
ASSESSING THE ROLE OF THE POLICE IN DEALING WITH CRIMINAL ACTS OF THEFT COMMITTED BY MINORS

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ARTICLE INFO

Keywords :

Criminal Acts, Theft, Children

How To Cite :

Nur'ain., Puluhulawa, Moh. R. U., Sarson, S. (2019). Assessing The Role Of The Police In Dealing With Criminal Acts Of Theft Committed By Minors. *Estudiante Law Journal*. 1 (1): 68-80

DOI :

ABSTRACT

In essence, children cannot protect themselves from various actions that cause mental, physical, social, losses in various areas of life. For children who commit criminal acts, not all can be applied Diversi and Based on the description above, factors that inhibit the police in tackling the crime of theft committed by minors are: lack of understanding of the community related to Diversi, in the judicial process, is the understanding of the community about the child who committed the crime, and the lack of understanding of state responsibility towards children, Underprivileged children such as abandoned children, victims do not know the identity of the perpetrator, there are no witnesses.

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I. Introduction

Children have human rights, just like adults have. Reporting on children's rights is not as wide as adult rights or gender issues, which concern women's rights. The protection of children's rights is not much of a party that also thinks and takes concrete measures. Likewise, efforts to protect the rights of violated children by the state, adults, or even their parents, are not so concerned about the future interests of the child. Whereas the child is a soulmate, a picture, and mirror of the future, an asset of the family, religion, nation, and country.

Children are a potential growth and development of a nation in the future, which has special traits and characteristics. This specificity lies in his attitude and behavior in understanding the world, which he must face. Therefore, children should be given special protection by the state.¹

In-Law No. 11 of 2012 concerning the Criminal Justice System of Children which has been effective in July 2014, determining the age limit of children who face the law, namely Article 1 Number 3, among others: "children who conflict with the law which is then called a child who has aged 12 (twelve) years, but not yet 18 (eighteen) years old suspected of committing a criminal act".

For example, in 2017 there was 1 case of theft committed by minors located in the tent village, namely children stealing scrap metal but in this case, the police did the same diversion in 2018 where there was a case of theft committed by minors but this case was continued by the police to stage 2, namely the prosecution stage, From this case there is a difference in settlement from the police but when viewed from the problem these two children both commit ordinary theft crimes, but in the case of 2017 the police have applied diversion but diversion is not enforced in the 2018 case. What is the consideration of the police in resolving these 2 cases with different settlements? There are many children involved in criminal cases such as theft, sexual crimes, murder, and so on. The crime of theft is one of the acts of criminality that disrupt the lives of people, especially those who do it are minors. The crime of theft is stipulated in article 362 of the Criminal Code, in article 362 of the Criminal Code mentioned "whoever takes something, wholly or partially belongs to another person, to be owned unlawfully, is threatened for theft, with a maximum imprisonment of five years or a maximum fine of Nine hundred rupiah."²

¹ 2016. Undang-Undang Perlindungan Anak. Jakarta: Bhuana Ilmu Populer. Hal 5

² Kutipan skripsi. Rantiawi Dj Karim Taha. 2019. Penegakan hukum terhadap tindak pidana pencurian dilakukan oleh anak. UNG. Hal 1

The problem faced is that the state protects children because children are the hope of the nation and must be protected and fulfilled their rights, but the child commits a criminal act, in that case, the state has a duty and responsibility to uphold the law and provide justice either to the child as a perpetrator or to the victim. In essence, children cannot protect themselves from various actions that cause mental, physical, social, losses in various areas of life. The child should be assisted by others in protecting himself, given his situation and condition, especially in the implementation of criminal justice of children who are foreign to him. Children need to get protection from the misrepresented implementing laws and regulations imposed on them that cause physical, mental, and social harm.

