

Legal Analysis of Criminal Punishment Against Children as Perpetrators of Crimes Aggregated Theft Criminal

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Abstract. *This study aims to determine, examine, and analyze: (1) The purpose of writing this thesis is to find out the basic considerations of judges in imposing criminal sanctions on children as perpetrators of the crime of theft with aggravating circumstances, (2) to know the weaknesses of punishing children as perpetrators of the crime of theft at this time, and (3) to know the concept of punishing children as perpetrators of the crime of theft. in the future based on the value of justice. The approach method used in this study uses a normative juridical. The specifications of this study are descriptive analytical. Based on the results of the study, it can be concluded that (1) the basis for the judge's considerations in imposing criminal sanctions on children as perpetrators of the crime of theft with aggravating circumstances of course the panel of judges used the basis of consideration for punishment. what was handed down was felt to be appropriate and fair. (2) The weakness of punishing children as perpetrators of the crime of theft at this time is in the legal structure such as the mental and moral of the relevant law enforcement officers which is inadequate, the substance factor is that there are articles that contain conflicts, or are vague/ ambiguous or have a legal vacuum that has not yet realized justice. for children, as well as cultural factors, namely the sometimes lack of public understanding of the restorative justice process and its objectives as well as trust in the implementing officers. (3) The concept of punishing children as perpetrators of criminal acts of theft in the future is based on the value of justice, which if you look at the comparison between Malaysia, the Netherlands and Indonesia, it is felt that the concept of punishing children as perpetrators of criminal acts will bring about justice in accordance with the prevailing values of Pancasila. in Indonesia.*

Keywords: Children; Juridical; Punishment; Perpetrators.

1. Introduction

The Republic of Indonesia is a country based on law as stated in Article 1 Article 3 of the 1945 Constitution of the Republic of Indonesia. Explicitly, in in the Opening of the 1945 Constitution of the Republic of Indonesia in the fourth paragraph clearly states that the purpose of forming a state government Indonesia, among other things, is to protect the entire Indonesian nation and all Indonesian bloodshed, advancing public welfare, improving life nation, and participate in implementing world order.

Behavior that does not conform to norms or can be called deviation from the agreed norms turns out to result indisruption of the order and tranquility of human life. Deviations that like that, usually society will label it as a violation, even crime. Crime in community life is a social phenomenon that will always face by every human being, society, and even country.

Technological developments in the 4.0 era influence behavior and thought patterns. humans in national and state life, so that it has an impact on life, namely giving rise to treatment that is not in accordance with norms or existing regulations and will trigger the emergence of crime in various environments. This response cannot be separated from various factors, both law enforcement itself and external influences. Handling of various crimes, both conventional and criminal or of a nature transnational crime carried out by truly professional apparatus truly an expert in his field and has practical experience related to the field handled. Proportional legal protection is very necessary for society. In recent years, the crime of theft has developed with violence and aggravation and the perpetrators are children. This behavior is not in accordance with the norms that exist in society so that violations arise violations that ultimately tend towards criminal acts. Criminal acts committed by children or known as juvenile delinquency Nowadays it is increasingly widespread and diverse, both in frequency and in seriousness. quality of crime. This can be seen from the many cases that have occurred, including fights, extortion/mugging, abuse and so on. Cases of children who in conflict with the law, according to data from the Directorate General of Corrections Ministry of Law and Human Rights, shows an increasing trend in the period 2020 to 2023. As of August 26, 2023, it was recorded that almost 2,000 children were in conflict with law. As many as 1,467 of the children have the status of detainees and are still undergoing the process justice, while 526 children are serving their sentences as prisoners. Based on problems with children in conflict with the law The government has enacted Law Number 11 of 2012 concerning Juvenile Criminal Justice System. Juvenile justice aims to provide the best for children, without sacrificing the interests of society and upholding justice. The goal Juvenile Justice is no different from other justice systems, namely examining, deciding and resolve child matters. In this case, the implementation of guidance and protection for children, support is needed both in terms of institutions and

better and more accommodating legal instruments.

Theft as regulated in Article 363 is theft which. Some acts are punishable by a maximum of 7 years in prison, namely livestock theft, theft during fire, disaster, accident, riot and war, theft during at night in a house or enclosed yard where there is a house, theft by two or more people carried out together, theft by means of dismantle, break or climb or by using false keys, orders fake or fake job clothing where if the child in this case is the perpetrator this crime.

