

The Criminal Law Enforcement Against Criminal Acts Begal by Child Offenders

By Eddy Rifai, Heni Siswanto, and M. Farid, Anisa Cahaya Pratiwi

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PROCEEDINGS

INTERNATIONAL CONFERENCE

2nd SHIELD 2017

52nd Dies Natalis Unila

Bandar Lampung - 18-20 September 2017 - 4 International Speaker

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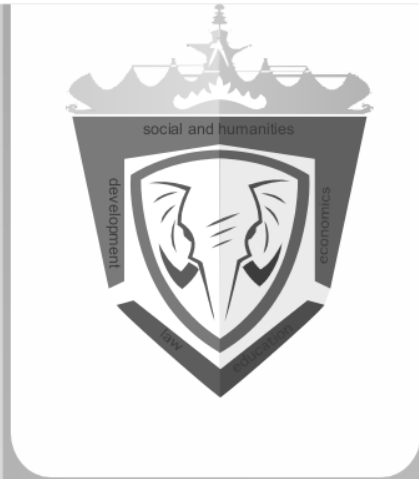


Postgraduate Program
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Foreword

2 In this globalization era, advancement in science and technology has led to remarkable gains in life. However, despite the remarkable gains, many countries particularly Asian countries face inequalities and uneven progress. Even worse, these countries are facing many problems such as poverty, terrorism, drug abuse, and other social issues. These problems are complex and multidimensional. We should give a real contribution to solving these problems. Because the problems are multidimensional, we need people from cross-disciplinary interests to work hand in hand with strong commitment, not only to face, but also to change these problems into opportunities.

Therefore, the Postgraduate Program in collaboration with Institute of Research and Community Service of University of Lampung provides a place for academicians, practitioners, policy makers, researchers and professionals from multi-disciplines related to Social Sciences and Humanities, Economics, Education, Law, and Sustainable Development (SHIELD) to meet and interact with members inside and outside their own particular disciplines. All participants are challenged to give their real contribution to helping solve the real-world problems.

2 The authors of Proceeding of 2nd SHIELD International Conference come from academicians, practitioners, policy makers, researchers and professionals from multi-disciplines related to Social Sciences and Humanities, Economics, Education, Law, and Sustainable Development.

2 This conference aims to share information and discuss recent developments and innovations arising from research in a wide range of disciplines. Through this conference, it is expected that the research articles can be documented and communicated throughout the countries.

Head of Committee

Prof. Dr. Muhammad Akib, S.H., M.Hum.

2
Welcome Address
Report by the Organizing Committee



Dear distinguished guests and participants,

In this globalization era, advancement in science and technology has led to remarkable gains. However, despite the remarkable gains, many countries particularly Asian countries face inequalities and uneven progresses. Even worse, these countries are facing many problems such as poverty, terrorism, drug abuse, and other social issues. These problems are complex and multidimensional. We should give a real contribution to solving these problems. Because the problems are multidimensional, we need people from cross-disciplinary interests to work hand in hand with strong commitment, not only to face but also to change these problems into opportunities.

Therefore, the Postgraduate Program in collaboration with Institute of Research and Community Service of University of Lampung holds The 2nd SHIELD Conference as a place for academicians, practitioners, policy makers, researchers and professionals from multi-disciplines relating to Social Science and Humanities, Economic, Education, Law, and Sustainable Development to meet and interact with members inside and outside their own particular disciplines. All participants are challenged to give their real contribution to helping solve the real-world problems.

At this second international conference, four keynote speakers from different disciplines and different countries were invited. Seventy-five authors initially submitted their abstracts before submitting the full papers, but finally only 49 full papers were accepted for publications. The authors are academicians, practitioners, policy makers, researchers and professionals. This conference aims to share information and discuss recent developments and innovations arising from research in a wide range of disciplines. Through this conference, we hope that the research articles can be documented and communicated throughout the countries.

I would like to thank you for your participation and look forward to having productive discussion among participants.

Sincerely yours,

Professor Muhammad Akib

Remarks by the Rector of the University of Lampung



The Honorable keynote speakers, committees, participants, ladies and gentlemen,

It gives me a great pleasure to welcome all of you and chair the Opening Ceremony this morning to the Second SHIELD International Conference, jointly organized by Postgraduate Program and Institute for Research and Public Services, the University of Lampung. We'd like to say how grateful we are to all the keynote speakers who have accepted our invitation. Also, we are delighted to have all of participants here to participate and share in the Second SHIELD International Conference.

Along with an increase in the activity of national development and dynamic development of the international world due to globalization, then it always be followed by the emergence of complex social, humanity, economics, education, law and sustainable development issues. Therefore, the University of Lampung, which has a vision to be the best 10 among public universities nationwide, a mission to be a world class research university, and as the third largest state university (outside Java Island) feels compelled to draw up concepts and provide solutions to the various issues.

In relation to these issues, practically the University of Lampung through its Postgraduate Program in collaboration with its Institute Research and Public Services organizes the Second International

Conference with such disciplines as social sciences, humanities, economics, education, law and sustainable development. This international conference presents several keynote speakers who come from leading universities in the world. These activities are held in Lampung, which is one area that has a nationally important role, because it is the gateway of Sumatera Island and is strategically located for the development progress.

