

Criminal Conviction of Child Traffic Offenders Reviewed From The Juvenile Criminal Justice System

Muhammad Dzikri Akbar Syafi'i, Firman Arif Pribadi, Saiful Abdullah

Faculty of Law, Universitas Trunojoyo Madura

dzikri.akbar18@gmail.com; arif.pribadi@trunojoyo.ac.id

ABSTRACT

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law) which is a formal criminal law for children specifically regulates punishment that can be imposed on children. The criminal sanctions stipulated in the SPPA Law are different from the criminal sanctions in the Criminal Code. The criminal sanctions contained in Article 71 do not include criminal sanctions of confinement and criminal sanctions of fines, nor does the SPPA Law specifically regulate criminal sanctions in lieu of imprisonment and fines. This is a problem related to children who commit criminal acts of traffic violations which in material law are threatened with imprisonment and fines. In this case, the criminal sanctions that can be imposed on children perpetrators of traffic violations are criminal sanctions contained in the SPPA Law by taking into account the principle of the best interests for children, as well as the regulations contained in the SPPA Law. The research method used in this study is a normative juridical research method, with a statute approach and a conceptual approach. The collection of sources of legal materials, both primary and secondary, is carried out through legal literature studies, recording legal documents, laws and regulations and tracing the research results of others. The results of this study show that the criminal sanctions that can be imposed on children violating traffic crimes under the SPPA Law are criminal sanctions for warning, probation, and job training.

Keywords: Criminal Sanction, Traffic Violations, Juvenile Criminal Justice System

INTRODUCTION

Legal certainty is a hope for seekers of justice from arbitrary actions by law enforcement. In order for the actions taken by law officers not to be arbitrary, in

realizing legal certainty, these actions formally must have regulation. That is, it does not only refer to provisions in material criminal law, but must refer to provisions in criminal procedure as well, which are commonly known as the Code of Criminal Procedure (KUHAP).

The Criminal Procedure Law is a formal law that contains provisions regarding the process and stages of dealing in the enforcement of material criminal law. General regulations regarding the Criminal Procedure Law are contained in Law Number 8 of 1981 concerning the Criminal Procedure Law (hereinafter referred to as the Criminal Procedure Code). In the Criminal Procedure Code, it is clearly spelled out the provisions of the Criminal Procedure Law related to the process and stages of justice of a criminal case starting from the investigation, prosecution to the process and stages of the court.

The main type of examination event in the examination of criminal cases is the ordinary examination event. Although it is called a regular inspection event, this inspection event is the most complete process compared to other inspection events. Usually a criminal case that is examined, tried and decided by ordinary examination events, namely criminal cases with the threat of criminal sanctions in the form of imprisonment of 5 (five) years or more or criminal cases that require a thorough and careful proof.

The provisions for ordinary examination events are contained in the third part of the Criminal Procedure Code CHAPTER XVI, which can be summarized into several stages as follows:¹

- Hearing I, the agenda for the reading of the indictment letter and the memorandum of objection;
- Second Session, the agenda for the reading of the injunction;
- Third Session, the agenda for the proof of The Tria
- Trial IV, the agenda for the reading of criminal charges, the defense, the replicators and duplications
- The Trial V, the agenda for the reading of the judgment

In addition to the formal law regulated in the Criminal Procedure Code, there is a formal law or procedural law specifically intended for children who are facing the

¹ 1Tolib Effendi, *Praktik Peradilan Pidana*, (Malang : Setara Pers, 2016), hlm. 11-12.

law, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law). In as quoted by R. Wiyono, Setyo Wahyudi who said that the juvenile criminal justice system is a juvenile criminal justice law enforcement system composed of subsystems of investigation, prosecution, examination of judges, and subsystems for the implementation of criminal law sanctions against children based on material criminal law and the criminal law for children as well as the law of implementing juvenile criminal law. The purpose of the juvenile criminal justice enforcement system focuses more on the interests of protection and welfare of the child himself.²

