



Restorative Justice Crime Against Child Actors In The Perspective Of Justice Theft Dignified

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Abstract

Various factors the cause of children committing crimes, especially in this discussion are children who are perpetrators of the crime of theft. Various problems of children as perpetrators of criminal acts of theft that occur. The act of a child committing theft is a violation of the law and has been regulated in the Criminal Code as formulated in the provisions of Articles 362, 363 and 365 of the Criminal Code. Various negative impacts of imposing punishment on children who commit the crime of theft causing dehumanization (decreased human values), prisonization (the influence of learning crime) and stigmatization (bad labels) are also taken into consideration in encouraging the birth of a diversion policy in Indonesia. The problem that arises is how the application of diversion to child perpetrators of the crime of theft is made aware of restorative justice in the perspective of dignified justice that prioritizes the future of the child. In child protection, there are 4 basic principles, namely: non-discrimination; the best interests of the child; survival, growth and development, respect for children's opinions. Thus, in the perspective of child protection, there is no punishment for children and there is no prison for children. So that in cases of children, perpetrators of the crime of theft should prioritize diversion against children with more emphasis on dignified justice for children.

Keywords: Restorative Justice, Tna, Theft, Dignified Justice

I. Introduction

The problem of criminal acts committed by children is a crime that always causes disturbance and unrest in society. Deviations in behavior or unlawful acts committed by children are caused by various factors, including the negative impact of rapid development, the flow of globalization in the field of communication and information, advances in science and technology as well as changes in the style and way of life of some parents, has brought social changes in people's lives that greatly affect the value of children's behavior.¹ Various factors cause children to commit crimes, especially in this discussion are children who are perpetrators of the crime of theft. Various cases of theft committed by children include the case in 2020 the circulation of a video recording the theft on Jalan Kalibaru Timur 5, Jakarta. an adult who is suspected of playing the role of a father orders his son to take a cell phone at a shop. Meanwhile, the father, talking to

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¹ Gatot Supramono, Hukum Acara Pengadilan Anak, Penerbit Djambatan, Jakarta, 2007, p. 12

the shop owner, is thought to be a distraction.² The case is an example of children being used by adults to commit crimes. Various problems of children as perpetrators of criminal acts of theft that occur. The act of a child committing theft is a violation of the law and has been regulated in the Criminal Code as formulated in the provisions of Articles 362, 363 and 365 of the Criminal Code. However, whatever causes children to commit the crime of theft, children still need special legal protection when dealing with legal problems. The existing regulations have a number of weaknesses, these weaknesses are contained in Law Number 3 of 1997 concerning Juvenile Court which provides a threat of punishment when a child is in the judicial process. In addition, protection for children who are in trouble with the law (ABH) has also been guaranteed in the mandate of the Indonesian Constitution, namely Article 28 B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "Every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination". Various negative impacts of imposing punishment on children who commit the crime of theft causing dehumanization (decreased human values), prisonization (the influence of learning crime) and stigmatization (bad labels) are also taken into consideration in encouraging the birth of a diversion policy in Indonesia. The problem that arises is how the application of diversion to child perpetrators of the crime of theft is made aware of restorative justice in the perspective of dignified justice that prioritizes the future of the child.

II. Method

Writing about restorative justice for children who are perpetrators of the crime of theft in a dignified justice perspective is normative legal writing. According to Soerjono Soekanto and Sri Mamuji, normative legal research includes an inventory of legal principles, legal systematization, research on law enforcement both operationally by institutions and in terms of legal settlement processes in practice, to then conduct research on the level of vertical synchronization and horizontal, comparative law and legal history.³

² <https://metro.tempo.co/read/1341123/viral-pencurian-di-jakarta-pusat-anak-disuruh-curi-hp>

³ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Rajawali Pers, Jakarta, 2010, p. 14.

III. Main Heading of the Analysis or Results

Restorative Justice Against Children Perpetrators of the Crime of Theft in the Perspective of Dignified

Justice Restorative Justice is a system which is an approach to justice based on the philosophy and values of responsibility, openness, trust, hope, healing, and "inclusiveness" and has an impact on policy decision making criminal justice systems and legal practitioners around the world and promises positive things in the future in the form of a justice system to resolve conflicts due to crime and accountable law and restorative justice can be implemented if the focus of attention is directed to losses due to criminal acts, the same concerns and commitment to involve perpetrator and victim. encourage perpetrators to take responsibility, opportunities for dialogue between perpetrators and victims, involve communities affected by crime in retroactive processes, encourage cooperation and reintegration.⁴

The Restorative Justice System is a system with the hope that it will provide justice for both victims and perpetrators of crimes with greater emphasis on restoring the relationship between victims and perpetrators to achieve a sense of justice.

As stipulated in the provisions of Article 1 point 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, what is meant by children in conflict with the law are children who are in conflict with the law, children who are victims of criminal acts, and children who are witnesses of criminal acts. Article 1 point 3 states that a child in conflict with the law, hereinafter referred to as a child, is a child aged 12 (twelve) years, but not yet 18 (eighteen) years old who is suspected of committing a crime.

