

## **EFFECTIVENESS OF IMPLEMENTING SANCTIONS IN THE FORM OF RETURN TO PARENTS AND SUPERVISION OF CHILDREN PERPETRATOR OF THE CRIME OF THEFT**

Taufik Efendi

Universitas Krisnadwipayana, Jakarta, Indonesia

taufikefendi@gmail.com

### **Abstract**

According to Article 82 paragraph (1) letter a of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is explained that sanctions that can be imposed on children include returning them to their parents/guardians. In the Banda Aceh District Court from 2015 to August 2016 there were 12 cases in which the perpetrators were children, but only 6 cases resulted in a decision to return the action to the parents. The purpose of writing this article is to explain the judge's considerations in imposing sanctions for returning parents, indicators of the effectiveness of implementing sanctions for returning parents to children who commit criminal acts and to explain the monitoring mechanism for the implementation of sanctions for returning parents. that the judge's considerations in imposing sanctions for returning parents are based on the severity of the crime committed and whether the person concerned has ever committed a crime or not. Applying the sanction of returning parents to children who commit criminal acts is considered better than imposing other sanctions, because children will receive direct supervision and education from their parents, and children will also avoid being labeled and/or branded as perpetrators of criminal acts by society. The monitoring mechanism for the implementation of sanctions for returning to parents is carried out by the Correctional Center (Bapas) for 3 (three) months and the results of supervision from the Bapas regarding children who are returned to their parents are that the child has good behavior such as taking part in community activities where he lives, such as attending recitations and carrying out social activities such as mutual cooperation.

**Keywords:** Child Crime, Return to Parents, Supervision

**INTRODUCTION**

A criminal act is an unlawful act committed by a person and deserves to be punished according to the error as formulated in the law. A person who commits a criminal act will be held criminally responsible if he or she is guilty. There are still legal officials (judges) who think that theory is in an area that is far from anything practical, and often gives the impression that it is impractical and does not help solve concrete legal problems. In short, the theory is obstructive, tortuous, even confusing. This opinion is of course not correct, because it could be that their assumption/opinion is already part of a theory. The main function of theory is to provide clarity on a problem. The better a theory's ability to explain something, the higher people's acceptance of that theory. If in the future a new theory emerges that is able to provide better clarity and is more precise, then the old theory will be abandoned. This is very common in the world of science.

Children are the generation that will be the nation's successor. They must be directed and prepared from an early age so that they can grow and develop into children who are physically and mentally healthy and of good quality so they can face the challenges of the future. Considering that childhood is a process of physical and mental growth, children must avoid various behaviors that can disrupt this growth process. The definition of a child is regulated in Law No. 11 of 2012 concerning the Juvenile Justice System, article 1 paragraph 3. A child is a child who is 12 years old, but not yet 18 years old, who is suspected of committing a crime.

Theft is a form of deviant behavior that always exists and is inherent in every society, therefore theft is a social phenomenon that is universal in human life. However, in the increasingly modern era, and the increasing level of living necessities, the level of the criminal world of theft crimes is increasingly volatile, where perpetrators in the criminal world of theft crimes are not only committed by adults, but are often committed by children. This is one form of deviation that occurs in the criminal world, where the perpetrators of crimes are committed by children.

As the days, weeks, months and even years increase, cases of children committing crimes with various activities become increasingly worrying, in fact we increasingly hear or see reports from print and electronic media about minors committing crimes. Based on SDP (Correctional Database System) data in 2013, there were 4,583 child detainees placed in class 1 prisons in West Jakarta, every month around 200 children were placed in class 1 prisons in West Jakarta. However, the limited number of children's prisons results in children being in adult prisons, this puts children together with adult prisoners which results in children becoming victims of violence in prisons.

Children who commit criminal acts in the context of positive law that applies in Indonesia must still be held accountable for their actions. However, considering that the perpetrator of the crime is still a minor, the law enforcement process is carried out specifically. In its development to protect children, especially special protection, namely legal protection in the justice system, one of the laws and regulations governing child justice is Law Number 3 of 1997 concerning Children's Court which has been changed to Law Number 11 of 2012 on the Juvenile Criminal Justice System.

Law No. 11 of 2012 concerning the Juvenile Justice System, provides special treatment for children who are in conflict with the law, both in procedural law and in court. This is because the nature of the child and his psychological condition in some cases require special treatment and special protection, especially against actions that can basically be detrimental to the child's mental and physical development. This is realized by providing special treatment during investigations, which are handled by child investigators who are appointed based on the decision of the head of the Republic of Indonesia Police and the examination is carried out in a separate section separate from the person section. mature.

The implementation of investigations into criminal acts of theft committed by children, relates to the investigation process carried out by investigators as determined by the Criminal Procedure Code, as well as Law No. 11 of 2012 concerning the Juvenile Criminal Justice System which specifically regulates the rights of children in conflict with the law, which applied by investigators in the process of investigating criminal acts committed by children. Can things go as expected in the process of investigating children so that the rules are implemented properly, and there is no violence against children, both physically and psychologically, for children who are in conflict with the law?

Various cases of children in conflict with the law (ABH) are on the rise became the subject of public discussion and headline news in various media shows that so far ABH is considered to have violated ethics, laws and norms exist in society. Ethics is the science of what is good, what is bad and about rights and moral obligation. This understanding arises considering that ethics comes from ancient Greek "ethos" (plural: ta etha), which means customs, way of thinking, morals, attitudes, character, way of acting. Then the words ethics (English), ethics (Indonesia) were derived. Big Dictionary Indonesian, 1988, explains ethics by distinguishing three meanings, namely: Knowledge about what is good and bad, a collection of principles or values, and values regarding right and wrong Wrong. With a distinction between three definitions of ethics then we gain understanding ethics that is more complete about what ethics is, and at the same time we are better able to understand it The meaning of ethics often appears in everyday conversations, both verbally or written. The object of ethics is changing nature, especially human nature. The community tends to hand over the handling of ABH to law enforcement officers so that out of hundreds of thousands of ABH two thirds of them ends with a prison sentence.

Based on KPAI (Indonesian Child Protection Commission) data contained in 2019 SPPA Implementation Report prepared by the Ministry of PPPA, cases of children who dealing with the law constitutes the largest percentage of complaints received in KPAI. From this data, it then focuses on data on children who are in conflict with the law (son of the perpetrator). Based on KPAI data for 2017-2019, there were 1888 children recorded conflict with the law. Data on children of perpetrators is relatively fluctuating, even today has a decreasing trend in terms of numbers. One of the reasons for this is: the existence of diversion and *restorative justice policies*. Referring to Article 1, Paragraph 7, Law Number 11/2012 concerning the Juvenile Criminal Justice System (UU SPPA), diversion is transfer of resolution of children's cases from the criminal justice process to an extrajudicial process criminal. Meanwhile, in Article 1, Paragraph 6, Law Number 11/2012 concerning Systems Juvenile Criminal Justice, states that *restorative justice* is resolving criminal cases involving the perpetrator, victim, family perpetrators/victims, and other related parties to work together to find a fair solution by emphasizing restoration to the original state and not retaliation. This policy intends to make every effort to ensure that child perpetrators do not die receive a prison sentence, but it is still adjusted to the applicable provisions.

Prison is the last punishment option if peace and consensus are no longer possible created between the conflicting parties. However, It cannot be denied that children who commit crimes are an existing phenomenon in the midst of community life. This means that crimes are not only committed by adults, but it can also be done by children. Therefore, this study is devoted to describes a number of data related to children and crime, especially on child perpetrators (children conflict with the law) .

