

The Process of Investigation on Child Criminal Theft Committed Under Diversion

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Abstract.

The purpose of this research is to find out and analyze the process of investigating the crime of children committing theft which is not diverted. To find out and analyze the obstacles in the process of investigating the crime of children committing theft that is not diverted and the solution. The method used by the researcher is normative legal approach and the specifications in this study are descriptive. The sources and types of data in this study are secondary data obtained from library studies. Data analyzed qualitatively. Based on the results of the study that The Process of Investigating the Crime of Children Committing Theft That Wasn't Done Diversion i.e. investigators make summons, arrests, search bodies/houses, confiscate evidence, detain and file cases they handle. In addition, investigations of children who commit crimes of theft are carried out in a family atmosphere to children who carry out the investigation process. consideration or advice from community counselors or if necessary to educational experts, psychologists, psychiatrists, religious leaders, social workers and other experts in Cirebon Regency. The obstacle is There is no Social Welfare Organization (LPKS), not all cases can be diverted and detention for investigation purposes too short. The solution is the Police Coordinates with the Government on LPKS, Investigators Provide Advice to Perpetrators and Victims, Police Conduct Workshops to Discuss the Juvenile Justice System Act.

Keywords: Child; Crime; Diversion; Investigation; Theft.

1. Introduction

The life of the nation and state, security is a determining factor in the life of the nation and state, the implementation of a sovereign and authoritative government, which is the main condition supporting the realization of a just, prosperous, prosperous and civilized civil society system based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Domestically, the National Police carry out law enforcement efforts through the process of investigating and investigating criminal acts as regulated in Act No. 2 of 2002 concerning the Indonesian National Police.¹

Every citizen is obliged to "uphold the law". In everyday reality, citizens who neglect/deliberately do not carry out their obligations to the detriment of society, it is said that these citizens "violate the law" because these obligations have been determined by law.²

¹Ni Made Srinetri, Umar Ma'ruf, (2020), *Progressivity Of Criminal Handling Fraud And Disease By The Directorate Of The General Criminal Reserse Of Central Java Regional Police (POLDA)*, dalam Jurnal Daulat Hukum Volume 1 (1), Published Master Of Law, Faculty of Law Unissula, <http://jurnal.unissula.ac.id/index.php/RH/article/view/8777/4076>

²Leden Marpaung, (2011), *Proses Penanganan Perkara Pidana (Penyidikan dan Penyelidikan)*, Cetakan Ketiga, Sinar Grafika, Jakarta, p. 22

The rule of law is primarily aimed at concrete perpetrators, namely for the actual perpetrators of violations, it is also aimed at public order so as not to become victims of crime, and so that crimes do not occur.³

A child is essentially a gift from God Almighty in which there is a dignity and worth as a human being as well as an adult. Children are physically and psychologically different from adults. Despite having a mind to think, children's reasoning power is generally more unstable than adults. Children rarely think about the negative impact of doing something. In general, children are easily influenced by life in the surrounding environment. Without realizing it, children easily get into a bad environment. In a bad environment, children can follow the behavior of the people in the environment and eventually fall into crime or criminal acts.

Whereas Indonesia as a State party to the Convention on the Rights of the Child (Conventional on the Rights of the Child) which regulates the principle of legal protection for children has an obligation to provide legal protection to children and has an obligation to provide special legal protection for children in conflict with the law; d. Whereas Act No. 3 of 1997 concerning juvenile court is no longer in accordance with the development and legal needs of the community because it has not comprehensively provided protection to children in conflict with the law so that it needs to be replaced with a new law; e. That based on the considerations as referred to in letters a, b, c, and d, it is necessary to establish a law on the juvenile justice system.

Children who lack or do not receive physical, mental or social attention often behave and act asocially and even anti-socially which are detrimental to themselves, their families and society.⁴ The condition of children is greatly influenced by family life. Broken home families are very influential on children's mental and child development. In family life, children need attention and help so as not to fall into the life of a bad environment. The family plays a very large role in the development of self and children's behavior. If the child's life is in a damaged family, it can make the child's behavior pattern be damaged. According to general opinion, in broken homes there is a high probability of juvenile delinquency, which is mainly caused by divorce or separation of parents.⁵

Children who have a role as the nation's successor, must and should get their rights and needs properly. Children should not be the object (target) of unfair treatment/acts of arbitrariness from any party. Children who are basically vulnerable to violence and abuse , must be nurtured, educated and cared for as well as possible in order to grow and develop naturally and healthily. This action becomes necessary to do so that in the future it does not cause a lost generation.⁶

One of the crimes often committed by children in committing the crime of theft by weight is theft in accordance with Article 363 paragraph (2) of the

³ Sumaryono and Sri Kusriyah, (2020), *The Criminal Enforcement of the Fraud Mode of Multiple Money (Case study Decision No.61 / Pid.B / 2019 / PN.Blora)*, *Jurnal Daulat Hukum* Volume 3 Issue 1, hal. 237, <http://jurnal.unissula.ac.id/index.php/RH/article/download/8811/4075>

⁴Bambang Waluyo, (2000), *Pidana dan Pemidanaan*, Sinar Grafika, Jakarta, p. 2

⁵Moeljatno, (1984), *Asas-asas Hukum Pidana*, Bina aksara, Jakarta, p. 98

⁶Abu Huraerah, (2006), *Kekerasan terhadap Anak*, Nusantara, Bandung, p. 18.

