

## JURIDICAL REVIEW OF THE CRIME OF VIOLENT THEFT BY UNDERAGE PERSPECTIVES VIEWED FROM THE PERSPECTIVE OF THE CRIMINAL LAW BOOK (KUHP)

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**Abstract:** Law is a series of rules regarding the behaviour of people as members of society both verbally and in writing; every member of the community, including children, certainly has various diverse interests, which can cause clashes or problems with one another over their respective interests. The method used in this research is the juridical-normative method. The approach used in this research is the statute approach and the case approach. The source of legal material used in a study can be in the form of data obtained through library materials and directly from the public. The analytical method used is descriptive qualitative analysis, presenting a survey of the data obtained from the research object. The study results are that legal provisions weight the perpetrators of the theft crime against the corruption of robbery committed by children based on decision Number: 8/Pid.Sus Anak/2020/PN.Dps. The application of punishment given to children who commit criminal acts of theft is by imposing prison sentences. The basis for the judge's legal considerations in imposing criminal sanctions on children as perpetrators of the crime of robbery with violence and weighting is the prosecutor's indictment, the purpose of the punishment, mitigating and aggravating matters, the panel of judges tends not to impose the maximum sentence, the hope that the perpetrator does not repeat his actions, the motive for the crime, the attitude of the perpetrator after committing a crime, the consequences, as well as the application of theories related to the primary considerations of judges in deciding cases in court hearings, namely legal certainty, expediency and legal justice.

**Kata kunci:** Law, Criminal acts of theft, Regulations, Behavior, Criminal Sanctions

## I. INTRODUCTION

Law is a series of rules regarding the behaviour of people as members of society both verbally and in writing; every member of the community, including children, certainly has various diverse interests, which can cause clashes or problems with one another over their respective interests. According to Soerjono in (Sari et al., 2019), it states that law is the whole of the rules or rules in a common life that can be enforced with a sanction. If this problem occurs, the community will be disturbed by this problem; how can this problem be avoided and resolved correctly. So the law has the goal of creating justice in society (Shalihah, 2017). This law creates certain relations in society. In regulating all respects, the law aims to establish a balance between various interests, this balance does not only lie in the physical world, but most of it lies in the spiritual world amid society (Prodjodikoro, 2003). So if you want to achieve safety, happiness, and benefit in the midst of society, both physically and spiritually, then do it, respect it, and don't violate the laws that regulate it.

Children are the nation's next generation; therefore, a treatment that pays attention to the development and role of children as the nation's next generation is something that the Government must pay attention to (Adi, 2022). For children who are not yet mature mentally and physically, their needs must be met; their opinions must be respected, and they must give the right and conducive education for personal and psychological growth and development so that they can grow and develop into children who can be expected as successors to the nation and state, and obtain legal/judicial protection in order to guarantee their interests as members of society (Verawati, 2020). Children have the potential and an essential role in the continuity and existence of the government in the future (Fitriani, 2016). This responsibility must be carried out in the future to realise the ideals of the country and state. To assume this responsibility, children are allowed to grow and develop optimally. Opportunities to grow and develop include more than optimal. Opportunities for growth and development include physical growth and development and cover children's growth, social, and mental development (Dinda et al., 2020). Viewed from the side of national and state life, children, according to Andi Syamsi Alam, are: "Heirs and, at the same time, portraits of the nation's future in the future, future generations of the nation's ideals, so that every child has the right to a proper survival, to grow and develop and participate and are entitled to protection from acts of violence and discrimination as well as rights and freedoms in doing anything (Alam & Fauzan, 2008)".

Taking other people's things using violence, more so at night, is one of the criminal acts of theft by force regulated by law, and this develops from time to time and is a reality in life which requires special handling. This is because the crime of theft by tapping at night by children will cause unrest in people's lives. Therefore, various efforts are always made to deal with these criminal acts, even though, in reality, it is tough to completely eradicate criminal acts because criminal acts will constantly develop along with societal times. Criminal acts can be committed by anyone and against anyone, including children as perpetrators and as victims (Ramadhan, 2020). Everyone who commits a crime must be legally responsible for his mistakes.

A criminal act is an act undertaken by a person who breaches the law and causes injury to another party, whether material or immaterial, with the danger of criminal consequences by the applicable legislation (Suari et al., 2020). Criminal acts that have been rife in society lately, namely the crime of theft, including those committed by children, Laden Marpaung expressed his opinion as follows: "Against children, it is increasingly common with various motives for the perpetrators of these acts of theft, the victims of which are children and adults. Done by children who do not understand the situation they are experiencing. The crime of robbery with violence committed by children is essentially personal (Marpaung, 1996). Theft with violence is indeed a crime that makes people uneasy (Yuserlina, 2020).