Legal protection of children in a nation's society is a benchmark of the nation's civilization, therefore must be cultivated by the ability of nusa and the nation. Child protection is a legal action that has legal consequences. Therefore, there need to be legal guarantees for child protection. Legal certainty needs to be pursued for the sake of continuing child protection and preventing abuses that bring unintended negative consequences in the implementation of child protection activities. Law enforcement that is not in line with community justice will have an impact on the loss of public trust in the state.³

Considerations of Law No. 23 of 2002 on Child Protection are:

1. That the Unitary State of the Republic of Indonesia guarantees the welfare of each citizen, including the protection of the rights of children which is a human right.
2. That the child is the trust and gift of God Almighty, in which he attaches dignity and dignity as a whole human being.
3. That the child is the bud, potential, and the next generation of the ideals of the nation's struggle, has a strategic role, and has special characteristics and traits that ensure the continuity of the existence of the nation and state in the future.
4. That for every child to be able to assume this responsibility, then he needs to get the widest opportunity to grow and develop optimally, both physical, mental, and social, and noble, it is necessary to make efforts to protect and to realize the welfare of children by providing guarantees to the fulfillment of their rights and the existence of treatment without discrimination.

³ Fence M. Wantu. Kendala Hakim dalam Menciptakan Kepastian Hukum, Keadilan Hukum dan kemanfaatan hukum di Peradilan Perdata. *Mimbar Hukum*. Volume 25. No 2.2013

5. That to realize the protection and welfare of children, support is needed and legislation that can ensure its implementation
6. That various laws only regulate certain matters concerning the child and in particular have not regulated the whole aspect relating to child protection.
7. That based on these considerations in letters a, b, c, d, e, and f need to be established law on child protection.⁴

Criminal theft can occur anywhere including in the city of Gorontalo. As per the results of research interviews at the Gorontalo City Police, there were 5 cases of theft committed by minors in 2017, 2018, and 2019. By article 21 paragraph (1) of Law No. 11 of 2012 concerning the Children's Criminal Justice System "If a child as young as 12 (twelve) years of age commits or is suspected of committing a criminal offense, investigators, community supervisors, and professional social workers decide on: and it back to the parent/guardian.

The problem of children who have problems with the law, both in a position as an object (victim) and a child as the subject (perpetrator) of criminal acts, is a problem faced by all countries. Children are often involved in the crime of theft behind several factors. Starting from family factors, the environment, and even factors from within themselves children as a criminal act of theft must be responsible for their actions. This is done so that the child opinions the lesson so that in the future the child does not repeat the same mistake. Giving the law to the child must pay attention to aspects of the child's development and the interests of the child. Children who commit crimes must still be protected and considered their rights so as not to interfere or damage the child's growth period.

As the problem outlined above, then the prospective researcher determines the formulation, namely: What is the inhibition factor of the police in solving the crime of theft by minors of funds What is a factor inhibiting the police in solving the crime of theft by minors?.

II. Research Methods

The type of research used in this study is Normative Empirical. In research usually use several approaches including the legislative approach, conceptual approach, case approach.⁵ In this study, we used a qualitative approach. This qualitative research is specifically geared more towards case study methods.

⁴Liza Agnesta Krisna. 2018. Hukum Perlindungan Anak. Yogyakarta: Deepublish. Hlm 1

⁵ Novendri. Menggagas Sanksi atau Tindakan Atas Tindakan Constitution Disobedience Terhadap Putusan Mahkamah Konstitusi. Jurnal Konstitusi. Volume 16. No 1. Tahun 2019

Data obtained both primary and secondarily is then analyzed qualitatively. Namely presenting descriptively by explaining and describing the problems that will be studied and the solution related to the efforts of the police in dealing with the crime of theft committed by underage children.

III. Discussion

Consideration of the policy does not apply diversion to the crime of theft by minors

The police are the state apparatus, so the final accountability is to the owner of sovereignty, namely all Indonesian people. In the context of *good governance*, the police should live the principles of accountability, transparency, respect for equality, law-abiding, and democracy. The crime of theft that occurs in the community today is not only committed by adult perpetrators (legally) but also widely committed by minors. Acts of theft committed by minors bring uncomfortable circumstances in the community, especially in the city of Gorontalo. The handling process is different between adults and children who commit criminal acts, by the prevailing laws and regulations in Indonesia. Law enforcement officials, especially the city's Gorontalo resort police, have a very important role in handling cases of theft by children, especially in the city of Gorontalo.

Theft committed by minors may be translated as special theft, i.e. as theft in certain ways so that it is lighter but in the provisions of the criminal law can be threatened with a maximum penalty higher, which is more than a prison sentence of five years or more than the criminal threatened in article 362 of the Criminal Code. The regulation of criminal sanctions must be interpreted as the norm of *remedium ultimatums*.⁶ Therefore, in carrying out examinations of children as criminal offenders must be considered the purpose of juvenile justice. That is to make corrections and rehabilitation so that children can return to a normal and independent life for the sake of their future potential. For that, it is necessary to apply diversion in the child criminal justice process.

