

JURIDICAL ANALYSIS OF THE APPLICATION OF SANCTIONS TO THE CRIMINAL ACTION OF THEFT WITH AGGRESSIONS PERFORMED BY CHILDREN VIEWED FROM THE SPPA LAW

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Abstract

This study aim application penalty to follow criminal theft with a burden by children associated with the purpose of punishment and practice application penalty to follow criminal theft with a burden by children associated with the purpose of the law. Research results show to follow criminal theft with weighting that has threat criminal imprisonment of 7 (seven) years no could apply aligned diversion with provision Article 7 SPPA Law. However, thereby could deviate because the SPPA Law has confirmed that the application penalty criminal is effort law last (ultimate remedy) for the child. The SPPA Law puts forward the concept of restorative justice that is poured in the form of diversion. kindly assertively explained that diversion Becomes a priority in a complete case of an opposite child with the law in the SPPA Act. The child must treat differently from adults, therefore application penalty to a child is not based on retaliation, but on the interest best for the child, that application diversion looked at Becomes Street best for the child so could be spared from stigmatization or bad labeling from society. As for the differences in application penalty to follow criminal theft with burdens made by children needs to be studied from the purpose of law theory by Gustav Radbruch explained in implementation law should notice purposes of law substance with put order always a priority comes first in every judge's decision.

Keywords: *Action Criminal theft with weighting, Children, Diversion, Interests best for child.*

I. INTRODUCTION

The 1945 Constitution in Article 1 paragraph (3) by way of assertive has stated that Indonesia is a country based on law. Every inhabitant in his country is entitled to recognition, guarantee, protection, and certainty of fair laws as well as the same treatment before the law under what is stated in article 28D of the 1945 Constitution. That matter applies to all Indonesian citizens not except to a child. Children are a gift from God Almighty as candidates for the next generation of the nation to come. Children have a noble position and play a strategic role in ensuring the continuity of existence in a country².

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² M.Nasir Djamil, 2012, *Anak Bukan Untuk Dihukum : Catatan Pembahasan UU Sistem Peradilan Pidana Anak (UU-SPPA)*, Jakarta: Sinar Grafika. p.1.

Children have physical and mental conditions that are still developing, and cannot be optimally stable. When acting, children cannot predict the future of the act. Because of that during development time many found the conflicted child with the law. Refer to the data published by the Commission Indonesian Child Protection (KPAI) case data compliant child 2016 to 2020 against a conflicted child with (ABH) as perpetrators reached 6500 cases.³

To address the problem of a conflicted child with law, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) was passed on July 30 2012 which is form renewal of Law Number 3 of 1997 Concerning Juvenile Courts. With exists system Justice child, no solely only aim to drop the penalty criminal for child perpetrator follow criminal but focus on thinking that the application of the penalty the means to support realized well-being of child perpetrator follow criminal.⁴ To realize well-being child perpetrator follow criminal as much as possible avoided involvement child in the judicial process criminal child.

In line with Thing in the SPPA Law, the priority model of punishment is not the *Retributive Justice model* as in the previous Juvenile Court Law but the *Restorative Justice model*, namely restoration to its original condition in which the punishment of children is used as the final way so that it is important to prioritize the settlement of a case against a child outside the court.⁵ Article 1 point 6 of the SPPA Law states applying the *restorative justice* model is prioritized in the Juvenile Criminal Justice System because of settlement case follow criminal involving perpetrators, victims and other parties related parties who jointly seek a fair solution and emphasize restoration to its original state so that it becomes the goal punishment is not retribution. To realize draft *restorative justice* the then the SPPA Law carries the concept of diversion as one effort application sanctions described definition on p origin 1 point 7 UU SPPA as following :

"Diversion is the transfer of settlement of child cases from the criminal justice process to processes outside of criminal justice "

There is a diversion for the sake of giving protection to a conflicted child with the law.⁶ The purpose of diversion arranged in Article 6 of the SPPA Law includes :

- a. *Reach peace between the victim and the child*
- b. *Complete case children outside the judicial process*
- c. *Avoid child from deprivation of independence*
- d. *Push the Public to participate*
- e. *Instill a sense of responsibility answer to the child*

³ KPAI RN: Data on Child Complaints 2016-2020 (<https://bankdata.kpai.go.id/tabulasi-data/data-kasus-pengaduan-anak-2016-2020>), accessed 8 January 2022.

⁴ Setya Wahyudi, 2011, Implementasi Ide Diversi dalam Pembaharuan Sistem Peradilan Anak di Indonesia, Yogyakarta: Genta Publishing. p. 1.

⁵ M. Nasir Djamil, *Op.Cit.* p. 6.

⁶ Marlina, 2009, Peradilan Pidana Anak Di Indonesia (Pengembangan Konsep Diversi dan Restorative Justice), Bandung: PT. Refika Aditama. p. 168.

