

Juridical Analysis in The Case of The Crime of Theft with Aggravation Committed by Minors

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ABSTRACT

Law No. 11/2012 regulates the special treatment of children in conflict with the law, which is different from adult criminal offenders. A child according to Article 1 number 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is a person who is not yet 18 (eighteen) years old, including children who are still in the womb. Children are vulnerable groups in society who need protection. This research aims at the qualification of criminal acts of theft with aggravation committed by children in the view of criminal law and knowing the basis of the judge's consideration in imposing punishment with aggravation committed by children. applied in order to answer the problem of criminal acts of theft with aggravation committed by children in the view of criminal law. The type of research used in this research is normative juridical by focusing on positive law and through a statutory approach. the results of this study know the basis of the judge's consideration in deciding a case of theft committed by a child and the judge's consideration is in accordance with the applicable provisions in the criminal code (KUHP).

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I. INTRODUCTION

Crime is a form of "deviant behavior" that always exists and is inherent in every form of society, so there is no society that is free from crime. Deviant behavior is a real threat or threat to the social norms that underlie life or social order, can cause individual tensions and social tensions. and is a real threat or potential for the continuation of social order¹.

Theft is a social phenomenon that is always faced by society, various efforts made by the authorities and citizens themselves to eliminate it occur continuously in society in order to create a safe, comfortable and peaceful environment, but these efforts are unlikely to be realized in their entirety, because every crime will not be eliminated easily but can only be reduced in intensity and quality.²

A child according to Article 1 number 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Children are a vulnerable group in society that needs protection. The purpose

¹ Barda Nawawi Arif, Legislative Policy in Combating Crime with Imprisonment, Genta Publishing, Yogyakarta, 2010, p. 11.

² Endro Didik, Criminal Law, Surabaya: Airlangga University Press, 2016, 1st printing, Page 63.

and rationale for legal protection of children cannot be separated from the goal of realizing children's welfare as an integral part of realizing overall social welfare.³

Law No. 11/2012 regulates special treatment for children in conflict with the law, which is different from adult offenders. For example, ½ (one-half) of the maximum penalty for adults. With the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is hoped that it can reduce the imposition of punishment against children and should be able to reduce children committing criminal acts, especially in aggravated theft.

This study aims to determine and analyze the qualifications of the crime of theft with aggravation committed by children in the view of criminal law and to determine and analyze the basis for the judge's consideration in imposing a sentence with aggravation committed by children. This research uses normative juridical methods using library legal research conducted by examining library materials or secondary data using deductive thinking methods (a way of thinking in drawing conclusions drawn from something general in nature that has been proven to be true and the conclusion is aimed at something specific, as well as the approach of the Law and cases with primary legal materials that are binding and secondary legal materials as references.

The previous research discussed the qualifications of theft committed by children according to criminal law and the application of criminal law to the crime of theft with aggravation committed by children. Other research discusses the legal arrangements regarding the crime of theft with aggravation and the factors that cause the crime of theft with aggravation committed by children and criminal liability for theft in Decision Number 13/Pid.Sus-Anak/2016/PN Mdn so that the author is interested in developing this previous research with a different analytical study.

Based on the description of the background of the problem above, the author raises the above problems into a study in order to better understand the problem and pour into the title: "JURIDICAL ANALYSIS IN THE CASE OF THE CRIME OF THEFT WITH AGGRAVATION COMMITTED BY MINORS"

II. RESEARCH PROBLEMS

- 1 What is the qualification of the crime of theft with aggravation committed by children in the view of criminal law?
- 2 What is the basis for the judge's consideration in imposing a verdict on juvenile offenders of aggravated theft?

III. RESEARCH METHODS

The type of research used in this research is normative juridical by focusing on positive law in the form of legislation and this research requires secondary legal material as the main data, and through a statutory approach.

The approach method used in the preparation of this thesis is normative juridical research (normative legal research method). The normative juridical research method is a library legal research conducted by examining library materials or secondary data using deductive thinking method (a way of thinking in drawing conclusions drawn from something general in nature which has been proven to be true and the conclusion is aimed at something specific).

IV. RESULT AND DISCUSSION

1. Qualification of the crime of theft with aggravation committed by children in the view of criminal law

The crime of theft is an act classified as a general criminal offense in which a crime against property occurs. Crimes against property are attacks on the legal interests of other people's property.