However, in the implementation of the juvenile criminal justice system in Indonesia, there are still various problems regarding children as perpetrators of criminal acts. The problems that exist include the detention of children who are combined with adults, a long trial process starting from investigation, prosecution, and trial which ultimately places the con-

victed child in a correctional institution. leaving trauma and negative implications for children.

Children's rights are often not protected at every level of examination, from the investigation process to the court process. The police as the gateway to the juvenile criminal justice system have the first authority to determine the position of a child in conflict with the law, leaving many places in the memory of children in conflict with the law. For the purposes of the investigation, the police carry out arrests, detention, searches, confiscation of goods and other actions otherwise in accordance with the Criminal Procedure Code.

Legal protection for children who commit criminal acts is currently not being implemented optimally, due to the lack of professionalism by law enforcement officers in handling children who are in conflict with the law. In 2022, there will be a case in West Jakarta District Court Decision Number 00/Pid.Sus-Anak/2022/PN Jkt.Brt even though the criminal sanction imposed by the panel of judges is in the form of returning to the parents of the child defendant who was the perpetrator of violent theft *of a cellphone*. Another case is in Decision Number 1/Pid.Sus-Anak/2020/PN Grt child defendant Syeh Roni Bin Tatang that at the time and above the child had committed the act of theft (taking goods) which was carried out 2 (two) times, namely the first was January 18 2020 and the second was on Wednesday February 12 2020, known to be around 13.00 WIB at Kp. Kandang Kidul Rt. 003 Rw. 002 Etc. Kandangmukti District. Leles District. Garut (in the same house owned by witness Kurniawan).

The child's first action, namely on January 18 2020, was taking goods in the form of money amounting to Rp. 1,600,000,- (one million six hundred thousand rupiah) belonging to witness Kurniawan Hendra Bin Alm Oji Sonjaya by entering the house through the front window of the house which was opened inside then entered the house and then entered the room after that took the money was kept in the cupboard and after successfully taking the money the child left the house using the same road.

The child's second action on Wednesday 12 February 2020 was discovered at around 13.00 WIB, namely that he had taken an item in the form of 1 (one) black Samsung V3 brand mobile phone tablet, namely the child entered the house by prying open the back door of the house using a screwdriver after opening it. The child entered the house of witness Kurniawan Hindra Bin Alm Oji after which the child took an item in the form of a cell phone which was kept in the TV cupboard. The child used the money stolen from his neighbor for his daily life, while he planned to sell the Samsung V3 tablet cell phone. Children's actions are regulated and punishable by crime in Article 363 paragraph 1 to 5 of the Criminal Code in conjunction with Article 64 of the Criminal Code. The Panel of Judges in Decision Number 1/Pid.Sus-Anak/2020/PN Grt. Declare that the child of Syeh Roni Bin Tatang has been legally and convincingly proven guilty of committing the crime of "theft under continuous aggravating circumstances", as in the single indictment and impose action therefore on the child in the form of returning him to his parents.

However, this certainly contradicts the spirit of the implementation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In accordance with the principles of restorative justice according to the Juvenile Criminal Justice System Law, which requires diversion, namely the legal process outside of the judiciary, the legal process for children who commit the crime of violent *cellphone theft should* not have to face legal proceedings until they are charged and tried at court level.

Based on the background of the problem above, the formulation in this research is: How is the effectiveness of implementing sanctions in the form of returning parents and supervising children who commit crimes of theft? and How to apply criminal sanctions for returning parents to children who commit violent theft of cellphones in the Study of Decision

Number 00/Pid.Sus-Anak/2022/PN Jkt.Brt and Decision Number 1/PID.SUS-ANAK/2020/PN Grt reviewed from Indonesian criminal law?

## **RESEARCH METHODS**

In this research, the type of research used is normative legal research/normative juridical legal research. by reviewing applicable laws and regulations, using Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP), Law Number 11 of 2012 concerning the Judicial System, Criminal Code, Law Number 23 of 2002 jo. Law Number 35 of 2014 concerning Child Protection.

The data used in this research is secondary data. Secondary data is data used to answer the problems in this research through literature study. The approaches used in this research are the statutory approach, case approach and conceptual approach.

## **DISCUSSION**

### **Analysis of Legal Regulations Regarding the Implementation of *Restorative Justice* in Handling Cases of Children Who Are Criminals**

Regarding law enforcement in Indonesia, it cannot be separated from Law Number 8 of 1981 concerning Criminal Procedure Law because based on its words alone, the term refers to the implementation of formal law. You could say that what is meant by law enforcement, the form of its concreteness is the imposition of crimes or sanctions. In this regard, according to Sauer, there are three basic meanings in criminal law, namely the nature of being against the law, error and crime

In many countries, dissatisfaction and frustration with formal justice systems or revived interest in preserving and strengthening customary law and traditional justice practices have led to calls for alternative responses to crime and social disorder. Many of these alternatives provide the parties involved, and often the surrounding community, the opportunity to participate in resolving the conflict and dealing with its consequences. Restorative justice programs are based on the belief that the parties involved in the conflict must be actively involved in resolving and mitigating negative consequences. They are also based, in some cases, on a willingness to return to decision-making buildings and local communities. These approaches are also seen as a means to encourage the peaceful expression of conflict, to promote tolerance and inclusivity, to build respect for diversity and to promote responsible societal practices.

Restorative Justice or known as "reparative justice" is an approach to justice that focuses on the needs of victims and perpetrators of crimes, and also involves community participation, and does not merely fulfill legal provisions or merely impose punishment. criminal. In this case, victims are also involved in the process, while perpetrators of crimes are also encouraged to take responsibility for their actions, namely by correcting the mistakes they have made by apologizing, returning money that has been stolen, or by providing community service.

This is based on a theory of justice which considers crimes and violations, in principle, to be violations against individuals or society and not against the state. *Restorative Justice*, fostering dialogue between victims and perpetrators, will demonstrate the highest level of victim satisfaction and perpetrator accountability.

The concept of Restorative Justice is basically simple. The measure of justice is no longer based on retaliation in kind from the victim to the perpetrator (whether physical, psychological or punitive); However, these painful acts are healed by providing support to the victim and requiring the perpetrator to take responsibility, with the help of family and community if necessary.

In Indonesian, it is interpreted that *restorative justice* itself means a fair resolution involving the perpetrator, victim, family and other parties involved in a criminal act and jointly seeking a resolution to the criminal act and its implications by emphasizing restoration back to its original state.

*Restorative justice* is a new movement in the fields of victimology and criminology. Recognizing that crimes cause injury to people and society, it insists that the courts repair those injuries and that parties are permitted to participate in the process. Restorative justice programs, therefore, enable victims, perpetrators and affected members of society to directly involved in responding to crime. They become central to the criminal justice process, with government and legal professionals serving as facilitators of a system aimed at perpetrator accountability, reparations to victims and full participation by victims, perpetrators and the community.

The emergence of the concept of Restorative Justice does not mean eliminating imprisonment, in certain cases that cause mass losses and are related to the value of a person's life, imprisonment can still be used. The concept of Restorative Justice is a concept that is able to function as an accelerator of the principles of simple, fast and low-cost justice, thereby ensuring the fulfillment of legal certainty and justice in society.

The implications of the practice of resolving cases outside of court so far do not have a formal legal basis, so it is also common for cases to be resolved informally through customary law mechanisms, but are still processed in court in accordance with applicable positive law. The consequence of the increasingly applied existence of penal mediation as an alternative for resolving cases in the field of criminal law through restitution in the criminal process shows that the difference between Criminal and Civil Law is not that big and this difference has become dysfunctional.

