

Children as People of The Crime of Theft with Violence and Incurment

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ABSTRACT

Background: Juvenile delinquency, including crimes committed by children, is a pressing social issue in various regions. Children are often unable to fully comprehend and take responsibility for their actions due to their developmental stage and environmental influences. To address this, the judicial process for children differs from that of adults, aiming to minimize psychological harm. Law Number 11 of 2012 on the Juvenile Criminal Justice System serves as the legal framework to protect children's rights while addressing their offenses.

Objectives: This study aims to analyze the occurrence of violent theft by children, understand contributing factors, and evaluate the application of the juvenile justice system in handling such cases..

Methods: The study uses a qualitative approach, analyzing legal documents, court cases, and interviews with stakeholders, including law enforcement, psychologists, and social workers, to understand the legal and social dimensions of violent theft involving children.

Research Findings: The findings reveal that environmental factors, lack of supervision, and socio-economic issues are significant contributors to children's involvement in violent theft. The juvenile justice system plays a crucial role in rehabilitating offenders and preventing recidivism.

Conclusion: Addressing juvenile delinquency requires an integrated approach involving legal, social, and psychological interventions. Strengthening family and community support systems is vital to reducing the incidence of violent theft by children.

KEYWORDS

Children's Rights, Juvenile Delinquency, Juvenile Justice System, Rehabilitation, Violent Theft.

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INTRODUCTION

Criminal acts committed by children (juvenile delinquency) currently occurring in various regions are a social phenomenon (Berezka dkk., 2022). Basically, a child is not yet able to take responsibility for all his mistakes because the surrounding environment also provides opportunities to violate the law, so that the judicial process is different from justice in general. , because in order to avoid psychological pressure on children who have violated applicable norms or laws as stated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Ramírez Fernández dkk., 2020).



The crime of theft with violence and aggravation (*gequalificeerde diefstal*) as regulated in Article 365 paragraph (2) 2 of the Criminal Code (KUHP) is a form of crime.

The perpetrator can be held responsible for all his mistakes. The crime of theft with violence and aggravation (*gequalificeerde diefstal*) still frequently occurs in the Republic of Indonesia (Lysova dkk., 2020). Such cases require attention from the government. The juridical basis that regulates criminal acts of theft is the Criminal Code (KUHP) which describes the criminal act of theft in detail in Chapter XXII concerning Theft (Blackmore dkk., 2022). Article 365 of the Criminal Code outlines provisions for theft involving violence or threats of violence. Theft accompanied by violence or threats, intended to facilitate the theft, enable escape, or retain stolen property, is punishable by a maximum imprisonment of nine years. If the theft occurs under aggravating circumstances, such as being committed at night in a house or closed yard, on a public road, or on a moving train or tram, the punishment increases to a maximum of twelve years. Additional aggravating factors include committing the act in partnership with others, entering the crime scene by breaking, climbing, or using false keys, orders, or official attire, or if the act results in serious injury. When the theft leads to death, the penalty escalates to a maximum of fifteen years. In cases where the act causes serious injury or death and is committed by two or more individuals in association, accompanied by aggravating factors as previously mentioned, the punishment can reach the death penalty, life imprisonment, or a maximum imprisonment of twenty years. These provisions underscore the seriousness with which the law treats theft involving violence, especially under circumstances that amplify its impact or harm.

A child committing a crime is caused by several factors, including the negative impact of the flow of globalization, communication and information, advances in science and technology, changes in lifestyle which have brought about social changes in people's lives (Graham dkk., 2021). Criminal acts committed by children need to receive attention from the government (Završnik, 2021). This has very bad consequences for society in general and for the development of children themselves in particular.

The criminal sanctions contained in the provisions in Article 365 of the Criminal Code (KUHP) are a form of legal certainty (Slavny-Cross dkk., 2022). These criminal sanctions aim to ensure legal certainty, order and legal protection in the current modernization and globalization can be implemented, if the various dimensions of legal life always maintain harmony, balance and harmony between civil morality which is based on actual values in civilized society.

Punishment sanctions for naughty children (juvenile delinquency) can be given according to the provisions in Article 82 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which explains that: (1) Actions that can be imposed on children include (Lavorgna & Ugwudike, 2021): returning them to their parents/guardians; submission to someone; treatment in a mental hospital; treatment at LPKS; obligation to attend formal education and/or training provided by the government or private bodies; revocation of driving license; correction of the consequences of criminal acts. (2) Actions as intended in paragraph (1) letters d, e and f are imposed for a maximum of 1 (one) year (David & Mitchell, 2021). (3) Actions as intended in paragraph (1) may be submitted by the Public Prosecutor in his prosecution, unless the criminal offense is punishable by imprisonment for a minimum of 7 (seven) years. (4) Further provisions regarding the actions as intended in paragraph (1) are regulated by Government Regulation (Ramponi dkk., 2021). Sentencing the defendant to prison will actually have a negative impact on children's development. If the defendant is still a child and can still be fostered. The aim of this punishment is not retaliation but rather guidance for defendants who have done wrong and so that they can be held accountable for their actions.

