



Crime Of Theft With Violence Against Minors as Perpetrators

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Abstract: The research discusses the Crime of Theft of Minors as Perpetrators with an example of decision no.36/Pid.Sus.Anak/2024/PN.Mdn. The case study approach is normative juridical law, studying, analyzing, by observing and understanding cases related to issues and legislative approaches related to legal issues in terms of legal principles, doctrines and jurisprudence. Author Data Creation Primary, Secondary, and Tertiary Data Sources focus on literature research using qualitative analysis by observing data obtained by interconnecting with several literature in the form of scientific works, books, the internet, and legal journals related to problem analysis with conclusions in knowing the Application of Law and the Basis of Judges' Considerations in providing punishment as accountability for actions committed by children, Children, in addition to having factors that encourage the occurrence of a criminal act, have a different position from adults in the justice system and need guidance and rehabilitation to prevent criminal behavior in the future and the basis for the judge's consideration provides a deterrent effect so that it does not happen again in the future against the Crime of Theft with Violence against Minors as the perpetrator.

Keywords: Crime, Theft with Violence, Minors

Introduction

The progress of the world, people expect changes in every aspect around them to be better or useful. This will certainly have consequences, the most important thing is to provide results that are beneficial to the welfare of the community. It is clear that changes in people's values, norms, views, and behaviors have a positive impact on the number and quality of legal practitioners. According to Paragraph 1 Article 3 of the 1945 Constitution, Indonesia is classified as a country of law. Therefore, every transaction must comply with the norms that have been set by the government (Ikrima Salsa Syahbana. Margo Hadi, 2024)

Childhood is the most important phase in the entire growth of adult human beings, every child in the development of growth often imitates every action he sees so that it has an impact on their behavior in the future (Nani Kusmayanti, 2023) Thus, guidance and guidance must be given so that, developing as a candidate for the next generation of the nation who is dedicated and reliable, even though children often experience difficulties so that they accompany them to commit acts that violate the law (Verawati, 2020).

Theft with violence is one of the rampant crimes in the community, crimes that spread to children, not children as victims, it is very important to consider that when a

child acts as a criminal act (Wahyu, 2015) The occurrence of theft is not only a legal problem but also causes problems with the welfare of the community (Iswantoro and Maryanto, 2020). Therefore, a child can commit crimes for various reasons, such as internal reasons, environmental causes, family factors, or poverty, one of the things that encourages children to commit the crime of stealing is the economy, theft is what children do when parents do not supervise them, this happens when parents are too busy working to take care of children, so children take advantage of the attention by stealing, Children also often find ways to get something quickly by stealing and then selling it for money (Mifftahur Rizky,Surahman, 2024). Because it is often carried out in public places and does not pay attention to tranquility or crowds, theft is usually night and noon The tools used have developed from simple means of communication and transportation to sharp weapons, currently also using means of transportation and daring actions to injure that result in death (Firnanda Cindy Maulana. Nur Rochmah. Lella Agustina . Galuh Novanda, 2020). Examples of theft cases, based on data in OBH compiled by BPHN during 2020-2022, there are 838 cases (Andi Saputra, n.d.).

In the context of criminal law, children are seen as individuals who do not have full maturity in acting, so that they need a special approach in their court process, the definition of children is emphasized in article 2 and article 1 number three stated "Children who are in conflict with the law are called children who have reached the age of 18 (eighteen) years old and are suspected of committing criminal acts" (SPPA) Law 11 of 2012 concerning the Juvenile Criminal Justice System aims to provide excellence for children, even if the application of children, in the form of examining, deciding, and finalizing, To carry out child coaching and protection, there must be a good environment to support institutional and legal devices, meaning that it must be more conducive and accommodating (Friwina Magnesia Surbakti& Rizkan Zulyadi, 2019)