In essence, diversion, which is the implementation of restorative justice, is intended for the best interests of the child, which pays attention to justice for the victim.⁷ Diversion makes an effort to return recovery to something problem, not a lasting revenge this is known in law crime.⁸ The implementation of diversion is an obligation in dealing with cases of children who conflict with the law, both at the stages of the investigation, prosecution, and even up to the examination of cases in court.⁹ it is emphasized in article 7 paragraph (1) of the SPPA Law that :

" *At the level of investigation, prosecution, and examination of cases of children in the District Court, efforts must be made to diversion .*"

To application diversion they naturally have mandatory conditions fulfilled especially formerly ie article 7 paragraph (2) of the SPPA Law states application diversion in terms of criminal acts committed:

- a . *punishable by imprisonment under 7 years; and*
- b. *not a repetition of a crime "*

Existence chapter the explained to a child who has to follow a criminal with a threat for more than 7 (seven) years and is following past crimes is repeatedly so diversion not Required endeavored. it because following a criminal with a threat over 7 (seven) years belong follows severe punishment and if something repetition it means child the once To do follow criminal good that kind nor no kind including following completed crime through diversion.¹⁰ Diversion looked at is one of the most appropriate solutions for children not to be brought to court.¹¹ If some Children's conflicts with the law are resolved in court worried will cause mental and psychological pressure so that the growth and development of children will be disrupted.¹² because children have a vulnerable condition that can not yet be optimally stable.

In practice enforcement law in the area of the Bale Bandung District Court against application penalty to a child still occur difference specifically for following criminal theft with weighting is follow criminal nature special. Wirjono Prodjodikoro explained that qualified theft this pointing at something the theft was committed in ways certain, so characteristic more heavy and so threatened with more punishment also heavy from theft normal.¹³ Theft with weighting or Qualified theft arranged in Article 363 of the Criminal Code. Because qualified theft is the theft was committed with ways specific and deep circumstances certain character

⁷ M. Nasir Djamil, *Op.Cit.* p. 137.

⁸ *Ibid.* p. 138

⁹ *Ibid.* p. 6.

¹⁰ *Ibid.* p. 139.

¹¹ *Ibid.* p. 137.

¹² *Ibid.* p. 3

¹³ Wirjono Prodjodikoro, 1986, *Tindak-tindak Pidana Tertentu di Indonesia*, Bandung: Eresco.

burdensome, then proof to elements follow criminal theft with weighting must start with proving theft in the form anyway.¹⁴

The Criminal Code states follow criminal theft with weighting has the threat of imprisonment for a maximum of 7 (seven) years. It means the appropriate number is 7 (seven) years. I see to Article 7 paragraph (2) letter an SPPA Law reads " *threatened with imprisonment under 7 years* " this explained that diversion no could be applied to follow criminal theft with weighting. In Case Number 08/Pid.Sus/Anak/2017/PN.Blb with child offenders Azhar Ripqi Zaidan Alias Bin Cecep Gunawan aged 16 (sixteen) years, violated Article 363 paragraph (1) 4th of the Criminal Code.¹⁵ In this case the Judge applied criminal sanctions against Ripqi child with imprisonment for 5 (five) months.¹⁶ Meanwhile in a case similar to Number 4/Pid.Sus-Children/2021/PN Blb with the perpetrator's son of Desinta Rohmatul Umaroh Binti Agud Jaenudin, aged 17 (seventeen) years is also a violation Article 363 paragraph (1) 4th Criminal Code no applied penalty criminal as in the case on but applied diversion.¹⁷

There are different application sanctions in court by the Judge worried about making destination law from justice, certainty, and expediency not reached. This underlying writer for study and explore the application penalty to follow criminal theft with burden by children associated with purpose of punishment and practice application penalty to follow criminal theft with burden by children associated with purpose of law.

II. DISCUSSION

Application Penalty To follow Criminal Theft With Weights Carried Out By Children Are Associated With Destination punishment

Definition of child reviewed from the aspect juridical emphasize age than human. According to Constitution Number 23 of 2002 Concerning Child Protection (next called the Child Protection Act) child is someone who hasn't aged 18 (eighteen, including still child in content. Another thing is with the definition of child in Constitution Number 11 of 2012 concerning System Justice Child Crime which mentions that the Child conflicts with the next Law called Son are a child who has 12 (twelve) years, however not yet 18 (eighteen) years allegedly to do follow criminal.