As the arena for discussion, communication, and enrichment of the knowledge of participants, this conference is expected to provide a significant contribution to capturing opportunities for the development of science today. This conference is intended to function as a forum among the participants from various walks of

life for dissemination of research results in the fields of social sciences, humanities, economics, education, law and sustainable development. The participants include practitioners, researchers, academics, students, industrialists and science observers from various organizations such as industries, state-owned enterprises, research institutions, government agencies, and public and private universities.

To expand the horizons of thinking for the participants and to share the experiences of international researches from world experts, this conference invites four keynote speakers from four countries who will present their main papers. These speakers are:

1. Prof. Dr. Arief Hidayat, S.H., M.S., Chairman of the Constitutional Court, Republic of Indonesia
2. Prof. Ryohei Kada from Shijyonawate Gakuen University, Japan.
3. Dr. Fony Dameaty H. from University of Malaya, Malaysia.
4. Dr. Jenny H. Panchal from James Cook University, Singapore.

² We are honored to have you all the speakers here in this conference, and thank you for being our keynote speakers in this conference.

Finally, I do hope that this seminar can run well and all participants can participate actively.

Sincerely yours,
Rector,

Prof. Dr. Hasriadi Mat Akin

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1 The Criminal Law Enforcement Against Criminal Acts *Begal* by Child Offenders

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Abstract

The study examines the enforcement of criminal penal law by child offenders. The method of research is juridical approach of normative and empirical juridical with qualitative analysis from primary and secondary data. The results showed that the enforcement of criminal law against criminal offenses against offenders involved the stages of "*in abstracto*" and "*in concreto*". *In abstracto* at the formulation stage is set out in articles 362, 363 and 365 of the Criminal Code. The provisions regulate the crime of theft, theft with the weighting, theft with violence, and the theft of motor vehicles and the provisions of Law Number 11 Year 2012 on the Criminal Justice System of the Child. The "*in concreto*" at the application stage and execution phase must be based on an integral approach and scientific approach in the field of law.

Keywords: Criminal law enforcement, *begal*, child offender.

1. Introduction

The crime of violent theft is one of the most common crimes in society. The crime ranks at the top among other crimes. The crime of theft is set out in Book II of the Criminal Code (KUHP) which is qualified into several types of theft crimes, of common theft crimes (Article 362 of the Criminal Code), petty theft crimes (Article 364 KUHP), theft of crime by objections (Article 363 (Article 365), crime of theft within the family (Article 367 of the Criminal Code). Among the perpetrators of criminal acts of theft are children aged children.

Normatively, the rules for prohibiting the act of stealing another person's property are known as criminal acts-theft (common) crime, theft by force (*curas*), or the theft of a motor vehicle (*curanmor*) or better known With the term C3 (*curas, curat and curanmor*). Violation of crime of theft to the perpetrator is threatened with 5 years imprisonment; or sentenced to life; even sentenced to death.

The third criminal act of theft (C3) is a prominent crime on the Crime Lampung Index¹. All three are the three largest criminal acts committed in Lampung. The terms of the three criminal acts of theft are sociologically recognized as 'crime of *begal*', including crime *begal* with the perpetrators of children.

Children as perpetrators of criminal underage in the discourse of Indonesian criminal law must still be accountable for his actions. Treated the same as adult offenders. What distinguishes it is that the process of criminal law enforcement and criminal prosecution applied to children is carried out in a special way, considering their age is in the category of under age which should be given special legal protection to children in conflict with the law².

¹ Badan Pusat Statistik (BPS) Provinsi Lampung Tahun 2014, *Lampung dalam Angka 2013*, Bandar Lampung: Badan Pusat Statistik Kota Bandar Lampung.

² Arif Gosita, *Masalah Perlindungan Anak*, Mandar Maju, Bandung, 2009, p. 43.

Children need special protection and care including legal protection different from adults. It is based on physical and mental reasons for immature and mature children. Children need to obtain a protection that is contained in a legislation. Each child will be able to assume the responsibility, then he needs to get the widest opportunity to grow and develop optimally both physically, mentally, socially, and noble character. Therefore it is necessary to do safeguard efforts to realize the welfare of children by providing guarantees of the fulfillment of their rights and the existence of the treatment without being discriminatory.

The Crime Lampung Index rating indicates a problem in criminal law enforcement against criminal theft or crime *begal*. The threat of severe criminal sanctions at this stage in *abstracto* does not frighten or discourage perpetrators of the crime. Even during the last 6 (six) months shows the number of criminal acts or crimes of sharpen against the types of *curas*, *curat* and *curanmor* increasing, including the form of *modus operandi* crime of the hijacking is done. Therefore, it is necessary to establish law enforcement policy through police policy towards crime of law enforcement. Police's policy in the effort to eliminate the crime of hijacking, especially that happened in Lampung area.

Given the very dangerous, harmful and disruptive nature of crime of harmony, the eradication of the crime of brutality necessitates a commitment within the framework of effective, systemic and holistic treatment of, Law enforcement should not be partial and do not implement shortcuts, which eventually fail. Therefore, law enforcement is necessary Carried out integrally and qualified in the face of crime of brutality, both in the present and in the future.

