

Criminal Responsibility of Children as Perpetrators of Murder

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Abstract Violent theft is indeed a crime that makes society restless. People dare to do it because of weak economic factors and always expect wealth that takes the property of others. The phenomenon that has occurred in society lately is that many perpetrators of violent theft are minors. This study aims to determine, examine and analyze 1. The Criminal Act of Violent Theft in Positive Law, 2. The Purpose of the Juvenile Criminal Justice System Based on Several Paradigms (Individual Guidance, Restorative Paradigm, and Distributive), According to the Beijing Rules, and the Children's Convention. The approach method used in this study is normative juridical. The specification of this study is descriptive analytical, the data source used is secondary data. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. Based on the research results, it can be concluded: 1. The crime of aggravated theft or theft with violence regulated in Article 365 is also a theft with qualifications or is a theft with aggravating elements. Thus, what is regulated in this article is actually only one crime, and not two crimes consisting of the crime of 'theft' and the crime of 'using violence against people'. 2. The juvenile justice system will prioritize the welfare of children and will ensure that any reaction to juvenile lawbreakers will always be commensurate with the circumstances of both the lawbreakers and the lawbreakers.

Keywords: Criminal Liability, Children, Robbery

1. INTRODUCTION

The phenomenon of crimes involving children as perpetrators is increasingly becoming a serious concern in society. One form of crime that often occurs and involves children is mugging. Mugging is a crime committed with violence or threats of violence to seize other people's property. This crime not only causes material losses to the victim, but also often causes deep physical and psychological trauma.

Children as perpetrators of robbery give rise to legal and social dilemmas. On the one hand, children as perpetrators must still be held accountable for their actions. However, on the other hand, the status of children as individuals who are still in the process of growing and developing requires a special approach in law enforcement. (Rahul Ardian Fikri. 2020)

In the context of criminal law, the discussion of *strafbaar feit* becomes very relevant. The concept of *strafbaar feit* refers to an act that can be punished because it meets certain elements, such as the existence of an unlawful act, error, and the perpetrator's ability to take responsibility. In the case of children as perpetrators of robbery, the application of this concept requires in-depth consideration, considering that children are considered to have different capacities in understanding the consequences of their actions. Therefore, the determination of criminal responsibility for children must be adjusted to principles that prioritize the protection of children's rights while providing a proportional deterrent effect. Based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), children who are in conflict

with the law have the right to receive different treatment from adults, with a focus on restorative and rehabilitative approaches.

In the context of criminal law, the discussion of *strafbaar feit* becomes very relevant. The concept of *strafbaar feit* refers to an act that can be punished because it meets certain elements, such as the existence of an unlawful act, error, and the ability to be responsible by the perpetrator. In the case of children as perpetrators of robbery, the application of this concept requires in-depth consideration, considering that children are considered to have different capacities in understanding the consequences of their actions. Therefore, the determination of criminal responsibility for children must be adjusted to principles that prioritize the protection of children's rights while providing a proportional deterrent effect.

In Indonesia, to date, criminal experts/legal scholars have not yet reached a common opinion in defining *Strafbaar feit*. *Strafbaar feit* is a Dutch term that is translated into Indonesian with various meanings including criminal acts, offenses, criminal acts, criminal events and acts that can be punished. The word *Strafbaar feit* consists of 3 words, namely straf, baar and feit. Various terms are used as translations of strafbaar feit, it turns out that *straf* is translated

as a crime and punishment. The word *baar* is translated as can/may, while the word *feit* is translated as action, event, violation and deed. (Yasmirah Mandasari Saragih, 2021)

The definition of a criminal act in the Criminal Code is known as *strafbaarfeit* and in the literature on criminal law often uses the term delik, while the legislator formulates a law using the term criminal event or criminal act or criminal act. Criminal act is a term that contains a basic understanding in legal science, as a term formed with awareness in giving certain characteristics to criminal law events. Criminal acts have an abstract meaning from concrete events in the field of criminal law, so that criminal acts must be given a scientific meaning and clearly defined in order to be able to separate it from the terms used everyday in community life.

