

An Overview of the Crime of Theft with Violence by Children

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Abstract. *Children are an asset and also the next generation of the nation, so children have the right to get the opportunity to develop, as well as the right to become a better person. However, nowadays there are many children who commit deviations, which are increasingly leading to criminal acts, such as theft by violence committed by children. This study aims to find out how the police handle children who commit criminal acts of theft with violence and what are the factors that cause children to commit theft with violence and what is the modus operandi of children who commit theft with violence. The research method used is empirical juridical. Data on children who commit crimes in theft and violence are dominated by almost 90% with children with low education. The modus operandi of perpetrators varies greatly depending on the location of the crime. The handling of the Police in dealing with the crime of theft is to take legal action.*

Keywords: Children; Police; Theft; Violence.

1. Introduction

Indonesia is one of the countries with an increasing population growth which is increasing day by day, thus affecting the socio-economic conditions of the community. This condition has the potential to cause problems in the field of security and peace, such as the rise of criminal acts or crimes of theft committed by someone to make ends meet. This happened because the lack of jobs triggered many criminals, including children, to commit crimes for the sake of their lives.

Currently many children who do deviations, as an unconventional act. The current position of children is in a social pattern that is increasingly leading to

criminal acts such as: the use of illegal drugs and narcotics, abuse, theft, rape, extortion and even murder.

Criminal acts committed by children are caused by various factors, including the negative impact of rapid development, the flow of globalization in the field of communication and information, advances in science and technology and changes in style and way of life as parents, have brought about fundamental social changes. in the life of society that greatly influences the values and behavior of children. In addition, children who do not receive love, care and guidance and coaching in the development of adaptive behavior, as well as supervision from parents, guardians or foster parents will easily be swept up in the flow of social interaction and their environment which is unhealthy and detrimental to their personal development.¹

One of the criminal acts committed by children is the crime of theft. Criminal acts of theft are increasingly being committed by children, often accompanied by aggravating circumstances to make the action easier. Children often look for shortcuts to get an item by stealing and then get money from the sale.

Theft in the Indonesian Criminal Code is regulated in Book II Chapter XXII Articles 362-367, Crime of Property, which has various types and sanctions for theft.² For theft with weighting in the Criminal Code (KUHP) is regulated in Article 363 of the Criminal Code and Article 365 of the Criminal Code which is called "Theft with qualifications" (*gequalificeerd diefstal*) or "theft with weights", because from these terms it can be seen that, because of its nature, theft is aggravated by criminal threats.³

In Islamic law act the crime of theft is regulated in Surah Al-Maidah verse 38 which means: "As for men and women who steal, cut off their hands (as) recompense for what they have done and as punishment from Allah SWT. And Allah is all-mighty, all-wise. However, whoever repents after committing the crime and corrects himself, Allah will accept his repentance. Indeed, Allah is Forgiving, Most Merciful."

There are two types of theft in Islamic criminal law, one is theft that can be punished by Hadd and the other is theft which is punishable by Tazir. Theft that is threatened with hadd is theft in which the hand must be cut off, while theft that is threatened with *ta'zir* is theft in which the hadd is incomplete or the

¹Sumpramono Gatot, *Juvenile Court Procedural Law*, (Djambatan: Jakarta, 2000), p. 58

²Lutfi, MA, Kurniaty, Y., Basri, B., & Krisnan, J. (2022). Comparative Study About *Determination of Criminal Sanctions for Theft Based on Indonesian Positive Criminal Law and Islamic Criminal Law*. Borobudur Law and Society Journal, 1(1), p. 20–30.

³Hermien, Hediati Koeswadji. *Property Crime Riches. Case Principles and The Problem*. First Printing. (Surabaya: Sinar Wijaya, 1984), p. 25.

elements and conditions of theft are not fulfilled. Therefore, because the elements and conditions for carrying out hadd are incomplete, theft is not a hadd punishment but a *ta'zir* punishment.⁴

Indonesia is a state of law regulated in Article 1 paragraph (3) of the 1945 Constitution which means that all aspects of life in this country are regulated based on the rule of law. There is an important thing in a rule of law, namely the existence of commitment and respect for upholding human rights and guarantees that all citizens share their position before the law. As stated in Article 27 paragraph (1) of the 1945 Constitution. Ideally the principles contained in the article are not only contained in the 1945 Constitution and legislation, but the most important thing is in practice or implementation.

