concerning Child Protection provides clear and comprehensive arrangements regarding child protection which in essence aim to guarantee and protect their rights so that they can live, grow, develop and participate optimally as well as obtain protection from violence and discrimination.¹

Juvenile delinquency can no longer be viewed as ordinary delinquency, many children commit acts that are classified as criminal acts, such as stealing, carrying sharp weapons, getting into fights, being involved in drug use, and so on. However, children who commit criminal acts and actions that are prohibited by law, must be interpreted as an inability of the mind (mind), physical (body) or moral and mentality that exists in the child which is determined by natural values.²

A child by nature still has reasoning power that is not good enough to distinguish between good and bad things. Crimes committed by children in general are a process of imitating or being influenced by the persuasion of adults. The formal criminal justice system which ultimately places children in the status of convicts certainly has considerable consequences in terms of the child's development. The process of punishment given to children through the formal criminal justice system by putting children in prison has failed to make children deterrent and become better individuals to support their growth and development process. Prison often makes children more professional in committing crimes.³

The perpetrators of criminal acts of theft are not half-heartedly carried out by children, where in the laws and regulations that apply in Indonesia, people who are under age are categorized as children. The rise of theft committed by children is often indicated by an unstable psychological condition coupled with solicitations or persuasion and even coercion from adults.

From a psychological point of view, various attitudes and arbitrary actions towards children make them problem children, thus interfering with the process of healthy growth/development. This is inseparable from the increasingly complex problems

¹Muhadar, Abdullah, Husni Thamrin, 2009, Protection of Witnesses and Victims in the Criminal Justice System, Putra Media Nusantara, Surabaya, p. 74.

²Wadong, Maulana Hasan, 2000, Advocacy and Child Protection Law, Grasindo, Jakarta, p. 68.

³ M. Joni and Zulchaina Z. Tanamas, 1995, Legal Aspects of Child Protection in the Perspective of the Convention on the Rights of the Child, Citra Aditya Bakti, Bandung, p. 1

faced by today's children, coupled with supporting factors for the learning process to occur indirectly, such as shows of violence on the television screen, to news of serious violence that has appeared recently. While in a child, the process of imitation (imitating) is the most dominant in influencing him. Starting from the complexity of the problems related to the protection that must be given to a child who has problems with the law, of course there must be efforts from various parties to save the nation's children.⁴

To avoid the negative effects or impacts of the criminal justice process on children, the United Nations Standard Minimum Rules for the Administrator of Juvenile (The Beijing Rules) has provided guidelines as an effort to avoid these negative effects, namely by giving authority to law enforcement officials to take policy actions in dealing with or resolving the problem of child offenders by not taking formal means, including stopping or not continuing or releasing from the Court Process or returning or handing over to the community and other forms of social service activities. This action is called diversion (diversion).⁵The concept of restorative justice as stipulated in Act No. 11 of 2012 concerning the juvenile justice system is to provide space for protection and respect for the interests and interests of victims and perpetrators.⁶

The purpose of this research is to find out and analyze the application of diversion in solving the crime of theft with violence committed by children. To find out and analyze the obstacles faced by investigators in implementing diversion to resolve the crime of theft with violence committed by children and the solutions.

2. Research Methods

This research is normative legal research by analyzing and describing the application of diversion in solving violent laundering crimes. Therefore, this research is a descriptive analysis research that aims to provide a comprehensive explanation regarding this matter, both in the Criminal Code, the RKUHP and other related laws and regulations. The research method used by the author is literature study which originates from primary and secondary legal materials such as the Criminal Code, Draft Criminal Code, related laws and regulations, research reports, internet, newspapers, and scientific books or articles.

⁴ Made Ayu Citra Mayasari, 2012, Diversion in the Juvenile Justice System in Indonesia, Master of Law Study Program, Postgraduate Program at Udayana University, Bali, p. 10

⁵R. Wiyono, 2016, Juvenile Criminal Justice System in Indonesia, Sinar Graphic, Jakarta, p. 45-46

⁶ Iwa Mashadi and Gunarto, 2018, Application of Restorative Justice Against Crime Committed by Children in the Cirebon Police, Journal of Daulat Hukum, Volume 1 Issue 3, Unissula, p. 743, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/RH/article/view/3386/2504>

3. Result and Discussion

3.1. Application of Diversion in Completion of Violent Theft Crimes Committed by Children

In Indonesia, realizing a judiciary that truly pays attention to the interests of the child, it is necessary to realize a limited judiciary for children to guarantee the interests of the child through Act No. 11 of 2012 concerning the Juvenile Criminal Justice System. who are still included in the category of children, all of them must be tried in courts for children in courts within the general court environment.⁷

Creating a rule of law state requires a legal instrument that regulates balance and justice in society in all areas of life and people's livelihood through statutory regulations. In general, society recognizes law as rules, norms, guidelines, behavior, or statutory regulations which if violated will be subject to sanctions.⁸

