

Juridical Review of The Crime of Theft Committed by Minors

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Abstract

The aim of this research is to understand the criminal act of theft committed by children, and to analyze the judge's considerations in handing down decisions in cases of criminal acts of theft of minors (Decision Number 10K/Pid.Sus/2018/PN.Tng). This research method uses the type of research carried out in this thesis is qualitative. Meanwhile, this research is included in the category of normative or doctrinal research. The research approach used in this research is normative juridical. The data collection method used in this research is document study. Also, data collection techniques are document study methods and library research methods. The data obtained will be processed using qualitative analysis. The results of the research show that the judge's considerations for the child are in accordance with the provisions of the juvenile justice system, in some of the judge's considerations the child was sentenced to only a third of the full sentence demanded by the public prosecutor, the child should have been sentenced to 10 months but at the judge's discretion the child was sentenced to only 6 months. As well as the qualifications of criminal acts of theft with aggravation committed by children from the perspective of criminal law.

Keywords: Juridical Review, The Crime, Theft Committed

1. Introduction

Children are in a social pattern that increasingly leads to criminal acts such as; use of narcotics and illegal drugs, extortion, theft, abuse, rape, even murder. Indonesia is a state of law as stated in the 1945 Constitution, especially in Article 1 paragraph (3), this means that all aspects of life in this country are regulated based on the rule of law. In an effort to realize the enforcement of legal supremacy in Indonesia, a legal product is needed, in this case a law which functions as a regulator of all community actions as well as a tool of coercion against the community.

Crimes committed by adults cannot simply be equated with the actions of children or teenagers (Juvenile Delinquency) which are usually committed by children, because the nature and form of a child's actions must be differentiated from those of an adult. Protection of children in relation to children who have problems with the law, as a main part of improving the quality of human life in accordance with Law no. 23 of 2002, namely all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate, optimally in accordance with human dignity, and receive protection from violence and discrimination.

With the existence of this Law, it provides a strong legal basis for differentiating the treatment of children in conflict with the law. The legal treatment of minors in cases of criminal acts of theft should receive special attention from law enforcement officials in processing and

deciding on decisions that will be made. taken to regulate and restore children's future as responsible citizens in society.

The decision made by the panel of judges was to sentence him to 6 months in prison. Looking at theft, namely the criminal act that has been regulated in article 362, it is theft in its basic form, as for its elements, namely objectively there is an act of taking, if an item is taken in whole or in part or partly belongs to another person, there is an act and this act is prohibited by law. -law, and receive criminal sanctions in the form of imprisonment. Meanwhile, the subjective elements, namely, with the intention to possess unlawfully.

2. Research methods

The data collection method used by researchers is document study. This data collection method searches for and collects the documents needed for later processing. In this research, the documents collected include a copy of the Supreme Court Decision Number 10 k/Pid.Sus/2018/PN.Tng and other literature related to the research.

2.1. Data collection technique

To complete the required data, the author uses two data collection methods, namely the document study method because the author will examine documents regarding the decision regarding the criminal act of theft (Decision Number 10 K/Pid.Sus/2018/PN.Tng) and the library research method the author uses. to review literature related to criminal acts of theft committed by minors.

2.2. Data analysis

In analyzing the data obtained, both primary and secondary legal materials and discussing issues that are discussed qualitatively. Namely, in this writing we use qualitative analysis, namely normative juridical analysis which is carried out descriptively because this research not only intends to reveal and describe criminal law policy data as it is, but also intends to describe the criminal law policy expected in future laws. So that later all materials, both in terms of library data and research data, will always be maintained.