Criminal acts come from a term known in criminal law, namely *strafbaarfeit*. Although this term is found in the Dutch WvS as well as the Dutch East Indies WvS (KUHP), there is no official explanation of what is meant by *strafbaarfeit*, therefore legal experts try to give meaning to the term. The term criminal act "is a translation of *strafbaar feit*", in the Criminal Code there is no explanation of what is meant by *strafbaarfeit* itself.

Usually criminal acts are synonymous with crimes, which come from the Latin word *delictum*. In the legal dictionary, the definition of crimes is stated that a crime is an act that can be punished because it is a violation of the law (criminal act). The term "*strafbaar feit*"

itself, which is Dutch, consists of three words, namely *straf* which means punishment (criminal), *baar* which means can (allowed), and *feit* which means act, event, violation and deed. So the term *strafbaarfeit* is an event that can be punished or an act that can be punished.

Strafbaar feit is interpreted by Utrecht as a "criminal event" which has attracted debate among legal experts. Moeljatno, for example, rejects the term "criminal event" as a translation of *strafbaar feit*. Moeljatno, argues that the event is a concrete understanding, which only refers to a certain incident, for example the death of a person. This is considered contrary to its practice, where the law does not prohibit someone from dying. What is prohibited is the death of a person as a result of the actions of another person.

The increasing number of robbery cases involving children as perpetrators raises several important questions. What is the form of criminal responsibility for Theft with Violence in Positive Law? How Juvenile Criminal Justice System Based on Several Paradigms (Individual Guidance, Restorative Paradigm, and Distributive), According to the Beijing Rules, and the Children's Convention?

This study is important to examine how the criminal responsibility of children as perpetrators of robbery is applied in practice, as well as to analyze the suitability of its application with applicable legal principles, especially those regulated in the SPPA. Thus, this study is expected to contribute to the development of a criminal justice system that is not only fair to victims, but also supports rehabilitation and social reintegration for child perpetrators of crime.

2. RESEARCH METHODS

This study uses a juridical-normative method with a statute approach and a conceptual approach. The juridical-normative method was chosen to analyze relevant laws and regulations, especially Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), as well as the concept of criminal law related to *strafbaar feit*.

The legal approach is carried out by examining various regulations governing the criminal responsibility of children, both in the national and international contexts. The conceptual approach is used to deeply understand the concept of *strafbaar feit* and the legal principles behind it, including the application of the concept to cases of children as perpetrators of robbery.

Data collection was conducted through library research involving analysis of legal documents, literature, scientific journals, and related reports. The data obtained were analyzed qualitatively to produce a comprehensive understanding of the issues studied. The results of

this analysis will be used as a basis for formulating conclusions and recommendations that are relevant to the research objectives.

3. RESULTS AND DISCUSSION

The Crime of Theft with Violence in Positive Law

The crime of theft is one of the crimes against property. The victim who experiences the crime of theft will experience economic and social losses, the most felt by the victim is the trauma of the incident that befell him which is always attached to his memory and the psychological effects that will cause shock and excessive emotional reactions. Therefore, by understanding the role of the victim above, it can reduce excessive emotional reactions so that therapy and diagnosis efforts for the victim are easier to do.

Violent theft is a deviant act, deviant itself according to Robert MZ Lawang behavioral deviation is all actions that deviate from the norms that apply in the social system and cause efforts from those in authority in the system to correct deviant behavior. In Article 362 of the Criminal Code it is stated that "taking an item, all or part of which belongs to another person, with the intention of possessing it unlawfully is threatened because of theft". Thus robbery can also be said to be theft of an item. Article 365 of the Criminal Code is regulated in the Criminal Code Book II Chapter XXII and contains the following, "threatened with a maximum imprisonment of nine years, theft preceded, accompanied, or followed by violence or threats of violence, against people, with the intention of preparing or facilitating the theft, or in the case of being caught red-handed, to allow escape by yourself or other participants, or to maintain control of the stolen goods". This article is a special form of Article 362 of the Criminal Code concerning ordinary theft, which states, "anyone who takes something, which in whole or in part belongs to another person, with the intention of unlawfully possessing it, is threatened with theft, with a maximum prison sentence of five years or a maximum fine of sixty rupiah."