The Juvenile Justice Act will provide a national legal basis for legal protection for children through the juvenile justice system. In addition to that the Juvenile Justice Act, which is intended as a more stable and adequate legal instrument in carrying out guidance and providing legal protection for children who have problems with the law as well as upholding children's rights and child law to realize the principle of the best interests of the child (the best interests of the child).⁹

One of the efforts to prevent and overcome delinquency is through the implementation of the juvenile justice system. The purpose of administering the juvenile justice system is not solely aimed at imposing criminal sanctions on children who have committed criminal acts, but is more focused on the premise that imposing sanctions as a means of supporting the realization of child welfare as perpetrators of crimes. Children who violate the law are strongly influenced by several factors outside the child, such as social relations, education, playmates and so on, because crimes committed by children are generally affected by the negative actions of adults or those around them.¹⁰

One of the efforts made by the government in prevention and control is to organize a juvenile justice system through Act No. 11 of 2012, so that a judiciary that truly guarantees the protection of the best interests of children in conflict

⁷Afrina, N., & Marbun, W. 2019, Application of Diversion in Settlement of Children in Conflict with the Law. *Supremacy: Journal of Law* ,2(1), 51-58

⁸ Danang Sucahyo and Aryani Witasari, 2021, The Diversion in Law Enforcement of Criminal Action of Children in the Judicial System of Children, *Journal of Sovereign Law* Volume 4 Issue 1, Unissula, p. 10, <http://jurnal.unissula.ac.id/index.php/RH/article/view/13694/5368>

⁹Sambas, N., & Unisba, FH 2012, Criminal System Legislative Policy as an Effort for Legal Protection of Children in Indonesia. *Journal of Law IUS QUIA IUSTUM*, Number 3

¹⁰Marlina, 2010, Introduction to the Concept of Diversion and Restorative Justice in Criminal Law, USU Pres, Medan, p. 1.

with the law is realized. The existence of Act No. 11 of 2012 concerning the Juvenile Criminal Justice System is the opening door for handling children in conflict with the law so that this law can be properly implemented for the benefit and protection of children. The basic substance regulated in Act No. 11 of 2012 is strict regulation regarding restorative justice and diversion which is intended to avoid and keep children away from the judicial process.¹¹

The diversion that was carried out at the investigation level did not find an agreement between the victim and the suspect, even though the victim's family had forgiven the act, but the victim's family preferred that the suspect who was still a child be processed according to applicable law. The investigator then makes the minutes of diversion which are then read back to each party, they agree and confirm everything that is listed in the minutes made by the investigator.

Settlement by diversion is an effort to settle criminal cases outside the court by deliberation for consensus by bringing together the two parties to make a peace agreement where the mediator is a law enforcement officer. Diversion is intended to realize restorative justice, namely efforts to restore both parties. Of course this is felt to be fairer by both the victim and the perpetrator, because they are directly involved in resolving the case. Efforts to resolve this are carried out with sincerity, calm, peace and harmony so that deliberations can be carried out properly so as to produce fair decisions for both parties. Deliberation for consensus is what diversion wants to achieve as a way of judging Indonesian society by way of deliberation.

The application of diversion in the settlement of the crime of theft with violence committed by children is carried out based on Act No. 11 of 2012 concerning the Juvenile Criminal Justice System which requires investigators to carry out diversion at the investigation stage by involving related parties, namely perpetrators, victims, parents of victims and perpetrators. , Professional Social Workers and Bapas to hold deliberations where later the results of these deliberations are set forth in the form of a Diversion Agreement. The implementation of diversion at the Cirebon City Police is an obligation guided by Act No. 11 of 2012 concerning the Juvenile Criminal Justice System and views children not to be punished but to be given the opportunity to become better.

3.2. Obstacles Faced by Investigators in Implementing Diversion for Completion of Violent Theft Crimes Committed by Children and Their Solutions

Legislative provisions regarding the age limit for criminal responsibility of children who commit criminal acts are regulated in criminal law in Indonesia, namely in the

¹¹Yuliana Ratnadewi & Budi Setiyanto, 2018, Application of Diversion in Settlement of Crimes of Theft by Children, Recidive Vol.7 No.3,

Criminal Code and then replaced by Act No. 3 of 1997 concerning Juvenile Courts (Children Court Law), and finally replaced by Act No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). With the hope that guarantees for children's rights to be fulfilled, it is no exception for children who commit criminal acts. Even if a child commits a crime that is detrimental to society, the principle of child protection must still be upheld.¹²