3. Results and Discussion

3.1. Qualifications for Criminal Acts One of the crimes that often occurs is theft.

Theft includes crimes against property or what is called offenses against property and possession. What is meant by theft is the act of taking something which all or part of it belongs to another person with the intention of possessing it and carrying it out against the law. up to Article 367 of the Criminal Code as follows: 1. Ordinary Theft is regulated in Article 362 of the Criminal Code; 2. Aggravated theft is regulated in Article 363 of the Criminal Code; 3. Petty Theft is regulated in Article 364 of the Criminal Code; 4. Theft with Violence is regulated in Article 365 of the Criminal Code; and 5. Theft in the family is regulated in Article 367 of the Criminal Code. In this case, the author emphasizes the type of theft with aggravation. Aggravated Theft is a type of theft, and in its primary form, the threat of the crime is aggravated by adding other elements to the underlying theft in a certain way and through certain aggravating circumstances.

In terms of the elements of this article, if the perpetrator is an adult, he is threatened with imprisonment for a maximum of seven years. It's different if the person committing the crime is a child. Children in Article 1 number 3 of Law Number 11 of 2012 concerning the Juvenile

Justice System are: 63 "Children in Conflict with the Law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who suspected of committing a criminal act." In the case of children's cases, it is known that there is diversion. In Article 1 number 7 of Law Number 11 of 2012, it is stated that diversion is the transfer of the resolution of children's cases from the criminal justice process to a process outside of criminal justice.

Diversion is explicitly stated in Article 5 paragraph (3) that in the juvenile criminal justice system diversion must be pursued. In Article 6 of Law Number 11 of 2012, the objectives of diversion are stated as follows:

- a. Achieve peace between victims and children
- b. Resolving children's cases outside the judicial process
- c. Prevent children from deprivation of liberty
- d. Encourage the public to participate; and 5. Instill a sense of responsibility in children

3.2. Criminal Sanctions Against Children as Perpetrators of Crime

According to Article 69 of Law Number. 11 of 2012 concerning the Juvenile Criminal Justice System, only criminal penalties can be imposed on children, namely:

- a. Children can only be punished or subject to action based on the provisions of this Law.
- b. Children who are not yet 14 (fourteen) years old can only be subject to action. The following are the types of crimes that can be imposed on children as perpetrators of criminal acts according to Article 71 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System.

3.3. Principal Crime

There are several basic crimes that can be imposed on children, including the following:

- a. Warning Crime According to Article 72 paragraph of Law no. 11 of 2012 reads: "A warning crime is a light crime that does not result in restrictions on a child's freedom."
- b. Sentence with conditions; According to Article 73 of Law No.3 of 1997. Then the types of punishment are further regulated with the following conditions: 1) Guidance outside the institution; The type of crime with these conditions is regulated in Article 75 paragraph (1) of Law no. 11 of 2012. 2) Community service; The type of crime with these conditions is regulated in Article 76 paragraph (1) of Law no. 11 of 2012. 3) Supervision. The type of crime with these conditions is regulated in Article 77 paragraph of Law no. 11 of 2012.
- c. Work training; According to Article 78 of Law no. 11 of 2012 reads: 1) Job training crimes as intended in Article 71 paragraph (1) letter c are carried out in institutions that carry out job training that is appropriate to the child's age. 2) The job training penalty as intended in paragraph (1) is imposed for a minimum of 3 (three) months and a maximum of 1 (one) year.

3.4. Coaching in Institutions

According to Article 80 of Law no. 11 of 2012 reads as follows:

- a. Criminal coaching within institutions is carried out at work training sites or coaching institutions run by both the government and the private sector.
- b. The punishment for fostering in an institution is imposed if the child's condition and actions do not endanger society.

- c. Guidance within the institution is carried out for a minimum of 3 (three) months and a maximum of 24 (twenty four) months.
- d. Children who have undergone 1/2 (one half) of the period of training in an institution and have not less than 3 (three) months of good behavior are entitled to parole.