Child protection is basically developed with the spirit of protecting children is to protect humans and build a whole person. The essence of National Development is the development of a fully Indonesian human being who is virtuous. Ignoring the issue of child protection means not to consolidate national development. Due to the absence of child protection will cause various social problems that can interfere with law enforcement, order, security, and the development of the law itself.³

Changes and developments within the framework of legal development, especially in Law Number 11 Year 2012 on the Criminal Justice System of Children compared with Law No. 3 of 1997 on Juvenile Court. These changes and developments include the diversion of children as perpetrators of criminal acts. According to Article 1 Paragraph (7) of Law Number 11 Year 2012 on the Criminal Justice System of the Child, it is stated that the diversion is the transfer of the settlement of a child case from the criminal justice process to proceedings outside the criminal court.

The purpose of diversion in the criminal justice system is to increase the effectiveness of child protection in the judicial system for the establishment of an integrated criminal justice system or it may also be a setback to pre-existing values. The enactment of both laws is an attempt to fulfill the rights of children with legal problems.

Government Efforts R.I. It should be appreciated that the government has instituted legal reform in the field of reforming laws or legal substance. Renewal of criminal law is part of the policy of criminal law. The urgency of reform of criminal law can be reviewed from various aspects of policy (especially social policy, criminal policy, and law enforcement policy). Thus the renewal of the criminal law in essence implies, an attempt to reorient and reform the criminal law in accordance with socio-political, socio-philosophical and socio-cultural values of Indonesian society that underlies social policy, criminal policy and law enforcement policy in Indonesia, especially to children.⁴

The renewal of the criminal law must be done with a policy approach, because in fact it is only part of a policy move. Within each policy is also a consideration of value, therefore reform of the criminal law should also be oriented towards a value approach. Renewal of criminal law is seen from the point of view for policy as part of social policy, meaning part of the effort to address social problems (including humanitarian issues) in order to achieve the national goal of community welfare, as well as part of the criminal policy, meaning part of the protection effort of the community crime

³ Maulana Hasan Wadong, *Pengantar Advokasi dan Hukum Perlindungan Anak*, Gramedia Widiaksara Indonesia, Jakarta, 2006, p. 32.

⁴ Erni Dwita Silambi dan Andi Sofyan, *Penanganan Anak yang Berkonflik dengan Hukum*, http://www.hukumonline.com/artikel/perlindungananak_html.

prevention efforts), especially crimes or crimes committed by minors. Legal protection of children in the judicial process begins since the level of investigation, investigation, prosecution, examination in court until the implementation of the court decision. During the judicial process, the rights of the child shall be protected by law.

The Child Criminal Justice System in Indonesia gives special attention to children who are in conflict with the law. This is reinforced by the enactment of Law No. 23 of 2002 jo Law No. 35 of 2014 on Child Protection and Law No. 11 of 2012 on the Criminal Justice System of Children. The consideration of the enactment of this law is that children are seen as part of the young generation as one of the human resources which is the potential and successor of the ideals of the nation's struggle, which has strategic roles and possesses special features and traits, requires guidance and protection in order to ensure growth and Physical, mental and social development in a balanced way. In order to enforce child protection, there is a need for support, both in terms of institutional and legal instruments which are more stable and adequate, therefore the provision of court for children needs to be done in a special way.

Legal gaps in the implementation of the protection of children who commit criminal acts include the implementation is not maximal, because the lack of professional law enforcement officers in the handling of children in conflict with the law. There is still the same treatment as an adult to a child who commits a crime, either in the process of investigation or placement in a penitentiary. This is certainly contrary to the spirit of the enactment of Law No. 11 of 2012 on the Criminal Justice System of Children. The problem in this research is how is the enforcement of criminal law against criminal offense with child abuser

2. Methodology

The research method uses a research approach with normative juridical approach and empirical juridical approach. Source of data obtained from field data and library data. Types of data viewed from the source can be reported between data obtained directly from the public and data obtained from library materials. The selected resource is Criminal Law Academician at Faculty of Law Unila as much as 3 (three) people because his expertise in criminal law field which stated competent and feasible.

Data collection was done by literature study procedure and field study. Data processing is done by stages of data selection, data classification, and data preparation. Data analysis using qualitative analysis, which describes the data in the form of sentences are arranged in a systematic, clear and detailed which then interpreted to obtain a conclusion. Data analysis used in this research is qualitative analysis and withdrawal conclusion is done by inductive method, that is describing things that are special then draw conclusion which is general in accordance with problem which discussed in research.

3. Result and Discussion

Prevention and prevention of criminal acts of penalization by means of penal is a penal policy or penal law enforcement policy which operationalization through several stages:

A. Formulation stage (legislative policy), ie law enforcement stage in abstracto by lawmaking body. This stage can also be called the legislative policy stage.

B. Application phase (judicial policy), namely the stage of application of criminal law by law enforcement officers ranging from the Police to the Court. This second stage can also be called the stage of judicial policy.

C. The execution stage (executive policy), which is the stage of the implementation of criminal law in concrete by the criminal apparatus. This stage can be called the executive policy stage.