The investigation must pay attention to the rights of the perpetrators of criminal acts contained in the Criminal Procedure Code. What's more, the perpetrators of crimes that occur are children, treatment that is not in accordance with the procedures and procedures in the Criminal Procedure Code besides being able to tarnish the image of law in Indonesia can have a negative impact on the child's psychology. In addition, the function of an investigation carried out based on the guidelines in the Criminal Procedure Code is to expedite the course of the investigation and to seek and find evidence with which evidence can shed light on the crime that occurred and to find the suspect.¹³

The criminal justice system for children/adolescents will prioritize the welfare of adolescents and must ensure that every reaction of a juvenile who violates the law will always be commensurate with the circumstances of the perpetrator and his violation of the law or the law.¹⁴

The crime of theft contained in the Criminal Code is also divided into several types, including the crime of theft in accordance with the provisions of Article 362 of the Criminal Code or ordinary theft, the crime of theft with weighting in accordance with Article 363 of the Criminal Code, the crime of petty theft as specified in Article 364 Criminal Code, the crime of theft with violence regulated in Article 365 of the Criminal Code, as well as the crime of theft within the family specified in Article 367 of the Criminal Code.

Theft by force is a human problem which is a social reality. Developments within and outside a particular human being affect his predisposition and ability to commit criminal behavior. Furthermore, humans influence the people around them and their environment in an effort to meet physical, mental and social needs, positively or negatively. the main thing is, preventing the absence of possibilities

¹² Teguh Ariawan, Siti Rodhiyah Dwi Istinah and Denny Suwondo, 2022, The Implementation of Child Violence Law which Caused the Fatal Death, *Law Development Journal*, Volume 4 Issue 1, Unissula, p. 157, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/ldj/article/view/21246/6896>

¹³ Marwan and Jimmy, 2009, *Legal Dictionary*, Gama Press, Yogyakarta, p. 504.

¹⁴ Muchammad Qomaruddin, Gunarto and Aryani Witasari, 2020, Legal Flexibility in Children Diversion Which Conflict With the Law (ABH) Case Study At Ex Residency of Cirebon Jurisdiction, *Journal of Sovereign Law*, Volume 3 Issue 1, Unissula, p. 55, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/RH/article/view/8456/3935>

and opportunities to meet the needs of a person's life legally and fairly.

Walter Lunden points out several factors that support crime, as follows: “(1) There is migration of young people from villages to big cities; (2) There is a conflict between the new norms and old customs from the countryside; (3) The absence of strong personality foundations in individuals because of the loss of their personality.¹⁵

Implementation of deliberations to resolve cases of theft by children cannot be carried out only by involving the perpetrator's family and the victim and investigators. The deliberation must also involve other parties, so that investigators always try to ensure that all relevant parties are actually present during the deliberation. Investigators always make every effort to involve all parties regulated by the SPPA Law in diversion meetings, so that the discussions that occur are legal in accordance with applicable regulations.

Diversion of the juvenile justice process or what is known as diversion is useful for avoiding the negative impact of subsequent judicial processes on the administration of juvenile justice, for example labeling because of a statement of guilt or punishment. In carrying out diversion against children in conflict with the law, National Police investigators actually have a legal umbrella based on laws and regulations that legitimize these actions as well as implementation guidelines at the Domestic Police.¹⁶

The Obstacles Faced by Investigators in Implementing Diversion to Settle the Crime of Theft with Violence Committed by Children include:

1. Not all law enforcement officers have attended SPPA training.
2. The penalty for this case is up to 9 years in prison
3. The attitude of the victim who wants to be paid higher for commercial purposes

Efforts to overcome the obstacles faced by investigators in implementing diversion for the settlement of criminal acts of theft by violence committed by children include:

1. Be active in carrying out tasks
2. Understanding the Best Interests Principle for Children

¹⁵ PAF Lamintang, 2009, Special Delicts for Crime Violating the Norms of Decency & Norms of Decency, Sinar Graphic, Jakarta. p. 58

¹⁶ Masngud Afandi and Gunarto, 2021, The Legal Protection Against Children Who Did Criminal Actions Through Diversion, *Law Development Journal*, Volume 3 Issue 2, p. 285, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/ldj/article/view/15996/5724#>

3. The judge in determining the diversion agreement also did not immediately accept the victim's statement asking for more or inappropriate compensation.

4. Conclusion

The application of diversion in the settlement of the crime of theft with violence committed by children is carried out based on Act No. 11 of 2012 concerning the Juvenile Criminal Justice System which requires investigators to carry out diversion at the investigation stage by involving related parties, namely perpetrators, victims, parents of victims and perpetrators. , Professional Social Workers and Bapas to hold deliberations where later the results of these deliberations are set forth in the form of a Diversion Agreement. The obstacles are that not all law enforcement officers have attended SPPA training, the threat of a case that carries a maximum penalty of 9 years in prison and the attitude of victims who want to be paid higher for commercial purposes. The solution is to be active in carrying out tasks.

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