Simons stated when somebody to do follows a criminal deed they have prohibited and threatened consequences with punishment by law should also be done by someone who can be responsible. ¹⁸ In his time, a child is very susceptible

¹⁴ Rian Prayudi Saputra, *Perkembangan Tindak Pidana Pencurian Di Indonesia*, Jurnal Pahlawan, Vol 2 No. 2. 2019. p.5

¹⁵ Indictment of Case Register Number: PDM-108/CIMAH/2/2017

¹⁶ Bale Bandung District Court Decision Number: 08/Pid.Sus/Anak/2017/PN. Blb

¹⁷ Determination letter diversion Number 4/Pid.Sus-Children/2021/PN Blb

¹⁸ Satochid Kartanegara, 2001, *Hukum Pidana Bagian Kesatu*, Balai Lektor Mahasiswa. p. 65

to do various activities that do not evaluate impact end from the action. Therefore moment this crowd found A child who has to follow a criminal to see from threatening crime that has arranged in provision normative so need for entered to in system processes Justice criminal so could sentenced penalty on his actions. However, if see than age as well as circumstances psychic and mental children who are still in the process of developing, son no could impose accountability criminal in a manner full because a child has limitations in their ability to think as well and is still under the supervision of a parent or his guardian.¹⁹

Generally occupying crime highest order in terms of quantity is theft commonplace, theft with weighting, then follow theft with violence, incl hold-up, and robbery, followed by other crimes decency.²⁰ Follow criminal theft is follow frequent crime found in life every day which is not looked at who the perpetrator or the victim is. Not only committed by an adult offender, the act of criminal theft too carried out by the perpetrator's child. It is because following criminal theft is more easily conducted than following other crimes, even not a little perpetrator child who does follow criminal theft followed with action other for make it easy To do theft.

Following criminal theft with weighting following low criminal special theft. Apart from theft as an action anyway, also have other qualifications with ways certain, so that following criminal is more severe punishment. No criminal theft with weighting arranged in Article 363 of the Criminal Code with threat imprisonment for a maximum of 7 (seven) years up to 9 (nine) years with elements as follows:

" (1) 1st Convicted with punishment prison forever seven year : 1st Theft livestock; 2nd Theft at the time fire, eruption, flood, earthquake earth or earthquake sea, eruption Mountain fire, ship shipwreck, ship stranded, accident train fire, riot, mutiny or danger war; 3rd Theft at the time night in a house residence or the yard closed there is house residence, carried out by existing people there without to my knowledge or contrary with an entitled will; The 4th Theft by two or more people in a manner together; The 5 Thefts committed with Street disassemble, destroy or climb or use child key fake command false or clothes position fake, that is for could enter to the place crime or for could take goods to be stolen

(2) If theft from number 3 accompanied by one Thing from number 4 and number 5, then dropped punishment prison forever nine years."

As for someone who has to follow criminal already goods of course must sentence sanctions. Satochid Kartanegara explains that a penalty is something consequence law (*rechtsgecolg*) from a violation of something rules. Consequences intended that it exists which action was dropped punishment because somebody has violated something norm. According to him, penalty law criminal is sharp sanctions very because drop punishment in penalty law criminal is torment or suffering (*leed*). Penalty law criminal will be applied if other sanctions already no

¹⁹ Marlina. *Op.Cit.* p. 36

²⁰ Andi Hamzah, 2008, *Asas-Asas Hukum Pidana*, Jakarta: Rineka Cipta. p. 106.

could guarantee "compliance" than something normal. Because that penalty criminal is a "tool "last " or the most called with *remedia ultimum*.²¹

Satochid explains that there is a form of sanctions torment and what not shaped torment. For the form of sanctions torment namely: 1) Punishment die 2) Punishment prison 3) Punishment confinement 4) Punishment fine. In line with the thing the law, there is also a crime something sanctions that don't characteristic torment, that is the action or which *maatregel* has nature as following:²²

1. Is something action to protect the public from acts committed by children below Age 16 (sixteen) years
2. Intended action is to repair the child concerned.

Drop penalty to someone who has to follow criminal theft with weighting as the focus in this research has been of course he replied is threat imprisonment for a maximum of 7 (seven) years, as stipulated in Article 363 of the Criminal Code. Provision the apply to perpetrator child and threat The penalty that can be imposed is ½ of the threat adult crime, namely the longest 3.5 (three half) years.

Refer to the theory of the purpose of punishment divided becomes three, ie theory *absolute* or theory retaliation (*retributive/vergelding theory orient*), theory relative or goal theory (*utilitarian/doel theory*), and theory combined. First, the theory of absolute or explanatory revenge drop criminal justified because somebody has To do something criminal. Criminals are interpreted as a consequence of absolute law which is retaliation must there is to someone who has done the crime. Therefore that becomes a base justification ie existence than a crime alone. More further, there is something suffering must also reply with a form of suffering criminal. Therefore criminals intended solely only for give suffering to people who have to do the crime.²³

Second, relative theory or theory purpose. This theory state that criminal no intended to do retribution against people who have to do a crime but have useful goals. Basic justification Relative theory is on purpose desired punishment achieved in which according to several opinions is 1) for reassuring restless society to past crimes happen and 2) to prevent crime good with method common precautions or special precautions. Third, theory combined. This theory combined from theory absolute and relative theory which is the basic justification lies in crime as well as on the purpose of the criminal. Punishment no just for the past but also for the future come, therefore punishment must give a fair impact on the whole element of society.²⁴

According to the writer reviewed from absolute theory someone who has to follow criminal, so as a reply from what have done must sentenced penalty criminal.