Based on the explanation above, the formulation of the research problem can be put forward: what is the criminal responsibility for children as perpetrators of criminal acts of theft with violence and aggravation (LaChance & Kaplan, 2020), and what is the basis for the judge's legal considerations in imposing criminal sanctions against children as perpetrators of criminal acts of theft with violence and aggravation.

RESEARCH METHODOLOGY

This research method used in this article is normative juridical research (Bowden dkk., 2022). The sources of legal materials used in this research are primary legal materials and secondary legal materials (Blonigen dkk., 2020). The type of approach used in this research is the legal approach (Baidawi, 2020). The data processing method used is the analytical method which is then outlined in analytical descriptive writing.

RESULT AND DISCUSSION

Criminal law in Indonesia provides the concept of criminal responsibility that to be able to hold someone criminally responsible even though they have committed an act that fulfills the elements of a criminal act and is against the law, and there is no justification, this does not fulfill the requirement that the person who committed the crime must be guilty (Price dkk., 2021). If there is an error that results in the defendant being convicted, the defendant must meet the following criteria: Resisting criminal acts; Able to take responsibility; intentionally or negligently; and There is no reason to forgive.

Criminal liability means whether a person can be convicted or not because of their ability to take responsibility for their actions. In foreign languages it is known as *Toerekeningsvatbaarheid* and the defendant will be released from responsibility if it does not violate the law (Lofstrom dkk., 2020). For criminal liability to exist, it must first be clear who can be held accountable. This means that it must first be ascertained who is declared to be the perpetrator of a criminal act.

It is not enough for a person to be convicted by proving that the person has committed an act that is contrary to the law or unlawful. In order for the person to be held accountable, there needs to be a requirement that the person who committed the act as a fault or is guilty (subjective guilt).]

An unlawful act is not enough to warrant a penalty. There must be a maker (*dader*) who is responsible for his actions (Fairclough, 2021). The maker must have an element of fault and that guilt is a responsibility that must meet the elements: Acts that are against the law; The maker or perpetrator is considered capable of being responsible for his actions (element of fault).

Every person is responsible for all his actions, only his behavior causes the judge to impose a punishment that is responsible for the perpetrator (DeMarco dkk., 2021). Criminal liability or error in a broad sense has three areas, namely: The ability to be responsible for the person who committed the act; The inner relationship (psychic attitude) of the person who commits the act is intentional, or negligent, negligent, careless; There is no reason to eliminate criminal liability for the maker.

A person must be responsible for something done alone or with other people, through intention or active or passive negligence, carried out in the form of an unlawful act, both in the implementation and trial stages. The concept of the Principle of Legality states that a person can only be said to have committed a criminal act if the act is in accordance with the formulation in the criminal law (Edalati dkk., 2020). However, this person cannot necessarily be sentenced to a crime, because his guilt must still be proven, whether he can be held accountable. In order for someone to be sentenced to a crime, they must fulfill the elements of a criminal act and criminal responsibility.

Based on the theory above, it can be analyzed that responsibility according to criminal law is a person's ability to be responsible for mistakes (Humphreys & Kilmer, 2020). In criminal law, in order for criminals to be held accountable, there must be an error, because there is a principle in criminal law which states that there is no crime without error, in order to be convicted, the elements of a criminal act must be met, namely: There is a legal subject (the perpetrator); There is action (active or passive); Is against the law (principle of legality); There is an error (intentional or culpa); Can be accounted for (no excuses or justifications).

A person has committed or not committed an act that is prohibited by law and is not permitted by society or is inappropriate in the opinion of society. Violating the law and wrongdoing are elements of a criminal event or criminal act (delict) that are closely related. This responsibility is always there, although it is not certain that it will be demanded by interested parties if the implementation of the role that has been carried out does not achieve the desired goals (Guiney, 2020). Likewise with the problem of criminal acts occurring with all the factors that are taken into consideration in carrying out responsibility in criminal law. Based on these factors, responsibility can arise in criminal law.

Criminal responsibility can be interpreted as further consequences that must be borne by people who have acted, whether they act in accordance with the law or in conflict with the law (Ariefulloh dkk., 2023). Criminal responsibility is a further consequence that must be received/paid/borne by someone who commits a criminal act directly or indirectly. To be punished, the act must fulfill the elements of a criminal act. If the actions fulfill the elements of a criminal act, then the person concerned can be held legally responsible for criminal action.