Crime comes from the word crime which means crime. Can be called criminality because it shows an act or behavior of crime. The act of crime cannot be separated from involving the consequences it causes in society, both the consequences for individuals and groups and are institutional and organizational in nature. The resulting consequences are the yardstick for measuring a mode of crime, whether the mode of crime is in the mild or aggravating category.⁵ Crime which committed by adults, cannot be equated with the actions of children or adolescents (Juvenile Delinquency) which are usually carried out by children, because the nature and form of a child's actions must be distinguished from those of adults.

Against children who commit these crimes will be carried out legal action or legal process. Legal action or legal process for children is not enough if it is only based on material law as stipulated in the Criminal Code, because the Criminal Code has conventional legal provisions that refer to the interests of Dutch colonial law, but also because human behavior and civilization are so complex that even their development is far more advanced. faster than the existing regulations.⁶ These legal actions, which are still children, are prioritized on the aspect of protecting the rights of these children at each level of examination. This is intended as an effort to protect children as part of the younger generation. Protection is aimed at various kinds of actions that endanger balance, welfare, security and social order.

Currently not only from the perpetrators adults, theft which is carried out either without violence or with violence and by using sharp weapons is now being carried out by children. Usually these children are just tools used by adult

⁴Fauzi, SR, & Dona, F. (2022). Investigation of theft crime at the Purworejo Police. *Al-Hakim Journal: Student Scientific Journal, Sharia Studies, Law and Philanthropy*, 4(1), p. 43–64

⁵Abdul Wahid. 2000, *Criminology and Contemporary Crime*, Surabaya; Visipress, p. 7

⁶Bunadi Hidayat, *Criminalization of Children in Underage*, (Bandung, PT Alumni, 2010), p.49.

thieves. As happened in several areas which are famous for their street crimes, namely theft with violence which often occurs, one of the reasons is that the association that occurs among children is so quickly influenced by communication, the flow of globalization of information and the low level of human resources so that many children who are willing to commit criminal acts.

If the apparatus the police are late or even unable to uncover these crimes that are troubling the community which incidentally are committed by children, will cause these crimes to become more prevalent and claim many victims. Indeed, in handling these cases the police faced obstacles that resulted in a lack of disclosure of the case. Among them is the limited number of personnel in the Investigation Unit, while the number of crime groups is increasing and expanding.

This situation causes people to despair to be able to recover vehicles or items that have been lost stolen. Then another consequence is that people are more comfortable looking for their own vehicles, what is more troubling is that people are currently becoming vigilantes against suspects, who have not been proven to have committed the crime. The phenomenon of perpetrators of criminal acts that occur in many parts of Indonesia is interesting to study, this is important because if a person or group experiences a failure in fighting for their own interests, then that person or group may take actions that deviate from the applicable legal regulations. This can cause or result in harm to other people and the general public.⁷ The purpose of this research is to find out how the police handle Yang's children Committing the Criminal Act of Theft with Violence, What are the Factors Causing Children Who Perform theft with Violence and What is the Modus Operandi of Children Who Perform theft with Violence.

2. Research Methods

This type of research is empirical juridical research, meaning the issues raised, discussed and described in this research are focused on applying research data in the form of symptoms or phenomena of facts and figures as information material in research. Empirical legal research is also called research that wants to find law as a reality of society, in accordance with the principle of *iub societas ibi ius* which means where there is society there is law. Empirical legal research requires primary data, namely data originating from human interests in social life.⁸

3. Result and Discussion

⁷Hari Saheroji, *Fundamentals of Criminology*, (Jakarta: New Aksaran, 1980), p.20.

⁸Elisabeth Nurhaini Butarbutar. 2018, *Legal Research Methods (steps to find the truth in legal science)*, Bandung; Refika Aditama, p. 136

3.1. Police Handling of Children Yang Committing the Crime of Theft with Violence

In a process of achieving people's welfare, law enforcement officials should be aware of minor symptoms that can be the reason for the emergence of a crime in society. These small changes, of course, can have a big impact if they happen continuously. Based on research conducted by the author in several related agencies, there are several countermeasures that have been carried out by the Police to prevent and overcome the crime of theft committed by children, namely:

a) preventive efforts

This effort instills good values/norms so that these norms are internalized within a person. Even though there is an opportunity to commit a crime but there is no intention to do so, there will be no crime. Preventive efforts, aiming to prevent before the crime of theft committed by children. The following are examples of preventive efforts carried out by the Police, including:

- Conducting roving patrols;
- Designate police personnel in crowded places that are prone to theft;
- Carry out socialization and cooperate with the protection of women and children from related agencies, schools and to parents who have children who are no longer in school;
- Collecting data on motorcycle gangs in the regions;

b) repressive efforts

This effort is a conceptual effort to overcome crime which is taken after the crime has occurred. Countermeasures with repressive efforts are intended to take action against the perpetrators of crimes according to their actions and improve again so that they are aware that the actions they have committed are unlawful and detrimental to society, so they will not repeat them and other people will not do them again considering the sanctions that will be borne are very heavy. .