In addition, the recent rise of criminal acts where those who commit crimes are children, it can be concluded that "anyone can commit an act against the law, in general crimes are only committed by adults who know clearly the consequences of their actions" What if those who commit acts of theft with violence are children who are still innocent and innocent?(M. Rizki Nugraha Tjaya, 2024)

According to Toto Hratono, Mhd Ansori Lubis, Syawal Darma Siregar (2021) in his article entitled Law Enforcement Against the Crime of Theft with Violence (Study on the Medan Metropolitan Police) explained about how the Crime of Theft through Violence in the Criminal Code so that he conducted his research at the Medan City Police with secondary data collection, an observation method in the policy-making process. The results of the study show that what happened is that the Government should make restrictions on the provision of diversion to children of perpetrators of theft with violence, especially minor perpetrators who are given protection through diversion, which will trigger criminal acts to be committed in the future(Toto Hartono Mhd Ansori Lubis. Syawal Darma Agung, 2021) In Article 362 of the Criminal Code, criminal acts include: subject element: "With the intention of unlawfully controlling the object". object element: "Whom, takes, an object, partially or wholly belongs to another person"(Rian Prayudi

Saputra, 2019). The theft of criminal acts as referred to in Article 365 of the Criminal Code can be considered as a crime with gross theft (Hartono. Syafrudin kalo. M. Hamdani. Mahmud Mulyadi, 2021).

According to Eka Eman Rosi, Mulyati Pawennei & Muh.Rinaldy Bima (2022) in their article entitled Juridical Review of the Crime of Theft with Violence Carried out by Children, the study of Decision Number 51/Pid.Sus-Anak/2020/PN.Mks explains about how the form of criminal liability for children as perpetrators of the crime of theft with violence with observation methods in the Makassar district court, the selection is based on the object of the research. The results of his research explained that the child became a perpetrator legally proven with aggravating circumstances so that he was subjected to a ceremony of murder as a final sentence of one year and ten months as a criminal witness at LPKA Maros (Eka Eman Rosi . Mulyati Pawennei & Muh. Rinaldy Bima, 2022). As for talking or discussing the issue of crime and the perpetrator of the crime, it is not enough only to impose punishment/punishment on the perpetrator. The more important thing is to find the factors that cause people/perpetrators to commit crimes and efforts to counter them. Therefore, children who commit crimes have different places in the legal system and need guidance and final efforts to prevent criminal behavior in the future and achieve a deterrent effect on the perpetrators, and realize that everything must be accountable, or dare to act responsibly.

So the selection of this topic is based on the author's need to examine how the law is applied to the perpetrator and the punishment that is ultimately given to the child due to his or her actions by looking at the causal factors, the judge's consideration with evidence in the trial that convinces that his actions are lawful and unlawful. To answer the problem of "Crime of Theft of Minors as Perpetrators" and decision number 36/Pid-Sus-Anak/2024/PN.Mdn became interesting to the author.

Methodology

The type of research is normative juridical with a case approach and a case approach related to the legal problems being researched, the data used are primary, secondary and tertiary data sources focusing on literature research using qualitative provisions with legal principles summarized in several literatures so as to prevent problems. and provide an explanation of a conclusion and the aim of the research is to find out the application of the law for the act of stealing with violence and the judge's considerations based on evidence and consideration factors in giving a decision on the crime of theft with violence against minors as the perpetrators

Result and Discussion

Application of Criminal Law of Theft with Violence Committed by Minors

The application of the law is seen as a result of its application of several theories of criminal objectives. Criminalization is defined as the beginning and end of sanctions in criminal law. In general, the term "criminal" refers to the law, while "criminal" is interpreted as a sentence (Ahmad Ropei, 2022). Hoefnagels stated that criminalization

"The stage of a person committing an offense on the basis of an offense with prosecution as a characteristic, censure as the main basis, warning to public relations and influence on behavior as an approach, fulfillment of opposition and attempts to influence the perpetrator, and other parties who do not fully comply with the requirements of the law (Umi R. Aditya, 2018). *executio est executio juris secundum iudicium*: Criminal imposition is a provision for the implementation of the court (Fitriani, 2023). According to theorists, it was formulated to explain criminalization in detail three parts, including:

- 1) Herbart's absolute theory (*vergeldings theorien*) states that if there is a revenge crime, it will cause problems to the wider community so that the general public is responded to and interpreted, so that from an early age it must be balanced with criminal knowledge that is in accordance with the evil of the perpetrator (Andi Maulana Mustamin, 2012). Therefore the punishment comes from an imbalance, so it is a *dialectische ver gelding* (Marpaung and Laden, 2005). So, it is concluded that a type of revolution is given by a country with the aim of reducing the impact of its actions (eddy O.S., 2016).
- 2) Relative Theory (*doel theorien*) is based on the principle of criminal imposition of a crime prevention, a prevention that refers to the prevention of crimes that affect behavior (eddy O.S., 2016) Retribution for mistakes is not the same as penal theory, structural measures to achieve peace and tranquility of the people (Afdhal Ananda Temokati, 2023).
- 3) *Verneins theorien*, Although there is an element of retaliation in criminal law, it is recognized that prevention and recovery are inherent in criminal acts; as a result, it will be applied if it helps to comply with the regulations and is useful if it precludes its application in the public interest (Muhammad Aenur Rosyid, 2020) Trying to hack the way and find a common thread between retributive theory and relative theory (Siti Nabilah utami. Anggun NUrul Isma. Gialdah Tapiansari B.Faris Fachrizal, 2024)

Based on the so-called criminal theory, the author observes that the paradigm has proven to be effective in influencing children's behavior, the defender must admit his mistake and show a sense of justice by paying attention to the benefits, both from preventive measures and child protection, because it can be concluded that the judge's consideration states that the perpetrator's actions have been proven legitimate and convincing to commit a crime or criminal act. In decision number 36/pid.sus Anak/2024/PN.Mdn. The purpose of this consideration includes the following: the purpose of research on retaliatory crimes. the purpose of prevention, community justice, and protection of children's interests (Firiama laia. Laka Dodo Laia, 2023). Children commit crimes often using the modus operandi used by children also varies depending on the location, planned or not, even the perpetrators number more than 2 people and have their own roles by using a planned and neatly organized modus operandi so that the perpetrators can easily escape after committing the crime (Andika Lilik MulyanaRatio, 2022) . for example, decision no.36/pid.sus anak/PN.Mdn where FM, MGS, K, and T plan to commit theft against a child with the initials RB in such a way that FM will take RB for a walk by using a motorbike to a quiet place and K and T will carry out their action by

grabbing the motorbike brought by RB and FM and after being successfully picked up they accuse one of the motorcycle gang members while the two will be asked to show their phones and the three immediately take or forcibly snatched from FM's hands after which they fled. FM will pretend to chase K and T but cannot be done so FM escorts RB home after that Fm will meet MGS, K, T to ask for his phone back. Where from the above FM acts as regulated and threatened to be subject to articles three hundred and six five paragraphs two of the first and second Criminal Code jo article fifty-six second of the Criminal Code jo Law No. 11 of 2012 concerning the Criminal Justice System.

Based on the chronology above, the understanding of the application of the law begins with an investigation. Where when there are reports of violent theft. Investigators handle this case, investigators have special expertise in handling children's cases, such as trained police. The investigation is essentially to clarify the problem, as well as to avoid innocent people from actions that should be taken to teach the perpetrator of the crime (Andi Muhammad Sofyan and abd.asis, 2022). Investigator activities Collecting evidence, being given permission to take actions that support the settlement so that it can be explained accurately to the prosecutor general (July Esther. Herlina Manullang. johan Silalahi, 2021). Acts involved in theft cases will be faced with investigation with different treatment from adults and must involve parents or guardians of children and provide opportunities for children to be accompanied by legal counsel will then be held diversion From article 6 to article fifteen, article ten there is a discussion about the diversity of each stage of the investigation, Starting from investigations, prosecutions, and examinations in court hearings in the process of examining children's behavior that is contrary to the law (Dwi Rachma Ningtias.Said Sampura and Hardianto Djanggih, 2020). The implementation of diversion is based on the desire to avoid impacts, especially on the soul and progress of children (Heriyanto, 2022).