The juvenile justice system has several specific provisions or principles that are different from those contained in the Criminal Procedure Code. As with the special requirements for Investigators, Public Prosecutors, and Judges, this is contained in Article 26 paragraph (3), jo Article 41 paragraph (2), jo Article 43 paragraph (2) of the SPPA Law, the examination of children's cases must also be carried out closed to the public. The SPPA Law also specifically regulates the types of criminal sanctions that can be imposed on children perpetrators of criminal acts as regulated in Article 71 paragraph (1) which explains that:

“The principal punishment for a child consist of :

- a. Criminal warning.
- b. Probation with condition :
 - 1) Coaching outside the institution.
 - 2) Community service.
 - 3) Supervision.
- c. Job training.
- d. Coaching within the institution.
- e. Prison.

Additional punishment consist of :

- a. Deprivation of profits obtained from the proceeds of a criminal act
- b. Fulfillment of customary obligations”.

The types of criminal sanctions in the SPPA Law are not the same as the types of punishment listed in Article 10 of the Criminal Code (hereinafter referred to as the Criminal Code) which states that:

“Punishment consist of :

- a. Principal punishment :

² R.Wiyono, Sistem Peradilan Pidana Anak di Indonesia, (Jakarta : Sinar Grafika, 2016), hlm. 21-22.

1. Death penalty.
 2. Imprisonment.
 3. Confinement.
 4. Fines.
- b. Additional punishment:
1. Disenfranchisement of certain rights.
 2. Deprivation of certain items.
 3. Announcement of the judge's decision".

The difference in provisions regarding the types of criminal sanctions between those listed in the Criminal Code and the SPPA Law allows for a conflict between material criminal laws that contain the threat of criminal sanctions based on the Criminal Code that are not listed in the SPPA Law. One of them is a criminal sanction that is used as a threat to traffic violations in Law Number 22 of 2009 concerning Road Traffic and Transportation (hereinafter referred to as the Traffic Law). In the Traffic Law, criminal sanctions are used as threats to traffic violators in the form of criminal sanctions of confinement or fines. The SPPA Law itself does not recognize criminal sanctions in the form of imprisonment or criminal sanctions for fines, this is clearly seen in Article 71 paragraphs (1) and (2) of the SPPA Law.

Meanwhile, Article 71 paragraph (3) of the SPPA Law states that "fines can be replaced by job training crimes with the condition that the material law must be threatened with cumulative penalties in the form of imprisonment and fines". As it is known that in the Traffic Law traffic offenders are alternatively threatened with confinement or fines, thus, the provisions of Article 71 paragraph 3 cannot be directly applied to traffic violations, that is, by interpreting criminal sanctions fines directly replaced by job training.

Although in the SPPA Law, the settlement of criminal cases committed by children must prioritize a restorative justice approach as stated in Article 5 paragraph (1) of the SPPA Law which reads, "The Juvenile Criminal Justice System must prioritize a restorative justice approach". However, in Article 7 of the SPPA Law, there are limitations in carrying out diversion, namely to children who commit repetition of criminal acts. Article 7 of the SPPA Law not only excludes diversion in the level of investigation but also in the diversion of the level of examination of cases in court in the event of repetition. So that in the context of repetition of criminal acts of traffic violations. Article 7 of the SPPA Law provides a limit so that children of traffic violators can be submitted to the court for criminal sanctions.

Article 10 of the SPPA Law provides a provision that "the agreement on the diversion of criminal acts in the form of violations can be carried out by investigators together with the perpetrator and his family, Community Advisors, and can also include community leaders. The diversion agreement implemented can be in the form of return of losses if there are victims, medical and psychosocial rehabilitation, handover of parents, participation in education and training in educational institutions or LPKS for a maximum of 3 (three) months, and community services. Furthermore, Article 13 of the SPPA Law states that the criminal justice stage can be continued if the diversion does not produce an agreement or the result of the diversion agreement as stated in Article 7 paragraph (2) of the SPPA Law is not implemented".