Based on the background that has been described, this article examines Legal analysis of criminal penalties against children as perpetrators of the crime of theft with aggravation.

2. Research Method

The approach method used in this research is normative juridical. The specifications of this research are descriptive analytical. The data sources used are secondary data obtained from literature study research consisting of materials primary law, secondary legal materials, and testier legal materials.

3. Results And Discussion

3.1. Basic Considerations of Judges in Imposing Criminal Sanctions on Children as Perpetrators of Aggravated Theft

A quality judge's decision is a decision that is based on the judge's considerations are in line with the facts found in the trial process, laws and also the judge's beliefs without any intervention from any party so that it can be professionally accounted for to the public. Mertokusumo said that the judge's decision is a statement by the judge, which has capacity as an official who has authority based on law an invitation in the form of a statement in a trial process which has the aim of ending it a matter between the parties.

The basis for judges' considerations in imposing criminal sanctions on children as a perpetrator of the crime of theft with aggravating circumstances can be seen from 2 perspectives, namely the legal perspective and the empirical perspective. These two perspectives can explain as follows:

1. Basis for Consideration in Legal Review

In a legal review, it can be interpreted as the judge's considerations which are seen from a legal perspective. This means that in deciding the crime of theft committed by children, namely Article 363 paragraph (1) 4 of the Criminal Code, panel of judges must examine carefully and precisely based on what is revealed in the place of trial, namely based on the available evidence, whether the act the defendant fulfills the elements of Article 363 paragraph (1) 4 of the Criminal Code. In this case regarding evidence is stated in Articles 184-189 of the Criminal Procedure Code. Article 184 of the Criminal Procedure Code explains the types of evidence including witness statements, expert

statements, letters, instructions and statements the accused, while Articles 185-189 of the Criminal Procedure Code explain in more detail regarding each each of the 5 types of evidence that have been stated in Article 184 paragraph (1) of the Criminal Procedure Code.

2. Basic Considerations in Empirical Review

In an empirical review, it can be interpreted as the judge's considerations which are seen from a non-legal aspect. The application of the severity of a punishment imposed by the panel of judges against the defendant, especially the type and duration of the sentence which is imposed can be seen from the basis of considerations in the empirical review in the form of the motivation or intention of the accused to commit the crime, then the facts facts obtained in the trial process based on evidence and physical evidence which is submitted where the facts exist as a matter or condition which burdensome punishment for the accused and there are some which are as a matter or circumstances that mitigate the criminal punishment of the accused.

Non-juridical provisions, justice and empathy of a panel of judges who also becomes the basis for judges' considerations in sentencing

The defendant of course also influences the severity of the punishment, apart from that

factors inherent in the defendant's self and actions.

- a. Non-juridical considerations inherent in the defendant's actions:
 1. Harming the country or potentially harming the country
 2. Disturbing the community
- b. The basis for the Panel of Judges' considerations attached to the Defendant:
 1. The defendant regretted his actions
 2. The defendant's attitude at trial
 3. Never been convicted
 4. The defendant has family responsibilities
 5. Not yet had time to enjoy the fruits of his crimes

In relation to the theory of punishment, the judge has issued a verdict as a child who is sentenced to a criminal offence, he must also be burdened with paying the costs case. Then, the judge's decision basically took into account Article 363 paragraph (1) 4th Criminal Code, Article 71 of Law Number 11 of 2003.

2012 concerning the Juvenile Criminal Justice System and Law Number 8 of 1981 regarding Criminal Procedure Law and other relevant laws and regulations.

In making a decision, the judge bases it on the facts revealed in a trial where

the judge's decision is based on the charges, witnesses, letters and evidence (legal considerations) as well as several non-legal considerations as contained in mitigating and aggravating matters, referring to the law laws that are relevant to the case being examined. Based on considerations- the considerations contained in the decision can be concluded that the considerations legal considerations are more dominant than non-legal considerations.

Basically, children who commit crimes at a certain age are not yet can be aware of what he is doing, meaning that children at a certain age also not being able to distinguish between good and bad deeds is certainly also affects the child not being able to realize his actions, especially if the child is at that age certain people commit crimes and because of their actions are subject to criminal proceedings then psychologically it will have an impact in adulthood.

Based on the description above, it can be concluded that the panel of judges in deciding a case reflects the existence of criminal punishment as adjusted to Article 71 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System because the age of the Child as the Perpetrator is under 14 years or as explained in The Act.