Criminal Code which includes committing the crime of theft at night at home or in a closed yard, carried out by two persons or more, and take things they take by dismantling, breaking, climbing by using fake keys, false orders.

The purpose of this study is as follows: To find out and analyze the process of investigating the crime of children committing theft which is not diverted. To find out and analyze the obstacles in the process of investigating the crime of children committing theft that is not diverted and the solution.

2. Research Methods

The method used by the researcher is normative legal approach and the specifications in this study are descriptive. The sources and types of data in this study are secondary data obtained from library studies. Data analyzed qualitatively.

3. Results and Discussion

3.1. The Process of Investigating the Crime of Children Committing Theft That Wasn't Done Diversion

The development of law in Indonesia itself is very dynamic and always changes following the development of society, legal developments, especially in the development of criminal (material) and criminal procedural law (formal) outside the territory of the Indonesian Criminal Code (Criminal Law Book) and the Criminal Procedure Code which is currently in force. This is because the basic rules of the Criminal Procedure Code (material) of the Criminal Code and the Criminal Procedure Code (formal) from the Criminal Procedure Code which are old legal products that have not been updated or revised, only the revision / review of the articles in the two laws and regulations does not replace / revise the entire Criminal Code or KUHP.⁷

Theft committed by children may be translated as special theft, namely as a theft in certain ways so that it is lighter, but in criminal law provisions it can be threatened with a higher maximum sentence, which is more than a prison sentence of five years or more. of the punishments threatened in Article 362 of the Criminal Code.

In carrying out its investigative function, the National Police must obey and submit to the principle of the right of due process. Every suspect has the right to be investigated on a basis in accordance with procedural law, not through an undue process. The right of due process in carrying out law enforcement actions stems from the ideals of a state of law that upholds the rule of law which emphasizes "we are ruled by law" and not "by people" (government of law and not of men). Starting from this principle, the National Police in carrying out their functions and powers of investigation must be based on and guided by the special provisions stipulated

⁷Moch. Isa Nazarudin, Umar Ma'ruf, *Comparison Of The Implementation Of Pre-Court Process Before And After The Constitutional Court Decision Number: 21 / PUU-XII / 2014 In The Batang*, Jurnal Daulat Hukum Volume 3 Issue 1, March 2020 ISSN: 2614-560X State Court

in the Criminal Procedure Code. Police as the spearhead of law enforcement in the field with a limited number of personnel,⁸

Efforts to investigate criminal acts committed by children, what is meant is how the investigation process carried out by investigators is determined by the Criminal Procedure Code, as well as the role of Act No. 3 of 1997, concerning Juvenile Court, and which has been replaced by Act No. 11 of 2012 which is very important to be implemented and applied by investigators in the process of investigating criminal acts of theft by weighting committed by children. Can it work as expected in the investigation process against children.⁹

According to R. Soesilo in the field of criminal investigations, investigations are usually distinguished as follows:¹⁰ Investigation in the broad sense of the word includes investigation, investigation and examination, which is at the same time a series of actions from which there is no starting or ending basis. Investigation in the narrow sense of the word is all actions which are a form of repression from the criminal investigation of the Police which is the beginning of the examination of criminal cases.

This investigation process must also be kept confidential so that it is not easily known to the public which can cause depression, shame or inferiority and so on which will have a psychological impact on the growth and development of children in the community. For the proper implementation of a rule, as well as the absence of violence against children, both physically and psychologically, children are in the process of investigating children as perpetrators of criminal acts. What is meant by investigators here are Indonesian state police officers or certain civil servants who are given special authority by law to conduct investigations.

During the investigation of child suspects during the investigation process, investigators detain child suspects for 7 days in accordance with Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, and for child suspects, an extension of detention can be carried out, but there must be a letter of suspension of detention from the family, where the investigator remembers the child's physiological development. In the examination of child suspects, child suspects are accompanied by parents/guardians or accompanying officers as regulated in Act No. 11 of 2012 concerning the Juvenile Criminal Justice System.¹¹

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⁸ Kusfitono, Umar Ma'ruf, Sri Kusriyah, (2017), *Implementasi Putusan Mahkamah Konstitusi Nomor 130/PUU-XIII/2015 Terhadap Proses Penyidikan Tindak Pidana Pencurian Dengan Pemberatan Di Sat Reskrim Polres Kendal*, *Jurnal Hukum Khaira Ummah* Vol. 12. No. 4, Unissula

⁹ Nashriana, (2011), *Perlindungan Hukum Pidana Bagi Anak Indonesia*,: Raja Grafindo Persada, Jakarta, p. 79-80

¹⁰ R. Soesilo. *Kitab Undang-undang Hukum Acara Pidana*. Politeia- Bogor *Pasal 1 ayat (1) KUHP*. p.3

¹¹ Act No. 11 of 2012 concerning the Juvenile Criminal Justice System, Article 3, Bandung; *Media Focus*, p. 108 - 109

counselors or if necessary to educational experts, psychologists, psychiatrists, religious leaders, social workers and other experts available.