²¹ Satochid Kartanegara. *Op.Cit.* p. 42-43.

²² *Ibid.* p. 44

²³ Sofjan Sastradwidjaja, 1996, *Hukum Pidana (Asas Hukum Pidana Sampai Dengan Alasan Penidaan Pidana)*, Bandung: CV. Armico. p. 26-30

²⁴ Utrecht, 1994, *Hukum Pidana 1*, Surabaya: Pustaka Tinta Mas. p. 180.

There is a penalty criminal because emphasizes the aspect of retribution (compensation) which is deliberate suffering charged to someone who has to follow the criminal, here looked at becomes the most effective way to give a reply to somebody on his deeds. Therefore according to theory absolute if someone has to follow criminal and not replied is something injustice.²⁵ The same thing to a child who has To do theft with weighting so already goods, of course, sentenced penalty criminal where the thing is form concrete from threat existing crime in follows criminal theft with regulated weight in Article 363 of the Criminal Code. When someone to do follows criminal, specifically related to theft with weighting then sentenced to criminal sanctions, so like George Hegel mentioned that evil is something necessary omission removed and given penalty criminal reply.²⁶ Because the function of the criminal in this theory is to reply to those who have to do a crime as well as Fulfill demands for justice, the existence of punishment that depend on there or no his something crime.²⁷

Reviewed from theory relatively, drop penalty criminals aim to prevent and reduce crime. This theory is intended to so someone who has been sentenced to a penalty criminal find frustrated not want to follow criminal again.²⁸ Therefore when a child To do follows criminal, reviewed to theory this, then sanctions criminal dropped for give regret on mistakes made, then feeling aggrieved on the sentence imposed, so in future a child becomes aware will guilt and fear for repeat follow criminal. Preview from theory combined, somebody doesn't look at the past only, but also at the future. Ethics somebody to do follows a criminal and then sentenced penalty criminal, then the goal is not to scare course, but to guard peace and order in society so that someone who has to follow the crime no-repeat his deeds.²⁹

When the child enters the judicial process criminal, then must be followed up based on existing provisions in the SPPA Act. reviewed from the SPPA Law, dropping the penalty criminal to a child is an effort law final (*ultimate remedies*). It is because the focus of penalty criminal directed at wrongdoing somebody through the imposition of suffering to be concerned becomes a deterrent. Alf Ross explained *the concept of punishment* goes on two conditions or objectives, namely: first, the criminal shown on application suffering towards the person concerned. Second, the criminal is something statement reproach to deed perpetrators.³⁰ What does that mean in penalty criminal if applied to children will give a bad effect or child-like mental and psychological stress. Because that need conducted approach special to

²⁵ Abintoro Prakoso, 2019, *Hukum Penitensier*, Yogyakarta: Aswaja Pressindo. p. 31-32.

²⁶ *Ibid.*

²⁷ Muladi and Barda Nawawi Arief, 2005, *Teori-Teori dan Kebijakan Pidana*, Bandung: PT. Alumni. p. 11

²⁸ Abintoro Prakoso, *Op.Cit.* p. 33

²⁹ *Ibid.* p. 35

³⁰ Anis Widyawati and Ade Adhari, 2020, *Hukum Penitensier di Indonesia*, Depok: Rajawali Pers. p.41

the child as has been mentioned in the *Declaration of the rights of the Child and related SMR-JJ* (Beijing Rules). Policy for no drop criminal set dies in No. 17.2 were in *commentary* explained Thing the by Article 6 (5) of *International Covenant on Civil and Political Rights* (ICCPR) and about ban use corporal punishment.³¹

Based on the results Interview together Rudita Setya Hermawan a Judge at Bale Bandung Class IA District Court that when a child dropped the penalty criminal and entered into Correctional Institution, no possible child will increase naughty. Inside the penitentiary, the child will meet with the child others who have To do various follow criminal so that child will hang out/socialize the end form child the more naughty. Not forever dropping penalty punishment and placement child to in Correctional Institutions will be the objectives of the construction. Therefore criminal prison is *the ultimate remedy* or effort final for the child, so the need to avoid from drop penalty criminal or prison. More critical again when imprisonment to the child not separated from adults, then will be caused influenced him to think child learn to follow more punishment heavy.

Asep whereas adviser of Child law from the Advocacy Institute of Rights of the Child (LAHA) Bandung said that every child in Correctional Institutions no will ensure child Becomes aware and not will repeat and follow every criminal done. Drop penalty punishment and placement child to in Correctional Institutions are no answer for reducing crimes committed by children in the future because many occur already child-free then To do return follow criminal/*recidivist*. Drop penalty criminal is one means used for cope crime however no method is best for settlement case child. Given the child penalty criminal will get *stigmatization* or bad *labeling* by society, so that would be difficult growth psychologically and socially in the future. Therefore dropping the penalty for crime on children worried will destroy the hope child as an element important in determining the future nation.

