

Juridical Study on the Criminal Acts of theft by Minors at the Surakarta

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ABSTRACT

The purpose of this study is to analyze the punishment for the crime of theft committed by children. under age. The research method uses a normative juridical research method, which focuses on the study starting from the provisions of the applicable laws and regulations, accompanied by legal theories and principles related to the problems studied. The results of the study of the Juridical Study of the Criminalization Conducted by Judges Against the Crime of Theft Perpetrated by Minors in the Surakarta District Court based on Law No. 3 of 1997 concerning Juvenile Court. That the Surakarta District Court Judge has acted 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 making a decision, the judge will consider several things, namely: evidence, the fulfillment of the elements of a criminal act, aggravating and mitigating matters, and the presence or absence of excuses and justifications. From these considerations, the judge handed down a decision against the naughty child. The punishment carried out by the Surakarta District Court judge against minors who commit the crime of theft is still far from the maximum penalty that can be imposed, which is in accordance with Article 11 paragraph (1) of Law Number 3 of 1997.

Keywords: Minors, Jurisdiction, Law, Criminal.

1. INTRODUCTION

Children as part of the younger generation are the successors of the ideals of the nation's struggle and as human resources for national development, in realizing quality human resources and being able to lead and see the unity and integrity of the nation in the unitary container of the Republic of Indonesia based on the Act. Basic 1945 (Jarudin et al., 2019). Child delinquency remains an actual problem, in almost all countries in the world, including Indonesia. Attention to this problem has been given a lot of thought, both in the form of discussions and in seminars that have been held by organizations or government agencies that are closely related to this issue (Lubis, 2021). The process of fostering children can begin in a family life that is peaceful and prosperous physically and mentally. Basically the welfare of children is not the same, depending on the level of welfare of their parents. In Indonesia, there are still many children who live in slum areas and some of them have to struggle to earn a living to help their families. Poverty, low education, broken family and social environment will affect the life or growth of a child (Aripin, 2020).

And the above is the basis behind a child to commit a crime or crime. One example is the crime of theft which has recently occurred, and the perpetrators of the theft are children. To deal



with and cope with various actions and behaviors of naughty children, it is necessary to consider the position of children with all their distinctive characteristics and characteristics (Tyas & Rodiyah, 2020). According to Article 1 point 1 of Law No. 23 of 2002 concerning Child Protection, a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb (Budiastuti & Hermoyo, n.d.).

In relation to children who commit criminal acts, that children as perpetrators are children who are suspected, charged, or found guilty of violating the law, and need protection. According to the Juvenile Court Law, what is meant by naughty children in Article 1 number 2 has two meanings, namely:

1. Children who commit criminal acts;
2. Children who commit acts that are prohibited for children.

Children who commit this crime are also subject to criminal sanctions. Talking about the punishment of children often causes a lively and long debate, because the problem has very broad consequences, both concerning the perpetrators themselves and the community (Williams, 1953). The punishment has negative consequences for those who are convicted. So that in imposing a crime against a child, the judge must use a rational basis for consideration so that it can be accounted for.

Sentencing a child is considered unwise. However, there are also those who think that it is still important to punish children, so that children's bad attitudes do not continue to become permanent until they are adults. And in the practice of juvenile justice in the field of criminal law, children are treated as "little adults", so that the whole process of the case except in the Penitentiary is carried out the same as adult cases. The different treatment is only at the time of examination in court, which is in accordance with Article 153 paragraph (3) of the Criminal Procedure Code that hearings for children's cases are carried out in private and their duties (judges and prosecutors) do not wear a gown. It is related to the physical, mental and social interests of the child concerned (Kadish et al., 2022).

In addition to Article 153 paragraph (3) of the Criminal Procedure Code, the examination of children's cases is also regulated in Article 42 paragraph (3) of Law Number 3 of 1997 concerning Juvenile Court, which states that the investigation process of juvenile delinquent cases must be kept confidential. So that all investigators' actions in the context of investigating children must be kept confidential, and without exception (Kumara et al., 2019).