The handling of the Police in dealing with criminal acts of theft with violence, namely taking legal action by taking action in the form of conducting an investigation first to find out whether the crime of theft with violence was actually committed by the perpetrator so that when making an arrest the Police did not wrongly arrest the perpetrator. After the investigation phase is carried

out, it is tiered to the investigative stage, which takes legal action in the form of arresting and detaining the perpetrators and conducting examinations of the perpetrators until the case is transferred to the Attorney General's Office. In the case of an arrest, investigators prioritize arrests that are based on humanity and consider whether or not a child of a certain age should be arrested. The issue of arresting children is when and when such arrests are made possible according to law. In this case there are 2 (two) things, namely: (a) In the case of being caught red-handed, (b) In the case of not being caught red-handed.

When a crime is committed by a child, in the case of being caught in the act of committing a crime, the police have no obligation to arrest the child by not wearing police uniforms. On the other hand, if there is a crime committed by a minor, in the event that he is not caught red-handed but with a report and it is known that he is a child, the police are obliged to arrest him without wearing official clothes. The arrest of children must be carried out humanely by taking into account the needs according to their age and children who are arrested must be placed in the RPKA (Special Service Room for Children). If it is not available in that area, the child will be placed in the LPKS (Social Welfare Organizing Institution) in that area so that the child will still get his rights as a child.

In the process of examining children as perpetrators, the investigator is obliged to contact the parents of the perpetrators to provide assistance during the examination and to bring in social workers and legal advisors to the perpetrators during the investigation process as well as assistance from the correctional center whose function is to determine the best decisions for children through recommendations in research community and coaching. In the recommendations for social research conducted by the correctional center, it will later be considered by the judge in making a decision to sanction or sentence a child in court proceedings. In terms of detention, child detention is placed separately from adult offenders with the aim that children can get their rights as children and not have a bad influence on children.⁹

3.2. Factors Causing Yang Child Committing Violent Theft

The pattern of children's behavior is closely related to the phases or stages of development which are descriptions of the course of an individual's life which are colored by special characteristics or certain patterns of behavior. Because in general that in this developmental phase individuals experience periods of turmoil. Children who are at high risk from the start can be known or identified by parents, teachers, orphanage staff, child trainers and various other workers

⁹ <http://download.garuda.kemdikbud.go.id/article.php?article> Accessed Saturday, January 7 2023 at 15.40 WIB

who are close to children. Every perpetrator of a crime has factors that cause him to commit the crime so that a child who commits a crime must have a reason or reasons why he committed a crime.

According to Clemens Bartollas there are seven backgrounds and personal characteristics to predict the behavior of children who are at high risk of committing a crime, namely:

- a. Age, younger children if they enter a particular system will have a higher risk;
- b. *Psychological variables*, namely the nature of disputation is difficult to control and feels unappreciated;
- c. *School performance*, namely children who have problems at school with truant behavior;
- d. *home adjustments*, namely lack of interaction with parents and siblings, lack of discipline and supervision of leaving home;
- e. *Drugs and alcohol use*, namely the use of alcohol and drugs, children who have used alcohol if their parents have a history of alcohol use;
- f. *Neighborhood*(neighboring environment), where the environment easily influences children such as poverty, social problems and behavior;
- g. *Social adjustment of peers*(the influence of peer strength), friendship influences behavior including delinquency, drugs, truancy and chaos at school (troublemakers), gangs, sex and others.¹⁰

Based on data on children who commit crimes, almost 90% have low education and data shows that school-aged children of criminals stop going to school due to various factors such as the inability of their parents to pay for school, then there are also those children who prefer to stop going to school even though his parents were able to pay for his schooling but due to family disharmony factors the child did not go to school.