The existence of the formulation stage, then the effort of prevention and handling of crime is not only the duty of law enforcement officers, but also the task of law-making apparatus (legislative apparatus). Even the legislative policy is the most strategic stage of the prevention and prevention of

crime through penal policy. Therefore, the errors or weaknesses of the legislative policy are strategic mistakes that can hinder prevention and crime prevention at the application and execution stage.⁵

As a systemic process, criminal law enforcement manifests itself as a criminal law application involving various structural sub-systems of police, prosecutors, courts, and correctional institutions. Includes the legal advisory body. The application of criminal law should be viewed from three dimensions.

The first dimension, the application of criminal law is seen as a normative system, namely the application of the whole rule of law that describes the social values supported by criminal sanctions. In the second dimension, the application of criminal law is seen as an administrative system that encompasses interaction among various law enforcement apparatuses that constitute the sub-system of justice above. The third dimension, the application of criminal law is a social system in the sense that in defining and reacting criminal acts must also be taken into account various perspectives of thought that exist within the community. Various dimensions can be stated that the actual results of the application of criminal law should describe the overall outcome of interaction between the rule of law, administrative practice and social behavior.

Understanding the term of handling and criminal prosecution is another language of criminal law enforcement. Law enforcement can be interpreted as: (a) a whole series of activities of maintenance of the balance of rights and obligations of citizens in accordance with human dignity and respective responsibilities in accordance with its functions fairly and equally with the rule of law, law and legislation constituting The embodiment of Pancasila and the 1945 Constitution; (b) the overall activities of law enforcement officers towards the upholding of law, justice and protection of human dignity, orderliness, security and legal certainty in accordance with the 1945 Constitution.⁶ In particular, the definition of criminal law enforcement in relation to legislation, Invitation in the field of criminal law.

Criminal law enforcement consists of two core stages. The first stage, law enforcement in abstracto is the stage of formulating the law by the legislature. This stage can be called legislative stage. Law enforcement in abstracto is law making or law reform. Law enforcement in abstracto (the process of producing legislation products) through the process of drafting of legislation, is essentially a process of law enforcement in abstracto. This legislation process is a very strategic beginning stage of law enforcement process in concreto. Therefore, weaknesses in the policy stage of legislation is a strategic mistake that can hamper law enforcement efforts in concreto. Law enforcement done at the application policy stage and execution policy. The second stage, law enforcement in concreto (law enforcement). Both law enforcement is within the framework of supporting the achievement of the goals, vision and mission of national development and support the establishment of national criminal law enforcement system.

3.1 Criminal Law Enforcement Against Criminal Acts Begal on Stage or "In Abstracto"

Criminal law enforcement at the "in abstracto" stage is the stage of formulation of legislation by the legislature can be called the legislative / formulation stage. The legislation phase is over when a legislation is passed. Stage of legislation continued application stage and execution phase.

The enforcement of criminal law against criminal offense at the stage or in "abstracto", according to the researcher Nikmah Rosidah stated that the enforcement of criminal law at "in abstracto" stage is done by applying special law, that is Law Number 11 Year 2012 On the Child Criminal Justice System and a number of articles set forth in Article 362 up to Article 365 of the Criminal Code. Erna Dewi stated that the applicable special law relating to the criminal justice system of children which has been regulated in Law Number 11 Year 2012 on Child Criminal Justice System. Criminal law regulation related to Criminal Law Materiel refers to the Criminal Code (WvS), but the term "begal" is expeditiously and implicitly not regulated in the Criminal Code. Maroni stated that the

⁵ Barda Nawawi Arief, *Masalah Menganakan Hukum dan Kebijakan Penanggulangan Kejahatan*, Citra Aditya Bakti, Bandung, 2001, p. 73.

⁶ Ibid., hlm. 25.

enforcement of criminal law in abstracto does not distinguish between child and adult actors, both in the field of material criminal law, formal criminal law and criminal law.

Thus, the enforcement of criminal law against criminal offenses at the stage or in "abstracto" is the first, the enforcement of criminal law against criminal offenses is based on the provisions set out in Book II of Crimes in Articles 362, 363 and 365 of the Criminal Code As the provisions of general criminal law legislation. The provisions are stipulated prohibiting the act of stealing goods owned by others, either in the form of criminal acts-theft crime (ordinary), theft with the weight (*curat*), theft with violence (*curas*), or the theft of a motor vehicle (*curanmor*) or better known With the term C3 (*curas*, *curat* and *curanmor*). Violation of the prohibition of crime / crime of theft to the perpetrator / its maker is threatened with 5 years imprisonment; Or sentenced to life; Even sentenced to death. Secondly, the enforcement of criminal law against criminal offenses at the "in abstracto" stage is based on the provisions of specific criminal law legislation, namely Law Number 11 Year 2012 on the Criminal Justice System of the Child.

Particularly in relation to the Criminal Law Material of criminal acts of crime involves three matters in criminal law, covering the issue of criminal acts (crimes), criminal or criminal liability (concerning the person) and criminal and criminal matters relating to Articles 362, 363 and 365 of the Criminal Code are:

Article 362

Anyone who takes anything, wholly or partly belongs to another person, with the intent to possess unlawfully, is liable for theft, with a maximum imprisonment of five years or a maximum fine of nine hundred Rupiah.