3.5. Prison

According to Article 81 of Law no. 11 of 2012 reads:

- a. Children are sentenced to imprisonment at LPKA if the child's circumstances and actions will endanger society.
- b. The prison sentence that can be imposed on a child is a maximum of 1/2 (one half) of the maximum penalty of imprisonment for an adult.
- c. Guidance at LPKA is carried out until the child is 18 (eighteen) years old.
- d. Children who have undergone 1/2 (one half) of the training period at LPKA and have good behavior are entitled to parole.
- e. Imprisonment for children is only used as a last resort. 6) If the criminal offense committed by the child is a criminal offense punishable by the death penalty or life imprisonment, the penalty imposed is a maximum imprisonment of ten years.

3.6. Additional Penalty

Additional penalties that can be imposed on children as perpetrators of criminal acts are regulated in Article 71 paragraph (2) of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System as follows.

Additional penalties consist of: a) Confiscation of profits obtained from criminal acts; or b) Fulfillment of customary obligations. b. Sanctions for Actions Against Children as Perpetrators of Crimes Several actions that can be imposed on delinquent children are regulated in Article 80 paragraph (1) of Law no. 11 of 2012 are: a. Actions that can be imposed on children include:

- a. Returning them to their parents
- b. Handing over to someone
- c. Treatment in a mental hospital
- d. Treatment at LPKS
- e. Obligation to attend formal education and/or training provided by the government or private bodies
- f. Revocation of driving license
- g. Repairs resulting from criminal acts.

3.7. Judge's Considerations in Deciding Case Decision Number 10 K/Pid.Sus/2018/PN.Tng

Case Chronology That he was a NH child on Sunday 11 November 2018 at around 14.00 WITA or at least at another time in November 2018, at the Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara School Room, Rukam Hilir Village, District. South Amuntai District. Hulu Sungai Utara, or at least in another place which is still included in the legal area of the Amuntai District Court which has the authority to examine and adjudicate, jointly or acting individually.

Witness Suhaimi Als imi and Witness Pardiansyah Als Pardi (prosecution was carried out separately) took things in the form of 1 (one) black Toshiba brand laptop, 1 (one) red Toshiba brand note book, 1 (one) Handy Camp black Sony brand, 1 (one) red Sony brand camera, and 1 (one) black Canon brand camera whose value is estimated at around Rp.

8,000,000,- (eight million rupiah) or at least more than Rp. 250,- (two hundred and fifty rupiah) which wholly or partly belongs to another person, namely the Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara school

With the intention of unlawful possession, which is to enter a place of committing a crime, or to obtain goods that are taken, carried out by breaking, cutting or climbing, or by using a fake key, a fake order or fake clothes, the act of a NH child

Witness Suhaimi and the defendant himself, after that NH's child agreed to this person's offer because NH's child and witness Suhaimi were in a hurry to go to Balikpapan, then NH's child and witness Suhaimi went to Balikpapan using a public transport bus via terminal pal 6 (six) after arriving Then NH's child was in Balikpapan for approximately one week, while he was in Balikpapan NH's child and witness Suhaimi ran out of fare then NH's child and witness Suhaimi offered Handycamp to people the witness didn't know for Rp. 250,000 (two hundred and fifty thousand rupiah) after getting the money, NH's child and witness Suhaimi left for Samarinda after arriving, NH's child stayed at witness Suhaimi's friend's house for 3 (three) days, then NH's child left witness Suhaimi to look for work in the Samarinda area.

3.8. Judge's considerations Claims by the Public Prosecutor

- a. Declare that NH Child has been legally and convincingly proven guilty of committing the crime of theft with aggravation, as regulated and punishable by crime in Article 363 paragraph (2) 4th and 5th of the Criminal Code.
- b. Sentenced the NH Child to a prison sentence of 10 (ten) months minus the detention period while the NH Child was detained and ordered that the NH Child remain detained in the Detention Center.
- c. Stated the evidence in the form of: - 1 (one) black Toshiba brand laptop, - 1 (one) red Toshiba brand notebook. Returned to the Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara school through witness H. Hayani (Principal).
- d. Determine that the child is burdened with paying court costs of IDR 5,000 (five thousand Rupiah).