Children as perpetrators or children in conflict with the law are children who are suspected, charged, or found guilty of violating the law, and need protection. The word conflict is used to indicate that there is an event that is not in harmony or that there is a contradiction in an event, so that it can be said to be a problem (Walker dkk., 2021). Therefore, the definition of a child in conflict with the law can also be interpreted as a child who has problems because of an action that is contrary to the law, or it could also be said that a child in conflict with the law is a naughty child

Juvenile delinquency is not the delinquency referred to in Article 489 of the Criminal Code. Juvenile means young, children, young people, characteristic features of youth, typical traits of the teenage period, while delinquency means doing wrong, neglected/neglected, which was later expanded to mean evil, a-social, criminal, breaking the rules, loudspeaker, troublemaker, terrorizer, irreparable, evil, unscrupulous, etc.

Child delinquency can be seen in two forms, namely: Child Delinquency as status offenses, namely all child behavior that is considered deviant, but if carried out by adults is not considered a criminal act, for example skipping school, fighting parents, running away from home (Marçal & Maguire-Jack, 2021); Child delinquency is a criminal act, namely any child's behavior that is considered to violate legal regulations, but the child is deemed not to be fully responsible for his actions. For example stealing, extorting.

The enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System has, among other things, determined what is meant by a child in conflict with the law (Guiney, 2020). This law applies *lexspecialis* to the Criminal Code, especially those relating to criminal acts committed by children, with the existence of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which also becomes a reference in the formulation of the 2012 Criminal Code Concept relating to crimes and criminal acts. for children. In this way, there will be no overlap or conflict.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System defines children in conflict with the law as individuals aged 12 to 18 years old who are suspected of committing criminal acts or engaging in acts prohibited for children, either by statutory regulations or other applicable legal regulations within the society. Furthermore, when considering Law Number 12 of 1995 concerning Corrections, the legal status of delinquent children determined by court decisions can be categorized as either criminal children or state children. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System defines “Children” as individuals aged 12 to 18 years who are suspected of committing a criminal act. This definition encompasses not only children who commit criminal acts but also those who engage in acts prohibited for children, as outlined in statutory or other relevant legal regulations within the applicable society. Furthermore, when considering Law Number 12 of 1995 concerning Corrections, the legal status of delinquent children can be categorized as either criminal children or state children, as determined by court decisions.

A criminal child is a child who, based on a court decision, is serving a sentence in a correctional institution (LP) until he or she is 18 (eighteen) years old (Jarldorn, 2020). Then as a child of the state, that is, a child who, based on a court decision, is handed over to the State to be educated and placed in a children’s prison until he is 18 (eighteen) years old.

Based on the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, criminals can be imposed on children who are in conflict with the law, namely principal penalties and additional penalties or actions (Lucas dkk., 2022). Law Number 11 of 2012 concerning the Juvenile Criminal Justice System outlines the main and additional punishments for children in conflict with the law. Main punishments include warning, criminal penalties with conditions such as coaching outside the institution, community service, and supervision, job training, coaching within the institution, and imprisonment. Additionally, children may face further consequences such as confiscation of profits from criminal acts and fulfillment of customary obligations.

Furthermore, Article 82 paragraph (1) of the same law stipulates that actions such as returning the child to parents/guardians, handing over the child to a responsible individual, providing treatment at a mental hospital or LPKS (Lembaga Pembinaan Khusus Anak), ensuring the child attends formal education or training, revoking their driving license, and requiring them to repair the damages caused by their criminal acts can also be imposed.

In addition to the actions above, the judge can give a warning and set additional conditions. A warning is a warning from the judge either directly to the child who has been punished or indirectly through the parent, guardian or foster parent so that the child does not repeat the action (Krawczyk dkk., 2020). These additional requirements, for example, the obligation to report periodically to community counselors are based on the explanation of Article 73 paragraph (7) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. [Rahardi Ramelan, Non-Prison Correctional Institutions, Gramedia, Jakarta, 2012, p. .63]

The judge imposes an action on a child who commits an act that is declared prohibited for children according to statutory regulations (Feigenberg & Miller, 2021). However, for children who commit criminal acts, the judge imposes a principal penalty and/or additional penalties or actions. In terms of age, measures are applied primarily to children aged 12 (twelve) years. For children who have exceeded the age of 12 (twelve) years to 18 (eighteen) years, criminal penalties are imposed.

This is done considering the physical, mental and social growth and development of children. [Mahmul Siregar et al, Practical Guidelines for Protecting Children by Law in Emergency Situations and Natural Disasters, Center for Child Protection and Studies (PKPA), Medan, 2007, p.19]

The objectives and rationale for juvenile justice are the starting point for the approach that must first be considered when discussing the issue of legal protection for children in the judicial process (Swofford & Champod, 2022). Based on the starting point of an approach that is oriented towards children's welfare, there needs to be a special approach to the issue of legal protection for children in the judicial process.]