Violent theft is indeed a crime that makes society restless (Irma Fatmawati. 2023). The Restorative Method For Development Urgency Of Customary. *Journal of Economics* , 12 (02). People who commit such crimes are indeed from the element of coercion against themselves. The person dares to do it because of a weak economy and always expects wealth that takes the property of others without being burdened by means of association. Therefore, the police must work extra hard to eradicate the crime of theft accompanied by violence in the community. Universally, the message of the police in society is formulated as law enforcers (*lawenforcement officers*), order maintenance . This role also contains the understanding of the police as crime *fighters* .

However, in a country with an authoritarian political system, the meaning of the role of the police as a law enforcement tool is reduced to a tool of power. Violent theft is indeed very different from theft. (Lidya Rahmadani Hasibuan, 2015) However, the substance of violent theft is the same as theft. The difference between the two lies in the technicalities in the field, violent theft is an act of theft that takes place when the victim is aware of it, while theft is identical to being carried out when the victim is not aware of it. The Criminal Code of Violent Theft is categorized as a crime of violent theft regulated in Article 365 of the Criminal Code, namely theft preceded, accompanied, followed by violence directed at people with the aim of making it easier to carry out the action. The crime of violent theft is regulated in Article 365 of the Criminal Code, namely theft preceded, accompanied, followed by violence that will be directed at people with the aim of making it easier to carry out the action. Article 365 of the Criminal Code states that:

1. The crime of theft preceded, accompanied or followed by violence will be subject to a maximum prison sentence of 9 (nine) years, with the intention of facilitating or preparing the theft or if caught red-handed so that there is an opportunity for himself or his friends who are involved in the crime to escape or so that the stolen goods remain in his hands, including tying up the owner of the house, locking him in a room, this violence or threat of violence must be carried out on people, not on goods and can be carried out before, together with or after the theft is carried out, as long as the intention is to prepare or facilitate the theft, and if caught red-handed so that there is an opportunity for himself or his friends who are involved in the crime to escape or so that the stolen goods remain in his hands. A thief who damages a house is not included here, because violence (damaging) is not imposed on people.
2. The maximum prison sentence imposed is 12 (twelve) years.
 - a. If the act is committed at night in a closed house or yard, where there is a house or on a public road or in a train or in a moving tram.
 - b. If the act is carried out by two or more people together.
 - c. If the perpetrator entered the place of committing the crime by breaking open or climbing, or by using a fake key, a fake order or fake official clothes.
 - d. If this action causes the victim to suffer serious injuries.
3. A maximum prison sentence of 15 (fifteen) years is imposed if the act results in someone dying.
4. The death penalty or life imprisonment or temporary imprisonment for a maximum of 20 (twenty) years is imposed if the act results in someone being seriously injured or dying

and is carried out by two or more people together and is accompanied by one of the things explained in numbers 1 and 3 paragraph (2).

Article 365 concerning the crime of theft with violence, which reads:

- (1) Threatened with a maximum sentence of nine years, theft that is preceded, accompanied or followed by violence or the threat of violence, against a person, with the intention of preparing or facilitating the theft, or in the case of being caught in the act, to enable the escape of oneself or other participants, or to retain control of the stolen goods.
- (2) Threatened with a maximum prison sentence of twelve years:
 - a. If the act is committed at night in a house or in an enclosed yard where the house is located, on a public road, or in a moving train or tram;
 - b. If the act is carried out by two or more people in partnership
 - c. If the entry into the place of crime is by damaging or climbing or by using a fake key, a fake order or fake official clothing. If the act results in serious injury.
- (3) If the act results in death, the penalty is a maximum of fifteen years' imprisonment.
- (4) Threatened with the death penalty or life imprisonment or imprisonment for a certain period of time, a maximum of twenty years, if the act results in serious injury or death and is carried out by two or more people in league, and is also accompanied by one of the things explained in number 1' and 3'.90

The crime of aggravated theft or theft with violence regulated in Article 365 is also a theft with qualifications or is a theft with aggravating elements. Thus, what is regulated in this article is actually only one crime, and not two crimes consisting of the crime of 'theft' and the crime of 'use of violence against people'.

