

ANALYSIS OF JUDGES' CONDITIONS IN MAKING DECISION ON THE PERSONNEL OF THE CRIME OF MOTORCYCLE THEFT BY UNDERAGE CHILD

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Abstract

Every child should ideally grow and develop properly according to their age, but in reality there are children who commit the crime of motorbike theft, namely in Decision Number: 4/Pid Sus-Anak/2022/PN.Tjk. Internal factors that cause underage Childs to commit motorcycle theft crimes are the child's desire to gain material benefits (money) and the low level of education of children who are still junior high school students. The external factor was the solicitation and persuasion of other actors, namely Fajar Riyadi, who asked his children to steal motorbikes. The basis for the judge's consideration in imposing a prison sentence of 4 (four) months in the Women's Correctional Institution for a child is legally proven to fulfill the elements of Article 363 paragraph (1) 4 of the Criminal Code. The judge considered that imprisonment as an effort to improve the child's behavior. Diversion synchronization of crimes committed by underage Childs is that diversion cannot be applied because the maximum penalty for crimes committed by children is 7 (seven) years and the victim does not want the diversion process.

Keywords: Judge Considerations, Daughter, Motorcycle Theft.

I. INTRODUCTION

Every child should ideally grow and develop naturally according to their age. Children as the nation's next generation are expected to be in the care and protection of their parents, society and the state. In fact, there are children who violate legal norms and commit criminal acts. In accordance with the context of a rule of law, children who commit crimes must still be held accountable for their actions before the law, however, considering that the perpetrators of crimes are still young, the process of law enforcement and punishment applied to children is carried out specifically through Law Number 11 2012 concerning the Juvenile Criminal Justice System (UUSPPA).

The implementation of the UUSPPA is based on the spirit of the goal of punishment which is oriented towards fostering children so that later they become good children and do not repeat their crimes. Criminalization of children is a planned and integrated effort to mold children into law-abiding human beings.

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Children who realize their mistakes and show good development during the coaching period are expected not to return to committing crimes or unlawful acts.³

One type of crime committed by children is the crime of theft with weighting as stipulated in Article 363 paragraph (1) 4th of the Criminal Code (KUHP) with a maximum imprisonment of 7 (seven) years. An example of a case is in Decision Number: 4/Pid Sus-Anak/2022/PN.Tjk with the child defendant with the initials ZT who committed the crime of motorbike theft. The juvenile judge in this case sentenced the child to imprisonment for 4 (four) months at the Bandar Lampung Women's Correctional Institution, because it was legally and convincingly proven to have committed the crime of theft with weighting.

This is in accordance with the objectives of the Juvenile Criminal Justice System which is to provide protection to children and ensure the welfare of children, even though they are in conflict with the law. The imposition of legal sanctions against children must be strictly proportional, not only giving sanctions oriented towards punishment (imprisonment), but also providing other alternatives in the form of coaching (treatment) in accordance with the purpose of punishment. The meaning is that the punishment of children is expected to realize the welfare of children and judges in imposing crimes against children must be oriented towards providing the best for children, without sacrificing the interests of society and upholding the rule of law.⁴

Criminal sanctions imposed on children are based on truth, justice and child welfare. Juvenile Criminal Justice as an effort to correct, rehabilitate, so that sooner or later, children can return to normal social life and not to end their hopes and future potential. Criminal imposition or action is a series of action procedures that must be accounted for and can be useful for the fulfillment of the child's rights..⁵

The imposition of imprisonment for 4 (four) months in the Women's Correctional Institution for underage Children as perpetrators of the crime of motorbike theft in Decision Number: 4/Pid Sus-Anak/2022/PN.Tjk is an interesting study, because it is in accordance with the provisions Article 71 UUSPPA, that the criminal sanctions that can be imposed on children as perpetrators of juvenile crimes are divided into Main Crimes and Additional Crimes. Imprisonment as the main punishment should ideally be used as the last alternative against children, but in this decision imprisonment was prioritized. After the enactment of the UUSPPA, law enforcement officials should prioritize the development and improvement of the child's personality in the punishment of children so that they become better and do not repeat their actions.