The types of actions that can be imposed on children who are in conflict with the law based on Article 82 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System is apparently slightly broader than the formulation of the 2012 Criminal Code Concept. The formulation of the imposition of actions against children (Article 132 The concept of the 2012 Criminal Code) is:

1. Return to parents, guardians or caregivers,
2. Return to the government or someone,
3. Having to take part in training held by the government or private agency,
4. Revocation of driving license,
5. Rehabilitation.

The juridical basis governing the crime of theft with violence and aggravation (gequalificeerde diefstal) is regulated in Article 365 paragraph (2) 2 of the Criminal Code (KUHP) which is a form of crime (Carvalho dkk., 2019). The perpetrator can be held responsible for all his mistakes. The crime of theft with violence and aggravation (gequalificeerde diefstal) still often occurs in the Republic of Indonesia. [Anthon F. Susanto, Legal Theories, Refika Aditama, Bandung, 2010, p.47]

Cases that occur like this need to receive attention from the government. The juridical basis that regulates criminal acts of theft is the Criminal Code (KUHP) which describes the criminal act of theft in detail in Chapter XXII concerning Theft. The provisions in Article 365 of the Criminal Code explain that:

1. Punishable by a maximum imprisonment of nine years for theft which is preceded, accompanied or followed by violence or threats of violence against a person with the intention of preparing or facilitating the theft, or if caught red-handed, to enable oneself or other participants to escape, or to retain control of the stolen goods.
2. Threatened with a maximum imprisonment of twelve years.
 - a. If the act is committed at night in a house or closed yard where the house is located, on a public road, or on a moving train or tram;
 - b. If the act is carried out by two or more people in partnership;
 - c. If the guilty person enters the place of committing the crime by breaking or climbing or using a fake key, a fake order or fake official attire;
 - d. If the action results in serious injury.
 - e. If the act results in death, the guilty party is threatened with imprisonment for a maximum of fifteen years.
 - f. Threatened with the death penalty or life imprisonment or imprisonment for a maximum period of twenty years, if the act results in serious injury or death and is committed by two or more people in association, accompanied by one of the things described in numbers 1 and 3.

The offense of theft with violence and aggravation (gequalificeerde diefstal) in Article 365 paragraph (2) 2 of the Criminal Code (KUHP) determines the form and method of carrying out the act, the time and type of goods stolen so that the quality of the theft is assessed as aggravating, so it is necessary threatened with a more severe crime or a higher maximum sentence (Purtle dkk.,

2020). Aggravated theft is usually referred to as qualified theft. in certain circumstances, so it is more serious and therefore punishable by a heavier crime than ordinary theft. This shows two or more people working together to commit a crime of theft, such as taking items together.[Momo Kelana, Understanding the Police Law (Law Number 2 of 2002), Background and Article Comments by Article, PTIK Press, Jakarta, 2002, p. 27]

The provisions in Article 365 paragraph (2) 2 of the Criminal Code, that this article is aggravating criminal circumstances (Sanchez dkk., 2020). Because the theft was carried out by two or more people in alliance. In an association where the theft is carried out by several people and each perpetrator in the regulations has a different position, but what is important is the number of people at the time the theft is committed, however the criminal threat remains the same.

CONCLUSION

Based on the analysis of research results and discussion, it can be concluded that criminal responsibility for children as perpetrators of criminal acts of theft with violence and aggravation, during the judicial process, from the investigation level to the execution level, the defendant is in a physically and mentally healthy condition (excluding the qualifications of Article 44 of the Criminal Code) and no reason for expunging the crime was found in this case, either a justifying reason or a forgiving reason, so that in the judge's consideration the defendant was categorized as capable of being responsible for the actions he committed. The purpose of punishment, mitigating and aggravating factors, the panel of judges tends not to impose the maximum sentence, the hope of the perpetrator not repeating his actions, the motive for the crime, the attitude of the perpetrator after committing the crime, the consequences, as well as the application of theories related to the basic considerations Judges in deciding cases in court include legal certainty, expediency and legal justice.

Suggestions will be given regarding criminal responsibility for children as perpetrators of criminal acts of theft with violence and aggravation. When giving considerations, judges should take more into account the condition of perpetrators who are still minors, so this of course requires special forms of rehabilitation and guidance for perpetrators to be able to develop self-control and to avoid negative influences on children, namely mental stigma and depressed behavior in a prison environment. The judge must be wiser and fairer in giving a sentence to the perpetrator on the grounds that the results of the examination in court stated that the defendant had not had time to enjoy the results of his actions and remember that imprisonment has a negative impact on children's development.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.

Author 2: Conceptualization; Data curation; In-vestigation.

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