This is a problem regarding the type of criminal sanctions that can be imposed or given against children as traffic offenders. Given that the SPPA Law does not specifically regulate what criminal sanctions are imposed if the type of criminal sanctions threatened in the material criminal law is not stated in the SPPA Law.

RESEARCH METHODS

The method used in this study is Normative Juridical with a statutory approach. Based on this, the analysis method used in this study is qualitative which is supported by data and analysis studies from laws and regulations, books, journals and doctrines about criminal law.³

PEMBAHASAN

The juvenile criminal justice system is a juvenile criminal justice law enforcement system composed of subsystems of investigation, prosecution, examination, and subsystems for the implementation of criminal sanctions against children based on the material criminal law of children and children's formality and the law of the implementation of juvenile criminal law. The purpose of this juvenile criminal justice enforcement system emphasizes the purpose of child protection and welfare. The SPPA Law as a special formal law for children regulates specifically

³ Peter Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi)*, (Jakarta : Prenamedia Group, 2005), hlm 133-134

regarding criminal sanctions imposed on children perpetrators of criminal acts. As stated in Article 71 of the SPPA Law which states that:

“The principal punishment for a child consist of :

- a. Criminal warning.
- b. Probation with condition :
 - 1) Coaching outside the institution.
 - 2) Community service.
 - 3) Supervision.
- c. Job training.
- d. Coaching within the institution.
- e. Prison.

Additional punishment consist of :

- a. Deprivation of profits obtained from the proceeds of a criminal act
- b. Fulfillment of customary obligations”.

Sanksi pidana yang terdapat dalam Pasal 71 UU SPPA tersebut berbeda dengan macam-macam sanksi pidana yang diatur dalam Pasal 10 KUHP. Pasal 10 KUHP menjelaskan bahwa:

“Punishment consist of :

- c. Principal punishment :
 5. Death penalty.
 6. Imprisonment.
 7. Confinement.
 8. Fines.
- d. Additional punishment:
 4. Disenfranchisement of certain rights.
 5. Deprivation of certain items.
 6. Announcement of the judge's decision”.

Based on the comparison above, it can be seen the difference between the main criminal sanctions according to Article 71 of the SPPA Law and the main criminal sanctions based on Article 10 of the Criminal Code. The Criminal Justice System Law does not regulate the sanction of the death penalty, imprisonment, and fines. Especially for the death penalty, in Article 81 paragraph (6) of the SPPA Law there is a provision that "if the criminal act committed by a child is a criminal offense threatened with the penalty of death or life imprisonment, then the sentence imposed is a maximum imprisonment of 10 (ten) years".

Furthermore, regarding criminal sanctions for fines, in Article 71 Paragraph (3) of the SPPA Law there is a provision that "if in material law a cumulative penalty is threatened in the form of imprisonment and a fine, then the fine is replaced with a job

training penalty". Thus, based on the provisions of Article 71 paragraph (3) of the SPPA Law, fines can be replaced with criminal sanctions for job training if in the material criminal law criminal sanctions are threatened cumulatively with fines.

Although related to the replacement of the death penalty and the cumulative penalty of fines with imprisonment, it has been regulated in the SPPA Law. However, the SPPA Law does not specifically regulate the replacement of confinement that is not stated in the SPPA Law and the replacement of criminal sanctions for fines if they are not threatened cumulatively with imprisonment. This then becomes a problem related to the criminal conviction of the child of the perpetrator of a traffic violation crime which in material law is threatened with confinement or a fine.

This problem is quite important considering that the age of the child is considered unable to control his emotions, lack of maturity in thinking so that he cannot make decisions quickly and precisely, and a sense of responsibility that is still lacking. Stephen Hurwitz posits that, age is an importance factor in the causation of crime .. Generally, when they reach the age of students, children want to do new things that have never been done before and are easy to be affected by the surrounding environment so that it is also easy to commit violations. This is what makes children often commit violations in this case traffic violations.⁴

The reason for the non-inclusion of criminal sanctions for confinement in the SPPA Law itself is related to the principle or principle of "deprivation of liberty and punishment as a last resort". The criminality of confinement itself is a type of criminal deprivation of independence imposed on perpetrators of criminal offenses and minor crimes. Meanwhile, the SPPA Law has the principle or principle of "deprivation of independence and final punishment as a last resort".