Article 363

(1) Threatened with a maximum imprisonment of seven years:

1. Cattle theft;
2. Theft in times of fire, explosion, earthquake flood, or sea quake, volcano eruption, shipwreck, stranded ship, train accident, riot, rebellion or war hazard;
3. The theft of a night in a home or the enclosed yard of his house, carried out by the person present there is unknown or unwanted by the rightful;
4. Theft by two or more persons;
5. theft to enter the place of committing a crime, or to arrive at the goods taken, done by damaging, cutting or climbing, or by using false keys, false orders or false positions.

(2) If the theft described in clause 3 is accompanied by any of the items in items 4 and 5, it shall be subject to a maximum imprisonment of nine years imprisonment.

Article 365

(1) Threatened with imprisonment for a maximum of nine years of theft preceded, accompanied or followed by violence or threat of violence, against persons with a view to preparing or facilitating theft, or in the event of being caught, to enable escape or other participants; To keep the stuff stolen.

(2) Threatened with a maximum imprisonment of twelve years:

1. if the act is committed at night in a closed house or yard of his existing house, on public roads, or in a train or on-going tram;
2. if the deed is committed by two or more persons with an alliance;
3. if entering into the place of committing a crime by damaging or climbing or by using false keys, false pernisah or false office clothing.
4. if deeds result in severe injuries.

(3) If the act of causing death is threatened with a maximum imprisonment of fifteen years.

(4) Threatened with death penalty or life imprisonment or for a specified period of at most twenty years, if the act of causing serious injury or death and committed by two or more persons by alliance, accompanied by one of the things described in no. 1 and 3.

The enforcement of criminal law against criminal offenses at the "in abstracto" stage is based on the provisions of specific criminal law legislation, namely Law Number 11 Year 2012 on Child Criminal Justice System, Articles 3,5,6,7,8 and 9 as follows:

Article 3

Every Child in the criminal justice process shall have the right:

- A. Be treated humanely with due regard to needs in accordance with their age;
- B. Separated from adults;
- C. Obtain legal and other assistance effectively;
- D. Perform recreational activities;
- E. Free from torture, punishment or other cruel, inhuman, and degrading treatment;
- F. Not sentenced to capital punishment or life imprisonment;
- G. Not arrested, detained or imprisoned, except as a last resort and in the shortest possible time;
- H. Obtaining justice in the face of an objective, impartial, and closed court trial of the public;
- I. Unpublished identity;
- J. Obtain parent / guardian's guidance and a person trusted by the Child;
- K. Obtain social advocacy;
- L. Gain personal life;
- M. Gaining accessibility, especially for disabled children;
- N. Obtain education;
- O. Obtain health services; and
- P. Obtain other rights in accordance with the provisions of the laws and regulations.

Article 5

(1) The Criminal Justice System of the Child shall prioritize the approach of Restorative Justice.

(2) The Child Criminal Justice System as referred to in paragraph (1) includes:

- A. Child criminal investigation and prosecution conducted in accordance with the provisions of laws and regulations, unless otherwise provided in this Law;
- B. Court proceedings of the Child conducted by a court within the public court; and
- C. Coaching, guidance, supervision and / or counseling during the criminal proceedings or actions and after undergoing a crime or action.

(3) In the Child Criminal Justice System as referred to in paragraph (2) letter a and letter b shall be strived Diversi.

Article 6

Diversi aims:

- A. Achieve peace between the victim and the Child;
- B. Resolve cases of Children outside the judicial process;
- C. Prevent the Child from deprivation of liberty;
- D. Encourage people to participate; and
- E. Instilling a sense of responsibility to the Child.

Article 7

(1) At the level of investigation, prosecution, and examination of the case of a Child in a district court, a Diversity shall be pursued.

(2) Diversi referred to in paragraph (1) shall be implemented in the case of criminal acts committed:

- A. Threatened with imprisonment under 7 (seven) years; and
- B. Is not a repeat of a crime.

Article 8

(1) The Diversity process shall be conducted through consultation with the involvement of the Child and its parents, the victim and / or his / her parent / ward, the Community Counselor, and the Professional Social Worker based on the Restorative Justice approach.

(2) Where necessary, the deliberations referred to in paragraph (1) may involve Social Welfare Workers, and / or the community.

(3) The Diversity Process shall pay attention to:

- A. The interests of victims;
- B. Welfare and responsibility of the Child;
- C. Avoidance of negative stigma;

- D. Avoidance of retaliation;
- E. Community harmony; and
- F. Propriety, decency, and public order.

Article 9

(1) Investigators, Public Prosecutors, and Judges in conducting Diversi should consider:

- A. Category of crime;
- B. Age of the Child;
- C. Results of community research from Breath; and
- D. Support the family and community environment.

(2) The Diversi Agreement shall obtain the consent of the victim and / or the victim's family and the willingness of the Child and his family, except for:

- A. Offenses in the form of offenses;
- B. Minor crime;
- C. A criminal offense without a victim; or
- D. The value of the victim's loss is no more than the minimum wage value of the province.