The crime of theft with violence by children is one of the social problems that worries the community because it is carried out at night, so it is rather challenging to identify the perpetrators. What's more, cases of theft committed by these children have continued to grow until now, which should not have been carried out by children, even though the government and society have given directions to children while they were still / were in school. There was legal protection in the development of modern times.

Violence-related stealing is a crime that affects both adults and children. Children who are victims of these tragedies suffer from numerous disruptions to themselves, both physically and non-physically, as a result of these events, either directly or indirectly. The author comes to the conclusion that environmental factors, cultural factors, economic factors, media factors, psychological factors of the perpetrators, ecological factors, and family attention can increase and influence the occurrence of the crime of theft with violence by minors. This is especially true when the perpetrator commits the crime in multiple ways to achieve or fulfill goals.

The crime of theft by weighting, in this case, is by the issue in decision Number 8/Pid.Sus Anak/2020/PN.Dps. In this case, the defendant was legally and convincingly proven guilty of committing the crime of theft by force/aggravation as referred to in Article 365 paragraph (2) 1st and 2nd of the Criminal Code. The perpetrators of the robbery by staff/aggravation, totalling 8 (eight) children, were sentenced to imprisonment in the Karangasem Class II Children's Special Penitentiary for two (2) months and twenty (20) days and were charged with paying a court fee of Rp. 2,000 (two thousand rupiahs).

In terms of the crime of theft with violence, it has been regulated in statutory regulations, namely contained in the Criminal Code (KUHP). As a result, criminal law need to provide suitable punishments for those who commit these crimes in order to ensure that the law is really upheld and that society is brought into proper order. Also, these penalties are anticipated to have a deterrent impact on criminals, causing them to stop committing crimes in the future and preventing others from doing the same. committed the offense under fear of a quite harsh punishment.

## **II. RESEARCH METHODS**

The method used in this research is the juridical-normative method. The normative legal research method is a scientific research procedure to find the truth based on the scientific logic of law from its normative side (Ibrahim, 2005). The type of legal research being carried out is normative juridical, with the consideration that the starting point of the research is the analysis of existing laws and regulations. As for the formulation of the problem, it does not deviate from the existence of normative research methods in writing this law, meaning that it is still being studied normatively through the decisions of the relevant judges.

The approaches used in this study are the statute approach, which involves examining all laws and regulations that are related to the legal issues being handled, and the case approach, which involves conducting a case study. cases related to the issues at hand that have become court decisions that have permanent legal force (Marzuki, 2013). The source of legal material used in a study can be in the form of data obtained through library materials and/or directly from the public. Data obtained directly from the public is called primary legal material, while data obtained through library materials and documentation is called secondary data (Soemitro, 1990). In terms of collecting legal materials, both primary legal materials and secondary legal materials are organised based on the topic of the problem by conducting literature studies, namely, researchers collecting legal materials from various laws and regulations, books, articles, scientific journals, papers, research results in legal experts and newspaper clippings as well as browsing the internet on all matters related to the above issues.

The analytical method used is descriptive qualitative analysis, presenting a study of the data obtained from the research object. A descriptive study is intended to provide as accurate data as possible about humans, conditions or other symptoms (Soekanto, 1986), the point is that the legal material obtained through the research is described and linked in such a way that it is presented in a more systematic manner in order to answer the problems that have been formulated. In this study, after the legal material has been collected, it is analyzed to get conclusions. Legal material analysis uses content analysis. Content analysis, an integrative analytical approach, finds, identifies, processes, and analyzes legal information to comprehend their meaning, importance, and relevance (Bungin, 2007).

### **III. RESULT AND DISCUSSION**

#### **Legal Protection Against Children**

Developments and changes in times and circumstances have given their colour to the world of criminalization committed by children, especially theft committed by children. Often negligent, providing treatment to children who commit crimes requires efforts towards child protection. Legal topics are protected by the rule of law through preventative and repressive ways, written and unwritten, to implement legal norms. The application of crimes committed against children who commit criminal acts of theft differs from those committed by adults who commit criminal acts of stealing even though they still use the Criminal Code. Still, a separate law regulates children who commit crimes, namely the Juvenile Justice Law. And the Child Protection Act.