The child needs to be handled in a manner different from adults. That's the model of punishment no again must judgment or retribution for following a crime that he did but must handle with restore circumstances various parties to condition beginning like in the concept *restorative justice*. The SPPA Law carries draft *restorative justice* or more often known as designation justice restorative as a form of alternative settlement case. In draft restorative, this destination drop the said sanctions is involve the victim and/or the victim's family, the perpetrator, the community, and the law enforcers. *restorative justice* is a process in which interested parties in violation of certain meet together for complete problem consequences than violation in the interest of the future involved the activeness of victims, perpetrators, and society.³² As for success *restorative justice* materialized if the victim has recovered. It means the victim needs feel satisfied with the results

³¹ Marlina. Op. Cit. p. 118

³² Tony F Marshall, 1999, *Restorative Justice: An Overview*, London: Home Office Research Development and Statistic Directorate. p. 5.

agreements formed and actors must be aware of will actions already conducted as well as fulfillment changes huge loss per victim response. Restorative justice is a process involving the diversion of all interested parties in something following a crime that has been done by children for together complete problem in looking for a solution for the interest best of a child who doesn't base on revenge.

Based on the description above, according to the writer when a child To do follows criminals specifically in a study about following criminal theft with weighting, what more good drop penalty to a child no direct sentence penalty criminal. Giving a penalty criminal to a child is legal just During the fulfillment of conditions about accountability criminal a child. However, needs to remember that drop penalty criminals must notice the development of children. As what has been outlined that child does not enough think about or consider the deeds that he did so sometimes the child no know the real motive in To do follow a criminal, different from adults before To do follow a criminal already aware of motives to do follow the crime realized early. Therefore, dropping the penalty on the child must notice the interest best of the child in the future come, because if a little just one wrong step in handling a son, then will be fatal consequences, and in the end, will ruin his future as a candidate generation successor nation.

The fall penalty criminal to children only will make them suffer. In drop penalty for a child, besides guided by the Criminal Code as well as provisions in the SPPA Act. In the SPPA Law, it is stated that: before a child is sentenced penalty crime and action so will be more first taken mechanism diversion which is an obligation for apparatus enforcer law for trying it, good level investigation, prosecution, and examination case in court. In the international world, diversion trust Becomes a mechanism best for handling conflicted child law. With mechanism diversion so occur diversion something case from a formal process to an informal process. That is, the son is not involved in the system processes Justice criminal.

Article 2 of the SPPA Law has in a manner gives protection special for a child based on principle protection, justice, non-discrimination, interests best for a child, award to opinion child, survival live and grow flower children, coaching and mentoring child, proportionate, deprivation independence and punishment as effort final for avoiding revenge. So the spirit of the SPPA Act in settlement case child is to notice the best interests of the child. The principle reminds all organizer protection children good from party families, society, or enforcer laws and that all activities, as well as decisions for the child, must consider the continuity of life and growing flower child.

Because that diversion is seen as something form of protection law for a child who does follow criminal. Destination from existence diversion to minimize stigma, violence, humiliation, and segregation of social bonds. Diversion of trust could reduce happening recidivism. Besides, that diversion could avoid costs Laws are getting expensive as well as help integrate perpetrators. Diversion could build a

return to existing social relations damaged consequences happening to follow criminal than must To do exclusion in social life against the perpetrator. From the perspective of allocation budget, diversion Becomes an alternative way to no To do detention and correctional needs expensive cost.³³

Practice Application Penalty To follow Criminal Theft With Weighted By Child Associated With Legal Purposes

The Criminal Code states to follow criminal theft with weighting has threat imprisonment for a maximum of 7 (seven) years, which means no one could fulfill the condition conducted diversion because following the crime no under 7 (seven) years. It is already confirmed in Article 7 paragraph (2) of the SPPA Law regarding the conditions for diversion namely if follow crime committed is punishable by imprisonment of up to 7 years and not a repetition of a crime. However, in practice, found a different application penalty to follow criminal theft with burdens made by children.