In addition, it is also clearly explained in Article 79 Paragraph (1) of the SPPA Law which states "the penalty of limiting independence is imposed in the event that a child commits a serious crime or a criminal act accompanied by violence". Thus, regarding the imposition of criminal sanctions on children, they must avoid criminal sanctions in the form of deprivation of independence, especially for minor crimes and criminal offenses, including criminal offenses of traffic violations committed by children.

⁴ Romli Atmasasmita, Strategi Pembinaan Pelanggaran Hukum Dalam Konteks Penegakan Hukum di Indonesia, (Bandung : Alumni,1982), hlm.48

Then regarding the non-inclusion of criminal sanctions for fines in the SPPA Law related to the principle of "best interests for children". A fine is a type of criminal sanction contained in the Criminal Code, the fine aims to burden a person who violates the provisions of the rules or provisions in the Criminal Code by paying a certain amount of money or a property so that it is felt to be a loss for the maker himself so that order in the community can recover as before. As we know that the child is a being who cannot meet his own needs. So that the fine given will burden the child, this is because the child has not been able to make money on his own, and in the end it is the parents who will pay the fine.

Before the SPPA Law was established, the special criminal law for children was regulated in Law Number 3 of 1997 concerning Children's Courts (hereinafter referred to as the Children's Court Law). Article 23 paragraph (2) of the Children's Court Law explains "the main crimes that can be imposed against Delinquent Children are:

- a. Imprisonment
- b. Confinement.
- c. Fines.
- d. Supervision penalty".

With the certainty of Article 23 paragraph (2) of the Children's Court Law shows that the Children's Court Law still regulates and recognizes the criminality of confinement and fines are criminals that can be imposed on children when this law is in force. Then the SPPA Law was created for reasons or basis that the Children's Court Law in its implementation the child is positioned as an object and the treatment of children who face the law tends to harm the child. In addition, the creation of the SPPA Law as stated in letter e of the SPPA Law which says that "the Children's Court Law is considered no longer in accordance with the development and legal needs of the community because it has not comprehensively provided protection to children facing the law". So it needs to be replaced with a new law.

One of the differences between the SPPA Law and the Juvenile Court Law is the basic criminal sanctions contained in the two laws. The Children's Court Law recognizes and regulates criminal sanctions for confinement and fines, while the SPPA Law does not regulate and recognize confinement and fines. Thus, it can be concluded that the criminal sanctions of confinement and criminal sanctions for fines are not in

accordance with the development and legal needs of society because they have not stopped providing protection to children facing the law.

Protection of children is carried out in all aspects of life, one of which is in terms of juvenile criminal justice, which emphasizes more on the rights of children, especially when being a suspect in a criminal act. The purpose of holding juvenile criminal justice is not only to prioritize criminal prosecution, but also to protect the future of children from the aspect of psychology by providing guidance, protection and education. Furthermore, in Consideration Letter b of the SPPA Law, it states "that to maintain their dignity and dignity, children are entitled to special protection, especially legal protection in the judicial system".

So that it can be seen that the basis for the creation of a criminal justice system is to protect the rights of children who face the law, especially for children who are perpetrators of criminal acts and not only focus on criminal prosecution of children, but also in efforts to protect the future of the child. This is clearly stated in the principles contained in Article 2 of the SPPA Law

The SPPA Law itself adheres to the Relative theory, this can be seen from the punishment in the SPPA Law which does not focus on criminal prosecution alone, but also on efforts to protect the child's future. In addition, it can also be seen from the principles of "best interests for children", "deprivation of independence and punishment as a last resort", and "avoidance of retaliation" listed in Article 2 of the SPPA Law.