3.2. Obstacles in the process of investigating the crime of children committing theft that is not carried out by diversion

Deviations of behavior or unlawful acts committed by children, due to various factors including weak religious education in the family environment, deterioration of mental and morals, negative impacts of rapid development, globalization in the field of communication and information, advances in science and technology, instability social, political and economic conditions and changes in the style and way of life of some parents, have brought about fundamental social changes in people's lives that greatly affect values and behavior.¹²

Criminal acts committed by minors are still processed by legal procedures. But what makes the difference is that the prosecution process uses the juvenile justice system. The Principles of Act No. 11 of 2012 have used a restorative justice model centered on the diversion process as an effort to resolve crimes committed by children. As stated in Article 5 point 3 of Act No. 11 of 2012 explains that the juvenile justice system based on the principles of protection and justice must be pursued so that the transfer process. As stated in Article 5 point 3 of Act No. 11 of 2012 explains that a juvenile justice system based on the principles of protection and justice must be pursued so that the diversion process is carried out. In Article 7 paragraph 2 of Act No. 11 of 2012 also regulates the implementation of the diversion provisions, that the crimes committed: (1) are punishable by imprisonment of less than 7 (seven) years; and (2) not a repetition of a criminal act.¹³

The examination must be carried out in a family atmosphere considering that the perpetrator is still a child. The family atmosphere in the examination of children at the Cirebon City Police is that investigators use language that is easy to understand by asking questions that do not corner or force children to admit or provide information, no investigators are wearing official clothes so it does not appear that they are police. The examination system in a family atmosphere carried out by investigators is in accordance with the principle of kinship in UPPA, namely treating child suspects as if they were part of the family.

Not all investigators are child investigators. Child investigators are special investigators who must have commitment, dedication, interest and attention to children who are dealing with the law that is applied during the investigation process, such as the process of examining children in a familial way, the investigation process as soon as possible, procedural, transparent, professional and children's rights priority.

¹² Oscar Stefanus Setjo and Umar Ma'ruf, (2020), *Investigation of Children Which Conflicting With Law in Narcotics Criminal Acts In Law Area of the Semarang City Police Jurisdiction*, *Jurnal Daulat Hukum* Volume 3 Issue 2, June 2020 ISSN: 2614-560X, p. 284 <http://jurnal.unissula.ac.id/index.php/RH/article/download/9851/4156>

¹³Erwin Chan and Jawade Hafidz, (2020), *Policy For Crime Murder Investigation By The Children In Polrestabes Semarang*, *Jurnal Daulat Hukum* Volume 3 Issue 1, p. 27-28, <http://jurnal.unissula.ac.id/index.php/RH/article/download/8454/3929>

Obstacles in the process of investigating the crime of children committing theft that are not carried out by diversion, namely:

- There is no Social Welfare Organization (LPKS)
- Not All Things Can Be Done
- Detention for Investigation Purposes Too Short

To overcome obstacles in the process of investigating suspects, both at the crime scene, detention and examination, as well as adhering to the legal rules governing children, both the Juvenile Court Act and the Child Protection Act. Investigators take several ways to overcome these obstacles, namely:

- Police Coordinate With Government About LPKS
- Police Investigators Provide Advice to Perpetrators and Victims
- Police Conduct Workshop for Discussion on Juvenile Justice System Act

In a fairly short detention period, this is one of the obstacles that investigators have in collecting evidence that the perpetrator committed the crime of theft with the weighting, with the enactment of the Juvenile Criminal Justice System Act No. 11 of 2012 the detention period for investigation is longer. Further, they are only given a 7-day detention period and can be extended by 1 day if the investigation has not been completed by the investigator. If in the previous law investigators were given 20 days and it could be extended up to 10 days if according to the investigation they still have not found results.

Due to the fact that the detention time for the purposes of the investigation is relatively short, considering the condition of the perpetrators being minors and cannot be equated with adults, therefore, to shorten the time so that the time given by the Law regarding the period of detention for the purposes of the investigation is utilized properly. either by the investigator by continuing to examine the perpetrator of the crime even though the perpetrator of the crime is not detained or the investigator maximizes the examination in the investigation process which has a relatively short time.

4. Conclusion

The Process of Investigating the Crime of Children Committing Theft That Wasn't Done Diversioni.e. investigators make summons, arrests, search bodies/houses, confiscate evidence, detain and file cases they handle. In addition, investigations of children who commit crimes of theft are carried out in a family atmosphere to children who carry out the investigation process. consideration or advice from community counselors or if necessary to educational experts, psychologists, psychiatrists, religious leaders, social workers and other experts in Cirebon Regency. The obstacle is there is no Social Welfare Organization (LPKS), not all cases can be diverted and detention for investigation purposes too short. The solution is The Police Coordinates with the Government on LPKS, Investigators Provide Advice to Perpetrators and Victims, Police Conduct Workshops to Discuss the Juvenile Justice System Act.

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