Through the Penal Mediation process, the highest peak of justice is achieved because there is an agreement between the parties involved in the criminal case, namely between the perpetrator and the victim. Victims and perpetrators are expected to be able to find and reach the best solutions and alternatives to resolve the case. The implication of this achievement is that the perpetrator and victim can apply for compensation that is offered, agreed and negotiated between them together so that the solution reached is a "win-win". Apart from that, through penal mediation it will have positive implications where philosophically the achievement of justice is carried out quickly, simply and at low cost because there are relatively fewer parties involved compared to through a judicial process with components of the Criminal Justice System.

Settlement of cases outside of court through penal mediation is a new development in the realm of criminal law which has the implication that the private dimension has begun to be applied to the realm of public law. In this dimension of penal mediation, what is achieved is not formal justice through the Criminal Justice sub-system which is regulated in formal legal regulations.

Then regarding this penal mediation in the "Explanatory memorandum" of the European Council recommendation no. R. (99) 19 concerning "Mediation in Penal Matters", put forward the penal mediation model as follows:

1) The "informal mediation" model

This model is implemented by criminal justice personnel in their normal duties, which can be carried out by the Public Prosecutor by inviting the parties to carry out an informal resolution with the aim of not continuing the prosecution if an agreement is reached. In this model it can be carried out by social workers or supervisory officers (probation officers), by police officials or judges.

2) "Traditional village or tribal moots" model

According to this model, the entire community meets to resolve crime conflicts among its citizens and is found in several less developed countries and those in rural/inland areas. In essence, this model prioritizes western law and has provided the inspiration for most modern mediation programs. Modern mediation programs often try to introduce the benefits of tribal moots in a form adapted to the structure of modern society and the individual rights it recognizes under the law.

3) “Victim-offender mediation” model

According to this model, mediation between the victim and the perpetrator is the model that is most often in people's minds. This model involves various parties meeting in the presence of an appointed mediator. There are many variations of this model. The mediator can come from a formal official, an independent mediator, or a combination. This mediation can be held at any stage of the process, whether at the police discretion stage, prosecution stage, punishment stage or after conviction. Some of these models are applied to all types of criminals, some to certain types of criminal acts (for example shoplifting, robbery and acts of violence). Some are mainly aimed at child offenders, novice offenders, but there are also those for serious offenses and even recidivists.

4) “Reparation negotiation programs” model

This model is solely to estimate or evaluate the compensation or reparations that must be paid by the perpetrator of a crime to the victim, usually during a hearing in court. This program relates to reconciliation between the parties, but only relates to material improvement planning. In this model, non-criminal perpetrators can be subject to a work program so they can save money to pay compensation/compensation.

5) “Community panels of Courts” model

This model is a program to divert criminal cases from prosecution or trial to community procedures that are more flexible and informal and often involve elements of mediation or negotiation.

6) “Family and community group conferences” model

This model has been developed in Australia and New Zealand, which involves community participation in the SPP (criminal justice system). It does not only involve victims and perpetrators of criminal acts, but also the perpetrator's family and other community members, certain officials (such as police and juvenile judges) and victims' supporters. The perpetrator and his family are expected to come up with a comprehensive agreement that satisfies the victim and can help to keep the perpetrator out of further difficulties/problems.

From a brief explanation of Penal Mediation, the author concludes that the resolution of cases outside the Court through penal mediation in the Indonesian Criminal Justice System from Theory and Practice exists between "existing" and "non-existent". This is said, on the one hand, because penal mediation in the provisions of the law is not known in the Criminal Justice System, however at the level under the law it is known in a limited way through the discretion of law enforcers, it is limited and partial in nature. Then, on the other hand, it turns out that the practice of penal mediation has been carried out by the Indonesian people and the settlement is carried out outside the court, such as through traditional institutional mechanisms.

On the other hand, currently the legal system in Indonesia is starting to move towards the adoption of the concept of restorative justice. However, for the time being, it is still being implemented partially and takes into account a very basic level of urgency, which can be found in Law Number 11 of 2012 concerning the Juvenile Justice System.

As confirmed in Article 1 number 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which confirms the following:

"Restorative Justice is the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair resolution by emphasizing restoration to the original condition, and not retaliation." As a manifestation of the implementation of Restorative Justice, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System provides for Diversion institutions. As based on the Case Study of Decision Number 5/Pid.Sus-Anak/2022/PN JKT.PST and Decision Number 24/Pid.Sus-Anak/2021/PN Jkt.Br. As researched by the author, law enforcement parties are obliged to apply the concept of diversion to children in conflict with the law, but in reality it does not work and child defendants are still convicted and processed through the courts.

### **Completion Cases of Children in Conflict with the Law in Indonesia After the Enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System**

#### a) Efforts to Fulfill the Best Interests of Children at the Investigation Stage in the Women and Child Protection Unit

##### 1) Organizational Structure of the Women and Child Protection Unit

According to Article 1 number 5 of the National Police Chief's Regulation Number 23 of 2010 concerning Organizational Structure and Work Procedures at the Resort Police and Sector Police Level, the resort police, hereinafter abbreviated as Polres, is the implementer of the duties and authority of the National Police in the district/city area under the Regional Police Chief led by a Chief. Resort Police is abbreviated as Kapolres.

##### 2) Investigation Process

The process of investigating criminal cases is generally carried out by investigators from the WOMEN AND CHILD PROTECTION Unit following the National Police Chief's Regulation Number 14 of 2012 concerning Management of Criminal Investigations, then starting from 31 July 2014 all investigative actions regarding suspected children as perpetrators of criminal acts, children who are witnesses to criminal acts and children who are victims of criminal acts also follow Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Investigation is a series of investigative actions in terms and according to the methods regulated in the Criminal Procedure Code. The principle behind the nature of investigations according to the Criminal Procedure Code does not allow for diversion at all. This is different, with the implementation of diversion according to Articles 6 to 15 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

##### a. Summoning

When summoning ABH, investigators from the WOMEN AND CHILD PROTECTION Unit try to meet ABH directly through their parents or guardians. The letter of summons that has been legally made is delivered to ABH via the parent or guardian within sufficient time, but in an effort to fulfill the best interests of the child, the investigator will coordinate with the parent or guardian so that at the first opportunity they can fulfill the summons without having to wait. the time specified in the summons.

##### b. Arrest

In the event that at the investigation stage it is necessary to arrest a child who is in conflict with the law, the Women and Children Protection Unit investigators will carry out this action humanely by paying attention to the child's needs according to their age, and will seek assistance from parents or guardians or other parties deemed necessary. necessary during the arrest period, namely 24 (twenty four) hours and placing the child in a special children's service room.

c. Detention

Guided by Articles 32 and 33 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the act of detaining children can only be carried out against children who are in conflict with the law where the child is 14 (fourteen) years old or more, and is suspected of committing a criminal act. with the threat of imprisonment of 7 (seven) years or more. Detention of children for investigation purposes is a maximum of 7 (seven) days and an extension of detention can be requested from the Public Prosecutor for a maximum of 8 (eight) days.

d. Inspection

Examination of children is an activity to obtain/obtain information, clarity and identification between children in conflict with the law, child witnesses and child victims of criminal acts with other valid evidence, so that the child's information can shed light on a criminal act. Carrying out information request activities for children apart from having to be accompanied by parents/guardians as well as several institutions specified in Articles 22, 23 and 26 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, investigators from the Women and Children Protection Unit also apply special examination standards. for children, namely by hearing their statements in a friendly situation by creating a family atmosphere or like a family, not being examined facing a computer on a table, so that children are free from fear but the essence or purpose of the examination can be fulfilled completely and completely.