Factors that are very influential in causing the crime of theft committed by children are environmental factors and economic factors as for the application of punishment to children who commit criminal acts of robbery, namely imprisonment, action to the Ministry of Social Affairs or social institutions. Even though, in this case, the child who commits the theft is still imprisoned, the punishment given to children is inseparable from the Child Protection Act. When viewed from the context of the application of criminal acts against children who commit criminal acts of theft, there has been a strong effort or desire to prevent criminal acts of robbery from being saved by children; besides that, in terms of passing a decision or sentencing a judge has also considered what the rights are. Child. So that when a child who commits a crime of theft is sentenced to prison, the sentence given to the child cannot be separated from the Child Protection Act and the Juvenile Justice Law.

The absolute authority of the court is the authority of a particular judicial environment to examine and decide a case based on the type of case to be discussed and resolved. According to Law no. 4 of 2004, judicial power (judicial power), under the Supreme Court (MA), organises state power in the judicial sector (Indonesia, 2004), conducted by the General Courts, Religious Courts, Military Courts, and State Administrative Courts.

In general, the function of the authority to adjudicate within the scope of the District Court has been determined in Law no. 2 of 1986 concerning General Courts, examining and deciding cases in Criminal law (general and particular) and Civil (public and commercial) (Republik Indonesia, 1986). The results of the interview with Hans, namely how to further state that a judge's decision will be of good quality, depends on several things, namely:

1. Judge's knowledge which includes understanding the concept of Justice and Truth;
2. The integrity of judges includes the values of honesty and being trustworthy;
3. The independence of the judiciary, which is free from influence from litigation parties and public pressure;
4. The condition of the rule of law in formal and material direction still contains weaknesses;
5. Political order, social order, the law as a tool of power, the law as a requirement for political order and law has moral authority;

6. The work system is related to other management systems, including the oversight function of the community, to avoid losing public trust in the judiciary.

The actualization of this morality applies to judges and includes investigators and public prosecutors as part of the criminal justice system. In the criminal justice system, the role of judges is vital in law enforcement, especially in connection with the imposition of a criminal sentence against a person, which must always be based on justice based on law.

The provisions of the t Article 25 of Law Number 4 of 2004 on Judicial Authority specifies that all court judgments must provide the grounds for the decision and specific sections in the relevant laws and regulations or written sources of law utilized to decide. Article 28 of Law Number 4 of 2004 on Judicial Authority requires judges to investigate, follow, and grasp society's legal ideals and sense of justice. Articles mentioned above indicate that the problem of imposing a criminal sentence on someone is not an easy thing. Judges, besides having to base themselves on Legislation, also have to pay attention to the general feelings and opinions of the community. In other words, wherever possible, the judge's decision must reflect the will of the law and the values that live in society.

As is known, there are no guidelines for judges to impose a sentence on someone, both those regulated in the Criminal Code and the Law that explicitly governs the crime of theft committed by children. However, only provisions regulate the types of problems, type of crime, and maximum and minimum sentence length. Even so, it does not mean that the freedom of the judge in determining the maximum and minimum limits is free, but must also look at the results of the examination at the trial court and what criminal acts a person has committed as well as the circumstances or what factors include his actions.

A criminal verdict should be as futuristic as possible, describing what is obtained from it (Manalu et al., 2014). Apart from being a punishment, an illegal decision is also the basis for re-socializing the convict so that he is expected not to commit another crime in the future so that the danger to society can be avoided. Then he emphasized that one of the primary considerations in determining the severity or severity of a sentence given to a defendant is always based on the principle of balance between wrongdoing and unlawful acts. The judge's decision must also state the reason that the sentence imposed was following the nature of the action, the circumstances surrounding the show, and the accused's personal circumstances. Thus the criminal verdict reflected the futuristic nature of the punishment.

### **Denpasar District Court's Decision**

Paying attention to Article 365 paragraph (2) 1st and 2nd of the Criminal Code, Law Number 48 of 2009 concerning Judicial Power (Republik Indonesia, 2009) and Law Number 8 of 1981 concerning Criminal Procedure Code (Republik Indonesia, 1981) as well as other relevant laws and regulations :

1. Declare Child I: Muhammad Reva Saputra Alias Reva, Child II; Putu Bagus Widhi Pramana Putra Alias Widi, Child III; Surya Agung Saputra Alias Surya, Child IV. I Gusti Bagus Raditya Putra Sanjaya Alias Gung Adit, Child V. I Komang Bagus Merta Wiguna Alias Duck, Child VI I, Gede Krisna Mandala Putra alias Kapreng, am Child VII. I, Gede Mertayasa, and Child VIII As the Public Prosecutor's first alternative indictment, I Gede Juliantara Alias Julik was legally and convincingly proven guilty of committing the crime of theft with violence committed at night on a public road by two or more people in alliance.
2. Imposing crimes against children. Muhammad Revan Saputra Alias Reva in the form of imprisonment at the Special Development Institution for Class II Children in Karangasem for two months and fifteen days