In case Number 08/Pid.Sus/Child/2017/PN.blb The judge sentenced Ripqi's son to imprisonment for 5 (five) months. The chronology of the day Thursday February 9, 2017 approx at 12.00 WIB located in Kampung Warung Caringin Rt.005 Rw.008 Village Mekarwangi Subdistrict Lembang West Bandung Regency, started Among child Azhar together with Hadi and Indri (DPO) have intention for take motorbikes belonging to other people and for doing his intention the then go to area Lembang West Bandung Regency and When in Warung village Caringin RT.05 RW.008 Village Mekarwangi districts lembang West Bandung Regency, Hadi see there is 1 (one) unit of Honda Beat brand motorbike in 2013 color white Number Police D-6657-UBA No Frame MH1JFD213DK8 37863 No Engine: JFD2E18348 86 medium saved or parked in front of shop feed bird owned by witness Roy Rohmana in condition key contact is at or stick to the hole key next contact tell Thing the to child with mean for children take the motorcycle, then child come over owned motorcycle witness Roy and pretend call while see situation around whereas Hadi with Indri on duty supervise circumstances around, after situation felt safe then with without knowledge san permission from witness Roy later child take the motorbike with especially first turn on machine use key contact and bring toward Village Cikidang however do child the known by the witness Roy so that chased and finally succeed secured with assisted by residents around whereas Hadi with Indri succeeded run self then child submitted to Party Police Sector Lembang following goods the proof. Consequence deed child witness Roy experienced loss not enough more Rp. 9,000,000.00,-(Nine million rupiah)

Meanwhile in a similar case Number 4/Pid.Sus-Children/2021/PN blb no dropped criminal but applied diversion. The chronology on Saturday, January 30

³³ Ani Purwati, 2020, *Keadilan Restorative dan Diversi Dalam Penyelesaian Perkara Tindak Pidana Anak*, Surabaya: CV. Jakad Media Publishing. p. 43

2021 at around 07.00 WIB located at the EVO Cafe Page, Jalan Raya Gading I RT. 01 RW. 09 Cingcin Village, Soreang District, Bandung Regency, started with Desinta Rohmatul Umaroh's child, together with Amelia Putri Alias Amel and Ica Rahmawati Alias Caca (both wanted persons/DPO lists) had the intention to take someone else's motorbike that was parked or stored in an internet cafe located around the Soreang area, Bandung Regency, were to carry out his intention, they went together on a black Honda Beat motorcycle owned by Ica Rahmawati Alias Caca, driven by Ica Rahamwati Alias Caca.

Arriving in front of the EVO internet cafe, he saw 1 (one) cream Honda Scoopy motorcycle, 2013, police number: D 2344 JX belonging to Yani Nurjanah which at that time was used and kept by Muhammad Arif Syaipudin in the EVO internet cafe page, the handlebars were locked/neck with the surrounding conditions being quiet so that the motorbike was targeted, after that Ica Rahmawati Alias Caca stopped the motorbike she was driving near the EVO internet cafe and entered the internet cafe through the unlocked gate while Anak Desinta Rohmatul Umaroh with Amelia Putri Alias Amel was outside watching the surroundings, after that Ica Rahamwati Alias Caca saw the motorcycle ignition key stored on the table and returned to where Desinta Rohmatul Umaroh's child with Amelia Putri Alias Amel were while informing that the motorcycle ignition key was stored on the table and then the child Desinta Rohmatul Umaroh is with Am elia Putri Alias Amel went to the internet cafe then Desinta Rohmatul Umaroh's child entered the cafe page through an unlocked gate while Amelia Putri Alias Amel was outside the yard watching the surroundings, after that Desinta Rohmatul Umaroh's child took the motorbike's ignition key and 1 (one) black Bogo helmet belonging to the witness Irfan Fauzan which was kept in that place and Desinta's son Rohmatul Umaroh put the ignition key into the ignition lock of the Honda Scoopy cream color motorcycle, year 2013, police number: D 2344 JX to the handlebar lock/Desinta Rohmatul Umaroh's son then took and rode the motorbike to the house of Desinta Rohmatul Umaroh's child to be kept while Ica Rahamwati Alias Caca and Amelia Putri Alias Amel returned to their respective homes. When Desinta Rohmatul Umaroh's child together with Ica Rahamwati Alias Caca and Amelia Putri Alias Amel took the motorbike without the permission and knowledge of the owner Yani Nurjanah or Desinta Rohmatul Umaroh's child and as a result of this incident the loss was approximate Rp. 10,000,000 (ten million rupiah).

The second case on could be studied from the perspective purpose of law theory. According to Gustav Radbruch, the purpose of the law is justice, benefit, and certainty law. For the third principle, Radbruch says need to use principle priority which priority first is justice, then followed by benefit, and then the last certainty law. Ideally, the three base purposes of the law should be worked on in every decision law, whether carried out by judges, prosecutors, lawyers, or other law enforcement officers. Third score base purpose of law that expected could

materialize in a manner together, however when no maybe, then must prioritize justice first, then benefits, and finally then the certainty of the law. Only with the application principle priority this, system law could permanently move and escape from internal conflicts that can destroy it.³⁴ What was put forward above, is justification on “theory or principle priority three score base purpose of law” from Gustav Radbruch. Because of it, deep implementation law should notice substance destination law with put order always a priority comes first in every judicial decision or wisdom law from its executors.³⁵