- 3) Obstacles for WOMEN AND CHILD PROTECTION Unit Investigators, including:
- a. Not all ABH have complete and clear family status or do not even know the whereabouts of their parents and family.
  - b. Not many people understand the spirit of the promulgation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which has an impact on victims who often apply for compensation that exceeds the capacity of the child's family as the perpetrator.

### Legal Analysis of Decision Case Number 00/Pid.Sus-Anak/2022/PN JKT.PST

Based on Decision Number 00 /Pid.Sus-Anak/2022/PN JKT.PST , *Visum Et Repertum* has been read Number: 162/TU.FK/V/2022 dated 27 May 2022 from the Indonesian Ministry of Health Directorate General of Health Services RSUP National Dr. Ciptomangunkusumo Which signed by Dr. Yudy, Sp . FM on The conclusion was based on the examination of the male victim seventeen years and three months old, in the name of AHMAD INDRA, was found open wounds on the back and ribs cut due to violence sharp and causes bleeding, bleeding experienced by the victim in The above has caused shock which poses a threat of death .

The Children have been charged by the Public Prosecutor with indictment Which shaped alternative, so that with notice facts law first the first alternative indictment as regulated in Article 80 paragraph 2 of the Republic of Indonesia Law No. 35 of 2014 concerning amendments to Law No. 23 of 2002 the elements- The elements are as follows:

1. Everyone;
2. Placing, allowing, carrying out, ordering to commit, or participating in violence against children;
3. Those who are seriously injured;

Based on these elements, the legal analysis is as follows:

#### Ad.1. Every person's elements;

The Public Prosecutor in this case submitted The person as the subject charged with committing a criminal act is Child I Alfarino Zidane Ramadhan, Child II Alwi Nugraha,

Child III IQBAL, Child IV Adrian Nauval Ramadhan, Child V Muhammad Elmo Dharmawan and Child VI Ilham Musthofa Als. Mus with a clear and complete identity.

As far as the child's identity is concerned, based on based on evidence from witnesses, letters, statements from children According to the judge, the child's identity matched what was stated in the letter indictment, so it was proven that the child was named Alfarino Zidane Ramadhan, Alwi Nugraha, IQBAL, Adrian Nauval Ramadhan, Muhammad Elmo Dharmawan and Ilham Musthofa Als. This is the Mus that was accused by the Prosecutor The general is not other people, so the element "everyone" is present fulfilled.

#### **Ad.2. Element put, let, do, order commits, or participates in, committing violence against children;**

This second element is an alternative, if there are some element is fulfilled, then the element has been fulfilled. The element of doing, ordering to do or participate in committing violence against children, this element is duplicate of Article 55 (1) 1st of the Criminal Code.

What is meant by:

- (1) the person who commits it is someone who alone has carried out all the elements or elements of the criminal incident;
- (2) there are at least two people who order what to do, the person who orders and the person who is ordered. So it was not the person himself who committed the criminal incident but he ordered someone else to do it;
- (3) there must be at least two people who take part in the crime, meaning that there must be at least two people, namely the person who committed it and the person who participated in carrying out the criminal incident.

This provision states that it is punished as a person who commits a criminal event (perpetrator/perpetrator), namely the person who commits, who ordered to do it, or participate in committing criminal acts. The elements of this article are elements that are alternative, that is, they are sufficient to be proven one of these articles in accordance with capacity deed Which committed by the defendant concerned.

According to SR. Sianturi, stated that what is meant by the term "Inclusion" is that there are two or more people who commit a crime or in other words there are two or more people taking part in committing a criminal act. It can be broadly stated that a person takes part in a relationship with another person, to carry out a criminal act, perhaps long before it occurs (for example: planning), close before (for example : ordered or mobilize to do, provide information and so on), at the time it occurs (for example: participating, jointly carrying out or someone is helped by another person) or after an action occurs criminal (concealing the perpetrator or the proceeds of the perpetrator's criminal act).

Based on legal facts, on Thursday, May 19 2022, at around 14.00 WIT, PRADAVA Als POGA and Republikasaksi KHOIRUL ANAM, where the number of students at SMK PSKD 3 North Jakarta was approximately 40 people using 20 motorbikes. Located on Jl. In the industry behind the DP3K office, Gunung Sahari Selatan, Kemayoran, Central Jakarta, a brawl broke out between students at SMK Taman Siswa 2 Kemayoran and students at PSKD 3 Penjaringan, North Jakarta.

The group of students at SMK Taman Siswa 2 Kemayoran are the children and witnesses TAURA ALDI PRATAMA and his other friends numbering approximately 15 people using 7 motorbikes, while the group of students at SMK PSKD 3 North Jakarta are child victim witnesses AHMAD INDRA, witness MUHAMAD HARLAN FADILAH, witness MASDIAH FARSYAH bin MASKUP, witness ARDI.

The group of students at SMK Taman Siswa 2 Kemayoran carried sharp weapons in the form of sickles which were carried by the witnesses TAURA ALDI PRATAMA, Gilang, Maulana, Andika and Adam, those carrying iron rulers were Fauzan and Akbar, Anak II Alwi brought a blunt iron which was approximately 50 cm long., while the group of students at

SMK PSKD 3 North Jakarta brought around 10 sickles (he said 14) in the end we agreed to have a brawl against the children.

Initially on that day and date at around 11.00 WIT, the group of students from SMK Taman Siswa 2 Kemayoran left the classroom and gathered behind the school, then were dispersed by police officers and told to go home, then the group of students from SMK Taman Siswa 2 Kemayoran moved to hang out in Cempaka Baru, Central Jakarta, There were Tiyo and ADAM there.

In the chat above, Brother PRASETIO said that the SMK PSKD 3 North Jakarta school challenged us to a brawl, so then we were at SMK Taman Siswa 2 Kemayoran. Then the group of students from SMK Taman Siswa 2 Kemayoran so that the children and witness TAURA ALDI prepared tools for a brawl.

The group of SMK Taman Siswa 2 Kemayoran students turned around and tried to pass JIE EXPO Kemayoran Central Jakarta with the intention of taking I Zidan's child home, but the SMKN 54 students were still chasing the students of S MK Taman Siswa 2 Kemayoran.

The children saw witness TAURA ALDI PRATAMA and his group who were carrying weapons getting off with their respective weapons approaching the students of SMK PSKD 3 North Jakarta, who were riding a Honda Beat motorbike and 1 (one) other automatic motorbike who managed to step on the gas past the Tirta futsal field and the students of SMK PSKD 3 North Jakarta reprimanded the group of children and witness TAURA ALDI PRATAMA by raising both hands (piss), then when crossing the road the group of children turned left, the group of SMK PSKD 3 North Jakarta overtook on a straight road.

Then the group of children lost and retreated to the back and ran away randomly, while Child VI ran away with child IV Adrian and JAYA towards Child VI's house, as did the other children and the group ran apart.

Child V saved himself on a motorbike with Child III IQBAL and GILANG, but was chased by a group of students from SMK PSKD 3 North Jakarta and fell off his motorbike, 3 people from the opposing party kicked and slashed, then Child V tried to move the motorbike and suddenly GILANG fell. from a motorbike with slash wounds on the left wrist, left elbow, left ear and behind the ear on the way to Central Jakarta to look for brawl opponents, while traveling on the left, with the help of online motorcycle taxi driver Gilang, he was taken to HUSADA Hospital, Gilang died.