In practice, the punishment imposed on children who commit the crime of theft is lighter than the punishment for theft for adults (Roesli et al., 2017). This is in accordance with the provisions of the legislation which only determines that the punishment for children is (one half) or half of the punishment for adults. This punishment is considered sufficient as a form of education



for children so that they do not repeat the same actions again in the future, and can still develop as other children of their age (Sibarani, 2015). Because after all, children are the future of a nation, so that in making decisions, judges must be sure that the decisions taken will be a strong basis for returning and regulating children towards a good future to develop themselves as citizens who are responsible for nation's life.

In connection with what I have described above, I found the following problems:

- a. How is the regulation of criminal acts committed by minors in the Criminal Code and Law no. 3 of 1997?
- b. How is the judicial review of the punishment carried out by the judge against the crime of theft committed by minors in the Surakarta District Court based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System?

2. RESEARCH METHOD

In this paper, the author uses a normative juridical research method, the focus of the study is based on the provisions of the applicable laws and regulations, accompanied by theories and legal principles related to the problems studied. Thus, this research refers to the laws and regulations with a descriptive analytical discussion, which focuses on solving actual problems by collecting legal materials, compiling, classifying, and then analyzing them.

3. RESULTS AND DISCUSSION

Children under the age of

A person is still classified in terms of age as a child in Indonesia is very diverse, so sometimes it causes confusion to determine someone as a child or not. This is because the legal system in Indonesia is pluralistic so that the notion of minors has different meanings and boundaries between one legislation and another. The following is a description of the definition of children according to several laws and regulations:

A. Civil Code (KUHPerdata) and S. 1931 No. 54 (for adults).

The definition of a child according to the Civil Code is stated in Article 330 paragraph (1) which states that "Persons who are not yet mature are those who have not been able to reach the age of 21 years and have not married before".

The definition in Article 330 paragraph (1) of the Civil Code is placed the same as those who are not yet mature from someone who has not reached the age limit of legal legitimacy as legal subjects as determined by civil legislation. The position of a child as a result of being immature gives rise to rights that need to be realized with special legal provisions concerning these civil rights.

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Children in civil law have a broad and plural legal position because they depend on legal events that place children's rights in relation to the legal, social, religious, customs and other environments. The position and understanding of children in this civil law refers to the rights and obligations of children who have legal force both formally and materially.

So, what is the essence of S. 1931 No. 54 and Article 330 of the Civil Code:

1. If the laws and regulations use the term "minor", then simply regarding the Indonesian nation is meant all people who have not reached the age of 21 years or have never been married. ;
2. If the marriage is dissolved before the age of 21 years, then they cannot return to the status of minors;
3. In the sense of marriage is not including the marriage of children.

B. The Criminal Code (KUHP).

Understanding children in criminal law raises positive legal aspects to the process of normalizing children from deviant behavior to form personalities and responsibilities which in the end the child is entitled to proper welfare. Where, the understanding of children in the Criminal Code can be taken as an example in Article 45 of the Criminal Code, in the article it is stated that a minor is if the child has not reached the age of 16 (sixteen) years.

C. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

The definition of a child according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, is contained in Chapter I of the General Provisions of Article 1 number 1 which states "Children are people who in the case of naughty children have reached the age of 8 (eight) years but have not yet reached 18 years. eighteen) years and have never been married". Minor children are given a limit between 8 years to 18 years and the child has never been married, if a child has experienced a divorce even though he is not yet 18 years old, he is still considered an adult.

D. Law Number 23 of 2002 concerning Child Protection.

The definition of a child according to Law Number 23 of 2002 concerning child protection is stated in Chapter I of the General Provisions of Article I number I that "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb".