3.9. Witness Statements Considering,

To prove his accusations, the Public Prosecutor has presented the following witnesses:

3.10. The initials H. H under oath basically explain

- a. That witness H. H once gave a statement before investigators and that statement was correct
- b. That the child's name is NH, and his parents are named Mansyah and Raudah
- c. That the child had previously attended Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara School
- d. That this case concerns theft committed by Anak and his friends on Sunday 11 November 2018 at around 14.00 WITA in a room at the Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara in Rukam Hilir Village, District. South Amuntai District. Hulu Sungai Utara happened to be witness H. H was the principal of the school
- e. That the items lost in this incident were inventory items from the North Hulu Sungai 12 Madrasah Ibtidaiyah School, namely 1 (one) black Toshiba brand 72 Laptop, 1 (one) red Toshiba brand Netbook, 1 (one) black Handycam , 1 (one) black Canon camera and 1 (one) red Sony brand camera

- f. That the witness (deceased) analyzed this incident after witness M H as an honorary member of the school's administrative staff, on the morning of Monday 12 November 2018, took the laptop which was in the safe drawer and found it was no longer there and then informed witness H. H. , witness R I and other teachers; g) That all the lost items are in the safe in the administration room (TU) and are locked; h) That neither witness H.
- g. That as a result of this incident the North Hulu Sungai 12 Madrasah Ibtidaiyah School suffered a loss of IDR 8,000,000 (eight million Rupiah); j) That the witness recognizes the evidence presented at trial; Regarding the witness's testimony, the child gave the correct opinion and did not object

3.11. The initials M H under oath basically explain

- a. That witness M H once gave a statement before investigators and that statement was correct
- b. That the child's name is NH, and his parents are named Mansyah and Raudah
- c. That the child had previously attended Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara School
- d. That this case concerns theft committed by Anak and his friends on Sunday 11 November 2018 at around 14.00 WITA in a room at the North Hulu Sungai 12 Madrasah Ibtidaiyah School in Rukam Hilir Village, District. South Amuntai District. Hulu Sungai Utara happened to be witness H. H was the principal of the school
- e. That the items lost in this incident were inventory items from the North Hulu Sungai 12 Madrasah Ibtidaiyah School, namely 1 (one) black Toshiba brand laptop, 1 (one) red Toshiba brand Netbook, 1 (one) black Handycam, 1 (one) black Canon camera and 1 (one) red Sony camera
- f. That witness M H analyzed the incident after witness M H as an honorary member of the school's administrative staff, on the morning of Monday 12 November 2018 was going to take the laptop which was in the safe drawer and it turned out it was no longer there and then informed witness H. H, witness R I and other teachers
- g. That all the missing items are in a safe in the administration room (TU) and are locked
- h. That neither witness H. H, witness M H, witness R.
- i. That as a result of this incident the Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara suffered a loss of Rp. 8,000,000,- (eight million Rupiah)
- j. That the witness recognizes the evidence presented at trial; Regarding the witness's testimony, the child gave the correct opinion and did not object

3.12. The initials R I under oath basically explain

- a. That witness R I once gave a statement before investigators and that statement was correct
- b. That the child's name is NH, and his parents are named Mansyah and Raudah
- c. That the child had previously attended Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara School
- d. That this case concerns theft committed by Anak and his friends on Sunday 11 November 2018 at around 14.00 WITA in a room at the North Hulu Sungai 12 Madrasah Ibtidaiyah School in Rukam Hilir Village, District. South Amuntai District. Hulu Sungai Utara happened to be witness H. H was the principal of the school