3.2. Weaknesses of Criminalizing Children as Perpetrators of the Crime of Theft With Weighting at This Time

The weakness of criminal punishment for child criminals is: which the Juvenile Justice System Act stipulates that before Through the trial process the judge is obliged to try to resolve the child's case through diversion or also known as resolving children's cases outside the courts byrestorative justice. there are several weaknesses in resolving cases children through diversion *restorative justiceis*:

1. Criminal acts committed are punishable by severe punishment
2. Difficulty in obtaining consent from the victim/victim's family
3. The mediator's ability greatly influences the success of the process. *restorative justice*
4. Success of the process *restorative justice*it really depends on the family which is the place where the child is returned
5. Frequent occurrence *re-offending* or a re-offense by the perpetrator who has undergone *restorative justice*
6. Lack of public understanding of the process *restorative justice* and its purpose and trust in the implementing officers.

In addition, Article 70 states, "The lightness of the act, personal circumstances. Children, or circumstances at the time the act was committed or which occurred later an be used as a basis for judges' considerations for not imposing a criminal sentence or

take action by considering aspects of justice and humanity.

This article is the basis for judges not to impose a criminal sentence or impose actions on children. This article is the reason for forgiveness to children which can be used by judges to not impose a criminal sentence or impose measures on the Child. The provisions of this Article are the basis considerations for judges that are non-judicial in nature and provide freedom to Judges in handing down decisions in children's cases.

Article 71 paragraph (4) states that criminal penalties imposed on children are prohibited.

violating the dignity and honor of children. Sentencing children to imprisonment (confiscation freedom) towards children, is it not a violation of dignity and Child dignity? in Article 79 paragraph (1), "Criminal restrictions on freedom are imposed in the event that a child commits a serious crime or a crime accompanied by violence". In the Criminal Code (KUHP) there is no classification which is clear regarding the type of serious crime, so that there is no legal certainty.

So that the author can analyze that the things that have been described above This shows that the criminal rules or in this case the imposition of criminal penalties imprisonment of children (Law Number 11 of 2012 concerning the Penitentiary System) Juvenile Criminal Justice) still has weaknesses in the form of conflicts, or vague/ambiguous or legal vacuum that has not yet realized justice for children. so in this case, it is precisely these articles that are hindering the realization of fair criminal sanctions, which means it does not conform to the existing theory as purpose of punishment.

If associated with the theory of the legal system, as Lawrence M. Friedman stated that the effectiveness and success of law enforcement depends on three things elements of the legal system, namely the legal structure (*structure of law*), legal substance (*substance of law*), and legal culture (*legal culture*) namely as follows:

a) Legal structure factors

Legal structure is related to institutions or law enforcement which includes performance or can be said to include implementation or implementation of the law. Based on the analysis with related theories, then The author formulates the obstacles to the application of criminal penalties against children as perpetrators.

criminal act in this case the crime of theft as in the factors the imposition of a sentence or the examination process, when viewed from legal structure factors, namely the mental and moral aspects of the relevant law enforcement officers which is inadequate, the welfare of law enforcers who handle the problem child crime is still low, the number of law enforcement officers is inadequate compared to the area, the professionalism of the apparatus is inadequate

so that it still prioritizes the ego, still focuses on criminalization, not rehabilitation.

b) Legal substance factors

Substance means the rules, norms, and behavioral patterns of people within the real system emphasizes the law of life, not just regulations in legislation. Based on the related theory that

analyzed by the author, it can be formulated that there are several weaknesses in several articles in Law Number 11 of 2012

regarding the Juvenile Criminal Justice System, namely in Article 71, Article 79 paragraph (1) and Article 81 paragraph (1). So it still has weaknesses in the form of the existence of conflict, or vague/ambiguous or legal vacuum that has not yet been realized justice for children. So in this case, it is precisely these articles that hindering the realization of fair criminal sanctions, which means that they are not appropriate with existing theories as the purpose of punishment.

c) Legal culture factors

Where legal culture is the atmosphere of social thought and social power.

which determines how the law will be used, avoided, or misused. Legal culture is certainly very closely related to awareness community law. Because the higher the community's legal awareness, the more it will create a good legal culture and can change people's mindsets regarding the law so far. If it is associated with related theories, then the author analyzing that it is related to the criminalization of children as perpetrators of crimes Crime in this case theft is sometimes due to a lack of public understanding about the process *restorative justice* and its purpose and belief in the implementing officer.