Every child who is involved in the criminal justice process is entitled to be fulfilled a number of rights that have been determined in the law; The Criminal Justice System of the Child shall prioritize the approach of Restorative Justice; In the Criminal Justice System of Child at the level of investigation, prosecution and examination of the case of the Child in the trial of the district court in the general judicial environment in accordance with the provisions of legislation shall be strived Diversi.

Diversi carried out in the event that a criminal act committed is threatened with imprisonment under 7 (seven) years and not a repeat of a crime. The Diversity process is conducted through deliberations involving the child and parents, victims and parents, social counselors and professional social workers based on the approach of restorative justice. Where necessary, deliberations may involve Social Welfare Workers, and the community.

Diversi process must pay attention to the victim's interest; Welfare and responsibility of the Child; Avoidance of negative stigma; Avoidance of retaliation; Community harmony; And propriety, decency, and public order. Investigators, Public Prosecutors, and Judges in conducting Diversi should consider the category of criminal offenses; Age of the Child; Results of community research from Breath; And support the family and community environment.

The Diversi Agreement shall obtain the consent of the victim and / or the victim's family and the willingness of the Child and his family, except for offenses in the form of an offense; Minor crime; A criminal offense without a victim; Or the value of the victim's loss is not more than the minimum wage value of the province.

The Criminal Justice System of the Child shall prioritize the approach of Restorative Justice. The approach to restorative justice is a paradigm that can be used as a framework of criminal case management strategies aimed at answering dissatisfaction with the workings of the existing criminal justice system. Restorative justice is regulated in Article 1 Number 6 of 2012 on the Criminal Justice System of the Child stating that restorative justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators / victims, and other related parties to jointly Seeking a fair settlement by emphasizing restoration back to the original state, rather than retaliation.

Restorative justice as a concept of thought that responds to the development of the criminal justice system by focusing on the need for community involvement and the perceived victim with the mechanisms that work on the existing criminal justice system. Restorative justice is also a new framework of thought that can be used in responding to a criminal offense for law enforcers and workers.

The view of restorative justice emphasizes the perpetrators' responsibility as an attempt to restore the suffering of victims without prejudice to the interests of rehabilitation of the perpetrators and to create and maintain public order. The approach of restorative justice is a paradigm that aims to answer the dissatisfaction with the work of the existing criminal justice system. This approach is used as a framework of criminal case management strategies.

In general, the principles of restorative justice are to make offenders accountable for the harm inflicted upon their actions. Giving an opportunity to the offender to prove his or her quality. Involve

victims and related parties within the forum in connection with problem solving. Establish a direct and tangible relationship between error and a formal social reaction. With the existence of restorative justice, it is possible that the occurrence of collisions with the principle of legality and the purpose of legal certainty. The clash will resolve itself when the interpretation of legal certainty is just legal certainty.

3.2 Criminal Law Enforcement Against Criminal Acts Begal at Stage or "In Concreto"

Criminal law enforcement in concreto consists of the application stage and the stage of enforcement of the law by law enforcement officers, which can be called the judicial stage and the execution stage. The enforcement of criminal law in concreto is essentially a process of criminal imposition or criminal proceedings. The prosecution process itself is a criminal law enforcement process in order to uphold truth and justice.

Criminal law enforcement of criminal offenses at the stage or in concreto includes criminal law enforcement at application / implementation stage and execution / execution stage. Law enforcement "in concreto" at the stage of application of criminal offense against child offenders according to informant Nikmah Rosidah declares that law enforcers (in this case Police Investigator) as guardian and guidance community in settling child perpetrators who are not treated the same as adults. The actions of law enforcement officers are nature frameworks of respecting and protecting human dignity.

According to Erna Dewi point of view that at the application stage already used Law Number 11 Year 2012 about Child Criminal Justice System, but most Judges in deciding case with child actor, Judge decision is very less than standard ½ of adult threat, 3.5 years only disconnected 3-6 months (less than 1 year). While Maroni stated that the enforcement of criminal law in concreto has been implemented in accordance with the applicable law, although in certain cases get special treatment, such as shot his foot because escape or other reason.

Law enforcement "in concreto" at the execution stage of a criminal offense against child offenders, according to Nikmah Rosidah, states that the provision of an independent and independent judicial power must be realized in the whole process of the special criminal justice system. The provision refers to SEMA No. 1 of 2014 which leads to a diversioned verdict. Erna Dewi stated that in the execution phase, the placement of the convicted child (the perpetrator) is in place, namely in Lapas Anak Pesawaran District, Lampung, but in the guidance is not maximal (the process of socialization etc.) because the criminal sanction is very short as a result of the verdict Judge who is often less than 1 year of his sentence. Maroni stated that at the stage of execution is the same as law enforcement against other criminal cases.

The implementation of "in concreto" law enforcement at the application stage and execution stage must be based on an integral approach and a scientific approach in the field of law. An integral approach should be implemented in a tightly integrated system from various sub-systems of the legal system comprising legal substance, legal structure and legal culture in the field criminal law.

Implementation of law enforcement based on the criminal law system is closely linked to the workings of all three components, including normative components (legislation), structural /components and their procedural mechanisms (structures of law enforcement agencies), and Cultural components (cultural values of law) that must be held integrally and qualified.