Regulation of Crimes Perpetrated by Minors in the Criminal Code and Law No. 3 of 1997

In the Criminal Code, it is explained about the prosecution of minors, which is contained in Article 45 which reads: In prosecuting a person who is underage (minderjarig) for committing an act before the age of sixteen, the judge can determine: Ordering the guilty be returned to his parents, guardians or keeping him, without any punishment or ordering that the guilty be handed over to the government, without punishment. anything, that is, if the act is a crime or one of the



offenses referred to in Articles 489, 490, 492, 496, 497, 503, 505, 514, 517-519, 526, 531, 532, 536, and 540 and two years have not passed since it was declared guilty of committing a crime or one of the above-mentioned violations, and the verdict is final; or impose a sentence (Giacalone & Greenberg, 1997).

From the description above, it can be concluded that in the Criminal Code against children who commit acts that violate the law before the age of sixteen (16), the sanctions imposed are returned to their parents or guardians or maintain them without any crime. In addition to being returned to the parents, the guilty child can also be handed over to the government without any crime, if the act committed is a crime or one of the violations. And two years have not passed since being declared guilty for committing a crime or one of the violations, the decision becomes permanent or imposes a sentence (Redmayne, 2015).

Based on this, criminal acts committed by minors are a form of crime so that children who commit crimes can be subject to sanctions in accordance with what is stated in Article 45 of the Criminal Code. However, Article 45 of the Criminal Code is no longer valid because there are new regulations governing naughty children, which are contained in Article 4 paragraphs and (2) of Law no. 3 of 1997 concerning the age limit of naughty children who can be submitted to the juvenile court is at least 8 (eight) years old but has not yet reached the age of 18 (eighteen) years and has never been married and in the event that the child commits a crime at the age limit referred to in paragraph (1) and submitted to a court session after the child in question has exceeded the age limit, but has not yet reached the age of 21 (twenty one) years, it is still submitted to the juvenile court. the penalty is reduced by one third and if the act is a crime punishable by death or life imprisonment, a maximum imprisonment of fifteen years is imposed. This provision is also no longer valid because in Law no. 3 of 1997 has regulated the punishment for naughty children, which is contained in Article 26 of Law No. 3 of 1997 which states that the imprisonment that can be imposed on naughty children is a maximum of (one half) of the maximum threat of imprisonment for adults. and if a child commits a crime which is punishable by death or life imprisonment, the maximum imprisonment that can be imposed on the child is 10 (ten) years. The enactment of Law No. 3 of 1997 concerning Juvenile Court, among others, has determined what is meant by a child, and this Law (Kaplan et al., 2014).

Specialists apply to the Criminal Code, especially with regard to criminal acts committed by children. The birth of the Juvenile Court Law, later it must also become a reference in the formulation of the new articles of the Criminal Code relating to crimes and actions for children. Thus, there will be no overlapping or contradicting each other. The regulation regarding the crime of theft itself is regulated in Articles 362, 363, 364 and Article 365 of the Criminal Code, and as



long as it is not regulated in the Law so that it uses the Criminal Code because in this case Law no. 3 of 1997 does not regulate theft so it uses the Criminal Code.

Juridical Study of the Criminalization Conducted by Judges Against the Crime of Theft Perpetrated by Minors in the Surakarta District Court Based on Law Number 3 of 1997 concerning Juvenile Courts in the

Criminal Case of Angga Taufik Qurrahman (Judgment Number: 213/Pid.B/2008/PN. Ska)

a. Position of the Case

That he was the defendant Angga Taufik Qurrahman, on Saturday, May 3, 2008 at around 00.30 WIB or at least at another time around May 2008 at Jl. Ahmad Yani No. 354 RT 01 RW 09 Kerten Kec. Laweyan, Surakarta City or at least in another place which is still included in the jurisdiction of the Surakarta District Court, has attempted to take something that is wholly or partly owned by another person, with the intention of unlawfully possessing it, at night in a house or house. a closed yard where there is a house is carried out by the person who is there without his knowledge or against the will of the person entitled, and the defendant's actions are not completed until it is finished only because of things that did not join of his own volition. The defendant did this act in the following manner and in the following circumstances:

Earlier on Thursday, May 1, 2008 the Defendant met with Eko Saputro at the PS playground in Kleco, the defendant and Eko Saputro planned to take cigarettes at Witness Sishadi's house with the aim of using it themselves and selling them. , the next day the defendant and Eko Saputro met again at the place and confirmed that at 24.00 WIB they met in the trash at the SLB, on Friday after Friday the defendant played at Witness Sishadi's place until 24.00 WIB then the defendant met Eko Saputro in the SLB trash can, Eko Saputro gave a screwdriver to the defendant, then the defendant went to the house of Witness Sishadi to carry out his plan, while Eko Saputro waited at that place, then approached the nako's window and looked for the rolling door key which is usually placed in that place, the defendant saw the key was in that place, then the defendant open k aca nako with his right and left hands, the defendant entered to take the key, then after the key was successfully taken, the defendant opened the rooling door, after it was opened the defendant then entered Witness Sishadi's shop without permission and the owner's knowledge was about to take a cigarette in its place, but did not have time to smoke Witness Sishadi was taken screaming for his sister, Andi, three times, out of fear the defendant then went out through the rooling door again and closed and relocked the rooling door and put the roolong door key into the defendant's wallet, Witness Sishadi chased the defendant, the defendant ran to Al-fatah Mosque (south of Witness Sishadi's house) and pretended to sleep there, Witness Sishadi who chased the defendant met Witness Budi Santoso who saw the defendant running towards Al-fatah Mosque and informed the defendant that he had run to the mosque, Witness Sishadi then catch up and find a Kwa was

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sleeping in the mosque, and Witness Sishadi then suspected that the defendant searched the defendant and found his rolling door key in the defendant's wallet, after being caught the defendant was handed over to the Banjarsari Police. The defendant's actions are regulated and subject to criminal sanctions in Article 363 paragraph (1) 3 in conjunction with Article 53 of the Criminal Code.

b. The Public Prosecutor's Claim

1. To declare that the defendant Angga Taufik Qurrahman was found guilty of the crime of “attempted theft in aggravating circumstances”.
2. Sentencing the defendant with a sentence of imprisonment for 3 (three) months.
3. Determine the period of arrest and the period of detention that has been served by the defendant to be deducted entirely from the sentence imposed.
4. To stipulate that the accused remains in custody.
5. Determine the evidence in the form of: 1 (one) rolling door key returned to witness Sishadi.
6. Charge the defendant a case fee of Rp. 1000, - (one thousand rupiah).

c. Decision Decision

1. To declare that the defendant Angga Taufik Qurrahman is legally and convincingly proven guilty of committing the crime of “attempted theft in aggravating circumstances”.
2. Sentencing the defendant with a sentence of imprisonment for 3 (three) months.
3. Determine the period of arrest and the period of detention that has been served by the defendant to be deducted entirely from the sentence imposed.
4. To stipulate that the accused remains in custody.
5. Determine the evidence in the form of: 1 (one) rolling door key returned to witness Sishadi.
6. Charge the defendant a case fee of Rp. 1000, - (one thousand rupiah).

d. Author's Analysis

In Decision Number: 213/Pid.B/2008/PN.Ska., the Judge in making a decision considers several things, including:

1. That according to the demands of the Public Prosecutor, the defendant in verbal defense asked for leniency.
2. Whereas on the charges of the Public Prosecutor, the defendant stated that he did not file any objections or exceptions.
3. That at trial the Public Prosecutor submitted evidence in the form of: 1 (one) rolling door key.
4. Whereas at the trial, the Public Prosecutor has presented 3 (three) witnesses, namely Sishadi, Sendy Ardiatma and Budi Santoso. From the testimony of the witnesses, the defendant did not object and confirmed the statement.