3. Sentenced a sentence against Children II Putu Bagus Widhi Pramana Putra in the form of imprisonment at the Class II Special Children Development Institute Karangasem for 2 (two) and 15 (fifteen) days
4. Sentenced a sentence against Children III Surya Agung Saputra Alias Surya in the form of imprisonment at the Class II Special Children Development Institute Karangasem for 2 (two) and 15 (fifteen) days.
5. Imposing punishment on Children IV. I, Gusti Bagus Raditya Putra Sanjaya Alias Gung Adit, was imprisoned at the Special Child Development Institute. Keias II Karangasem for 1 (one) month and 20 (twenty) days.
6. Returning V. I Komang Bagus Merta Wiguna's child to his parents;
7. Imposing a crime on Child VI. I, Gede Krisna Mandala Putra Alias Kapreng, in the form of imprisonment for the Karangasem Class Child Special Development Institution for 1 (one) month and 20 (twenty) days;
8. Imposing a crime on Child VII. I, Gede Mertayasa in form of imprisoned at the Karangasem Special Class Children Development Institute for 1 (one) month and 20 (twenty) days
9. Imposing a crime on Child VIII. I, Gede Juliantara Alias Julik in form of imprisoned at the Karangasem Class Children's Special Development Institute for 1 (one) month and 20 (twenty) days
10. Ordered that the crime against Child VIII. I Gede Juliantara Alias Julik
  - a. This does not need to be carried out except at a later date with a judge's decision
  - b. Ordered otherwise because the convict was guilty of committing a criminal act before the probationary period of 1 (one) year ended.
11. Determine the length of the arrest and detention period served by Child I Muhamad Reva Saputra Alias Reva, Child II. Putu Bagus Widhi Pramana Putra Alias Widi, Child III. Surya Agung Saputra Alias Surya, Child IV. I Gusti Bagus Raditya Putra Sanjaya Alias Gung Adit, Child V. I Komang Bagus Merta Wiguna Alias Duck, Child VI. I Gede Krisna Mandala Putra alias Kapreng, Child VII. I, Gede Mertayasa, was fully deducted from the sentence imposed;
12. Establishing Child I Muhammad Reva Saputra Alias Reva, Child II. Putu Bagus Widhi Pramana Putra Alias Widi, Child III. Surya Agung Saputra Alias Surya, Child IV. I Gusti Bagus Raditya Putra Sanjaya Alias Gung Adit, Child V. I Komang Bagus Merta Wiguna Alias Duck, Child VI. I Gede Krisna Mandala Putra alias Kapreng, Child VII. I, Gede Mertayas, remain in detention;
13. Establish evidence in the form of:
  - a. 1 (one) Vave Joytech (electric cigarette).
  - b. 1 (one) Maroon sweater jacket with Jimmy Butcher printed on it.
  - c. One (1) blue short-sleeved shirt.
  - d. 1 (one) blue sweater jacket.
  - e. 1 (one) white short sleeve shirt.
  - f. 1 (one) red striped short-sleeve shirt.
  - g. 1 (one) purple short-sleeved T-shirt with Extrude printed on it.
  - h. 1 (one) white short-sleeved shirt.
  - i. 1 (one) long-sleeved shirt.
  - j. 1 (one) maroon short-sleeved shirt.
  - k. 1 (one) yellow sweater jacket,
  - l. 1 (one) white striped long-sleeved t-shirt.
  - m. One (1) yellow short-sleeve shirt.
  - n. 1 (one) T-Zone brand short-sleeve shirt.
  - o. One (1) pair of black jeans.

- p. One (1) pair of blue jeans.
- q. 1 (one) light blue cloth shorts.
- r. One (1) piece of blue cloth shorts.
- s. 1 (one) dark green sweater jacket,
- t. One (1) black short-sleeved shirt
- u. 1 (one) black jean shorts.
- v. One (1) black short-sleeve shirt.
- w. 1 (one) pair of blue jeans.  
Forfeited to be destroyed.
- x. 1 (one) Unit of Yamaha Mio Soul two-wheeled vehicle, white, 2012, police number DK 3997 ON, year 2012, frame number : MH31KP3O1CK033546, Engine Number : I KP034080, in the name of Budi Santoso.  
Returned to witness Muladi  
(one) black Yamaha NMX motorcycle with number DK 6978
- y. FAQ Noka : H3SG3190JK227343, Nosin G3E4E0963056 along with
- z. STNK.