The implementation of Diversion is motivated by the desire to avoid the negative effects on the child's soul and development by his involvement with the criminal justice system. The implementation of Diversion by law

⁶ Fence M. Wantu, dkk. Constitutional Judge Selection Process : Problems and Future Models. Jurnal Konstitusi. Volume 18. No 2. Tahun 2021

enforcement officials is based on the authority of law enforcement officials called *discretion* or in discretionary Indonesian.⁷

The circumstances and situations for obtaining appropriate sanctions or actions (*appropriate treatment*) there are three types of diversion program implementation, namely:

1. The implementation of social control, i. e. law enforcement officials hand over the perpetrator in the responsibility of supervision or observation of the community, with obedience to the consent or warning given.
2. Social services by the community to the perpetrator, namely carrying out the function to supervise, interfere, improve and provide services to the perpetrator and his family. The community can interfere with the family of the perpetrator to provide repairs or services.

Towards the process of restorative justice or negotiation, which is to protect the community, allow perpetrators, take direct responsibility to victims and the community and make a mutual agreement between the victim of the perpetrator and the community.

The application of diversion provisions is an important thing to consider because with diversion children's human rights can be more guaranteed, and prevent children from stigma as naughty children because criminal acts that allegedly involve a child as an offender can be handled without the need to go through the legal process. The diversion efforts are:

1. To avoid the child from detention
2. To avoid labeling a child as a criminal
3. To prevent the repetition of criminal acts committed by children
4. To hold the child responsible for his actions
5. To make necessary interventions for victims and children without having to go through the formal process of avoiding children following the process of the justice system, keep the child away from the influence and negative implications of the judicial process.

Based on the interview of researchers with Gorontalo City Police investigators, bipedal Febriyanti Ngorawan, in the interview researchers questioned how they handled the theft case dilaulaukan by children who are still under this age. Brinda Febriyanti Ngorawan said that the police's handling of criminal acts of theft committed by minors was carried out by the applicable rules. After there

⁷ Marlina.2011."Pengantar Konsep Diversi dan Restorative Justice dalam Hukum Pidana". USU Press 2010 : Medan. Hal. 2

is a report that goes to the police about the crime of theft committed by minors the first step is, the investigation process carried out by the police through the stage of investigation, investigation, examination of witnesses and victims.

In addition to interviewing Bripda Febriyanti Ngorawan researchers also asked the same question to Briptu Zuhra Moha, Briptu Zuhra said that the handling of the police in this theft crime as said by Bripda Febri that the handling process was by the applicable rules. The point is that we ice one case of theft if there is indeed a victim who reports and wants to process the theft case. From the victim's report then we the police conducted an investigation. Therefore theft is a regular deli, which means that to conduct legal proceedings against theft cases do not require a complaint, while the police report on the case cannot be revoked or retracted even though the stolen goods have been returned / the victim does not suffer losses for the actions of the perpetrator. Indeed, in the case of theft by the child, we must apply Diversi in prosecuting the child perpetrator. However, to apply this Diversion we also have to look at the side of the criminal acts committed by this child, whether the theft committed by the child is only a minor theft that can certainly be applied diversion.

In connection with the crime of theft committed by a minor, this crime has been regulated in the Criminal Code which is an act that harms others as stipulated in article 362 of the Criminal Code "Whoever takes something, which at all or part includes the property of others, to own the item against rights, punished, for theft, with a prison sentence, forever five years or a maximum fine of Rp. 900.

Based on research conducted by researchers, researchers get data in the form of theft rates committed by minors throughout 2017-2020 are as follows:

No	YEAR	ENTER	INFORMATION
1	2017	1	Diversion
2	2018	1	Stage 2 (court)
3	2019	2	Stage 2 (court)
4	JAN S/D NOV 2020	1	Diversion
	SUM	5	

Based on the data above, it can be seen that the number of thefts committed by minors that occurred from 2017 to 2020 there was 1 case in 2017 and 2018 and then increased in 2019, namely, there were 2 cases in that year. Then in 2020, there is another decrease, namely, there is only 1 case in 2020. Although in 2020

the theft rate is decreasing, with one case it remains a concern for all of us. Of course, we hope that there are no more cases of theft that occur.