5. That at trial the defendant admitted to having attempted theft at the shop owned by witness Sishadi.
6. Whereas all the elements indicted by the Public Prosecutor, namely Article 363 paragraph (1) 3 in conjunction with Article 53 of the Criminal Code, have been proven, the defendant is legally and convincingly guilty of committing a criminal act of attempted theft in aggravating circumstances.
7. Whereas the defendant did not find any excuse for forgiveness or justification as a criminal offence, so the defendant must be declared as a person who can be held accountable for all his actions.
8. Whereas with respect to the sentence to be imposed on the defendant, the judge needs to consider aggravating things and mitigating factors for the defendant, namely: Things that incriminate the defendant:
 - a. The defendant's actions harmed other people, especially Witness Sishadi;
 - b. The defendant had taken goods without the permission of Witness Sishadi;
 - c. The defendant had already enjoyed the results of his actions. Things that relieve the defendant:
 - d. The defendant regretted his actions;
 - e. The defendant promised not to repeat his actions again.
 - f. The defendant is still a child or not yet an adult, which is 15 years old.

In the above case the defendant was charged with committing an act that violated Article 363 paragraph (1) 3 in conjunction with Article 53 of the Criminal Code. In order to prove the guilt that has been charged to the defendant, in the trial examination, evidence has been submitted. The evidence submitted was in the form of witness statements consisting of 3 (three) people, namely victim witness, Sishadi, witness Sendy Ardiatma and Budi Santoso. In addition, there is evidence in the form of the defendant's statement, where the defendant admits that he has committed a criminal act of attempted theft at the shop of witness Sishadi.

With these two kinds of evidence, it has complied with the provisions of Law no. 3 of 1997, where a judge can impose a crime on a person, with at least two valid pieces of evidence he/she obtains the belief that a criminal act has actually occurred and the defendant is guilty of committing it.

Based on these statements, both from the testimony of witnesses and from the testimony of the defendant, it was found that the actions taken by the defendant fulfilled the elements contained in the article indicted, namely Article 363 paragraph (1) 3 in conjunction with Article 53 of the Criminal Code. These elements are:



The element of "whoever" Is meant by "anyone" by the law is a legal subject, both a person and a legal entity without exception and in connection with this case what is meant by who is a person named Angga Taufik Qurrahman who is confronted as the perpetrator or legal subject of the criminal act indicted by the Public Prosecutor, whose identity has been acknowledged by the defendant himself and confirmed by the witnesses, so that the element of "whoever" has been fulfilled.

The element of "taking something that is wholly or partly owned by another person" What is meant by "taking" in this provision is that the item must have moved from its original place. In connection with this case, legal facts have been obtained based on the testimony of the witnesses under oath and the testimony of the defendant as well as the evidence presented at the trial that the defendant was proven to have committed theft at the shop owned by witness Sishadi and found his rolling door key in the defendant's wallet. In addition, the defendant had previously taken weights from witness Sishadi's house, which the defendant later sold for Rp. 55,000,- (fifty five thousand rupiah) and the defendant used the money to play the Playstation.

The element "with the intention of being owned against the law" Based on the facts revealed in court, the defendant wanted to take the goods in the shop belonging to witness Sishadi without the permission and knowledge of the owner, the defendant wanted to take the cigarettes belonging to witness Sishadi for possession. Thus, the defendant's actions prove that the elements with the intention of being illegally owned have been legally fulfilled.

The element contained in Article 53 of the Criminal Code, which is in the form of an "experimental" element, what is meant by "experiment" here is trying to commit a criminal crime but its implementation is not completed. In connection with this case, legal facts have been obtained based on the testimony of witnesses under oath and the testimony of the defendant was proven to have attempted theft in a shop owned by Witness Sishadi.

With the fulfillment of all the elements in Article 363 paragraph (1) 3 in conjunction with Article 53 of the Criminal Code, the defendant is legally and convincingly proven guilty of committing a criminal act of attempted theft in aggravating circumstances, in accordance with Article 363. And in the absence of excuses and excuses. the justification for the defendant's actions, the defendant can be sentenced as a result of his actions. What is meant by justifying reasons are reasons that eliminate the unlawful nature of the act, so that what the defendant does is a proper and correct act, while the excuse for forgiveness is the reason that erases the defendant's guilt.