Diversion is the application of the authority of law enforcement officers to complete policy maneuvers in resolving or overcoming children's problems without going through formal channels such as stopping, continuing, releasing in criminal proceedings or reversing, handing over to the community, and other forms of social assistance (Friska Ananda, 2018). If the diversion is implemented unsuccessfully or is not possible, the prosecution process continues to the court stage, the public prosecutor will file a lawsuit based on factors such as age. Psycholohis, and the child's background as well as the level of delinquency and the need for child rehabilitation The direct involvement of the perpetrator, victim, and the community in the criminal justice process is the main goal of the restorative justice strategy (Toran Hansen. Mark Umbreit, 2018).

Restorative justice is often used in minor crimes such as article 364, the act committed by the child meets article 365, therefore the information contained in the indictment consists of the only public prosecutor's demand in the FM general indictment with the demand for a prison sentence of ten months in prison minus the period of detention that has been served, and the order for the child to remain in custody decision number 36/pid.sus anak/2024/PN (. The juvenile court is a judicial institution that handles cases of children in conflict with the law (Ratri Novita Endrianti, 2020). thejudicial process

will be carried out behind closed doors to the public, to maintain children's privacy and avoid social stigmatization that can damage the child's future (et al., 2023). The court will decide whether the child is guilty or not, therefore, FM is legally and convincingly proven from the evidence presented in the trial that FM committed the crime of theft with violence, namely summarizing the Criminal Code article three hundred and sixty-five paragraph (2) first and second of the Criminal Code Jo and article 56 of the second Criminal Code Jo Law of the Republic of Indonesia no. 11 of 2012 concerning the Juvenile Criminal Justice System.

Criminal liability is a process that is carried out after elements of a criminal act or criminal act are violated, both subjective objects, related to the moral principles involved, the problem here is based on moral principles that must be discussed. Subjective assessments are made regarding the creation of the belief that certain psychological phenomena have affected morality either in whole or in part (Fauzi, 2021). In order for the act to be criminally accountable, it must contain an error in the form of (*dolus/opzet*) or *culpa* (Ahmad Mahyani, 2019), In order for the criminal to be responsible, it is necessary to have certainty that the person can be responsible. The ability to be responsible is always related to the psychological condition of one of its elements (Samsul Arifin, 2021). If the child has mastered the elements of the Criminal Law, it can be called a sanction, Legal sanctions refer to the conceptual or philosophical purpose of criminal law and the purpose of providing parameters in the criminal process (Theo Safra Ahasia, 2021)¹.

Juridical considerations for theft with violence committed by minors

A court decision is an output of a judicial process in a court session which includes the process of examining witnesses, examining the defendant, and examining evidence. When the evidentiary process is declared complete by the judge, it is time for the judge to make a decision (Ronaldo Ipakit, 2015). In making a decision, the judge must consider all factors in order to generate a good impression of justice for the victim, detention, and the community, so that certain legal certainty arises (Siregar.C.A.Nasution.Siahaan, 2023)

To decide in a child case, the judge considers several factors in imposing sanctions for the acts committed by the child (perpetrator):