Integral shall be realized in the interwoven of various sub-systems related to the criminal law system including material criminal law, formal criminal law and criminal law. More specifically related to the three main / issues in the criminal law of material include criminal act (criminal act / actus reus), criminal errors or liability (schuld / guilt / mens rea), as well as criminal and punishment .

Criminal law enforcement is viewed integrally as a close integrity of the various subsystems of the criminal law system consisting of components of "legal substance", "legal structure" And "legal culture"

Law enforcement as a process is closely related to the three components, namely legal norms (normative components), law enforcement structures (structural components and procedural mechanisms), and values Legal culture (cultural component) which is more focused on the values of legal philosophy, the values of the law that lives in society and the attitude of social behavior, and jurisprudence.

Starting from an integral system understanding, the definition of criminal law enforcement system or criminal justice system can be seen from various aspects;

A. The substance of the criminal law (legal substance): in essence the criminal law enforcement system is a system of law enforcement substance in the field of criminal law covering material criminal law, formal criminal law, and criminal law.

B. Structural of the criminal law (legal structure): criminal law enforcement system is basically a system of work in carrying out their respective authority in the field of PHP consists of 4 (four) sub -systems, namely:

- 1) "investigation" authority (by the investigating body);
- 2) "prosecution" power (by the public prosecutor agency);
- 3) the power of "judging and bringing judgment" (by the judiciary); and
- 4) the power of "execution of judgment" (by the execution / execution agency / agency).

The four stages / subsystems are an integral system of criminal enforcement (SPHP) which is often referred to as the term "integrated criminal justice system" (integrated criminal justice system).

C. Legal culture: the criminal law enforcement system is basically a manifestation of a system of "legal cultural values" that can include legal philosophy, legal principles, legal theory, legal science and legal behavioral awareness .

Scientific approach (law) can be interpreted as a method of approaching or understanding something (phenomenon) based on logic of construction of thought, framework (view) particular. Because the point of view of thinking about the law can vary, it is common to find the term of various scientific approaches (law). These are called normative approaches, empirical (functional) approach, historical approach, comparative approach, philosophical approach (critical), policy oriented approach, value oriented approach, , Oriented approaches to national insight, global approach, partial approach, integral approach, and so on.

The construction of the division of the scientific approach (law) from the point of distribution of the types of studies of Criminal Law Sciences viewed from the point of Criminal Law Criminal Law, Criminal Law Science is not only positive Criminal Law Science but also there is knowledge about Policies of Penal Policy. And the science of Comparative Criminal Law. If the scientific approach contains in it a conceptual approach, then there can be three approaches of legal thinking that need to be developed in law enforcement in Indonesia through three scientific approaches integrally, namely:

A. Juridical-scientific-religious approach: a scientific approach oriented to the substance of positive criminal law (can be called a juridical-scientific);

B. B. A juridical-contextual approach: a legal-thinking approach oriented to policy of the Penal Code (juridical oriented approaches to national policy of Criminal Law);

C. A comparative juridical approach: a comparative-oriented approach to legal thinking (a comparative-oriented juridical approach), especially from the traditional and religious law system of legal families) to the aspect of basic values of the three areas Substance of criminal law (material criminal law, formal criminal law, and criminal law).

Enforcement of existing laws is still inferior quality are in concreto as a matter of law enforcement, because of a culture of culture "blindness" which certainly does not fit the culture of science, which can inhibit the quality of law enforcement .

If law enforcement will really improve the quality and regain the trust and high appreciation of the community, then one of the fundamental efforts is to improve the quality of science in the process of making and enforcing it. The quality of science, is not only intended solely to improve the quality of education and the development of law science itself, but also to improve the quality of value and products of law enforcement processes (in abstracto and in concreto). Similarly, legal products, both legislative products, and judicial products will be more qualified by using science / scientific approach.

Implementation of law enforcement is now considered not qualified for law enforcement at the stage in abstracto and in concreto third have yet to implement the approaches, namely: (1) a scientific approach to the juridical-religious; (2) a juridical-contextual approach; And (3) a juridical approach with a comparative perspective. These three scientific approaches have not been applied integrally in the three basic material issues of material criminal law described above.

Law enforcement at the stage in concreto (application phase) is still influenced by the habits dirty game and shortcuts committed by law enforcement officers are corrupt and collusive with the offender. The person exchanges the power of the law with certain rewards for fabricating or mocking the law in accordance with the agreed transaction. This dirty game culture affects the quality of law of enforcement to realize truth and substantive justice⁷.

Law enforcement in the face of a criminal offense at this time related to the three areas of the substance of criminal law related to criminal law materiel (Materielle Strafrecht), criminal law formal (*Strafprozessrecht*), and law enforcement criminal (*Strafvollstreckungsrecht*) that is based on a number of law General Criminal Law and Special Criminal Law⁸.

The three criminal laws are scattered in several criminal law legislation that are either separated or not yet compiled in an integral legislative policy. The current condition of criminal law substance is actually quite complete since all three already exist, but still contain various problems that must be addressed or reformed, especially in relation to the substance of the material criminal law.

Both stages in abstracto and in concreto are crucial aspects or points of handling and action of a bribery case because criminal law enforcement will be colored as follows:

1. The problem of dirty play (the act of bribes and other disgraceful acts);
2. The problem of optimizing the scientific approach (scientific approach) in law enforcement.