With the proof that the defendant has committed a crime that meets the elements in Article 363 paragraph (1) 3 in conjunction with Article 53 of the Criminal Code, the maximum penalty that can be imposed on the defendant is of the criminal threats contained in the provisions of the



article, namely 7 (seven) years, so that the maximum penalty is 3 (three and a half) years. However, in his decision, the judge only sentenced him to 3 (three) months in prison.

Based on the legal considerations above, it can be seen that the judge in making the decision is in accordance with the laws and regulations that apply to criminal acts of children, namely the Juvenile Court Act. Where it can be seen from the imposition of imprisonment in accordance with the provisions of Article 26 paragraph (1) of Law Number 3 of 1997 concerning Juvenile Court. In addition, before making a decision, the judge had also listened to the Research Report from the Correctional Supervisor. This is in accordance with Article 59 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In making a decision against a minor, the judge must consider the Research Report from the Community Counselor, otherwise the decision will be null and void. This case of theft by minors is examined and decided by a single judge. This is in accordance with Article 11 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that judges examine and decide cases of children at the first level as sole judges.

4. CONCLUSION

In the regulation of criminal acts of theft, which are committed by minors in the Criminal Code, that in the Criminal Code against children who commit acts that violate the law before the age of sixteen (16), the sanction imposed is to be returned to his parents or guardians or to maintain him without any punishment. In addition to being returned to the parents, the guilty child can also be handed over to the government without any crime, if the act committed is a crime or one of the violations. And two years have not passed since being declared guilty for committing a crime or one of the violations, the decision becomes permanent or imposes a sentence. Based on this, the crime of theft committed by minors is a form of crime so that children who commit the crime of theft can be subject to sanctions in accordance with what is stated in Article 45 of the Criminal Code. However, Article 45 of the Criminal Code is no longer valid because there are new regulations governing naughty children, which are contained in Article 4 paragraphs (1) and (2) of Law no. 3 of 1997 concerning the age limit of naughty children who can be submitted to the juvenile court is at least 8 (eight) years but has not yet reached the age of 18 (eighteen) years and has never been married and in the event that the child commits a crime at the age limit referred to in paragraph (1) and submitted to a court hearing after the child in question exceeds the age limit, but has not yet reached the age of 21 (twenty one) years, it is still submitted to the juvenile court. has determined what is meant by a child, and this Law applies specifically to the Criminal Code, especially with regard to criminal acts committed by children. The birth of the Juvenile Court Law, later it must also become a reference in the formulation of new articles of the Criminal Code

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relating to crimes and actions for children. Thus, there will be no overlapping or contradicting each other. The regulation regarding the crime of theft itself is regulated in Articles 362, 363, 364 and Article 365 of the Criminal Code, and as long as it is not regulated in the Law so that it uses the Criminal Code because in this case Law no. 3 of 1997 does not regulate theft so it uses the Criminal Code.

Juridical Study of the Criminalization Conducted by Judges Against the Crime of Theft Perpetrated by Minors in the Surakarta District Court Based on Law Number 3 of 1997 concerning Juvenile Court. That the Surakarta District Court Judge has acted 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 making a decision, the judge will consider several things, namely: evidence, the fulfillment of the elements of a criminal act, aggravating and mitigating factors, and the presence or absence of excuses and justifications. From these considerations, the judge handed down a decision against the naughty child. The punishment carried out by the Surakarta District Court judge against a minor who commits the crime of theft is still far from the maximum penalty that can be imposed, which is in accordance with Article 11 paragraph (1) of Law Number 3 of 1997. In determining the severity The law provides freedom for judges to determine the severity of the crime to be imposed between the minimum and maximum penalties contained in the article in question.

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