Child IV heard Br. FAUZAN was injured. Then Child IV ran away on a motorbike with Child VI ILHAM and Br. JAYA towards Jl. Industri was still with the other Taman Siswa children and the three of them split up because Child III saw students from SMK PSKD III chasing them. Child IV, Child VI ILHAM and Br. JAYA fled to his house. INSPIRATION; The group of students from SMK PSKD 3, North Jakarta, who deliberately continued walking when they arrived at Benyamin Syueb (ondel-ondel statue), the PSKD group saw a group of students from SMK Taman Siswa 2, Kemayoran, who were both riding motorbikes in front of the group at SMK PSKD 3, North Jakarta. Then the North Jakarta PSKD 3 Vocational School group reprimanded them by holding up two fingers, as they passed near the door of Jl. The expo group of students from SMK Taman Siswa 2 Kemayoran turned left, while the group from SMK PSKD 3 North Jakarta went straight. While leaving the group behind, including witnesses Ahmad Indra and Rangga, suddenly someone came to the witness's side and swung a sickle once at witness Ahmad Indra, hitting his upper waist/back, then witness Ahmad Indra was taken by Rangga to RSCM on 2 (two) motorbikes. other.

Victim witness AHMAD INDRA PERMANA. Born in Jakarta, February 10 2005 (aged 17 years 3 months) at the time of the incident. The witnesses did not know the face of the person who stabbed the victim, Ahmad Indra, but he was wearing white trousers, while the witness' boss did not know. The children also don't know who carried out the stabbing.

The victim on the part of the student at SMK Taman Siswa 2 Kemayoran was Gilang who died, Fauzan Critical.

Based on the *Visum Et Repertum* which was read at the trial, in conclusion it was stated that during the examination of the victim, a boy aged seventeen years and three months, on behalf of AHMAD INDRA, an open wound was found on his back and ribs were cut due to sharp violence which caused bleeding. experienced by the victim mentioned above has caused shock which poses a threat of death.

Based on the legal facts mentioned above, it is not known that the main perpetrator who stabbed or stabbed the victim witness Ahmad Indra, among the children who were presented to trial as the perpetrator who carried a weapon was only Child II Alwi Nugraha, who based on the confession of Child II was carrying a blunt iron. which was approximately 50 cm long, only one person stated that Child II was carrying a sword as explained by witness Taura Aldi, while the other children did not carry weapons and none got off the motorbike; that children who commit violence or order it to do so or

Based on the facts revealed in Decision Number 5/Pid.Sus-Anak/2022/PN Jkt.Pst, there are no statements from witnesses or statements about children participating in violence against child victim witness Ahmad Indra. Based on this legal analysis, this second element is not fulfilled in the children's actions.

Because one of the elements of Article 80 paragraph 2 of Republic of Indonesia Law No. 35 of 2014 concerning amendments to Law Number 23 of 2002 is not fulfilled, the children must be declared not legally and convincingly proven to have committed the criminal act as charged in the first indictment. , so that the children must be released from these charges. Because the first alternative charge was not proven, the judge then considered the second alternative charge as regulated in Article 170 paragraph (2) of the Criminal Code, the elements of which are as follows:

1. Whoever;
2. Publicly committing violence against people or property;
3. The violence causes injury;

#### **Ad. 1. Element Whoever;**

The element of whoever in this case implies every person as a subject who commits a criminal act. The Public Prosecutor in this case presented people as subjects who were accused of committing criminal acts, namely Child I, so it was proven that children named Alfarino Zidane Ramadhan, Alwi Alfarino Zidane Ramadhan, Child II, Child III IQBAL, Child IV Adrian Nauval Ramadhan, Child V Muhammad Elmo Dharmawan and Child VI Ilham Musthofa Als. Mus. As far as the child's identity is concerned, based on evidence from witnesses, letters, and child statements, according to the judge, the child's identity is in accordance with what is stated in the indictment, Alwi Nugraha Nugraha, IQBAL, Adrian Nauval Ramadhan, Muhammad Elmo Dharmawan and Ilham Musthofa Als. Mus with a clear and complete identity. This is what the Public Prosecutor is indicting and not anyone else, so the element of "whoever" has been fulfilled.

#### **Ad. 2. Elements in public together committing violence against people or property;**

What is meant by public is a place where the public can see it, whereas according to jurisprudence the meaning of "in public or openly" means not hidden, so it doesn't need to be in public, it's enough if it's not necessary if there's a possibility that other people can see it. (vide the decision of the Supreme Court of the Republic of Indonesia number: 10 K / Kr / 1975 dated 17 March 1976). Meanwhile, the definition of "with joint effort" means that it is carried out by two or more people, people who only follow and do not actually participate in carrying out violence, cannot also be subject to this article. Meanwhile, what is meant by violence is the unlawful use of physical force or strength which can take the form of hitting, kicking,

slapping, throwing, slamming and so on. The violence referred to in this element can be directed at people or objects.

Based on the facts revealed as described above, the witnesses and the children do not know who stabbed the victim witness Ahmad Indra, there is no statement from the witnesses or the children explaining the role of each of the children together. The same as committing violence against the child victim witness Ahmad Indra, then this second element was not fulfilled in the children's actions.

Because one of the elements of Article 170 paragraph (2) of the KUH is not fulfilled, the children must be declared not legally and convincingly proven to have committed the criminal act as charged in the second alternative indictment so that the children must be acquitted of the charges. Because the children were not proven to have committed the crime as charged by the Public Prosecutor, the Defense of the Children's Legal Counsel and the BAPAS Research Report are no longer relevant for consideration.

Because the children were not proven to have committed criminal acts as charged by the Public Prosecutor and the children were released, the children's rights must be restored in terms of their abilities, position, honor and dignity.

Because the children were not proven to have committed the criminal offenses they were charged with and the children were in custody, they were ordered to be released from detention immediately after this decision was pronounced.

In Decision Number 00/Pid.Sus-Anak/2022/PN Jkt.Pst Thus, the panel of judges was correct in considering the legal elements of Article 191 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law and regulations other relevant legislation. However, the panel of judges was not fair enough in its decision, only stating that Child I Alfarino Zidane Ramadhan, Child II Alwi Nugraha, Child III IQBAL, Child IV Adrian Nauval Ramadhan, Child V Muhammad ElmoDharmawan and Child VI Ilham Musthofa Als. Mus mentioned above, has not been legally and convincingly proven guilty of committing the criminal offenses as charged in the first and second indictments; 2. Acquit the Children therefore from all charges by the Public Prosecutor; 3. Order the Children to be released from detention immediately after this decision is pronounced; 4. Restoring the rights of children in terms of their abilities, position, honor and dignity. In fact, based on Decision Number 00/Pid.Sus-Anak/2022/PN JKT.PST, Visum Et Repertum Number: 162/TU.FK/V/2022 dated 27 May 2022 from the Indonesian Ministry of Health, Directorate General of Health Services, National Hospital Dr. Ciptomangunkusumo signed by Dr. Yudy, Sp. FM in conclusion said that during the examination of the victim, a boy aged seventeen years and three months, on behalf of AHMAD INDRA, an open wound was found on his back and his ribs were cut due to sharp force and caused bleeding. The bleeding experienced by the victim mentioned above had caused shock that causes death.

## **Legal Analysis of Decision Number 1/Pid.Sus-Anak/PN.Grt.**

### **ad. 1 Element Whoever;**

"whoever" is a person as a legal subject supporting rights and obligations, who is suspected of committing a criminal act with a clear identity based on evidence, whose case is examined and prosecuted in accordance with the provisions of the Law;

Based on the testimony of witnesses, the child admitted and confirmed his identity in court, namely Syeh Roni Bin Tatang, male, 15 years old, born in Garut on 17 Mukti, Leles District, Garut Regency, as described in the indictment, in front of during the trial, the child shows an attitude that can be held responsible for his actions and during the trial nothing is found that could free the child from criminal responsibility or anything that could exempt the child from criminal prosecution;

Therefore, the Judge is of the opinion that Syeh Roni Bin Tatang's son is a legal subject as a supporter of the rights and obligations of the alleged perpetrator in the case being examined and tried, so that in this way the element of whoever has been fulfilled;

Before the judge considers whether or not Syeh Roni Bin Tatang's son has committed the crime as charged, the elements of other material acts as in the indictment will first be proven;

**ad. 2 Elements of Taking Something that wholly or partially belongs to another person with the intention of unlawfully possessing it;**

The act of "taking" begins when someone tries to release power over an object from its owner in order to control it. What is meant by goods is anything movable, immovable or tangible and intangible that has economic value.