Apparently, the two problems are a phenomenon that many people get the spotlight. Indicators of the declining quality of scientific approaches⁹ with other approaches in law enforcement, are seen in various phenomena including: 1. There is a reality that is often denied by the general public, that there is a culture of bribery, material culture, or a dirty game culture known commonly to the term mafia culture of justice in the practice of law enforcement. Various terms appear, among others, the term transaction of law case, brokers case, markus (broker case), extortion, buying and selling demands and so forth. The development of a culture of bribery (dirty games) is an indicator of the weakness of the scientific culture.

2. Often bring in expert witnesses from legal experts. This phenomenon gives the impression of declining quality of science (law) among the law enforcement agencies, because that asked about jurisprudence that should be well known to law enforcement (which is actually a legal expert as well). At the very least, the phenomenon even this indicates a pragmatic approach in understanding the legal / law, namely just want fast can extract-only (from the expert witness / expert), without having bothered to dig own.

3. In law enforcement practice it is seen that there are partial legal tendencies and only see criminal laws with "horse spectacles", for example separating:

- A. Between the norms of the law and the principles, objectives of punishment, and the basic values that exist and are acknowledged in unlawful theory;
- B. Between legal certainty / against the formal law with legal against the law of material;
- C. Between law (law) and law;
- D. Between law and divinity (moral / religion);

⁷ Barda Nawawi Arief, Pembaharuan Sistem Penegakan Hukum dengan Pendekatan Religius dalam Konteks Siskumnas dan Bangkumnas, paper Seminar *Menembus Kebuntuan Legalitas Formal Menuju Pembangunan Hukum dengan Pendekatan Hukum Kritis*, FH UNDIP, 19 Desember 2009, p. 2.

⁸ Barda Nawawi Arief, Optimalisasi Kinerja Aparat Hukum Dalam Penegakan Hukum Indonesia Melalui Pemanfaatan Pendekatan Keilmuan, paper Seminar *Strategi Peningkatan Kinerja Kejaksaan RI*, di Gedung Program Pasca Sarjana Undip, Semarang tanggal 29 Nopember 2008, p. 14.

⁹ *Ibid.*, hlm. 10.

- E. Many know very well the guidance of the law, but are very ignorant of the meaning of justice based on (the direction of) Belief in the One Supreme;
- F. Separating the three main issues of criminal law (criminal, criminal) with the whole system of punishment; Separate criminal law enforcement (legislation) with national enforcement (system) enforcement systems; or
- G. Separating the criminal law system with Siskumnas. Law enforcement at the stage in concreto (application phase) is still influenced by the habits dirty game and shortcuts committed by law enforcement officers are corrupt and collusive with the offender. Law enforcement officials exchange (transactional) legal powers with certain rewards to fabricate or mime the law in accordance with the agreed transaction. This dirty game culture affects the quality of law enforcement to to realize the truth and substantive justice¹⁰.

Law enforcement interfered with bribery culture, material culture, or dirty game culture acts. The general public knows a number of terms such as judicial mafia culture in law enforcement practice. Various terms appear, among other terms:

- A. Legal case transactions;
- B. Calo case;
- C. Markus (case broker);
- D. Extortion;
- E. The sale of an Order of Termination of Inquiry (SP3) or suspension of detention;
- F. Ease of suspec in and out of the detention room;
- G. Engineering of legal judgments;
- H. The choice of the jail chamber;
- I. The ease of convicted in and out of criminal space, and so on.

The development of a culture of bribery, dirty play, or disgraceful acts is an indicator of a legal approach to law. Enforcement of criminal law against economic crime must be oriented to realize the basic values of law enforcement in society. According to Gustav Radbruch includes justice (*gerechtigkeit*); Usefulness (*zweckmäßigkeit*) or usefulness (*rechtmäßigkeit*); And legal certainty (*rechtssicherheit*). Although, among these three basic values there is a condition of Spannungsverhältnis, which is a tension of value to each other because all three contain different demands. The value of each other has the potential to be contradictory in its enforceability in society.

4. Conclusion and Suggestion

4.1 Conclusion

Criminal law enforcement against criminal offenses with child offenders includes "in abstracto" and "in concreto" stages. Law enforcement in abstracto at the stage of formulation is regulated in Articles 362, 363 and 365 of the Criminal Code as the provisions of general criminal law legislation. The stipulation regulates criminal offenses-theft, theft, theft, theft or theft of motor vehicles (*curanmor*) or better known by the term C3 and the provisions of specific criminal law legislation, namely Law Number 11 Year 2012 on the Criminal Justice System of the Child. Law enforcement "in concreto" at the application stage and execution phase should be based on an integral approach and a scientific approach in the field of law.

4.2 Suggestions

The enforcement of criminal law against criminal offense with child offender in the criminal justice system (SPPA) of child shall be entitled to fulfill its right. SPPA shall prioritize the approach of Restorative Justice at the level of investigation, prosecution and examination of the case of the Child in the trial of the district court shall strive. Diversity shall be based on an integral approach and scientific approach in the field of law.

¹⁰ *Ibid.*, hlm. 10.

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