

JURIDICIAL REVIEW OF DIVERSION APPLICATION AGAINST THEFT BY CHILDREN

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Abstract

In juvenile criminal law, children are also involved in criminal acts. Children under 10 are usually not punished, while children aged 10-16 can be punished. However, in the enforcement of punishment for children, it is important to pay attention to their stage of development. The method in this study is normative way. The result showed that is is reflected in Law No. 11 of 2012 concerning the juvenile criminal justice system, where diversion is used as an alternative to settlement outside of Justice. However, in certain cases such a number: 10/Pid.Sus.Child/2020 / Fr. Sgm, diversion is not applied because it only applies to child offenders who first make mistakes. In this case, the offender has committed a repeated criminal offense, so the judge decides to give a criminal sentence.

Keywords: Child Thief; Application; Diversion.

Abstrak

Dalam hukum pidana anak, anak-anak juga terlibat dalam tindakan kriminal. Anak di bawah 10 tahun biasanya tidak dihukum, sementara anak usia 10-16 tahun bisa mendapat hukuman. Namun, dalam penegakan hukuman bagi anak, penting untuk memperhatikan tahap perkembangan mereka. Metode penelitian yang digunakan adalah normatif. Hasil memperlihatkan bahwa tercermin dalam Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak, di mana diversifikasi digunakan sebagai alternatif penyelesaian di luar pengadilan. Namun, dalam kasus tertentu seperti Nomor: 10/Pid.Sus.Anak/2020/PN. Sgm, diversifikasi tidak diterapkan karena hanya berlaku untuk pelaku tindak pidana anak yang pertama kali melakukan kesalahan. Dalam kasus ini, pelaku telah melakukan tindak pidana berulang, sehingga hakim memutuskan untuk memberikan hukuman pidana.

Kata Kunci: Anak Pelaku Pencurian; Penerapan; Diversifikasi.

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INTRODUCTION

Children are the next generation of the ideals of the nation's struggle, for that every child needs to be equipped with faith, personality, intelligence skills, soul and spirit of nationality and physical freshness in order to grow and develop into a virtuous human.¹ educating children is very important because education is the most important asset that children need to meet their lives. Quranic verses that affirm the importance of parents giving good education to their children. It aims to create a generation of Muslims who are superior and obedient to Allah.

In juvenile criminal law, if a child under the age of 10 is found to have committed a criminal offense will not be punished; if the perpetrator is 10-16 years old, the criminal judge must investigate whether the perpetrator is suspect. from those torturous crimes. (You can evaluate his behavior and find out the forbidden nature of the behavior).² If observed, the number of child crime has increased significantly. So far, no matter in terms of quality or how it is carried out, the development of juvenile delinquency is often only experienced by all parties, especially parents, before feeling the offense committed by the child. The increase in juvenile delinquency seems to be proportional to the age of the perpetrators. Improving the lives of nations and peoples. Parents, family and society have a responsibility to protect and maintain these human rights in accordance with legal obligations to the child.³

In the process of upbringing and education of an immature child from fetus to adulthood, his personality or characteristics are formed by the influence of internal and external factors. In the process, the child may commit acts that violate criminal law or are considered reprehensible by society. This situation is defined as a child crime. In essence, the child cannot protect himself from various behaviors that can cause mental, physical and social harm in various other areas. Children need to get support from others to protect themselves, and children need to be protected to prevent the application of wrong laws against them, which can cause personal, mental and social harm.

Child protection activities are legal processes with legal consequences, so it is necessary to have laws that guarantee the protection of children. To ensure the protection of children in a sustainable manner, it is necessary to make efforts to ensure legal certainty in order to prevent adverse violations in the implementation of child protection activities.⁴ The rights of a child must be protected.

States and governments have a responsibility to provide convenience and transportation, especially in ensuring the best and targeted growth and development. By law, each state has an obligation to ensure the exercise of every right, including the rights of the child. Everyone should give the right to earn a living for children, by keeping them away from the dangers that threaten children, and providing well-being both inwardly and outwardly.