The Objectives of the Juvenile Criminal Justice System Based on Several Paradigms (Individual Guidance, Restorative Paradigm, and Distributive), According to the Beijing Rules, and the Children's Convention.

There have been so many legal policies to protect children with case conditions. Starting from the Beijing Rules, the Juvenile Court Act and the Convention on Rights through the Child Protection Act which have provided guidelines for treatment and conditions that are considered for children in conflict with the law. The judicial process should need to differentiate the treatment between children and adults, where children must still be considered for their rights not to be separated from their families or parents (Muchtar Fathuddin, 2006).

Review of the concept of legal recovery is a mandatory offer, to be able to present the *restorative justice efforts* needed. The juvenile criminal justice system is translated from the

term " *The Juvenile Justice System* " which is a term used by a number of institutions that are part of the court, including: Police, Public Prosecutors, Legal Counsel, Supervisory Institutions, Child detention centers, and child development facilities. (Bynum Jack E, 2002)

The juvenile criminal justice system is a justice system, in providing an understanding that was previously explained in the criminal justice system *which* shows the working mechanism in dealing with crime by using the basis of a "system approach". Muladi stated that the criminal justice system is a network of *justice* that uses criminal law as its main tool. Both material criminal law, formal criminal law and criminal enforcement law. Meanwhile, Romli Atmasasmita, distinguishes between the meaning of " *criminal justice process* " and " *criminal Justice System* ". (M. Nasir Djamil, 2013)

The understanding of *the "criminal justice process"* is every stage of a decision that confronts a suspect in the process of leading to the determination of his sentence, while the " *criminal justice system* " is the interconnection between decisions from each agency involved in the criminal justice process. The definition of the juvenile criminal justice system is further concluded in Law No. 11 of 2012 concerning the juvenile criminal justice system, namely: "the entire process of resolving cases of children in conflict with the law, starting from the investigator stage to the guidance stage after serving a sentence. (Arief Gosita, 1993)

The contextual basis for achieving the objectives of the juvenile criminal justice system is quite different. It depends on the paradigm of the juvenile criminal justice system adopted. Gordon Bazomere stated that the challenges of the objectives of the juvenile criminal justice system are different from those seen from 3 juvenile justice paradigms, namely the individual treatment paradigm, *the retributive paradigm*, and *the relative paradigm*. (Satjipto Raharjo, 2000)

a. SSPA Objectives with Individual Coaching Paradigm

The context as a point in the problem here is the matter that the perpetrator will face, not the context of the act/loss caused. This responsibility lies in the responsibility of the system in meeting the needs of the perpetrator. The imposition of sanctions in the juvenile criminal justice system with the paradigm of individual guidance is irrelevant, incidental and generally inappropriate, the achievement of the objectives of the sanctions is highlighted in indicators of matters related to whether the perpetrator is identified, whether the perpetrator has been requested to be fostered in a special guidance program and to what extent the program can be completed.

The decision is emphasized on the order of giving programs for therapy and services, the main focus is on identifying the perpetrator and developing an approach in the framework of coaching the perpetrator. The perpetrator is considered incompetent and

unable to act rationally without therapeutic intervention, in general the perpetrator needs to be coached, because he will benefit from therapeutic intervention.