The role of Pancasila is the source of all sources of law, therefore the entire nation and state of Indonesia must implement it. As stated in Article 2 of Law Number 12 of 2011 concerning the Establishment of Legislation which states Pancasila as the source of all sources of State law so that any material content of the Legislative Regulations must not conflict with the values contained in Pancasila.

⁴Muladi sebagaimana dikutip Taufik Makarao, *Pengkajian Ilukum Tentang Penerapan Restorative Justice Dalam Penyesuaian Tindak Pidana Yang Dilakukan Oleh Anak-Anak*, Badan Pembinaan Ilukum Nasional Kementerian IHukum Dan HAM RI, 2013, p. xxxi.

The theory of dignified justice as put forward by Teguh Prasetyo⁵, The theory of dignified justice departs from the postulant system; working towards the goal, namely dignified justice. Justice that humanizes humans, or justice "nge wong ke wong." The layers of legal knowledge in the perspective of the theory of dignified justice work or function as a source or place where the law is found.

Restorative justice through a diversion system in the hope that it will prioritize justice for children perpetrators of the crime of theft who prioritize the future of children who are perpetrators of crime so that they do not prioritize criminal penalties against children who are perpetrators of the crime of theft because of the various impacts that will be experienced by children when they receive sanctions in the form of imprisonment.

Lawrence M. Friedman in his theory a legal system consisting of on the legal structure in the form of legal institutions, legal substance in the form of statutory regulations and legal culture or legal culture, where these three components support the running of the legal system in a country. So that in social reality, the existence of a legal system in society depends on experience the changes as a result of influence, what is called modernization..⁶

The process as stated in the restorative justice system brings the perpetrator and the victim to sit together looking for the best way, in the presence of the perpetrator, victim, family, community, as well as the mediator. Through the implementation of the meeting, it is hoped that the victims will be able to recover the suffering and losses, by means of the perpetrators providing compensation, or carrying out social work, carrying out repairs or certain activities in accordance with an agreed joint decision.⁷

As stated by Andi Hamzah, "criminal is a sanction or suffering that is related to Article 1 of the Criminal Code (principle of legality) *mullum delictum mulla poena sine praevia lege poenali*."⁸

⁵Teguh Prasetyo, Keadilan Bermartabat Perspektif Teori Hukum, Nusa Media, Bandung, 2005. p 2

⁶ Arif Gosita, Masalah korban Kejahatan, Bhuana Ilmu Populer, Jakarta, 2004, p. 168

⁷ Marliani, Peradilan Pidana Anak di Indonesia Pengembangan Konsep Diversi dan Restorative Justice, Refika Aditama, Bandung, 2009. p. 23

⁸ Andi Hamzah, Sistem Pidana dan Pemidanaan Indonesia. Pradnya Paramita, Jakarta, 1996, p. 1.

Punishment as an effort based on the law that regulates it is carried out on a person because he has committed an unlawful act whose elements meet the requirements to be considered an unlawful act. So that a criminal act means an act where the perpetrator can be subject to a criminal penalty. In the science of criminal law, the perpetrator can be said to be a subject of criminal law, in addition to the existence of other elements that the perpetrator of a crime can be punished. However, it is also necessary to pay attention to the ability to account that is inherent in the subject of a criminal act, it does not mean that the perpetrator can certainly be given a sentence, but there are several things that need to be considered for reasons that eliminate the nature of the criminal act as the reason for the elimination of the crime.

The crime of theft is regulated in Articles 362 to 367 of the Criminal Code. The formulation of the criminal act of theft according to the provisions of Article 362 of the Criminal Code is as follows: Whoever takes something, wholly or partly belonging to another person, with the intent to possess it unlawfully, is threatened with theft with a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs. . Anyone who has committed an act that has fulfilled the elements of Article 362 of the Criminal Code can be said to have committed a crime of theft and can be threatened with a sentence of imprisonment for a maximum of five years. Based on the sound of Article 362 of the Criminal Code can be drawn into its elements, namely as follows: Objective elements include taking goods wholly or partly belonging to others. As well as the Subjective Element with the intent to possess it against the law.⁹

As regulated in Law Number 11 of 2012 there are three formulations regarding children in conflict with the law, namely (1) children in conflict with the law, (2) children who are victims of criminal acts, and (3) children who are witnesses of criminal acts. So what is meant by a child in conflict with the law is a child in conflict with the law; children of victims and children of witnesses. The vulnerability of children in conflict with the law becomes a rationale and justification for the Committee on the Rights of the Child to pressure the state to seek a construction of a criminal justice system that provides special protection.

⁹ H.A.K Moch Anwar, *Hukum Pidana Bagian Khusus*, Bandung: Alumni, 1992, p. 17.