- a) FM Age Factor, example of Decision number 36/Pid.Sus-Anak/2024/PN/Mdn, a person aged 16 (sixteen) years who is included in the category in the Indonesian legal system, children under the age of 18 are considered as children who must receive special treatment as affirmed in article 3 of Law 11 of 12 concerning the Juvenile Criminal Justice System, by the age factor must be considered by the judge in imposing the punishment, Because the child is not under 18 years of age, the child cannot be treated like an adult even if he or she has committed a serious offense such as theft with violence. Therefore, that punishment is fully given, there is also an action in the form of returning to parents/guardians, job training, or coaching in institutions based on the verdict that the child is being subjugated in a special children's institution (LPKA).
- b) The severity of the prison sentence accommodates justice for the perpetrators. The child FM from the facts of the trial by proving that the child is really legitimate,

convincingly guilty of committing a violation of the law and based on the factors that encourage the child to commit an act and the things that mitigate the child get sanctioned from his act, namely: that the child has never been punished, in other words, that the child has only committed an act that is against the law for the first time, The child is still 16 years old, and that the child and the victim have reconciled means that in the case as described. Perma 1/2024 was created to answer the need for judicial practice in handling disputes that arise between victims and parties who use restorative justice, or restorative justice, with procedures and objectives that encourage cooperation and not just punishment (Novalinda Nadya Putri. Muhammad enaldo Hasbaj, 2024). That is, the purpose of punishment, which in scientific circles is known as the "absolute" or "retribution" theory, is to establish the victim's criminal act, establish a bond between the perpetrator, the victim, and/or the general public, and punish the perpetrator of responsibility and punish every individual, especially children, from their independence (H. Dwiarso Budi Santiarto, n.d.). Because the purpose of punishment itself is to educate and correct those who have committed crimes.

- c) The evidence discussed in the conference should be closely related to each other if possible (Mucglas rasta s muksin. Nur Rochaeti, 2020). In the trial, the panel of judges must mention the child's deeds that are in accordance with the facts in the trial from the chronology showing that the crime of theft with violence has indeed occurred, FM is proven guilty from witness statements, clues from the chronology and evidence that has been secured by the police can be concluded to prove as explained in Article 183 of the Criminal Code. two valid pieces of evidence must be used and the evidence in the trial is emphasized as in article 184 of the Criminal Code as in number 36/pid.sus anak/PN/Mdn evidence and data revealed during the trial process the judge can sanction the child, both in the form of the principal crime in article 71 letter e and the child with the initials FM is given a punishment based on age in Article eight one paragraph two Prison sentence as a death that can be given to the child, one and a half (one-half), of the maximum amount of adult imprisonment with the prosecutor's demand and based on evidence.
- d) Therefore, based on the indictment, the Public Prosecutor charged him with violating Article three hundred and sixty-five paragraph (2) first and second of the Criminal Code, namely the crime of theft with violence committed by a child. only one fee. Therefore, by paying attention to the factors mentioned above, the application of criminal law made by juveniles with legal problems as defendants is in accordance with the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Criminal Procedure Code 1 of 1981. This is because the indictment was made based on the results of the examination carried out in the investigation and then submitted at the trial.

The type of research is normative juridical with a case approach and a case approach related to the legal problems being researched, the data used are primary, secondary and tertiary data sources focusing on literature research using qualitative provisions with legal

principles summarized in several literatures so as to prevent problems. and provide an explanation of a conclusion and the aim of the research is to find out the application of the law for the act of stealing with violence and the judge's considerations based on evidence and consideration factors in giving a decision on the crime of theft with violence against minors as the perpetrators.

When making his decision, the judge considers a number of additional factors:

- 1) Elements of personality Apart from individuals who possess emotional and intellectual maturity, environmental conditions can also contribute to some crimes, especially the absence of human interaction and role, as well as domestic abuse. Choosing whether to use criminal evidence as a means of education or rehabilitation as a last resort is another aspect of mental and physical health. The child's degree of awareness in carrying out and comprehending the difficulties of their acts may necessitate accountability. Therefore, a baby's involvement in a drawn-out legal process, which involves honesty and cooperation, may have an impact on the judge's development.
- 2) Crime Factor: A child who receives a prison sentence as a final measure for his blindness serves as a lesson for other children to be more prudent in their actions. This is because acts that are more severe and serious will demonstrate the impact of the loss caused by the child, particularly if the injury is deemed serious in petty theft for both the victim and the community, as well as the child's role in committing the crime as the main actor or as a secondary actor in the action.