Children who commit crimes basically do not really understand the consequences of their actions. From the results of the study it can be concluded that the main factors causing children to be involved in criminal acts of theft include:

¹⁰Abdul Rahman. 2011, Legal Protection and Fulfillment of Children's Constitutional Rights, Makassar; Alauddin University Press, p. 63

- The low level of piety in children and the lack of supervision from parents causes children not to heed parents' advice. For example, if playing, don't come home late and choose good friends to hang out with.
- Children associate and make friends with people who are adults and have bad habits, namely frequent drinking parties and depriving cell phones and motorcycles to make ends meet.
- Children do not think that the risk of unlawful acts if caught will be serious criminal sanctions.
- Children are not afraid to repeat actions that violate the law or seize other people's belongings, if someone invites them to do so, because they always succeed and have felt the pleasure of being the result of several cellphone seizures.

3.3. Modus Operandi of Children Who Perform theft with Violence

Modus operandi is a technique or method used by the perpetrator to commit a crime. The modus operandi used by perpetrators varies greatly depending on the location of the crime and sometimes the modus operandi is planned or not. Even the perpetrators, numbering more than 2 people, must have their own roles and tasks and use a well-planned and neatly arranged modus operandi so that the crimes committed can run smoothly and the perpetrators can easily escape after committing the crime.

As an example of a case where the modus operandi used by children as perpetrators of theft with violence is that children together with adult perpetrators ride motorbikes together looking for targets then when they find targets, the perpetrators approach the victim who is sitting on his motorcycle then the perpetrator immediately takes out a sickle type sharp weapon and threatens the victim to kill the victim if the victim does not give him his motorbike. So with this threat the victim finally gave his motorbike to the perpetrator. In addition to the modus operandi above, there are also several methods used by perpetrators to commit theft by force, such as when committing acts of theft by force on the streets where the perpetrators numbered more than 2 people or in groups. 2 people in a group of people followed the victim and then 2 people in a group were ready to stop the victim when the victim passed so that the victim could not escape. The perpetrators also often carried sharp weapons and pointed sharp weapons while threatening the victim with the aim of the victim being afraid and giving away their belongings, but if the victim wanted to fight back the perpetrator would immediately commit physical violence in the form of injuring the victim's body such as hitting, slapping, kicking, and slashing victim's body.

Perpetrators who commit theft with violence will observe certain times, namely between maghrib time at 18.00 WIB or 23.00 WIB and carried out in quiet areas and sometimes from 04.00 WIB to 05.00 WIB with the target of women who to the market or greengrocer around. Usually the perpetrators use the modus operandi by overtaking the victim and then one of the perpetrators takes out his sharp weapon to threaten the victim and the victim stops the vehicle he is driving. After the victim stopped, the perpetrator carried out the action by threatening while taking the victim's valuables and running away. However, if the victim resisted, the perpetrator would stab, stab and electrocute the victim to seize the victim's belongings.

4. Conclusion

The handling of the Police in dealing with criminal acts of theft with violence is to take legal action by taking action in the form of conducting an investigation first. After the investigation phase is carried out, it is tiered to the investigative stage, which takes legal action in the form of arresting and detaining the perpetrators and conducting examinations of the perpetrators until the case is transferred to the Attorney General's Office. After the file was declared complete by the Prosecutor's Office, the investigator then handed over the perpetrators along with the evidence to the Prosecutor's Office. Several efforts have been made to tackle the crime of theft in several areas, namely, preventive efforts and repressive efforts. Countermeasures with repressive efforts are intended to take action against the perpetrators of crimes according to their actions and improve again so that they are aware that the actions they have committed are unlawful and detrimental to society, so they will not repeat them and other people will not do them again considering the sanctions that will be borne are very heavy. Data on children who commit crimes of theft by children are almost 90% all of them have low education. Factors of economic conditions that do not support the fulfillment of the perpetrators' subsistence needs, social environmental factors of the perpetrators, and law enforcement factors that have not provided legal awareness for the perpetrators of the crime of motorcycle theft. The modus operandi used by perpetrators varies greatly depending on the location of the crime and sometimes the modus operandi is planned or not. As an example of cases that occurred in several areas where the modus operandi was used by children as perpetrators of theft by violence, namely children together with adult perpetrators riding motorbikes together looking for targets, then when they found targets, the perpetrators approached the victims who were sitting on their motorbikes, then the perpetrators immediately took out weapons sharp type of sickle and threatened the victim to kill the victim if the victim did not give him his motorbike. So the victim gave his motorbike to the perpetrator.

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