The achievement of the goal is known by seeing whether the perpetrator can avoid the bad influence of certain people/environments, whether the perpetrator obeys the rules of the Supervisor, whether the perpetrator is present and participates in the guidance, whether the perpetrator shows progress in attitude and *self-control*, whether there is progress in interaction with the family. The most important thing in practice is group and family counseling, work packages have been prepared, and recreational activities have taken place. According to the justice system with an individual guidance paradigm, the aspect of direct community protection is not part of the function of juvenile justice.

b. The Purpose of SSPA with the Retributive Paradigm

Determining when a child is sentenced, the imposition of the sanction must consider whether the perpetrator when the sanction is imposed is appropriate, certain, proportionate and fair. The form of punishment is in the form of confinement, electronic monitoring, *punitive sanctions*, fines and *fees*. To create community protection is carried out with supervision as the best strategy, such as detention, confinement and electronic monitoring, the success of community protection is seen in the circumstances whether the perpetrator has been detained, whether recidivism is reduced by prevention or detention.

c. The Purpose of SPPA with the Restorative Paradigm

The assumption in the juvenile criminal justice system with a restorative paradigm is that in achieving the goal of imposing sanctions, the victim is included to have the right to be actively involved in the judicial process. Indicators of achieving the goal of imposing sanctions are seen from whether the victim has been restored, victim satisfaction, the amount of compensation, the perpetrator's awareness of his actions, the number of improvement agreements made, the quality of work services and the entire process that occurs in the form of sanctions, namely restitution, mediation of the perpetrator and the victim, victim services, community restoration, direct services to victims or restorative fines.

The imposition of sanctions involves the perpetrator, victim, community, and law enforcement actively. The perpetrator works actively to restore the victim's losses, and confronts the victim/victim's representative. The victim is active in all stages of the process and will assist in determining witnesses for the perpetrator. The community is involved as a mediator. Helping the victim and supporting the fulfillment of the perpetrator's

obligations, law enforcement facilitates the mediation process. (Fitria Ramadhani Siregar, 2023).

The main focus of restorative justice for the benefit and building positively then children and families are the main sources. Children are considered competent and have positive abilities, are preventive and proactive. For the sake of rehabilitation of the perpetrators, changes in the attitude of community institutions and behavior that are *learning by doing are needed*. Counseling, and therapy to motivate the active delay of the parties. (Nandang Sambas, 2010)

The goal is to be achieved when viewed in the circumstances whether the perpetrator has gone through new positive things, whether the perpetrator is given the opportunity to practice and demonstrate norm-compliant behavior, whether stimulation can be prevented, whether there has been an increase in attachment to the community. Rehabilitation of the perpetrator in the form of practical activities so that the child gains work experience, and the child is able to develop his own *cultural project*.

In this aspect, it requires the roles of perpetrators, victims, society, and law enforcement in synergy. The perpetrators are active in developing their quality of life in society, the victims provide input to the process of community rehabilitation, develop opportunities for children to make productive contributions, develop new roles for the perpetrators to pay attention to and demonstrate their competence, access and build partnership ties with the community.

The assumption in *restorative justice* is about achieving community protection through collaborative efforts of the justice system and society to develop prevention. Confinement is limited only as a last resort. The community is responsible for actively supporting the implementation of restoration. Indicators of achieving community protection if the recidivism rate decreases, while the perpetrator is under community supervision, the community feels safe and confident in the role of the juvenile justice system, the involvement of schools, families, and community institutions to prevent crime, social ties and reintegration increase. (Romli Atmasasmita, 1994)

Increasing community protection, then the perpetrators, victims, society, and juvenile justice professionals are very much expected to play a role, the perpetrators must be involved constructively in developing competence and restorative activities in the program in a balanced manner, developing internal control and commitment with peers and children's organizations. Victims provide useful input to continue the mission of protecting the community from fear and the need for supervision of delinquent perpetrators, and

protecting other victims of crime, the community provides guidance to the perpetrators and acts as a mentor and provides input for the justice system about external information behind the crime. Juvenile justice professionals develop a scale of incentives and ensure the fulfillment of the obligations of the perpetrators and supervision, assist schools and families in efforts to supervise and maintain the perpetrators remain in the community. In addition to these three objectives, there is also an understanding of the objectives of other juvenile criminal justice systems that can be seen in the provisions of the Regulations and Legislation with the juvenile criminal justice system, namely *the Beijing Rules* and the Convention on the Rights of the Child

d. The purpose of SPPA according to *The Beijing Rules*

The juvenile justice system will prioritize the welfare of the child and will ensure that any response to juvenile offenders will always be proportionate to the circumstances of both the offender and the offence.