³ Wagianti Soetodjo. 2006. *Hukum Pidana Anak*, Refika Aditama, Bandung, p. 4.

⁴ Moch. Faisal Salam. 2013. *Hukum Acara Perlindungan Anak di Indonesia*, Mandar Maju, Bandung, p 11.

⁵ Nandang Sambar. 2013. *Pembaruan Sistem Pemidanaan Anak di Indonesia*, Graha Ilmu, Yogyakarta, p. 25.

II. DISCUSSION

Factors Causing Underage Childs to Commit the Crime of Motorcycle Theft

Underage Childs in decision No: 4/Pid Sus-Anak/2022/PN.Tjk legally and convincingly proven to have committed the crime of theft of a red and white Honda Beat 2019 motorcycle, Police Number BE 2493 ADK, Frame number: MH1JM22128KK575713, engine number: JME1E25543326. Children in committing the crime of theft are caused by several factors, both from within the child (internal) and from outside the child (external)..

Underage Childs as perpetrators of the crime of motorbike theft in Decision No: 4/Pid Sus-Anak/2022/PN.Tjk with the initials ZT. The child was charged by the Public Prosecutor with charges of Article 363 paragraph (1) 4 of the Criminal Code and demanded that the child be sentenced to imprisonment for 6 (six) months in the Women's Penitentiary. The factors that cause underage Childs to commit the crime of motorbike theft in this case are as follows. A person in committing a crime or crime in general is caused by two factors as follows:

1. Internal Factors

Internal factors are factors that come from within the perpetrator of the crime itself, without coercion from external factors. This is related to the mental or psychological state of the perpetrator, which is closely related to the assumption that every human being tends to behave in a deviant manner. This factor focuses on the rationale that spontaneously arises in a person.

2. External Factors

External factors are factors that come from outside the perpetrators of criminal acts that trigger them to commit crimes or criminal acts. This factor is generally due to the encouragement of economic factors, the social environment and the existence of intentions or opportunities that make it easier for someone to become a perpetrator of a crime or crime.⁶

Based on this theory, the factors causing the child defendant to commit the crime of motorcycle theft are as follows:

1. Internal Factors

The internal factor that caused the child defendant to commit the crime of theft by weighting was the desire to gain material benefits (money) from the sale of the motorcycle he stole. Apart from that, the ZT child's low education is also a factor that causes him to commit the crime of theft, the child in this case is still a junior high school student so he cannot think long about the crime he is committing.

2. External Factors

The external factor that caused the child defendant to commit the crime of theft by weighting was the invitation from another actor, namely Fajar Riyadi,

⁶ Ridwan Hasibuan dan Ediwarman. 1995. *Asas-asas Kriminologi*. USU Pers, Medan, p. 25.

to commit the theft. According to the results of an interview with Fahrurozi Saputra as the Community Advisor at the Class II Bapas Bandar Lampung, it is known that this crime was caused by the factor of ZT's association with his male friend Fajar Riyadi who had a naughty attitude so he ordered the victim to commit the crime of theft. ZT's son committed the crime of motorbike theft due to the persuasion and persuasion of his male friend who asked him to commit the crime of theft.

Considerations of Judges in Delivering Decisions on Underage Childs Who Commit the Crime of Motorcycle Theft.

Juridically, the judge may not impose the sentence unless with at least two valid pieces of evidence, so that the judge gains confidence that a crime has actually occurred and the defendant is guilty of committing it (Article 183 of the Criminal Procedure Code). Legal evidence referred to in Article 184 of the Criminal Procedure Code is:

1. Witness testimony
2. Expert Statement
3. Letters
4. Hint
5. Statements of the Defendant or things that are generally known so there is no need to prove it ⁷

Implementation of imprisonment for 4 (four) months at the Bandar Lampung Women's Correctional Institution for underage Childs as perpetrators of the crime of motorbike theft in Decision No.: 4/Pid Sus-Anak/2022/PN.Tjk decided by the judge based on several considerations including juridical considerations, namely the child's actions fulfill the elements of the article charged by the Public Prosecutor, namely Article 363 paragraph (1) 4th of the Criminal Code.