In case Number 08/Pid.Sus/Anak/2017/PN.Blb, according to the author of the judge, prioritizes legal certainty in solving cases, where when something regulation already invited so already goods, of course, must be followed. The judge focuses on Article 7 paragraph (2) letter an SPPA Law which states that diversion is only conducted to follow criminal who has a threat under 7 (seven) years. Based on the perspective of *legal positivism* this then the judge is inclined to u existing laws arranged in a manner clear and certain something norm so that no will raises hesitation. Strictly speaking from a positivistic and normative legal perspective provision Article 7 paragraph (2) letter an SPPA Law no could deviate because already arranged in a manner assertive so. Because that perspective from certainty law only emphasizes norms law written from law moderate positive apply. Certainty law form law formulated in a manner narrow and tight so no becomes blurred.³⁶

Meanwhile in case number 4/Pid.Sus-Children/2021/PN Blb where has applied diversion by the judge then according to the author of the judge prioritizes justice and benefit. Judging apart according to the conditions normative also take into account the right facts on trials and factors supporters other so that have belief alone in dropping something verdict. Judge no always see Constitution in a manner *legal positivism*, as long as it is for the sake of interest and best of the child so could deviate from what is already arranged in a manner normative. The judge plays a role seek and finding law, so that when always looking at cases in a manner *positivist legalistic*, then the result will be seen as rigid like not having a soul and a heart conscience. Applied it diversion this has good purposes for avoiding child from negative court proceedings for continuity grow flower child. Besides that also supported possible losses replaced/restored as well as the parties already forgive, then legal just for applied diversion, remember to focus on beginning that the existence of SPPA Law is to protect interest best for which child still pay attention right recovery to all party per draft restorative *justice*.

According to the author the judge prioritizes from perspective justice and benefit based on several factor existence The SPPA Act provides protection special

³⁴ Rusly Effendi, et.al, 1992, *Teori Hukum Lembaga*, Ujung Pandang: Penerbitan Unhas. p. 72

³⁵ Marwan Mas, 2004, *Pengantar Ilmu Hukum*, Jakarta: Ghalia Indonesia. p. 74

³⁶ Arbijoto, 2010, *Kebebasan Hakim (Analisis Kritis Terhadap Peran Hakim Dalam Menjalankan Kekuasaan Kehakiman)*, Jakarta: Diadit Media. p. 56-57.

for the child based on principle protection, justice, non-discrimination, interests best for the child, award to opinion child, survival life and growth flower children, coaching and mentoring child, proportionate, deprivation independence and punishment as effort final for avoiding revenge. SPPA Act is present for leaving existing paradigms in the Juvenile Court Law which is oriented towards sentencing models *retributive*, whereas in the SPPA Law, the punishment model that is prioritized is *restorative justice* or justice restorative. According to Zehr, *restorative justice* is interpreted as a method of settlement good to the perpetrator crime or the victim of the intended crime for rehabilitation for the doer and healer for the victim so that in the end will give justice to all parties.³⁷ Basically in *restorative justice* there are 3 (three) stakeholders possible interests complete case consists above: 1) victim 2) perpetrator 3) community. Therefore *restorative justice* becomes means for bringing victims and perpetrators together with crime with the ambition to realize recovery for victims. The perpetrator must be responsible and acknowledge his deeds to victims and communities as well as if possible restore the suffering experienced by victims.³⁸

Draft *restorative justice* poured through the process of diversion where all involved parties in case child in a manner together look for something the best solution with permanent by including victims, children, society or party certain other so that could ends peace, repair and/restore return circumstances that are not based on revenge. Diversion is the most appropriate mechanism to order a child could be spared from *negative* stigma in the form of violence, humiliation, and segregation from bondage social.

Besides those losses incurred by the offender's child from his deeds could be replaced/ restored by the party perpetrator in accordance desire of the victim and the parties want to agree on agreed things in looking for the interest best of the child. It could be seen from the case of child Desinta were losses incurred by children perpetrator related to 1 (one) motorcycle belonging to the victim who had been stolen however vehicle the motorbike was still there. That is, in the deep case, son Desinta does not yet succeed enjoy the results of his crimes so the object that has stolen by child Desinta is still there and can be returned to the owner. Therefore in case the judge can make an effort to diversion with results deal diversion that has Approved party first has forgiven the child, the party first begging for a child The desinta is built and returned by their parents under the supervision Father for 6 (six) months, parties first get the motor unit back, second child Desinta, as well as parent-child, will be attempted as well possible for educate and supervise child Desinta, party second no will repeat deed later day and party second plead sorry that big magnitude to party first as a victim.