The Juvenile Criminal Justice System is an element of the criminal justice system involved in handling cases of juvenile delinquency. First, the police as a formal institution when juvenile delinquents first come into contact with the justice system, which will also determine whether the child will be released or further processed. Second, prosecutors and parole agencies will also determine whether the child will be released or processed in juvenile court. Third, the Juvenile Court, the stage when the child will be placed in choices, starting from being released to being included in a sentencing institution. Lastly, the institution of punishment.¹⁰

In the implementation of juvenile criminal justice as regulated in the Juvenile Criminal Justice System Act, it must be carried out based on the following: the

- a. principles principle of protection which includes activities that are direct and indirect from actions that harm children physically and/or psychologically. ;
- b. the principle of justice in that principle states that every settlement of a child's case must reflect the child's sense of justice;
- c. the principle of non-discrimination as a manifestation of the absence of different treatment based on ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status of children, order of birth of children, as well as physical and/or mental conditions;
- d. the principle of the best interests of the child in which all decision-making must always take into account the survival and development of the child;
- e. the principle of respect for children's opinions as a form of respect for children's rights to participate and express their opinions in decision making, especially when it comes to matters that affect children's lives;
- f. the principle of survival and child development that prioritizes the survival and development of children is the most basic human right for children that is protected by the state, government, community, family and parents;
- g. the principle of coaching and guidance in activities to improve quality, devotion to God Almighty, intellectual, attitude and behavior, skills training, professional, and physical and spiritual health of children both inside and outside the criminal justice process. Guidance is the provision of guidance to improve the quality of

¹⁰Purnianti, dkk, Analisa Situasi Sistem Peradilan Pidana Anak (Juvenile Justice System) di Indonesia, UNICEF, Indonesia, 2003, p. 2

- piety to God Almighty, intellectual, attitude and behavior, skills training, professional, as well as physical and spiritual health of community clients;
- h. the principle of proportionality in which all treatment of children must take into account the limits of the child's needs, age and condition;
 - i. the principle of deprivation of liberty is the last resort wherein the principle of deprivation of liberty is the last resort is the principle that basically children cannot be deprived of their liberty, unless forced to in the interests of resolving cases;
 - j. the principle of avoidance of retaliation where the principle of avoiding retaliation in the criminal justice process

In the context of legal responsibility, especially in criminal law, the age limit is so important. Because it is considered as a benchmark, a person is considered by law to be responsible for his criminal actions or not. A criminal act committed by a minor who has not been able to clearly distinguish the consequences of his criminal act is clearly a situation where his ability/awareness is doubtful that he has committed a criminal act. This happens because children both psychologically and biologically have not been able to maintain awareness of their responsibilities.

The most basic principle in distinguishing children from adults is age and legal actions (ever married) before adulthood. Several laws provide different limits on the age limit of children so that their rights and obligations are relatively different.

Through the diversion program contained in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, there are 2 impacts that will occur, namely positive impacts and negative impacts:

1. Positive Impact: Children in Conflict with the Law can have a better chance of obtaining legal recovery. Psychological and assimilation in society is easier to do than if a Child in Conflict with the Law has been sentenced to prison, this is related to the evil stigma by society which is implicitly possible to occur.
2. Negative Impact: Children in Conflict with the Law are considered as legal subjects who are not yet competent and cannot understand what they are doing. However, in the era of globalization as it is today, the formation of children's character and mindset is strongly influenced by the environment, both social partners and other things that are easily obtained through information media,

both electronically and non-electronically. Thus, a criminal act committed by a child in conflict with the law may indeed be intended/intentioned by a child in conflict with the law and he also understands what the consequences of his actions are. If the criminal offense committed by the child carries a penalty of under 7 years of age and diversion is carried out against him, it is feared that it will not have a deterrent effect and the child will do it again. Assuming when they commit a crime can be solved by diversion.

The old paradigm of juvenile justice in Indonesia can no longer be maintained because what is happening is a process of criminalizing children by the State and society. a new paradigm, namely the child decriminalization paradigm. This paradigm requires an action for the release of children from all criminal perspectives, from examination, investigation, investigation to suspicion of children. The paradigm of criminalizing children as an act of killing the future of children who are dealing with and or in conflict with the law. In realizing the new paradigm of decriminalizing children, it is necessary to have a progressive legal basis as a law intended for humans and humanity, and not vice versa, humans and humanity serve the law. Progressive law means that it is always present to adjust human needs in accordance with the development of social changes in society. The juvenile justice paradigm must be based on the perspective of child protection. In child protection, there are 4 basic principles, namely: non-discrimination; the best interests of the child; survival, growth and development, respect for children's opinions. Thus, in the perspective of child protection, there is no punishment for children and there is no prison for children. So that in cases of children, perpetrators of the crime of theft should prioritize diversion against children with more emphasis on dignified justice for children.

IV. Conclusion

Various problems of children as perpetrators of the crime of theft that occurred. The act of a child committing theft is a violation of the law and has been regulated in the Criminal Code as formulated in the provisions of Articles 362, 363 and 365 of the Criminal Code. However, whatever causes children to commit the crime of theft, children still need special legal protection when dealing with legal problems. In child protection, there are 4 basic principles, namely: non-discrimination; the best interests of the child; survival, growth and development, respect for children's opinions. Thus, in

the perspective of child protection, there is no punishment for children and there is no prison for children. So that in cases of children, perpetrators of the crime of theft should prioritize diversion against children with more emphasis on dignified justice for children.

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