For the attention of the government, it was made Law No. 11 of 2012 on juvenile criminal justice system, the existence of the Juvenile Criminal Justice System Act is expected to overcome the

¹ Nirwono Joga dan Dhaneswara Nirwana Indra Joga, *Membangun Peradaban Kota*, (Jakarta: PT Gramedia Pustaka Utama, 2018),h.156

² Wagiaty Soetedjo dan Melani, *Hukum Pidana Anak*, (Bandung: PT Refika Aditama, 2013),h. 1-2

³ Ismantoro Dwi Yuwono, *Penerapan Hukum Dalam Kasus Kekerasan Seksual Terhadap Anak*,(Yogyakarta: Medpress Digital, 2015),h.160

⁴ Liza Agnesta Krisna, *Hukum Perlindungan Anak Panduan Memahami Anak Yang Berkonflik*, (Yogyakarta: Deepublish,2018),h.1-2

imposition of criminal penalties against children.. But in fact, there are still many children who are not protected by the government as mandated by Law Number 11 of 2012. In Law No. 11 of 2012, it is expressly stated that the provisions on restorative and transferable justice are designed to avoid and keep children away from the judicial process, so as not to face the humiliation of children through the legal process, and the hope that children do not enter the judicial process and can return to the social environment and be accepted as before.

It is also worth remembering that a child who violates the law or commits an ordinary criminal offense is also influenced by other factors outside of a child. In order to deal with the offenses committed by the child, measures have been taken not to take formal steps, namely stopping or releasing the child from the criminal justice process, or returning (transferring) the child to society and other forms of life.

METHOD

The research used by the author is Field research, namely field research which is one of the studies conducted by collecting data through observation and interviews in order to obtain information according to what is desired. In order to obtain the data needed, the authors set the location of the research conducted at the Sungguminasa District Court.

RESULT AND DISCUSSION

1. Law Enforcement Against Perpetrators Of Theft By Children That Occurred In Gowa Regency (Sungguminasa District Court Decision Study Number: 10/Pid.Sus.Child/2020 / Fr. Sgm)

a. Indictment

That Anak Ikram Alias Pudi Bin Sareka on Thursday, January 09, 2020 at around 02.00 Wita or at least in January 2020 located on Jalan poros Sapaya, Kampung Campagaya, Pattalikang Village, Manuju District, Gowa regency or at least somewhere in the legal area of the Sungguminasa District Court, has taken something entirely or partially belonging to someone else, with the intention of being unlawfully, which is done at night in a house or a closed yard in which there is a house that children do in the following ways:

That at the time and place mentioned above, when the child passes in front of the House Kadi DG Raja Bin Sule and then the child who saw the situation and the situation near the house in a state of calm and quiet, next, Ikram's son then approached the Honda Supra Fit motorcycle that was parked and immediately pushed the motorcycle out of the yard to the road and on the way down then Ikram's son started the motorcycle engine by entering the motorcycle warning and when the motorcycle engine was alive without thinking again, Ikram's son immediately took the motorcycle to Kampung Batu Rappe to be sold to the Imam of the mosque (DPO) for Rp.800.000, - (eight hundred thousand rupiah).

That as a result of the actions of the child Ikram, Kadi DG Raja Bin Sule suffered a loss of approximately Rp.3.800.000, - (three million eight hundred thousand rupiah). The actions of children as regulated and punishable by criminal penalties in Article 363 paragraph (1) 3 of the Criminal Code.

b. Claims

Points of claim:

- 1) Declare the child Ikram ALS Pudi Bin Sareka guilty of theft with weighting as stipulated in Article 363 paragraph (1) KE3 of the Criminal Code as in the indictment ;
- 2) Impose a crime against the child with imprisonment for 1 (one) year in prison minus as long as the child is in custody, with the order the child remains detained ;
- 3) Establish evidence in the form of 1 (One) Piece Of Motorcycle brand Honda supra fix police number DD 6513 CB black, frame number MH1HB21135K819431 and engine number : HB21E - 1820775. Returned to its owner Kadi DG Raja Bin Sule.
- 4) Stipulate that the child pay a case fee of Rp.2.000.- (two thousand rupiah)

c. Amar Verdict Judge:

- 1) States Ikram alias Pudi Bin Sareka children mentioned above, proven legally and convincingly guilty of theft under aggravating circumstances as in the single indictment of the Public Prosecutor;
- 2) Impose a criminal to the child therefore with imprisonment for 10 (ten) months;
- 3) Establish the period of arrest and detention for which the child has undergone a full deduction from the crime imposed;
- 4) Keeping children in custody;
- 5) Establish evidence in the form of: 1 (One) Piece of motorcycle brand Honda supra fix police number DD 6513 CB black, frame number MH1HB21135K819431 and engine number: HB21E-1820775.