- e. That the items lost in this incident were inventory items from the North Hulu Sungai 12 Madrasah Ibtidaiyah School, namely 1 (one) black Toshiba brand laptop, 1 (one) red Toshiba brand Netbook, 1 (one) black Handycam, 1 (one) black Canon camera and 1 (one) red Sony camera
- f. That witness R. R I and other teachers
- g. That all the missing items are in a safe in the administration room (TU) and are locked
- h. That neither witness H. H, witness M H, witness R.
- i. That as a result of this incident the Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara suffered a loss of Rp. 8,000,000,- (eight million Rupiah)
- j. That the witness recognizes the evidence presented at trial; Regarding the witness's testimony, the child gave the correct opinion and did not object

3.13. The initials S under oath basically explain

- a. That witness S once gave a statement before investigators and that statement was correct
- b. That the child's name is NH, and his parents are named Mansyah and Raudah
- c. That the child had previously attended Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara School
- d. - That this case concerns theft committed by the child and witness S and witness P on Sunday 11 November 2018 at around 14.00 WITA in a room at Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara in Rukam Hilir Village, District. South Amuntai District. Hulu Sungai Utara happened to be witness H. H was the principal of the school
- e. That the items taken by the child and witness S and witness P in this incident were inventory items from the North Hulu Sungai 12 Madrasah Ibtidaiyah School, namely 1 (one) black Toshiba brand laptop, 1 (one) red Toshiba brand netbook, 1 (one) black Handycam, 1 (one) black Canon camera and 1 (one) red Sony camera
- f. That the incident started on Sunday 11 November 2018 at around 10.00 WITA, witness S came to Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara and sat on the school terrace, about 10 (ten) minutes later the child came and not long after witness P arrived , while sitting around the idea arose from witness S to pick up litter at the school and this was agreed to by witness P and Anak
- g. Next, witness S ordered the child and witness P to enter the school room via the roof by climbing the school pole
- h. At that time witness S was standing guard outside the room
- i. That after being on the roof of the school, the child and witness P opened one of the school roofs which was made of zinc and entered through the hole and then opened the tape which was right on top of the cupboard in that room and came down from the top of the cupboard, that in that room the child and witness P opened the cupboards and got 1 (one) black Toshiba brand laptop, 1 (one) red Toshiba brand Netbook, 1 (one) black Handycam, 1 (one) black Canon camera and 1 (one) red Sony brand camera
- j. then by passing through the window opened from inside the child and witness P handed over 1 (one) black Toshiba brand laptop, 1 (one) red Toshiba brand netbook, 1 (one) black Handycam, 1 (one) black a black Canon camera and 1 (one) red Sony brand camera to witness S and then stored under the school
- k. That after that the child and witness P left the room using the same path
- l. Whereas witness S then planned to sell the goods to Banjarmasin and the child agreed, but witness P did not participate and immediately took 1 (one) black Handycam.

- m. Whereas the child and witness S then went to Banjarmasin using public transportation and made 1 (one) black Canon camera as collateral for payment because at that time they had no money.
- n. Whereas in Banjarmasin the child and witness S sold 1 (one) black Toshiba brand laptop and 1 (one) red Toshiba brand netbook at the Kasbah Market for IDR 700,000 (seven hundred thousand Rupiah) and the money was used by the child and witness S to go to Balikpapan via the Bus terminal at kilometer 6 to look for work
- o. That for approximately 7 (seven) days in Balikpapan the child and witness S did not find work or food. The child and witness S returned again to sell 1 (one) black Handycam for IDR 250,000 (two hundred and fifty thousand Rupiah).) and went straight to Samarinda to look for work and apparently didn't get a job so he ended up going back to Amuntai again
- p. That neither witness H.
- q. That 1 (one) black Handycam brought by witness P was sold for IDR 200,000 (two hundred thousand Rupiah) and the money was used up.
- r. That the child, witness P and witness S often sit behind the school because they don't have a job and because of that they often see the items taken being placed in a cupboard in the administration room (TU) of the school.
- s. That the child, witness P and witness S have never been punished before
- t. That the child, witness P and witness S really regret their actions
- u. That as a result of this incident the Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara suffered a loss of Rp. 8,000,000,- (eight million Rupiah)
- v. That the witness recognizes the evidence presented at trial; Regarding the witness's testimony, the child gave the correct opinion and did not object.