According to Sudarto, the judge's decision is the culmination of a criminal case, so the judge must consider the following:

1. Juridical considerations

Juridical considerations mean that judges base their decisions on formal provisions of laws and regulations. Juridically, the judge may not impose the sentence unless with at least two valid pieces of evidence, so that the judge gains confidence that a crime has actually occurred and the defendant is guilty of committing it (Article 183 of the Criminal Procedure Code). The legal evidence in question is: (a). Witness Statement; (b). Expert Statement; (c). Letter; (d). Instruction; (e). The statement of the Defendant or matters that are generally known so that no need to be proven

⁷ Ahmad Rifai. 2010. *Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif*. Sinar Grafika, Jakarta, p.101.

(Article 184). Apart from that, it was also considered that the defendant's actions violated formal law and fulfilled the elements of the crime he had committed.

2. Philosophical considerations

Philosophical considerations mean that the judge considers that the sentence imposed on the defendant is an attempt to improve the defendant's behavior through the sentencing process. This means that the philosophy of punishment is coaching the perpetrators of crimes so that after the convict leaves the penitentiary, he will be able to improve himself and not commit crimes again..

3. Sociological considerations

Sociological considerations mean that the judge in imposing a sentence is based on the social background of the defendant and taking into account that the sentence imposed has benefits for society.⁸

The judge considers that because the child is capable of being responsible, the child must be found guilty of the crime charged against the child and therefore must be sentenced to imprisonment for 4 (four) months at the Bandar Lampung Women's Penitentiary. The judge in this case noticed that according to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, in article 21 it is stated that the minimum limit for children who can be submitted is a child who is 12 years old, this according to the elucidation of the article is based on sociological development, psychologically, and pedagogically that a child who has not reached 12 years of age is considered unable to be held accountable for his actions, meaning that for a child, a child who is 16 years old means that he is considered to be able to account for his actions as stated in the Law on the Juvenile Criminal Justice System. According to the judge, he should be held accountable for his criminal actions in the form of imprisonment in the Bandar Lampung Women's Penitentiary.

Judges have a central role in passing court decisions. The procedural law in Article 197 Paragraph (1) letter d of the Criminal Procedure Code states that a sentencing decision must contain briefly compiled considerations regarding the facts and circumstances, along with the evidence obtained from the examination at trial which forms the basis for determining the defendant's guilt. Furthermore, Article 197 Paragraph (2) stipulates that non-compliance with these provisions will result in the decision being null and void.⁹

Based on the description above, the authors state that the judge's consideration in passing a decision on an underage Child who commits the crime of motorbike theft is based on Decision Number: 4/Pid Sus-Anak/2022/PN.Tjk is that juridically the child's actions are proven to fulfill the elements in Article 363 paragraph (1) 4th of the Criminal Code which the Public Prosecutor charged. Philosophically, prison sentence is not merely a body confinement, but is more oriented towards efforts to improve children's behavior so that they become better

⁸ Sudarto. 1986. *Kapita Selekta Hukum Pidana*, Alumni, Bandung, p.67.

⁹ Lilik Mulyadi. *Hukum Acara Pidana*, Citra Aditya Bakti, Bandung 2007, p. 152-153

individuals after completing their sentence. Sociological considerations, namely the judge considers mitigating and aggravating circumstances for underage Childs as perpetrators of the crime of motorbike theft.

Synchronization of Diversion in the Juvenile Criminal Justice System Act against Crimes Committed by Underage Childs

Based on the provisions of Article 1 Paragraph (7) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System it is stated that diversion is the transfer of settlement of child cases from the criminal justice process to processes outside the criminal justice. The aim of diversion is to achieve peace between victims and children, resolve child cases outside the judicial process, prevent children from being deprived of independence, encourage the community to participate and instill a sense of responsibility towards children..