The crime of theft is a criminal act regarding the taking of property without the knowledge of the owner which results in loss and this crime often occurs in the community. The author in conducting his research obtained an overview that now who commits a criminal offense such as theft, the perpetrator does not immediately become a defendant but goes through the process of determining the status of suspects, suspects, and then defendants through investigations and investigations to find the truth of the criminal acts that have been committed by who, why, where, and for what purpose.

As regulated in the Criminal Code (KUHP), there are four types of theft, namely:

- 1 Ordinary theft (Article 362 of the Criminal Code);
- 2 Theft with aggravation (Article 363 of the Criminal Code);
- 3 Petit larceny (Article 364 of the Criminal Code); and
- 4 Theft with Violence (Article 365 of the Criminal Code)⁴

³ Arif Gosita, *Child Protection Issues (Collection of Essays)*, BIP Gramedia Group, Jakarta, 2004, p.43.

⁴ Andi Hamzah, *Certain Offenses in the Criminal Code*, Sinar Grafika, Jakarta, 2009, p.249.

In essence, every criminal act has external elements (facts) by the act, containing behavior and consequences caused by the act⁵. In order for a person to be proven to have committed the crime of theft, there must be evidence that meets all the elements of the crime of theft in the main form as regulated in Article 362 of the Criminal Code.

The crime of theft with aggravation is included in Article 363 of the Criminal Code. The crime of theft with aggravation is also known as theft with qualification. What is meant by theft with aggravation is ordinary theft accompanied by certain aggravating circumstances that are punishable by a minimum imprisonment of 7 (seven) years and a maximum of 9 (nine) years.⁶

Based on the provisions of Article 363 of the Criminal Code which reads:

(1) Shall be punished with a maximum imprisonment of seven years:

- 1 Theft of livestock;
- 2 Theft committed during a fire, eruption, flood, earthquake or seaquake, volcanic eruption, shipwreck, shipwreck, train wreck, riot, rebellion or danger of war;
- 3 Burglary by night in a dwelling or enclosed yard attached to a dwelling, which is committed by a person who is there, without the knowledge or will of the person entitled person;
- 4 Theft committed by two or more persons;
- 5 Theft by means of breaking, cutting or climbing into the place where the crime has been committed, or by means of false keys, a false order or a false costume.

(2) If the theft described under point three is accompanied by one of the circumstances described under points four and five, a maximum imprisonment of nine years shall be imposed.⁷

Theft with violence or threat of violence. This type of theft is regulated in Article 365 of the Criminal Code, which is formulated as follows:

- a. By a maximum imprisonment of nine months shall be punished theft preceded, as well as or followed by violence or threat of violence, against persons, with intent to prepare or facilitate the theft, or in case of arrest, to enable the escape of oneself or other participants, or to retain possession of the stolen property.
- b. Shall be punished by a maximum imprisonment of twelve years:
The first qualification, if the act is committed at night in an existing dwelling or enclosed yard, on a public road, or in a moving train or tram. The second qualification, if the act is committed by two or more persons in concert. The third qualification is if the entry to the place where the crime is committed is by means of a false key, a false order or a false costume. The fourth qualification is if the act results in serious injury.
- c. If the act results in death, a maximum imprisonment of fifteen years shall be imposed.
- d. Shall be punished by capital punishment or life imprisonment for a maximum period of twenty years, if the fact results in a serious physical injury or death and is committed by two or more persons in concert, and is accompanied by one of the circumstances described in n. 1 and 3.

2. The basis of the judge's consideration in imposing a verdict on juvenile offenders of theft with aggravation

The role of juvenile judges is no different from the role of judges in general, which is obliged to examine, try and decide on a case submitted to them. The judge's consideration or what can also be called the Ratio Decidendi is the basic argument or reasoning of the judge used as a consideration in deciding or imposing a sentence.⁸

Judges in deciding cases against children as perpetrators of criminal acts consider mitigating and aggravating circumstances. This has been determined in Article 197 Paragraph (1) letter (f) of the Criminal Procedure Code which states that the verdict of conviction contains the mitigating and aggravating circumstances of the defendant, according to the judge in imposing sanctions / punishment against children not only as a form of accountability for their actions but by imposing sanctions on children is a form of guidance so that children can improve their behavior and attitudes in the future as capital in living life as the next generation of the nation.