Returned to son I Gusti Bagus Raditya Putra Sanjaya Alias Gung Adit.

14. Burden to Child I Muhammad Reva Saputra Alias Reva, Child II. Putu Bagus Widhi Pramana Putra Alias Widi, Child III. Surya Agung Saputra Alias Surya, Child IV. I Gusti Bagus Raditya Putra Sanjaya Alias Gung Adit, Child V. I Komang Bagus Merta Wiguna Alias Duck, Child VI. I Gede Krisna Mandala Putra alias Kapreng, Child VII. I Gede Mertayasa paid court fees of Rp. 2,000, - (two thousand rupiah).

Thus was decided by the Denpasar District Court Judge on Monday, February 24 2020, by 1 Dewa Made Budi Watsara, S.H., M.H. as the Single Judge, which was pronounced in a session open to the public on that day and date, assisted by I Made Wisnawa. S.H. as Substitute Registrar at the Denpasar District Court, and attended by I Made Santiawan, S.H., as the Public Prosecutor at the Denpasar District Attorney, Child I, Child II, Child III, Child IV, Child V, Child VI, Child VII and Child VIII accompanied by Person Old, Legal Counsel, Community Advisor for Bapas Class I Denpasar, Social Worker at the Social Service and P2TP2A.

The actions of the defendant as stipulated and subject to punishment in Article 365 paragraph (2) 1st and 2nd of the Criminal Code

”(2) Shall be punished with a maximum imprisonment of twelve years for theft with violence”

"1. If the act is committed at night in a closed house or yard where there is a house, on a public road or in a running train or tram"

“2. If the act is committed by two or more people in alliance.

In their considerations, the panel of judges tried the defendant and declared him legally and convincingly guilty of committing the crime of theft by taking into account Article 365, paragraph (2), 1st and 2nd of the Criminal Code. Considering that for this charge the defendant has submitted a defense that principally requests leniency of sentence on the grounds that the defendant admits his actions and regrets them, Considering that the defendant was found guilty of committing the criminal act as charged against him, he must be sentenced to a sentence commensurate with his actions, and he must be burdened with paying court costs as stipulated in this decision.

Considering whereas, for this reason, judges need to pay attention to the results of social research regarding children, which in essence:

1. It is true that the defendant is 12 years old and has never been married
2. The defendant committed the crime because a friend's invitation influenced him.
3. The problem faced by the defendant was due to a lack of parental supervision.

Because the defendant has been legally and convincingly proven guilty of committing the criminal act as charged with him, the defendant must be sentenced to a sentence commensurate with his actions. The defendant must be burdened with paying court costs as stipulated in the verdict. In this decision, the author thinks that the defendant has been proven to legally take other people's property in the form of money and goods of economic value to want to own these goods against rights.

Based on the results of the author's interview with the panel of judges, the reason for imposing a sentence on the defendant was because, based on the existing trial facts, the defendant was legally and convincingly proven guilty of committing the crime of theft as stated in Article 365 of the Criminal Code. Based on this, according to the author, the Panel of Judges considers that the sentence length imposed, as stated in the decision, is fair enough for the defendant because the defendant is still underage.

#### **IV. CONCLUSION**

Based on the analysis of the results of the research and discussion, it can be concluded that the perpetrators of the crime of theft are weighted (Decision Number: 8/Pid.Sus Anak/2020/PN.Dps) where the legal provisions for the crime of robbery committed by children are based on decision Number:8/ Pid. Sus Anak/2020/PN.Dps. Namely by looking at the Criminal Code Article 365 concerning theft. In addition, legal provisions relating to the crime of robbery committed by children are also contained in the Child Protection Act and the Juvenile Court Law, Article 34 of the 1945 Constitution concerning the poor and RI Law No. 4 of 1979 concerning Child Welfare. Based on Decision Number: 8/ Pid.Sus Anak/2020/PN.Dps.

The application of punishment given to children who commit criminal acts of theft is by imposing prison sentences. In addition, the application of criminal sanctions that can be set on children who commit criminal acts of robbery is imprisonment, fines and supervision. The prosecutor's indictment, the purpose of the punishment, mitigating and aggravating circumstances, the fact that the panel of judges tends not to impose the maximum sentence, the hope that the perpetrator does not repeat his actions, the motivation for the crime, the perpetrator's attitude after committing a crime, and other legal factors serve as the basis for the judge's legal considerations when imposing criminal sanctions on children as perpetrators of theft with violence and weighting.

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