Because the products being sold are usually not particularly valuable, kleptomania can be categorized as a form of psychiatric disorder, which logically is the urge to sell something that does not belong in the economy. Kleptomania and criminal theft, which is not specifically mentioned as the aim of theft but is simply referred to as taking, or possessing things that one does not own, are closely related in a chapter that covers theft. Economic value is not required for goods. Everything that is useful, like money, clothes, and necklaces, as well as things that are not, like electricity and used gas, are among the topics being discussed.

Accordingly, a few strands of a woman's hair for keepsakes without the woman's permission is considered a theft, based on the assertion that two strands of hair are not worth anything. But it must be noted that criminal law has the "justifying reasons" and "forgiving reasons" symbols. Kleptomania is seen as a warning sign for criminal acts of theft. According to Article 44 of the Criminal Code, kleptomania can be used as a pardon in relation to criminal acts of theft, even if the law does not specifically address the mental health of those who suffer from it . In criminal law, reasons for expunging a crime, which includes justifying reasons and forgiving reasons, is known as:

- a) The field of justification (*Rechtvaardigingsgronden*) is a statement that explains the legal basis of a particular criminal act. Because of this, the justifying reason is seen from the perspective of the action (purpose). For example, the executioner of a dead shooter performs "taking a life" in relation to a death row inmate (Article 50 of the Criminal Code).
- b) Even if his actions still largely violate the law, excuses (*Schuldduitsluitingsgronden*) are

an excuse that highlights the difficulties faced by those who engage in criminal acts. Because of this, the reasons for forgiveness can be seen from the perspective of the person performing the criminal act. For example, because the perpetrator is not sane or crazy, thus it cannot be used to support its purpose (Article 44 of the Criminal Code).

In addition to the above factors that are considered in providing stau effect for children who commit blind criminal acts of child accountability, during the trial of His Majesty the panel of judges did not find anything that could abolish criminal liability, either justifying reasons or excuses, then the child must be accountable for all his crimes. The Judge's Decision is basically not explained by the study of justice, utility, and legal certainty caused by three elements when it is the subject of law (Verawati, 2020). As a result, there is a balance between things and obligations in the community. Finally, justice in essence provides good protection for equal rights, even though procedural justice has not provided substantial justice. However, it gives a sense of certainty and peace. If the third element is applied carefully to the judge for a particular decision, then the decision itself will not be hampered and will still highlight the importance of anything

Conclusion

investigation, prosecution, proof, and verdicts are carried out as a form of application of the Criminal Law of Theft with Violence committed by minors in accordance with the provisions of the Criminal Procedure Code and Law no.11 of 2012 concerning the juvenile criminal justice system. FM children can be described in the aforementioned accountability for their actions based on decision no. 36/pid.sus anak/2024/PN.Mdn children are subject to article 365 paragraph (2) first and second of the Criminal Code, with legal considerations based on observations made in the evidentiary conference that are closely related to each other. The defendant's statement accurately described the situation that had been carried out and made it clear that the child who was still 16 years old and the child and the victim had reconciled so that something became a consideration for the punishment of his actions. Therefore, the child is given for seven months as a form of accountability for the actions he commits, not retaliation but only for the purpose of punishment which means prevention, legal balance, and the final up as a deterrent effect on the child not to commit a crime in the future because the child is the successor of the nation, it is necessary to know that everything has been regulated in the law that all acts committed must be accounted for, especially if they have violated the law and norm. Therefore, the appropriate penalty for children is a crime with special or general conditions that have been determined by the judge so that they still pay attention to the freedom of children to avoid the attitude of the people who do not forget the mistakes of former prisoners so that they add new problems. Thus, it is hoped that the elderly will spend more time paying attention to children's associations both in the environment where they live and in the environment where children get along.

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