3.14. Announcement of Decision

- a. Declare that the child named NH, as mentioned above, has been legally and convincingly proven guilty of committing the crime of "Theft under aggravating circumstances.
- b. Sentenced the child named NH to prison for 6 (six) months
- c. Determining that the period of arrest and detention that has been served by the child is deducted entirely from the sentence imposed
- d. Determining that the child remains detained
- e. Determine the evidence in the form of: - 1 (one) black Toshiba brand laptop, - 1 (one) red Toshiba brand notebook, returned to the Madrasah Ibtidaiyah Negeri 12 Hulu Sungai Utara school through witness H. H;
- f. Charge the child to pay court fees in this case amounting to Rp. 2,000.00 (two thousand Rupiah).

3.15. Author's Analysis of the Judges' Council Decision

Based on the articles alleged by investigators which have been stated in Decision Number 10/Pid.SusAnak/2018/PN.Tng. The defendant has been charged by the Public Prosecutor with a single charge as regulated in Article 363 paragraph (1) 4th and 5th of the Criminal Code, the elements of which are as follows:

- a. Whoever
- b. Take something
- c. Which wholly or partly belongs to someone else
- d. With the intention of possessing the item against the rights

- e. Theft is committed by two or more people together
- f. Theft is committed by the defendant by entering the place of crime or being able to reach the goods to take them, by breaking, breaking or climbing or by using a fake key, a fake order or fake official clothes.

4. Conclusion Suggestion

4.1. Conclusion

Based on the discussion above, the author concludes the following:

- a. The classification of criminal acts of theft with aggravation committed by children is contained in Article 363 paragraph (1) of the Criminal Code with the elements: • The act of taking; • What is taken must be something; • Which wholly or partly belongs to another person; • The taking must be done with the intention of unlawfully possessing the item. Aggravating elements are: • Livestock theft; • Theft during fire, explosion, flood, earthquake or seaquake, volcanic eruption, ship stranding, train accident, riot, rebellion or danger of war; • Theft at night in a house or closed yard where the house is located, carried out by someone who was there without their knowledge or without their rightful will; • Theft committed by two or more people in partnership; • Theft by dismantling, damaging, and so on. If these elements are met then a person will be sentenced to a maximum sentence of 7 (seven) years, whereas if 90 of the perpetrators are children then there will be 2 (two) crimes or actions as regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. .
- b. Considerations made in decision number 10/Pid.SusAnak/2018/PN.Tng. Regarding the indictment of the public prosecutor. When the public prosecutor reveals the chronology of the case by presenting witnesses for questioning and presenting evidence as a consideration for the case decision. So from all the facts at the trial the panel of judges stated that the defendant's actions were proven and convincingly to have violated the market 363 paragraph (1) 4th and 5th and Article 193 of the Criminal Procedure Code. So the judge considered mitigating factors in the form of the defendant being polite and honest in court and the defendant also having never been convicted so that the defendant regretted his actions and promised not to repeat his actions.

4.2. Suggestion

Based on the conclusions above, the researcher provides several recommendations, namely as follows:

- a. According to the author, law enforcement officers are expected to respect the provisions of the rules that apply to defendants who are classified as children in this case. Therefore, in order to prevent children from repeating the action again, the threat of imprisonment is the last alternative in imposing sanctions on children. Criminal sanctions against delinquent children need special attention to the psychological and social conditions of children and society. In this way, the decision does not make the child feel stressed and depressed so that the end result will be detrimental and will not improve the child for the better.
- b. The author suggests that parents should pay more attention to their children and give them more education. To help children understand what children should or should not do and what they should do. So that children better understand the norms and laws that apply in Indonesia. For society, the author suggests that society pay more attention

to children. If a child commits a crime, the community must provide protection and education/direction to the child. In order to prevent the child from repeating the action again.

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