According to the author, it should be replaced with imprisonment. as a punishment and is in accordance with Article 71 of Law Number 11 2012 concerning the Juvenile Criminal Justice System as per point b, namely criminal with the condition that it includes coaching outside the Institution, community service or supervision. So it can be concluded that the criminal rules or in This is the imposition of a prison sentence on a child (Law Number 11 of 2003).

2012 concerning the Juvenile Criminal Justice System) still has weaknesses in the form of the existence of conflict, or vague/ambiguous or legal vacuum that has not yet realized justice

for children so that it is not in line with the objectives of criminal punishment.

3.3. Concept of Implementation *Restorative Justice* by the Prosecutor's Office in Case Resolution General Criminal Acts in the Future Based on Justice Values

Malaysian criminal law provisions regarding the punishment of children are still widely shortcomings which are still not compatible with international CRC instruments. Starting from the minimum age, criminal responsibility is

still below international CRC instrument, namely 10 years. In addition, the application of criminal

regarding the minimum age also does not comply with the legal framework explained in the CRC, which strongly opposes the application of the violation exception on children as perpetrators. Malaysia applies superiority laws that can provide an opportunity for prosecution of children, this is contained in the regulations *the Security Case Regulation 1975* Article 3 paragraph (3).

Meanwhile in Indonesia, specifically in the legal regulations that specifically applicable, namely Law Number 12 of 2011 concerning the Information System Juvenile Criminal Justice as related to the current urgency that in Article Article 71 paragraph (1) letter b number 2, uses the term community service crime.

Article 76 (1) Community service is a punishment intended for educate children by increasing awareness of community activities positive. Community service for children is a minimum of 7 (seven) hours and a maximum of 120 (one hundred and twenty) hours. The Child SPP Law does not mention the type of criminal acts, minimum age limits, and the presence of children during the period of serving their sentence.

criminal punishment of community service. Regarding the new concept of types of punishment in the new Indonesian Criminal Code, namely in Law Number 1 of 2023 concerning the Criminal Code Criminal Code (KUHP) contains a number of new concepts of punishment which are different compared to with the previous Criminal Code. Updates to the concept of punishment in the National Criminal Code which will be in effect in 2026, it is hoped that it will be able to answer current conditions for replacing the colonial concept which is outdated and no longer answers the problems new issues that arise. Criminal law reform can also be seen from the perspective criminal law enforcement or sentencing system. The National Criminal Code includes the objective variable as a new variable as a condition for sentencing.

According to the author's analysis, if it is linked to the Pancasila theory of justice as it includes social justice for all Indonesian people with values Belief in the Almighty God to create a just and civilized humanity to wards the Unity of Indonesia through deliberation and consensus. There fore Good legislation can be concluded that the regulations legislation that must meet the basic requirements for the formation of regulations legislation in accordance with what the Indonesian nation has. This is of course it must be in accordance with justice based on Pancasila, so that later it can be legal justice is realized which is recognized by the entire Indonesian nation without doubt the existing form of legal justice, because basically legal justice formed based on several principles of forming statutory regulations which is based on Pancasila justice. So that with the concept of criminalization for children in the new

Criminal Code it is felt that it will achieve justice in accordance with values Pancasila.

4. Conclusion

The basis for judges' considerations in imposing criminal sanctions on children as the perpetrator of the crime of aggravated theft, of course the panel of judges using the basis of consideration so that the punishment imposed is deemed appropriate and as fair as possible. The basis for consideration used is the facts in the trial. which is supported by actual evidence and material evidence. As is the case This is also based on the aggravating circumstances that impose a penalty on the defendant.

and there are mitigating factors for the defendant. So it is in accordance with the system criminalization of children as perpetrators of criminal acts, in this case criminal acts aggravated theft. Weaknesses in criminalizing children as perpetrators the crime of aggravated theft at this time is with the existence of weaknesses in both legal structure, substance factors and cultural factors. The concept criminalization of children as perpetrators of the crime of aggravated theft in the future based on the value of justice, if you look at the comparison with the State of Malaysia, the Netherlands with the State of Indonesia, showing the existence of regulations that will apply in the future, then the concept of child criminalization as the perpetrators of the crime who are required should be able to realize the justice that is in accordance with the Pancasila values that apply in Indonesia.

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