According to the Relative Theory or Nisbi (Doel Theorien) a crime is not absolutely necessarily to be followed by a criminal. For this reason, it is not enough for a crime to exist, but it must be questioned the need and benefit of a crime for society or for the criminal himself. Thus, there must be a further purpose than just criminal prosecution alone. This goal must first be directed to efforts so that in the future the crimes that have been committed do not repeat themselves (prevention).⁵

Meanwhile, the Criminal Code itself adheres to the Combined Theory, this can be seen from the change of the term "prison" to "Correctional Institution" which is used for coaching prisoners so that they can be accepted and benefit the community when they come out later. The Criminal Code also still recognizes the existence of the

⁵ Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana di Indonesia*, (Jakarta : Refika Aditama. 2003), hlm.23

death penalty which is a criminal sanction that emphasizes retaliation more. Thus it can be seen that the current Criminal Code adheres to a combined theory.

The combined theory is a theory that on the one hand recognizes the existence of retaliation, but on the other hand also recognizes the element of prevention or correcting the criminals attached to each criminal. The combined theory itself can be classified into 2 (two), namely the combined theory that prioritizes retribution, but is not excessive from what limit is sufficient and necessary for the preservation of discipline in society, and the second is that the combined theory also prioritizes the protection of the order of society, but the suffering of the imposed criminal is more severe than the actions of the convict.

With the special regulation of the law enforcement process against children in the SPPA Law which is specially made to maintain the dignity and bartabat of children who are facing the law. Thus, the criminal sanctions imposed on children perpetrators of traffic violations must also use one of the criminal sanctions contained in Article 71 of the SPPA Law which not only focuses on punishment but also on the future of the child to be in accordance with the principle of "best interests for the child" contained in the SPPA Law. However, it is necessary to analyze first one by one related to the criminal sanctions contained in the SPPA Law to determine which criminal sanctions can be imposed on children perpetrators of traffic violations in accordance with the rules and principles of "best interests for children" in the SPPA Law.

The first is the criminal sanction warning, the criminal warning is one of the criminal sanctions recognized by the SPPA Law. According to Article 72 of the SPPA Law it says that "the penalty of warning is a minor crime which does not result in the restriction of the independence of the child". Thus, criminal sanctions can be used against children perpetrators of traffic violations based on the provisions of Article 79 Paragraph (1) of the SPPA Law which states that "the penalty of restriction of independence is imposed in the event that the child commits a serious criminal act or a criminal act accompanied by violence".

The second is probation with conditions, criminal sanctions with conditions regulated in Article 73 of the SPPA Law, it is explained that "Probation with conditions can be imposed by the Judge in the event of imprisonment imposed for a maximum of 2 (two) years. In court decisions regarding criminal matters on condition that general conditions and special conditions are determined. The general condition is that the

child will not commit any more criminal acts, and the special condition is to do or not do certain things stipulated in the judge's ruling while still paying attention to the freedom of the child".

The probation on its own terms is also regulated in Article 14a of the Criminal Code which states that "if the judge imposes a maximum imprisonment of 1 (one) year or confinement, excluding substitute confinement, then in his judgment may also order that the criminal does not need to be served, unless in the future there is a judge's decision that determines otherwise, because the convicted person committed a criminal act before the probation period specified in the order expires, or because the convict during probation did not meet the specific conditions that might be specified in the order".

Criminals with conditions in the SPPA Law and conditional crimes in the Criminal Code both determine that the criminal sentence imposed by the Judge does not need to be carried out as long as during the criminal period must meet or not violate special conditions and general conditions. However, there is also a difference between criminal and conditional penalties in the Criminal Code. As stated in Article 73 paragraph (1) of the SPPA Law "a criminal offense with the condition that it can be imposed by a Judge in the case of imprisonment which is imposed a maximum of 2 (two) years".