"Things" are anything tangible, including animals, which by their nature can be moved (movable objects). However, in its development it expanded to become an immovable object and has no form or value for its owner. Partially or wholly belonging to another person is anything that is part of (someone's) assets that can be taken by another person, it can be the object of a crime of theft; With the intention to possess it unlawfully means treating something as if it were one's own.

"Unlawfully" here is historically and etymologically, 'against the law' as referred to in the articles contained in the Criminal Code comes from the word "wederrechtelijk" which has three meanings, namely 'in strijd met het objectiefrecht' (contrary to objective law), '*in strijd met het subjectief recht van een ander*' (contrary to the subjective rights of others), and '*zonder eigen recht*' (without rights). Thus, against the law is defined as an act or omission, which is or is in conflict with the rights of other people, or which is in conflict with the legal obligations of the perpetrator or which is in conflict with either morality or social relations with other people or objects, while whoever does so because of his wrongdoing as a result of his actions. it has brought harm to others;

Based on the evidence obtained from the legal facts as described above, the Judge was of the opinion that Syeh Roni Bin Tatang's son on January 18 2020 had taken Rp. 1,600,000.- (one million six hundred thousand rupiah) which is located in the cupboard in the room and then on Wednesday 12 February 2020 at around 13.00 WIB took 1 (one) unit of Hand Phone Tablet, Samsung Brand, Type V3, color Black, which is located on top of the TV cupboard in the house of Kurniawan Hendra Bin Alm Oji Sonjaya, whose address is Kp. Kandang Kidul, RT. 003/RW 002, Ex/Ds. Kandang Mukti, Leles District, Garut Regency, where the act of taking was carried out by the child without the permission of Witness Kurniawan Hendra Bin Alm Oji Sonjaya as the owner of these objects;

Based on this description, the Judge is of the opinion that to the extent that the goods taken were carried out by Indonesia destroying them, the element of "Taking goods which wholly or partly belong to another person with the intention of possessing them unlawfully" has been fulfilled;

Because this second element is not an independent description of the act, it will be considered in full after considering the description of the elements of the provisions of Article 64 paragraph 1 of the Criminal Code (KUHP);

**ad. 3 The element of entering a place of committing a crime or to cut or climb or by using a fake key, a fake order or fake official attire;**

This element is an alternative element which is marked by the use of comma punctuation (,) between words and the use of the word "or" as a separator between words and sentences, so that the elements proven in this case are not all the elements but seen from the facts of the trial which is in accordance with these elements, so that the element used is the element "to achieve the goods taken by destroying them"; as explained above, the judge was of the opinion that when the child entered the house of Kurniawan Hendra Bin, the late Oji

Sonjaya, whose address was at Kp. Kandang Kidul, RT. 003/RW 002, Ex/Ds. Kandang Mukti, Leles District, Garut Regency by damaging the back door using a flat-head screwdriver, after the door was opened due to the prying, the child entered the house and took 1 (one) Samsung V3 tablet cell phone which at that time was located on the cupboard. TV;

Based on this description, the Judge was of the opinion that the element "To obtain the goods taken was done by destroying them" had been fulfilled legally and convincingly;

**ad. 4. Element: If several acts, even though each is a crime or violation, are related in such a way that they must be viewed as one continuous act, then only one criminal rule will be applied, if different ones are applied which contains the most serious principal criminal threat;**

This element is basically several acts, either in the form of violations or crimes, which are related to each other in such a way that they must be seen as one continuous act so that the act here is in the form of an act that gives rise to a criminal act, not merely a physical act or not a physical act. what constitutes an element of a criminal act is that there must be such a relationship between one act and another;

In the Dutch *Memorie van Toelichting* (MvT) regarding various behaviors must be the implementation of a prohibited decision, and that a continuing crime can only occur from a group of similar criminal acts. The main characteristics of continuous action are:

1. there is a decision of the maker's will;
2. each action must be of the same type;
3. the time period between the first acts being carried out is on Saturday 18 January 2020 and the act is not too long;

Based on the evidence obtained from the legal facts as described above, the judge was of the opinion that the child had committed the act of theft, which was carried out consciously by the child and these acts were similar acts, namely taking someone else's property, which in this case was money amounting to Rp. 1,600,000 (one million six hundred thousand rupiah) and 1 (one) black Samsung V3 branded tablet cell phone and the child stole these objects within a short period of time, the second act being carried out on Wednesday 12 February 2020;

Based on the considerations above related to the fourth element, the child has committed several similar crimes, namely the crime of theft, where these acts are seen as ongoing acts;

Based on this description, the Judge is of the opinion that "if several acts, even though each is a crime or violation, are related in such a way that they must be viewed as one continuous act, then only one criminal rule is applied, if they are applied differently, it contains the same basic criminal threat. most severe" has been fulfilled legally and convincingly;

Because all the material elements of Article 363 paragraph 1-5 of the Criminal Code in conjunction with Article 64 paragraph 1 of the Criminal Code have been fulfilled, then the element of whoever is also fulfilled, thus the child must be declared to have been legally and convincingly proven to have committed the criminal act as charged in the indictment. single;

Aggravating circumstances:

- Children's actions disturb the community;
- The child's actions harm other people;

Extenuating circumstances:

- Children behave politely in court;
- The child regrets his actions;
- The child is still at a young age

The differences between the allied elements in question in Article 365 paragraph (2) of the Criminal Code with the concept of inclusion as follows referred to in Article 55 of the Criminal Code, the context of Article 55 of the Criminal Code contained in Book I of the

Criminal Code (Article 1 to Article 103 of the Criminal Code) is a general rule ( *legi generali* ), while Article 365 paragraph (2) of the Criminal Code is a special regulation ( *lex specialis* ) from the article that regulates the aggravation of ordinary theft; .

Types of inclusion ( *deelneming* ) according to R. Soesilo, as follows

1. The Person Who Performs ( *Pleger* ).

The person here is a person who alone has created everything elements or elements of criminal events.

2. The person who ordered to do ( *Doen Plege r* )

Here at least there are two people, who ordered to do ( *doen plege r* ) and what was ordered ( *pleger* ). So it's not the person who does it criminal event, but he told others.

3. People Who Participate ( *Medepleger* )

Taking part in the meaning of the word "doing together". There must be at least two people, namely the person who does it (pleger) and the person who participated in committing ( *medeplege r* ) the criminal incident.

Based on the facts revealed in In Decision Number 24/Pid.Sus-Anak/2021/PN Jkt.Br, Anak ROHIM Bin BARUDIN's actions were riding a brown Honda Scoopy motorbike with Police Number B 3521 UTK riding in tandem with witness Muhammad Ikhsan drove closer to the victim's child, then Anak ROHIM Bin BARUDIN was riding behind him with his left hand immediately snatched the cellphone held by the victim's child, then after managed to seize the two perpetrators and stepped on the gas, leaving the child behind victim In this case, it can be seen that there is cooperation between two or more people, each of whom fulfills their role as mentioned by R. Susilo from the types of inclusion ( *deelneming* ). Based on the analysis description above, this element has been fulfilled.