The settlement in the above case is different there are those resolved familiarly or *Diversi* but there are also cases that are continued to stage 2. In 2017 there was 1 case committed by a minor located in the tent village, namely the child who committed theft with scrap metal in this case the police applied *Diversi* so that the perpetrator is not detained in prison. Similarly, in 2017, 2018 there was also 1 case of theft committed by children in the village of Biau with the same stolen object but this case was not enforced diversion and continued to stage 2, namely the prosecution stage, as well as in 2019 to 2 cases that entered the Gorontalo City resort police were not resolved in the police but remained in the process to court. And 1 case that in 2020 has been resolved with diversion. From this case, there is a difference in settlement from the police but when viewed from the problem the child perpetrators only commit light theft, but not all cases are applied diversion. It becomes a question for researchers exactly what is the balance of the police in solving the theft cases with a different settlement.

To clarify what the police are considering is not applying diversion to all cases they handle, researchers conduct interviews with other investigators, about the fundamental reasons they do a different settlement. And according to the statement from the father of Brigadier Alhidayat Abas as the Investigator of PPA Gorontalo City Police, he said that if talking about criminal acts involving the child must be very concerning especially when this child becomes the perpetrator of the crime. And the police as the first party to deal directly with cases like this is certainly very heavy in handling this case.

Because the Police must handle minors, actually for criminals who are minors. The examination process is distinguished from adults and the police must do their best for this child abuser. Many people know whether in the case of criminal acts like this the Police apply diversion or not, and the justice in the field of these police wants all children who face the law can be solved by family or applied *Diversi*. However, our country is a country of laws that are all regulated in the Law including the application of *Diversi* against underage criminal offenders. In addition to thinking about the interests of the perpetrators, the police also cannot ignore the victim, especially if the victim is both minors. Of course, this is very difficult for the police to take steps, but the steps they take must be by the applicable regulations, namely while still

protecting perpetrators and victims. Because in its function, the law is a protection of the interests of the community. The law has a purpose. The law has a goal to achieve. The main purpose of the law is to create an orderly society within a society. Consequently, society will be protected.⁸

From the description above can be concluded that the police handling of criminal acts of theft committed by children. Can be seen from the case data handled by the Police in the last 3 years, because the last 3 years did not decrease but instead increased in 2019. This shows that the handling carried out by the police has not been able to suppress or even make this criminal act no longer happen.

In this case, researchers not only conducted interviews with one policeman but also interviewed Briptu Zuhra about how the process of examining the underage perpetrators of theft, whether the examination process was equated with adults, bribes Zahra also provided information that the handling of criminal cases against children is certainly different from the handling of cases against perpetrators who are adults, The handling of the child is special because it is also regulated in its regulations. Understanding the process of handling children's cases of course there may still be some people who do not understand or understand so that sometimes it raises various assessments, even more, fatal if there is a misjudgment that the handling of children, especially children who conflict with the law get preferential treatment and there are also those who think children cannot be punished when not so far, It's just that the handling process is specially arranged. Therefore, it is necessary to conduct socialization and counseling related to this theft crime for changes in the community paradigm about this criminal act.⁹

It should be understood that related to the handling of children facing the law is certainly based on several provisions of the legislation that are special, namely the following:

1. Indonesian Law No. 11 of 2012 concerning the Criminal Justice System of Children, previously Indonesian Law No. 3 of 1997 concerning The Child Court.

⁸ Fence M. Wantu. *Anatomi dalam Penegakan Hukum Oleh Hakim*. Mimbar Hukum. Volume 19. No 3. 2007

⁹ Melisa Towadi dan Novendri. *Desain Yuridis Peraturan Desa dalam Penanganan Sampah Melalui Bank Sampah di Desa Bongo Nol*. Dassein (1). 2020

2. Indonesian Law No. 35 of 2014 on Amendments to Indonesian Law No. 23 of 2002 on Child Protection.
3. Government Regulation No. 65 of 2015 on Guidelines for The Implementation of Diversion and treatment of ana who is not yet 12 (Twelve) Years old.

A. Factors inhibiting the police in the settlement of criminal acts of theft by minors

If we are based on Law No. 11 of 2012 on the Juvenile Criminal Justice System that has been effective in July 2014 has regulated the diversion that is diffuse so that children who face the law are not stigmatized due to the judicial process that must be undertaken. The application of diversion is intended to reduce the negative impact of children's involvement in a judicial process.