Law enforcers in handling cases of the crime of motorbike theft committed by underage Childs based on Decision Number: 4/Pid Sus-Anak/2022/PN.Tjk, does not implement diversion. This is because the threat of theft crime with weighting as stipulated in Article 363 paragraph (1) 4 of the Criminal Code is a maximum of 7 (seven) years, while the diversion requirements as stipulated in Article 7 paragraph (2) letter (a) UUSPPA are stated that diversion can only be carried out if the crime committed by a child is punishable by imprisonment under 7 (seven) years. In addition, the victim does not want the process of settling the case outside the court against the perpetrator, so that diversion cannot be carried out and the child as the perpetrator of the crime is still processed in accordance with the applicable legal regulations..

Some alternative criminal sanctions that can be used by judges in accordance with Article 71 UUSPPA are warning sentences; punishment with conditions, which consist of: coaching outside the institution, community service, or supervision; Job training and coaching within the institution. According to the judge, the child has committed a serious crime and deserves a prison sentence. In accordance with the provisions in Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Justice System, it is explained that the imprisonment sentence that can be imposed on a child is at most $\frac{1}{2}$ (one half) of the maximum threat of imprisonment for an adult..¹⁰

The implementation of the UUSPPA is based on the spirit of the goal of punishment which is oriented towards fostering children so that later they become good children and do not repeat their crimes. Criminalization of children is a planned and integrated effort to mold children into law-abiding human beings. Children who realize their mistakes and show good development during the coaching period are expected not to return to committing crimes or unlawful acts.

¹⁰ Angger Sigit Pramukti dan Fuady Primaharsya. 2015. *Sistem Peradilan Pidana Anak*, Pustaka Yustisia, Yogyakarta, p. 54.

The substance of fostering children is a planned and integrated effort to shape children into law-abiding human beings. Children who realize their mistakes and show good development during the coaching period are expected not to return to committing crimes or unlawful acts. The prosecutor in this case can request a report on the child's personality development during the coaching period as an effort to improve the child's personality. This is in accordance with the essence contained in the purpose of the Juvenile Criminal Justice System is to provide protection to children and ensure the welfare of children, even though it is in conflict with the law. The imposition of legal sanctions against children must be strictly proportional, not only giving sanctions oriented towards punishment (imprisonment), but also providing other alternatives in the form of coaching (treatment) in accordance with the purpose of punishment.

This is in accordance with the objectives of the Juvenile Criminal Justice System which is to provide protection to children and ensure the welfare of children, even though they are in conflict with the law. The imposition of legal sanctions against children must be strictly proportional, not only giving sanctions oriented towards punishment (imprisonment), but also providing other alternatives in the form of coaching (treatment) in accordance with the purpose of punishment. The meaning is that punishment of children is expected to realize the welfare of children and judges in imposing crimes against children must be oriented towards providing the best for children, without sacrificing the interests of society and upholding the rule of law..

III. CONCLUSION

Based on the results of the research and discussion, it can be concluded as follows: Factors causing underage Childs to commit the crime of motorbike theft based on Decision Number: 4/Pid Sus-Anak/2022/PN.Tjk. internally is the child's desire to gain materially (money) from the sale of the stolen motorcycle and the low education of children who are still junior high school students. The external factor was the solicitation and persuasion of other actors, namely Fajar Riyadi, who asked his children to steal motorbikes. The basis for the judge's consideration in imposing a 4 (four) month prison in the Women's Correctional Institution for an underage Child as the perpetrator of the crime of motorbike theft based on Decision Number: 4/Pid Sus-Anak/2022/PN.Tjk in accordance with the theory of balance, namely the balance between juridical and non-juridical considerations. Juridically, the child's actions were proven to fulfill the elements in Article 363 paragraph (1) 4th of the Criminal Code which the Public Prosecutor charged. The judge considers that imprisonment is not merely a body confinement, but is more oriented towards efforts to improve children's behavior so that they become better individuals after serving a sentence. Synchronization of diversion in the Law on the Juvenile Criminal Justice System against crimes committed by underage Childs based on Decision

Number: 4/Pid Sus-Anak/2022/PN.Tjk is that diversion cannot be applied because the maximum penalty for a crime committed by a child is 7 (seven) years, while the requirement for diversion to be implemented is under 7 (seven) years. In addition, the victim does not want the process of settling cases outside the court, so that children as perpetrators of criminal acts are still processed in accordance with applicable legal regulations.

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