4. People who, by giving, misuse power Violence and So On, Deliberately Inducing Commitment Criminal Acts.

That person must deliberately persuade others, while persuading him must using one of the methods such as giving, misuse power, which means that you cannot use other methods other than those mentioned above.

O because of the elements of Article 365 Paragraph (2) 1st and The 2nd Criminal Code as the primary indictment has been fulfilled in the act ROHIM Bin BARUDIN's son, then there is no need for subsidiary charges be considered again, and the child must be declared proven legally and convincingly commits a criminal act as charged in the primary indictment.

Children's Legal Counsel in his defense on basically stated that he agreed with the Prosecutor's demands General throughout the qualification of the crime "Theft with violence", However, the Children's Legal Advisor disagrees regarding the amount criminal charges or punishment considering ROHIM BIN BARUDIN's child is still a minor and has admitted his actions, behaved politely throughout trial and regret his actions and can still be expected improve yourself, so that if you are willing to give a decision remove children from detention and return them to their parents for education or if you have a different opinion, ask for the fairest possible decision and commensurate with the deed This was done to teach the defendant a lesson as lightly as possible, while the child himself stated whether he was sorry or not will repeat the action again .

Regarding this application, the Judge opined that in educational theory states that criminal purposes are: educate the public about which actions are good and which bad deed. Seneca who refers to the Greek philosopher, Plato, declare *nemo prudens punit, quia peccatum, sed ne peccetur*. It means, a wise man does not punish for committing a sin, but rather for not committing one sin occurs again. A perpetrator of a crime must receive punishment for actions that harm other people so that they do not do the same. So it is based on internal theories The principles of criminal law are related to criminal acts that have been committed

committed by a child, then the type and length of punishment imposed on him Children as stated in this Decision are deemed appropriate and fair with the hope of providing benefits (deterrent and educational effects) to children not to repeat his actions again.

From the facts obtained in Decision Number 24/Pid.Sus-Anak/2020/PN Grt, during trial, the judge did not find anything that could release the child from criminal liability, either as a justification and/or reasons for forgiveness, namely in the form of actions carried out by the child because of forced by an unavoidable power (Article 48 of the Criminal Code), or actions that he is forced to do to defend himself or others, defend one's honor or property or someone else's property, rather than an attack that is against the rights and threatens immediately at that very moment, because the feeling was shaken immediately at that very moment (Article 49 paragraph (1) and paragraph (2) of the Criminal Code), or do actions to implement statutory regulations (Article 50 Criminal Code), or committing acts to carry out the orders of the office granted by a proxy who has the right to do so (Article 51 paragraph (1) of the Criminal Code), or committing an irresponsible act to him because his intellect is less than perfect or because he is sick of changing reason (Article 44 paragraph (1) of the Criminal Code), therefore the actions carried out by children must be held accountable to her.

Because children are capable of responsibility, then must be found guilty and sentenced or sentenced, where the form for the child will be determined after consideration or restorative justice. *Restorative justice* is understood as a form following:

Before handing down the Decision, the Judge has provide opportunities for parents/other guardians of children to express things that are essentially beneficial to children as the child's parent promises to educate the child to be better, For this reason, we ask the judge to be given the opportunity to educate child and ask for leniency in punishment .

Based on the theory of restorative justice where the goal Criminal law also restores justice which is known as *restorative justice* approach to resolving cases according to criminal law by involving perpetrators of crimes, victims, families of victims or perpetrators and other parties who related to seeking a fair solution by emphasizing on restoration back to its original state and not retaliation .

From the facts obtained in Decision Number 24/Pid.Sus-Anak/2021/PN Jkt.Brt, at the trial an attempt was made to resolve the case criminal acts involving children and their parents, with children victim DP, who in this case is represented by his father, is witness TENDI BUNJAMIN, but because he was busy with his work, he was delegated to the Prosecutor Prosecutor General Child, Mentor Sociability from Hall West Jakarta Class I Correctional Center and Child Legal Advisor for jointly seek a just solution with an emphasis on healing return to the original state, and not retaliate, until the facts are revealed that in fact the witness TENDI BUNJAMIN was the parent of the victim's child DEVI PRIVANKA has made a Statement Letter on a stamp duty dated 21 November 2021 which contains condoning RHM's children's actions against her child (victim's child) and will not do it legal prosecution because he is underage and must be fostered by his parents, then with Thus, in principle, the goals of restorative justice have been achieved .

After paying attention to the legal facts during at the trial in the form of statements from witnesses (including victim witnesses DP and the father is the witness TENDI BUNJAMIN) and the child, connected with:

- (1) Results of social research reports on Children from Guidance Sociability
- (2) Apology from witness TENDI BUNJAMIN as the child's parents' victim DEVI PRIVANKA as stated in the Statement Letter on stamp duty dated November 21 2021 which contains forgiving the child's actions RHM towards her child (victim's child).
- (3) A verbal statement from the child's parents that they are still capable caring for and educating their children;
- (4) Principles of Indonesian criminal law; and

(5) Social sanctions that have been received by children both on social media and the surrounding environment where the child lives.

Regarding the defense (Pledoi)/Petition from the Children's Legal Counsel, as well the demands of the Public Prosecutor (requisitoir) as mentioned above, then The judge was of the opinion that there were those who agreed to give the fairest and most lenient decision , and did not agree with the Recommendation from Mentor Sociability (PK) from COMMUNITY CENTER CLASS I JAKARTA WEST in Community Research Reports serious criminal offenses or criminal acts accompanied by I violence against Children give Action in the form of a return to parents/guardians, because it does not have a deterrent effect .

Considering the criminal acts committed by children qualified as “Theft with violence under the circumstances aggravating”, then for the qualifying criminal act ROHIM Bin BA-RUDIN's child was sentenced to a basic sentence in the form of imprisonment at the Special Children's Development Institute (LPKA) Class II Jakarta in Cinere (Art Article 71 paragraph (1) letter e of the SPPA Law), in accordance with Article 79 paragraph (1) - that Criminal restrictions on freedom are imposed if a child commits a criminal act.

Regarding the length of the sentence ( *strafamacht* ) who will set as in this decision, according to considerations Judges are in accordance with *moral justice, social justice and legal justice* ;

Based on the provisions of Article 194 paragraph (1) of the Criminal Procedure Code, in the event of a sentence of punishment or acquittal or release from all lawsuit, the Court determines that the evidence should be confiscated handed over to the party most entitled to receive it back stated in the decision unless it is in accordance with the provisions of the Goods Act proof That must be seized for purposes Country or destroyed or damaged so that it can no longer be used .

Evidence includes:

1 (one) brown Honda Scoopy with Police Number B 3521 UTK;

1 (one) unit of Xiaomi Mimax 6 brand cellphone, gold color;

Based on the facts at trial, the evidence is still required in the examination of criminal cases on behalf of the defendant MI Bin AS, then returned to the Public Prosecutor;

To : Statement Letter on stamp from witness TENDI BUNJAMIN as parent child victim DEVI PRIVANKA dated 21 November 2021 which contains forgive the RHM child's actions against his child (the victim's child);

So that it remains attached to the case file.

To impose a crime against a child, So it is necessary to first consider the aggravating circumstances and which relieves what is found in children.