An important objective in juvenile justice is to promote the welfare of the child (avoiding merely punitive sanctions) and to emphasize the principle of proportionality (based not only on consideration of the seriousness of the violation of the law but also on consideration of his personal circumstances, such as social status, family circumstances, harm caused or other factors related to personal circumstances that will affect the appropriateness of his reactions. (Yasmira Mandasari Saragih, 2023).

e. The Purpose of SPPA According to the Convention on the Rights of the Child

Article 37 states that: "a child shall not be subjected to torture or other cruel, inhuman or degrading punishment or acts."

1. The death penalty or life imprisonment without the possibility of parole shall not be imposed on children under 18 (eighteen) years of age.
2. No child shall be deprived of his or her liberty unlawfully or arbitrarily.
3. Arrest, detention and imprisonment are only used as measures of last resort and for very short periods of time.
4. Every child deprived of liberty will be treated humanely and with respect for his or her dignity as a human being
5. Children who are deprived of their liberty will be separated from adults and have the right to have contact with their families.
6. Every child who is deprived of liberty has the right to obtain legal aid, has the right to oppose the legal basis for the deprivation of liberty before a court or other authorized

and impartial official and has the right to receive a quick/appropriate decision regarding the action taken against him/her.

4. CONCLUSION AND SUGGESTIONS

Conclusion

Based on the results of research and analysis of the problem formulation, the following conclusions can be drawn:

1. Forms of Criminal Liability for Theft with Violence in Positive Law In Indonesian positive law, the crime of theft with violence, including that committed by children, is regulated in Article 365 of the Criminal Code (KUHP). However, in the context of children as perpetrators, the application of criminal law is based on special principles regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). Children who are proven to have committed a crime remain responsible for their actions, but the judicial mechanism applied prioritizes a restorative and rehabilitative approach. The imposition of criminal penalties on child perpetrators is more directed at efforts to foster and educate rather than merely providing repressive punishment.
2. Juvenile Criminal Justice System Based on Several Paradigms
 - a. Individual Guidance Paradigm This paradigm focuses on individual child guidance, with the aim of changing the child's behavior for the better through an educational and rehabilitation approach.
 - Restorative Paradigm Based on this paradigm, the judicial process aims to improve the relationship between the perpetrator, victim, and community. This process involves mediation, compensation, and other forms of non-repressive settlement, taking into account the best interests of the child.
 - Distributive Paradigm This approach emphasizes equal justice, taking into account the needs of the child perpetrator, victim, and community. This paradigm also ensures that the rights of the child perpetrator are not violated during the judicial process. According to the Beijing Rules and the Convention on the Rights of the Child The Beijing Rules and the Convention on the Rights of the Child emphasize the importance of special treatment for children in conflict with the law. Law enforcement against children must prioritize the principle of non-discrimination, the best interests of the child, the right to life, survival, and development of the child. Both of these instruments encourage the courts to prioritize alternative measures such as diversion, mediation, or guidance programs rather than formal punishment.

Suggestion

1. **Revision and Harmonization of Regulations** The government needs to ensure that there is harmonization between the SPPA Law and the Criminal Code, especially in regulating criminal acts involving children. This aims to ensure that criminal law policies against children can be applied consistently with the principles of child protection.
2. **Capacity Building for Law Enforcement Officers** Law enforcement officers who handle child cases need to receive special training on the restorative approach, the principles of the Beijing Rules, and the Convention on the Rights of the Child. This training aims to improve understanding and ability to apply laws that are oriented towards the best interests of children.
3. **Strengthening Diversion and Mediation Programs** Diversion and mediation programs need to be expanded and strengthened as the main alternative in resolving cases of children in conflict with the law. This program must also involve families, communities, and related institutions to create comprehensive solutions.

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