³⁷ Howard Zehr, 1990, *Changing Lense (Rev.Ed)*, Scottsdale: P.A Harlod Pres. p. 87

³⁸ Vermont Agency of Human Services, 2003, *Promoting Youth Justice Through Restorative Alternatives*, Planning Division. p. 14

III. CONCLUSION

Following criminal theft with weighting is follow belonging to the crime heavy because based on origin 363 of the Criminal Code has threat imprisonment for 7 (seven) years prison. However, to the perpetrator child, the threat criminal for 7 (seven) years the no as well immediately gets direct dropped, remember in SPPA Law has arranged that drop penalty criminal to the child is formed effort law last (*ultimate remedy*). The child must be treated differently from adults, therefore drop penalty to the child not based on retaliation, but interest best for the child.

The SPPA Law adheres to the penal model embodied *restorative* justice in the form of diversion, diverting settlement case child from the judicial process criminal to process in outside Justice criminal. Diversion is looked at as the best mechanism in the complete case of child crime, so that child is spared of impactful legal processes negative to grow its flowers. follow criminal theft with weighting that has the threat of 7 (seven) years in prison, based on the provisions of the SPPA Law do not could applied diversion, but in practice occur application diversion by the judge against following criminal theft with weighting. It no aligned with the provisions of the SPPA Law. But the judge as an enforcer of law and justice required to explore, follow and understand the values of living law in Public based on heart and conscience for the sake of achieving its destination the desired law principle certainty law, principle justice, and principles benefit. Application Diversion by judges is done for the sake of the interest best of the child.

REFERENCES

- Arbijoto. 2010. *Kebebasan Hakim (Analisis Kritis Terhadap Peran Hakim Dalam Menjalankan Kekuasaan Kehakiman)*. Jakarta. Diadit Media.
- Djamil, M. Nasir. 2012. *Anak Bukan Untuk Dihukum : Catatan Pembahasan UU Sistem Peradilan Pidana Anak (UU-SPPA)*. Jakarta. Sinar Grafika.
- Effendy, Rusli, et.al. 1992 *Teori Hukum Lembaga*. Ujung Pandang. Penerbitan Unhas.
- Hamzah, Andi. 2008. *Asas-Asas Hukum Pidana*. Jakarta. Rineka Cipta.
- Kartanegara, Satochid. 2001. *Hukum Pidana Bagian Kesatu*, Balai Lektur Mahasiswa.
- Marlina. 2009. *Peradilan Pidana Anak Di Indonesia (Pengembangan Konsep Diversi dan Restorative Justice)*. Bandung: PT. Refika Aditama.
- Marshall, Tony F. 1999. *Restorative Justice: An Overview*. London. Home Office Research Development and Statistic Directorate.
- Mas, Marwan. 2004. *Pengantar Ilmu Hukum*. Jakarta. Ghalia Indonesia.

- Muladi and Barda Nawawi Arief. 2005. *Teori-Teori dan Kebijakan Pidana*. Bandung. PT. Alumni.
- Prakoso, Abintoro. 2019. *Hukum Penitensier*. Yogyakarta. Aswaja Pressindo.
- Prodjodikoro, Wirjono. 1986. *Tindak-tindak Pidana Tertentu di Indonesia*. Bandung. Eresco,
- Purwati, Ani. 2020. *Keadilan Restorative dan Diversi Dalam Penyelesaian Perkara Tindak Pidana Anak*. Surabaya: CV. Jakad Media Publishing.
- Rian Prayudi Saputra. *Perkembangan Tindak Pidana Pencurian Di Indonesia*, Jurnal Pahlawan, Vol 2 No. 2. 2019
- Sastrawidjaja, Sofjan. 1996. *Hukum Pidana (Asas Hukum Pidana Sampai Dengan Alasan Peniadaan Pidana)*. Bandung. CV.Armico.
- Utrecht. 1994. *Hukum Pidana 1*. Surabaya. Pustaka Tinta Mas.
- Vermont Agency of Human Services. 2003. *Promoting Youth Justice Through Restorative Alternatives*. Planning Division.
- Wahyudi, Setya. 2011. *Implementasi Ide Diversi dalam Pembaharuan Sistem Peradilan Anak di Indonesia*. Yogyakarta. Genta Publishing.
- Widyawati, Anis and Ade Adhari. 2020. *Hukum Penitensier di Indonesia*. Depok: Rajawali Pers.
- Zehr, Howard. 1990. *Changing Lense* (Rev.Ed). Scottsdale. P. A Harlod Press.
- Bale Bandung District Court Decision Number: 08/Pid.Sus/Anak/2017/PN. Blb
- Constitution Number 23 of 2002 Concerning Child Protection
- Determination letter diversion Number 4/Pid.Sus-Children/2021/PN Blb
- Indictment of Case Register Number: PDM-108/CIMAH/2/2017
- Law Number 11 of 2012 concerning the Juvenile Criminal Justice System
- KPAI RN *Data Pengaduan Anak 2016-2020* (<https://bankdata.kpai.go.id/tabulasi-data/data-kasus-pengaduan-anak-2016-2020>).