Aggravating circumstances: Republic

The child's actions have disturbed society especially in around scene;

The child's actions have caused harm to the victim witness DP;

Extenuating circumstances:

The child behaves politely and frankly during the trial;

Victim witness The DP who is represented by his biological father is a witness TENDI BUNJAMIN, as stated in his statement, has forgiven him Child's actions

The child has never been punished;

Children are still young and are expected to be able to change behavior the bad;

Based on the provisions of Article 222 paragraphs (1) and (2) of the Criminal Procedure Code, because the child was sentenced to a crime and the child did not previously apply request for exemption from the burden of court fees, then the child must charged to pay court costs, the amount of which will be determined in this Decision .

Remembering, Article 365 Paragraph (2) 1st and 2nd of the Criminal Code, Article 71 paragraph (1) letter e Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile

Criminal Justice System and Republic of Indonesia Law Number 8 of 1981 concerning Criminal Procedure Law and regulations other relevant legislation.

Based on the Public Prosecutor's indictment, diversion cannot be applied to this child. Because the threat of punishment charged by the Public Prosecutor is a maximum of seven years in prison. Meanwhile, the Diversion requirements are based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 7 paragraph 2 which reads: Law Number 11 of 2012 concerning the Juvenile Criminal Justice System Article 7 paragraph (2):

(2) Diversion must be attempted in the event of a criminal offense committed:

- a. Threatened with imprisonment for under 7 years and
- b. It is not a repetition of a criminal act

However, in this case, the Judge has the same considerations as the Police Investigator and Public Prosecutor. Although the judge has considered (according to the author, not seriously and not strictly implemented by the judge) regarding Law number 23 of 2002 concerning Child Protection, specifically regarding Children's Rights. The child in conflict with the law in the case above is a child who is 16 years old and is committing a crime for the first time. Although it is also not appropriate that the judge does not carry out diversion, which should be mandatory in criminal court cases for children who are in conflict with the law to take diversion steps.

According to the author, taking diversion is the right step in the case of children being researched by the author because children are the nation's next generation. The most appropriate process for resolving cases against children who are in conflict with the law in the cases studied by the author is to resolve them outside the court process or Diversion by paying attention to the best interests of the child in accordance with Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 Concerning Child Protection.”

Then, it became known the purpose of Diversion as regulated in Law Number 11 of 2012 Article 6 concerning the Juvenile Criminal Justice System which reads:

Diversion aims:

- a. Achieve peace between victims and children
- b. Resolving children's cases outside the judicial process
- c. Prevent children from deprivation of liberty
- d. Encourage the public to participate; And
- e. Instill a sense of responsibility in children

Among the considerations of law enforcers not to take diversion steps or take diversion steps in the case of East Jakarta District Court Decision Number 5/PID.SUS-ANAK/2022/PN JKT.PST and Decision Number 24/Pid.Sus-Anak/2021/PN Jkt. Brt. According to the author, it is the judge's considerations that are NOT correct given the fact that they are still carrying out legal proceedings against child defendants through the courts because they are based on Law Number 35 of 2014 Article 59 concerning amendments to Law Number 23 of 2002 concerning Child Protection which reads:

- 1) The Government, Regional Government and other state institutions are obliged and responsible for providing Special Protection to Children.
- 2) Special protection for children as intended in paragraph (1) is given to:
  - a. Child in emergency situation
  - b. Children in conflict with the law
  - c. Children from minority and isolated groups
  - d. Children who are economically and/or sexually exploited
  - e. Children who are victims of abuse of narcotics, alcohol, psychotropic substances and other addictive substances
  - f. Children who are victims of pornography

- g. Children with HIV/AIDS
- h. Child victims of kidnapping, sale and/or trafficking
- i. Children who are victims of physical and/or psychological violence
- j. Child victims of terrorism networks
- k. Child victims of sexual crimes
- l. Children with disabilities
- m. Children who are victims of abuse and neglect
- n. Children with deviant social behavior; And
- o. Children who are victims of stigmatization from labels related to the condition of their parents

## CONCLUSION

The effectiveness of implementing sanctions in the form of returning parents and supervision for children who commit crimes of theft after the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Case study of Decision Number 5/Pid.Sus-Anak/2022/PN JKT.PST and Decision Number 24/Pid.Sus-Anak/2021/PN Jkt.Brt. is incorrect where the judge did not carry out diversion which should be mandatory for criminal court cases for children who are in conflict with the law to take diversion steps. To carry out the Diversion process so that children can resolve cases outside the Court which is a manifestation of Article 59 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in which the Government and other state institutions are obliged and responsible for providing special protection to children, among others. Another way is by improving the obstacles faced by Women and Children Protection Unit Investigators, including: not all ABH have complete and clear family status or do not even know the whereabouts of their parents and family and not many understand the spirit of the promulgation of Law Number 11 of 2012 concerning the Judicial System Child crime has an impact on victims who often apply for compensation that exceeds the capacity of the child's family as the perpetrator.

How is the application of criminal sanctions for returning parents to children who commit violent theft of cellphones in the Study of Decision Number 00/Pid.Sus-Anak/2022/PN Jkt.Brt and Decision Number 1/PID.SUS-ANAK/2020/PN GRT reviewed from Indonesian criminal law in the case of Decision Number 00 /PID.SUS-ANAK/2022/PN JKT.PST and Decision Number 1 /Pid.Sus-Anak/2020/PN Grt. concerning Children in Conflict with the Law in Indonesia That the judge's consideration in imposing sanctions for returning parents is based on the criminal act committed by the child not being classified as a serious crime, the child can receive education, guidance and supervision from the parents directly, the child has never committed a crime before and considers the community research report from the community counselor before making a decision on the case. Indicators of the effectiveness of applying sanctions for returning parents to children who commit criminal acts are considered better than imposing other sanctions, because children can directly receive supervision and education from their parents. Then children will also avoid being labeled and/or branded as perpetrators of criminal acts from society.

## REFERENCES

- Abinto Prakoso, 2013. *Reform of the Juvenile Criminal Justice System*, Yogyakarta: LaksbangGraphics.
- Andi Hamzah, 2001. *An Anthology of Criminal Law and Criminal Procedure*, (Jakarta: Ghalia Indonesia.
- Directorate General of Corrections (Ditjen PAS), Correctional Database System. <http://smslap.ditjenpas.go.id/>, accessed 18 September 2022

- Djaya, I. 2020. Understanding Children in Conflict with the Law (A. Yulfianto & A. Fadillah, ed.). Palangkaraya; JDHIN-BOHN, National Sociology Conference IX APSSI 2022, Balikpapan, 1-3 June 2022.
- Hadi Supeno. 2010. *Criminalization of Children Offers Radical Ideas for Juvenile Justice Without Punishment*, Jakarta: PT Gramedia Pusaka Utama.
- Mardani, 2017. *Ethics of the Legal Profession*, Depok: Rajawali Press.
- Mardani, 2024. *Legal Theory: From Classical Legal Theory to Contemporary Legal Theory*, Jakarta: Kencana Prenada Media Group.
- Marlina, 2012. *Juvenile Criminal Justice in Indonesia*, Bandung: Refika Aditama.
- Soedjono Dirjosiiworo, 1984. *Sociology of Criminology*, Bandung: Sinar Baru.
- SR. Sianturi, 1966. *Principles of Criminal Law in Indonesia and Their Application*, Jakarta: AHAEM-PETEHAEM Alumni.
- Sulaiman, R., and Halidi, R. 2019. Children Face the Ultimate Law, a Blurry Portrait of Indonesian Child Protection. (Suara.com, July 23). Accessed at <https://www.bangunan.com/health/2019/07/23/071000/anak-berhadapan-dengan-Hukum-potret-buram-perlindungan-anak-di-indonesia>, IX APSSI National Conference on Sociology 2022, Balikpapan, 1 -June 3, 2022.
- Wagiati Soetedjo, 2006. *Child Criminal Law*, Bandung: Refika Aditama.