Therefore, the most important consideration of the Judge in imposing imprisonment on children is juridical consideration, namely drawing facts in the trial that arise which is the conclusion of the testimony of witnesses and testimony of child defendants and evidence submitted and examined at the court session. After that, the subjective consideration of the Judge or his/her belief based on Moral Justice and Social Justice, as well as the

⁵ Waluyudi, Indonesian Criminal Law, Jambatani, Jakarta, 2003, pp. 71

⁶ Ida Bagus and others, JUDGE'S CONSIDERATION IN SENTENCING THE CRIME OF THEFT WITH A CRIME COMMITTED BY A CHILD, I

⁷ Ravinska Audina Zhasadoma and Budi Setiyanto, 'VIOLENCE BY CHILDREN', 4.1 (2014), 95-103.

⁸ Rusli Muhammad, Contemporary Criminal Procedure Law, Citra Aditya Bakti, Bandung, 2010, p. 193.

principles of justice, the principle of expediency, and the principle of legal certainty or non-judicial considerations⁹

Based on the research conducted, the judge's consideration in imposing criminal charges against children as perpetrators of theft is:

1 Juridical considerations

Juridical consideration means legal considerations based on the circumstances that occur and are revealed in the trial and this has been regulated in such a way by the laws and regulations that must be included in a decision. juridical considerations consist of:

- a) The indictment of the Public Prosecutor
- b) Witness testimony
- c) Testimony of the defendant
- d) Evidence
- e) Articles of criminal law

2 Non-judicial considerations

The background of the child's actions is every thing that encourages the child to commit a criminal offense. for example economy, poverty, deprivation, or misery is an economic situation that is very hard to encourage the defendant to commit his actions. Children whose family economic situation is poor are difficult to fulfill the needs of life, while the needs of life are many, finally for those who are weak in faith, easily determine the choice to commit a crime.¹⁰

As for the various factors of non-judicial considerations, among others:

- 1) The background of the act, namely the circumstances that gave rise to the desire and impulse in the defendant to commit a criminal offense.
- 2) The consequences of the defendant's actions, namely the victims and losses suffered by others.
- 3) The physical and psychological condition of the defendant before committing a criminal offense, the physical condition is related to the maturity of the defendant, the psychological condition is related to the emotional condition, the existence of a sense of resentment, and being pressured or threatened by others.
- 4) The socio-economic situation of the defendant, namely the background of the defendant's economic conditions that make a criminal offense.
- 5) Religious factors, every court decision always begins with the sentence "DEMI KEADILAN BASED ON THE KINGDOM OF THE Almighty God" The meaning of this deity shows that understanding has a religious dimension, therefore, the judge's attachment to religious teachings is not only merely putting the word "deity" at the head of the decision, but it must be a measure of assessment of every action of the judges themselves or especially the perpetrators of criminal acts.

According to the author, with various considerations, the judge in handing down the decision was in accordance with the applicable laws and regulations, namely the Criminal Code and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In imposing imprisonment, the judge has been guided by Article 81 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In addition, the judge has also listened to the community research report for the juvenile criminal justice process.

V. CONCLUSION

Based on the discussion above, the author can conclude the following:

The qualification of the crime of theft with aggravation committed by minors is listed in Article 363 (KUHP) with aggravating elements:

(1) Threatened with imprisonment for up to seven years:

- Theft of livestock;
- Theft committed during a fire, eruption, flood, earthquake or seaquake, volcanic eruption, shipwreck, railway accident, riot, rebellion or danger of war;
- Burglary by night in a dwelling or enclosed yard, committed by a person present therein without the knowledge or will of the person entitled thereto;
- Theft committed by two or more persons;
- Theft by means of breaking, cutting or climbing into the place where the crime has been committed, or by means of false keys, a false order or a false costume.

⁹ Bunadi Hidayat, 2009, Criminalization of Minors, PT. Alumni, Bandung, p. 93

¹⁰ Ainal Mardhiah, Judge at the District Court of Banda Aceh, interview dated September 11, 2018.

(2) If the theft described under point three is accompanied by one of the circumstances described under points four and five, a maximum imprisonment of nine years shall be imposed.

The most important consideration of the Judge in imposing imprisonment on children is juridical consideration, namely drawing facts in the trial that arise which is the conclusion of the testimony of witnesses and testimony of child defendants and evidence submitted and examined at the court session. After that, the judge's subjective considerations or beliefs based on Moral Justice and Social Justice, as well as the principles of justice, the principle of expediency, and the principle of legal certainty or non-judicial considerations. With various considerations, the judge in imposing a verdict is deemed to be in accordance with the applicable laws and regulations, namely the Criminal Code and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In imposing imprisonment the judge has been guided by Article 81 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In addition, the judge has also listened to the community research report for the juvenile criminal justice process.

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