Sementara itu, pidana dengan syarat dalam KUHP dapat diberlakukan apabila Hakim menjatuhkan pidana penjara paling lama 1 (satu) tahun atau kurungan tidak termasuk kurungan pengganti, sebagaimana tercantum dalam Pasal 14a ayat (1) KUHP. Meskipun pidana dengan syarat pada UU SPPA tidak menyebutkan secara spesifik mengenai penjatuhan pidana bersyarat untuk pidana kurungan yang diberikan oleh hakim, di sisi lain pada UU SPPA juga tidak terdapat ketentuan larangan diberkakukannya pidana bersyarat apabila hakim menjatuhkan pidana kurungan. Sehingga dengan demikian karena tidak ada ketentuan pada UU SPPA yang melarang, maka pidana bersyarat pada UU SPPA juga dapat diberlakukan pada anak yang melakukan tindak pidana pelanggaran lalu lintas yang diancam pidana denda dan kurungan.

Meanwhile, probation under the conditions in the Criminal Code can be applied if the judge sentences a maximum of 1 (one) year in prison or confinement does not include substitute confinement, as stated in Article 14a paragraph (1) of the Criminal

Code. Although the criminal code provided in the SPPA Law does not specify the conditional sentence for confinement given by a judge, on the other hand, the SPPA Law also does not provide a provision prohibiting the imposition of a conditional sentence if the judge imposes a sentence of confinement. Thus, because there is no provision in the SPPA Law that prohibits it, conditional crimes in the SPPA Law can also be applied to children who commit criminal acts of traffic violations that are threatened with fines and confinement.

Probation under the SPPA Law consist of out-of-institutional guidance, community services, and supervision. The conditional penalty of coaching outside the institution is regulated in Article 75 of the SPPA Law which states that "the criminal punishment of coaching outside the institution can be in the form of having to participate in a mentoring and counseling program carried out by the supervisory official, attending therapy in a mental hospital, or attending therapy due to alcohol abuse, narcotics, psychotropics, and other addictive substances. If during the coaching of the child violates the special conditions for doing or not doing a certain thing, then the coaching officer may propose to the supervising judge to extend the coaching period whose length does not exceed a maximum of 2 (two) times the coaching period that has not been implemented".

The probation of community service is regulated in Article 76 of the SPPA Law which states that "the criminal service of the community is a criminal intended to educate children by increasing their concern for positive community activities. If the child does not fulfill all or part of the obligations in carrying out the community service crime without a valid reason, the supervising officer may propose to the supervising judge to order the child to repeat all or part of the community service penalty imposed against him. The crime of community service for children is imposed for a minimum of 7 (seven) hours and a maximum of 120 (one hundred and twenty) hours".

The last conditional sentence, namely the supervision criminal, the supervision crime is regulated in Article 77 of the SPPA Law which states that "the supervision penalty that can be imposed on a child is at least 3 (three) months and a maximum of 2 (two) years. In the event that the child is sentenced to criminal supervision, the child is placed under the supervision of the public prosecutor and guided by a community adviser".

The third is job training sanctions, The criminal sanctions for job training are regulated in Article 78 of the SPPA Law which states that "the criminal training is carried out in institutions that carry out job training appropriate for the age of the child. The penalty of job training is subject to a minimum of 3 (three) months and a maximum of 1 (one) year". Furthermore, in the explanation of Article 78 paragraph (1) of the SPPA Law, it is explained that "what is meant by institutions that carry out job training includes job training centers, vocational education institutions that are carried out, for example by ministries that organize government affairs in the fields of labor, education or social".

If you look at the types of institutions that carry out job training as mentioned in the Explanation of Article 78 paragraph (1) of the SPPA Law, the institutions mentioned are not institutions that have cells that restrict children's freedom. So with reference to this, the criminal sanction of job training is not a criminal sanction that limits the freedom of children. So that criminal sanctions for job training can be imposed on children who commit criminal acts of traffic violations by referring to the provisions of Article 79 paragraph (1) of the SPPA Law.

The fourth is the criminal sanctions for coaching in institutions, criminal sanctions for coaching in institutions are regulated in Article 80 of the SPPA Law which explains that "criminal coaching in institutions is carried out at job training places or coaching institutions organized by the government and the private sector. The punishment of coaching is imposed if the circumstances and actions of the child do not endanger the community. Criminal sanctions in the institution are carried out for a minimum of 3 (three) months and a maximum of 24 (twenty-four) months. Children who have undergone 1/2 (one-second) of the length of coaching in the institution and not less than 3 (three) months of good behavior are entitled to parole".