The implementation of Diversi must also be with the consent of the child as the perpetrator of the crime, parents/guardians and requires the cooperation and role of the community in connection with the existence of programs such as supervision, guidance, recovery, and compensation to the victim. The Diversion process must pay attention to the interests of the Victim, the welfare and responsibility of the child, the avoidance of negative stigma, the avoidance of retaliation, the harmony of society, and propriety, decency, and public order.

The enactment of Law No. 23 of 2002 on Child Protection, then theft reads in article 362 of the Criminal Code "Whoever takes something, which is at all or partly belonging to others, to own the item against rights, punished, for theft, with a prison sentence, for five years or a maximum fine of Rp. 900.

Diversion is currently one of the legal means that is considered very accommodating to the management of the parties (law enforcement, perpetrators, victims, and the community) in resolving a criminal case outside and while in court. Normatively, Diversion is regulated and applied in the juvenile criminal justice system. Diversion is contained in article 1 number 7 of Law No. 11 of 2012 concerning the Juvenile Justice System (UU SPPA) which is the transfer of the settlement of Children's cases from criminal justice proceedings to out-of-court proceedings.¹⁰

Children who have committed criminal acts of theft, due to environmental factors, in addition to environmental factors some start from poor families or families that are unable to meet the needs of the child so that the child is easily

¹⁰ Ariefulloh, et al. Dilemma of Applying Traffic Violation Sanctions Against Children. *Jalrev* : Volume 1 Issue 02.2019

plunged into the environment. If the environment is not healthy for children, the child will easily commit crimes in fulfilling his wishes.¹¹

The sociology of law found 4 determinants of the success or not of the application of a legal norm amid society. These factors are legal material factors, law enforcement officials, legal infrastructure facilities, and cultural factors of community law. these factors have a close relationship with each other. These four factors have the same position and function in supporting the application and enforcement of a norm or rule of law. If one of these factors does not work, it is almost certain that the application of the law will experience obstacles and will even reap failure, because the law is not able to carry out functions as a means of the embodiment of order, justice, and welfare.¹²

Based on the description above, the factors that inhibit the police in tackling the crime of theft committed by minors there are several factors, namely: first the lack of understanding from the community related to *Diversi*, secondly in the judicial process that becomes an inhibitory factor is the application of diversion is the community's understanding of children who commit criminal acts, and a lack of understanding of state responsibility towards children, Third, in this case, it has been achieved often the police, especially the police in Gorontalo City Police experiencing obstacles in children who have underprivileged families such as children who are.

Abandoned or street children. The four things that hinder the achievement of diversion is that the victim does not know the identity of the perpetrator. Fifth, the absence of witnesses with no witnesses will make it difficult for the police to find the perpetrator, the sixth is not the existence of evidence, seventh in the investigation process, the factor that becomes an obstacle is when the complainant or the victim's family does not attend the diversion process at the investigation level and there is a desire on the part of this victim to continue the investigation process.

IV. Conclusion

To be able to apply the diversion some points must be met to be applied *Diversi*. The point of *Diversi* I mean is that the first is a criminal offense committed not threatened with a sentence of 7 years and above, and the second is a criminal offense committed it is not a repetition of the criminal act, and the

¹¹ Arifin, dkk. *Pidana Pencurian yang Dilakukan Oleh Anak Dibawah Umur*. Repository .2019

¹² Abbas Syahrizal. 2018. *Paradigma Baru Hukum Syariah di Aceh*. Banda Aceh : NASA.

third is when the party of the victim is willing and willing to solve the criminal act by family means that diversi applied to the case.

In the case of criminal acts of theft committed by the child of the police experiencing the following: Lack of understanding from the community is not related to diversion, Dalam the judicial process lack of public understanding about children who commit criminal acts, lack of understanding of the responsibility of jawab State towards children, children who are not able to for example abandoned children, The thing that hinders the achievement of diversion is that the victim does not know the identity of the perpetrator, from the investigation process there are no witnesses, the Sixth Videos do not have evidence, the investigation process, the victim's family does not attend the diversion process at the investigation level and there is a desire from this party to continue the investigation process.

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² 2016. Undang-Undang Perlindungan Anak. Jakarta: Bhuana Ilmu Populer