2. *Legal Consideration Of The Judge In Deciding Case Number 10 / Pid.SusChild/2020 / Fr. Sgm*

Based on Article 1 Number 2 of Law No. 23 of 2002 on Child Protection (hereinafter written UUPA) are all activities to ensure and protect children and their rights in order to live, grow, develop, and participate, optimally in accordance with human dignity and dignity, as well as protection from violence and discrimination. In the protection of children who are faced with the law, the solution can be done by promoting restorative justice. Restorative method based on Article 1 Number 6 of the SPPA law is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair settlement by emphasizing recovery back to the original state, and not retaliation. Based on the results of interviews with researchers Yulianti Muhidin, S.H., M.H. as the sole judge who handles cases with Verdict Number 10 / Pid.Sus.Child/2020 / Fr. Sgm. He said that not all criminal acts committed by children can be solved by diversion because the settlement by diversion has the conditions in Article 7 Paragraph 2, namely:

Diversion as referred to Paragraph (1) shall be carried out in the case of criminal acts committed:

- a. Shall be punished with imprisonment of less than 7 (seven) years; and
- b. Not constitute a repetition of a criminal offense.

Based on the explanation of the above article, it can be interpreted that even though the crime was committed by a child whose case did not reach the court, then again committed a criminal act, then it cannot be subject to diversion because it has committed a repeat criminal act.

In Decision Number 10 / Pid.Sus.Child/2020 / Fr. SGM perpetrator is someone who has ever committed a criminal act, so for that reason the judge did not apply the diversion, because this case does not qualify for the application of diversion. In this regard, for the sake of the Justice of God Almighty, the Sungguminasa District Court examines and Judges Case Number 10/Pid.Sus.Child/2020 / Fr. Sgm and after hearing the testimony of witnesses faced at the trial as well as the evidence of the letter, it can be obtained legal facts as material consideration of the judge in deciding a case as follows:

Considering, that based on the evidence and evidence submitted legal facts obtained as follows:

- That on Thursday, January 09, 2020 at around 02.00 Wita at Jalan Poros Sapaya Campagaya Hamlet Pattallikang Village Kec.Manuju District.Gowa, precisely beside the House of the victim's witness, the child has taken 1 (one) unit of the Honda Supra Fit black and orange motorcycle with the police number DD 6513 CB, no order : MH1HB21135K819431 and No.Engine: HB21E-1829775 year 2005 belonging to the victim's witness Kadi DG Raja Bin Sule by the way started when the child passed the House of the victim's witness, the child saw a motorcycle that was parked next to the house belonging to the victim's witness, next, the child entered the victim's witness's home page and approached the motorcycle, then the child saw that the motorcycle was unlocked, then the child pushed the motorcycle out of the victim's witness's home page, after some distance the child then sounded the motorcycle by connecting the cable after that the child brought the motorcycle to the Imam of;

- That the child then offered the motorcycle for Rp1, 000, 000.00 (one million rupiah) but by the Imam of the Baturappe mosque was offered for Rp800, 000.00 (eight hundred thousand rupiah), after which the child gave the motorcycle and returned to the children's village in Mangempang, Bungaya District, Gowa regency;

- That as a result of the incident the victim witnesses suffered losses of Rp.3,500,000 (three million five hundred thousand rupiah);

- That the child takes the belongings of the victim witness to meet the daily needs of the child;

- That previously the child had also taken other people's belongings, namely the Honda Blade brand motorcycle, Viar, but the owner had been taken because he found the item in the place of the person who bought it, while the Honda Supra Fit motorcycle and the Smash brand motorcycle were seized by the police along with the electric welding trapo machine.;

Considering, that the judge will then consider whether based on the above legal facts, the child can be declared to have committed the criminal offense for which he was charged;

Considering that the child has been charged by the Public Prosecutor with a single charge as provided for in Article 363 of the Criminal Code paragraph (1) 3 of the Criminal Code, the elements of which are as follows:

- 1) Whoever;
- 2) Taking an item that wholly or partly belongs to another person;
- 3) With the intention to be owned by against the right/law ;

- 4) At night in a closed House or yard in which there is a house done by the people there are not with his knowledge or against his will the right person;

The First One Is “Who”;

Considering, that what is meant by “whoever” is any person as a legal subject, supporter of rights and obligations that should be suspected or suspected or charged with committing a criminal act that is juridically capable of accounting for his actions if he commits a criminal act or may be subject to criminal liability; considering, that the person charged with committing a criminal act in this case as mentioned in the indictment of the public prosecutor is the son of Ikram alias Pudi Bin Sareka with the identity as contained in the indictment;

Considering, that in front of the trial has been faced Ikram alias Pudi Bin Sareka children in good physical and spiritual health and on the question of the judge confirming the identity of the child as contained in the indictment, thus there is no error in persona so that the child is a subject of law that can be held criminally liable if proven;

Considering, that based on the above description The judge argues that the element of anyone who has fulfilled;

Second element "taking an item wholly or partly belonging to another person”;

Considering, that regarding the element of “taking an item that wholly or partly belongs to another person”, it will be considered as follows:

- a. That, according to Van Bemmele-Van Hattum in the book compiled by Drs. P.F. Lamintang, S. H., entitled Special offenses crimes against property, states that what is meant by “taking” is any action that makes part of the property of another person to be in his control without the help or permission of the other person, or to sever the relationship that still exists between that other person and the part of the property in question, while according to Hoge Raad in his arrests dated November 12, 1894, W. 6578 and dated March 4, 1935, NJ 1935 page 681, W. 12932 has decided that the act of taking it has been completed if the object is already in the hands of the perpetrator although that he then had released the object in question because it was discovered by others;
- b. That, what is meant by “goods” is an object that has value in one's economic life;
- c. That, to assess the extent to which the child has committed the aforementioned act, it can be deduced from the ways of doing the act and the problems that include the act;
- d. That based on the facts at the trial, it was revealed that on Thursday, January 09, 2020 at around 02.00 Wita located in the yard/side of the House of the victim's witness Kadi Dg Raja Bin Sule located on Jalan Poros Sapaya, Kampung Campagaya, Pattalikang Village, Manuju District, Gowa regency, the child had taken a black and orange Honda Supra Fit motorcycle with police number DD 6513 CB, order NO : MH1HB21135K819431 and No.Engine: HB21E-1829775 year 2005 belongs to Kadi DG Raja Bin Sule by the way began when the child passed the House of the victim witness, The child saw a motorcycle that was parked next to the house belonging to the victim witness, then the child entered the victim witness's home page and approached the motorcycle, then the child saw that the motorcycle was not locked, then the child pushed the motorcycle out of the victim witness's home page, after some distance the child then sounded the motorcycle by connecting the cable after that the child brought the motorcycle to the Imam of

the Baturappe mosque who the child did not know his name who had previously told the child to bring the motorcycle;

- e. That the child then offered the motorcycle for Rp1, 000, 000.00 (one million rupiah) but by the Imam of the Baturappe mosque was offered for Rp800, 000.00 (eight hundred thousand rupiah), after which the child gave the motorcycle and returned to the children's village in Mangempang, Bungaya District, Gowa regency;
- f. That the child takes the property of the victim witness to meet the daily needs of the child;
- g. That as a result of the incident, the victim witness suffered a loss of Rp3, 500, 000.- (three million five hundred thousand rupiah);
- h. That based on the above description, The judge concluded that the child's actions have fulfilled the pattern of "taking something that partially or completely belongs to someone else";

Considering, that thus the element of "taking an item wholly or partly belonging to another person" has been fulfilled;

Third element: "with the intent to be possessed by going against the right/law";.

CONCLUSION

In determining the verdict on Case Number 10 / Pid.Sus.Child/2020 / Fr.SGM, the judge has carefully considered various factors. Although diversion is an option provided by Law Number 11 of 2012 concerning the juvenile criminal justice system, the judge decided not to apply it because the perpetrator had committed a repeat crime. Legal considerations and the interests of justice are the main cornerstones in the decision. Thus, the judge decided to impose a criminal sentence on the offender, affirming the commitment to fair and effective enforcement of the law in the protection of society and the coaching of children not to fall back into criminal behavior.

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