By looking at and referring to the provisions in Article 80 paragraph (2) which states that the penalty of guidance in the institution can be imposed if the circumstances and actions of the child do not endanger the community. Then correction within the institution can be imposed against children who commit criminal acts of traffic violations considering that the criminal act of traffic violations does not endanger the community.

However, on the other hand, if we see that before the provisions regarding the criminal treatment in institutions regulated in Article 80 of the SPPA Law, there is

Article 79 which precedes the provisions of Article 80 which reads "the penalty of restriction of independence is imposed in the event that a child commits a serious criminal act or a criminal act accompanied by violence". With the structure in place of Article 79 paragraph (1) of the SPPA Law which regulates the criminal restriction of independence, it seems to show that the criminal sanctions regulated after Article 79 of the SPPA Law are criminal restrictions on independence.

In addition, in the provisions of Article 80 paragraph (4) of the SPPA Law which states that "children who undergo 1/2 (one second) of the duration of coaching in the institution and not less than 3 (three) months of good behavior are entitled to parole". The provision of how to obtain parole in the criminal coaching within the institution shows that the criminal guidance within the institution is a criminal restriction of independence. So that as referring to Article 79 paragraph (1) of the SPPA Law, the punishment of coaching in the institution cannot be imposed or used against children who commit criminal acts of traffic violations because the criminal punishment of coaching in the institution includes the criminal restriction of independence.

The fifth is the penalty of imprisonment, although imprisonment is similar to imprisonment and is recognized and listed in Article 71 of the SPPA Law, it is necessary to first examine whether imprisonment can be imposed on children perpetrators of traffic violations in lieu of imprisonment. Although imprisonment and imprisonment are both punishments of independence restrictions, imprisonment and imprisonment are different things. P.A.F. Lamintang stated that imprisonment is a crime in the form of a restriction on the freedom of movement of a person who is a convict, which is carried out by closing the person in the penitentiary by requiring the person to comply with all the rules of order applicable in the penitentiary that are associated with an act of order for those who have violated the regulation.⁶

Article 12 of the Criminal Code explains that "imprisonment is divided into imprisonment for life and imprisonment for a certain time. Criminal for a certain time of at least one day and at most fifteen consecutive years. Imprisonment for a certain time may be imposed for twenty consecutive years for a crime for which the Judge may choose between the death penalty, life imprisonment, and imprisonment for a certain time. Likewise in the case of repetition (recidive), or concursus specified in

⁶ P. A. F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, (Bandung : Sinar Baru, 1984), hlm. 48

Articles 52 and 52a of the Criminal Code". Furthermore, in Article 13 of the Criminal Code, it is explained that convicts who are sentenced to imprisonment are divided into several classes. Then in Article 14 of the Criminal Code it is explained that "the convicted person sentenced to imprisonment is obliged to carry out all the work charged to him according to the rules held for the implementation of Article 29 of the Criminal Code".

Meanwhile, the criminal punishment of confinement also includes the crime of deprivation of independence such as imprisonment, but the penalty of confinement is lighter than imprisonment. Article 18 of the Criminal Code explains that "the penalty of confinement is at least one day and a maximum of one year. If there is a criminal conviction caused by repetition or concurrentity or because of a weighting due to office or national flag as stipulated in Articles 52 and 52a of the Criminal Code, then confinement can be increased to one year and four months. The sentence of confinement in a while should also not exceed one year and four months".

Furthermore, Article 19 of the Criminal Code states that "the person sentenced to confinement must or is obliged to carry out the work handed over to him, in accordance with the rules for carrying out Article 29 of the Criminal Code. People who are sentenced to imprisonment are given a lighter job than people who are sentenced to imprisonment. Article 23 of the Penal Code states that a person sentenced to confinement, at his own expense, can simply alleviate his fate, according to the rules to be established by the Act".

Thus, although imprisonment and confinement are both punishments for restricting freedom, the penalty of confinement is lighter than imprisonment. In addition, as a provision of Article 79 Paragraph (1) of the SPPA Law which states that "the penalty of restriction of independence is imposed in the event that a child commits a serious criminal act or a criminal act accompanied by violence". Thus, the sentence of confinement threatened against the child of the traffic offender cannot be replaced with imprisonment even though the prison sentence itself is charged in the SPPA Law.

After one-on-one analysis of the criminal sanctions listed in Article 71 paragraph (1) of the SPPA Law, it can be seen that criminal sanctions under the SPPA Law that can be imposed on children perpetrators of traffic violations are warning crimes, conditional crimes and job training crimes based on the principle of best

interests for children and the provisions in the SPPA Law. Thus, for now, judges can choose between criminal sanctions, conditional criminal sanctions or criminal sanctions for job training to be imposed on the child of the perpetrator of a traffic violation crime.

On the other hand, there is a principle of legality regulated in Article 1 paragraph (1) of the Criminal Code stating that "no act can be punished except for the strength of the criminal rules in the existing legislation, before the act is committed". Which means that the law used must be a written law and the criminal law cannot apply retroactively. The legal system in Indonesia adheres to *alira rechtsfinding* which emphasizes that judges must base their decisions on applicable laws.

However, judges have freedom in interpretation and opinion, judges also have a free attachment (*vrije gebondenheid*) in carrying out their duties to try a case. Sometimes the Judge will be faced with a case that has no legal basis or unclear legal arrangements. In such circumstances the Magistrate shall not refuse to adjudicate the case on the grounds that there is no governing law. This can be seen in the provisions of Article 10 of Law Number 48 of 2009 concerning Judicial Power which states that "courts are prohibited from refusing to examine, adjudicate and decide a case filed on the grounds that the law does not exist or is not clear, but is obliged to examine and adjudicate it". Furthermore, in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, it is stated that "Constitutional Judges and Judges are obliged to explore, follow and understand the values of law and the sense of justice that lives in society".

Thus the Judge must base his judgment in adjudicating to the laws and regulations and be free to interpret and interpret the law. In the event that the case being tried does not have a governing law or is unclear, the Judge is obliged to adjudicate the case by exploring the values of the law and the sense of justice that lives in society.

So that in the case of criminal acts of traffic violations, judges may use criminal sanctions of warning or criminal sanctions of job training, although it is not specifically regulated that criminal sanctions of warning, conditional criminal or criminal punishment of work training can replace the criminal imprisonment or criminal training of work that is threatened in violations in the Traffic Law. The decision in the future can also be a jurisprudence that other Judges can use as a guide

or direction in deciding the same case. Jurisprudence itself is one of the sources of formal law in addition to laws, customs and tracts.

CONCLUSION

Criminal sanctions of confinement and criminal sanctions of fines threatened with traffic violations in the Traffic Law are not listed in the SPPA Law which is a special criminal law for children. So that criminal sanctions of confinement and criminal sanctions of fines cannot be imposed on children of traffic offenders. On the other hand, the Criminal Justice System Law also does not include in detail the provisions for criminal sanctions in lieu of imprisonment and fines that are not cumulatively threatened with imprisonment.

With the regulation of special criminal sanctions for children in the SPPA Law which is a formal criminal law for children, the criminal sanctions that can be imposed on children perpetrators of traffic violations are only criminal sanctions listed in the SPPA Law along with the provisions in the SPPA Law. Based on the provisions of the SPPA Law, criminal sanctions according to the SPPA Law that can be imposed on children perpetrators of traffic violations are warning criminal sanctions, conditional criminal sanctions and criminal sanctions for job training. Thus, the Judge can choose between warning criminal sanctions, conditional criminal sanctions or criminal sanctions for job training to be imposed on the child of the perpetrator of a traffic violation crime. The judge's decision can later become jurisprudence for other judges in deciding the same case, if special regulations in the SPPA Law regarding the substitute for imprisonment and fines do not yet exist.

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