

Criminal Investigation of Stealing with Harshness which Causes Death of Victims by Children

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Abstract.

The crime of theft with harshness is regulated in Article 365 of the Criminal Code. Ironically, this crime is committed by someone who is considered a child in the eyes of the law. This writing discusses the mechanism of investigation, constraints and solutions in the implementation of the mechanism for investigating the crime of theft with harshness that causes the death of a person committed by a child. The approach method used in this research is the sociological juridical approach. The specification of this research is descriptive analysis and the source of the data that I use comes from primary data and secondary data. This writing uses an analytical knife based on the theory of justice and the theory of punishment. The mechanism for investigating the crime of theft with harshness that causes the death of people is carried out starting from the existence of police reports, investigations, investigations, arrests and detention, searches, seizures, witness statements, and statements of suspects. Obstacles in implementing the investigation mechanism are internal and external constraints. The solution to the obstacle is: the investigator confirms to the suspect's legal adviser to always be present and accompany the suspect in the investigation process, the investigator maximizes his performance to look for evidence according to the maximum time limit, the investigator tries to take an emotional approach, the investigator is assisted by the Correctional Center (BAPAS) provide understanding to children to stay calm.

Keywords: Investigation; Children; Harshness; Death.

1. Introduction

The state is called a rule of law, in which there are a number of citizens who take part in the deliberations. Justice is an absolute prerequisite for the implementation of a good country, for the realization of the aspirations of all its citizens.¹ The function of law as a means of social control cannot be fully relied on by the ability of formal legal legislation.² Starting from this problem, it is proper to doubt the ability of legal values to govern the life of Indonesian society now which is much more complicated than before.³ The increasing number of crimes as a result of ignoring the norms, values or prevailing legal principles.

One of the important principles of a rule of law is the guarantee of equality for everyone before the law (equality before the law). Therefore, everyone has the

¹Kaelan M.S & Achmad Zubaidi. (2012). *Pendidikan Kewarganegaraan Untuk Perguruan Tinggi*. Yogyakarta: Paradigma.p. 76

²Warassih, Esmi. (2005). *Pranata Hukum Sebuah Telaah Sosiologis*. Semarang: Suryandaru Utama.p. 8.

³Marwan & Jimmy. (2009). *Kamus Hukum*. Yogyakarta: Gama Press.p. 59

right to recognition, guarantees, protection and legal certainty that is just and equal recognition before the law.⁴

One form of crime that often occurs in society is violent theft (Curas). The crime of theft with harshness is regulated in Article 365 of the Criminal Code.⁵ In the literature, other terms are mentioned, but they have the same meaning for the term crime, namely crime or delict/offense.⁶ The implementation of procedures for investigating perpetrators of criminal acts by investigators is carried out based on the Criminal Procedure Code (KUHAP), in this case the Criminal Procedure Code clearly regulates how the procedures, as well as procedures, must be obeyed by investigators in carrying out an investigation.⁷

2. Research Methods

The approach method used in this research is the sociological juridical approach, which means that a study is carried out on the real situation of the community or the community environment with the intent and purpose of finding facts which then leads to identification and ultimately leads to problem solving. The specification of this research is descriptive analysis and the source of the data that the writer uses comes from primary data and secondary data.⁸ This writing uses an analytical knife based on the theory of justice and the theory of punishment.

3. Result and Discussion

3.1. Investigation Mechanisms Against Children Perpetrators Of The Crime Of Theft With Harshness That Causes The Death Of People

The mechanism for investigating child perpetrators of criminal acts of theft with harshness that causes the death of people is carried out in accordance with statutory regulations by taking into account the juvenile criminal justice system and child protection. In a case of theft with harshness which results in the death of a person, diversion cannot be carried out because of the penalty of over 7 years.

One example of a case of theft with harshness that causes the death of a person committed by a child is the theft of a go-car drive in Semarang City. In the theft, the victim was treated with harshness until he died. The action was carried out on Saturday, January 20 2018 at around 21.30 WIB on St. South Cendana IV Sambiroto Tembalang, Semarang. The dressing was carried out by IBRAN JAYA PERKASA bin DEVI SATRIA PUTRA, 16 years old, Islam, student work, address St Lemah Gempal V No.18 Rt 05 Rw 04 Vil.Barusari Dist.South Semarang Semarang/St. Lempuyang II No 499 Rt 11 Rw 08 Vil.Sambiroto Kec.Tembalang Semarang City/St. Kunir I No 28 Rt 01 Rw 08 Vil.Sambiroto Dist.Tembalang

⁴ Supriadi. (2006). *Etika & Tanggung Jawab Profesi Hukum di Indonesia*. Jakarta: Sinar Grafika.p.127

⁵ Basri, et.all. (2015). *Kajian Yuridis Unsur Tindak Pidana Pencurian Dengan Kekerasan*. Jurnal the 2nd University Research Coloquium.p. 155

⁶ Maerani, Ira Alia. (2018). *Hukum Pidana & Pidana Mati*. Semarang: Unissula Press.p. 72

⁷ Marwan & Jimmy. Op.cit.p. 504.

⁸ Amiruddin. (2006). *Metode Penelitian Hukum*. Jakarta: PT. Raja Grafindo Persada.p. 30

Semarang City together with DIRGANTARA YUDHO HANGGORO bin YENI ABI ATFALI, Age: 15 years old, Born in Semarang on June 17, 2002, Male Gender, Citizen: Indonesia, Religion: Islam, Occupation: Grade X student of SMKN 5 Semarang, Residence/Address: St. Lebdosari IV No. 09 Rt. 04 Rw.V vil.Kalibanteng Kulon dist. West Semarang, Semarang (DIBERKAS TERPISAH/SPLITZING).

The act was carried out by the suspect IBRAN JAYA PERKASA bin DEVI SATRIA PUTRA and DIRGANTARA YUDHO HANGGORO bin YENI ABI ATFALI by ordering GO-CAR online fleet services using Asus Zenfone phone with phone number 081542886137 email ibran.jpg@gmail.com owned by IBRAN JAYA PERKASA bin DEVI SATRIA PUTRA with the aim of delivering to the Sambiroto area of Semarang, + 30 minutes came the Online fleet (Go-car) driven by the victim, DENI SETYAWAN, 32 years old, Islam religion, self-employed, address Kp. Margorejo Timur Rt. 09 Rw.V Vil.Kemijen Semarang with 1 (one) unit of black Nissan Grand Livina With police number H 8849 D and waiting at the end of Lemah Gempal V road, carrying 1 (one) blade with a length of + 40cm with a glove brown skin tucked inside the perpetrator's shirt, IBRAN JAYA PERKASA, they (IBRAN JAYA PERKASA and DIRGANTARA YUDHO HANGGORO) came over, with the position of the victim, DENI SETYAWAN's brother as the driver, DIRGANTARA brothers YUDHO HANGGORO sat in the seat next to the steering wheel and IBRAN JAYA PERKASA's brother sat in the middle seat they went to the Sambiroto area of Semarang, after arriving at St. Cendana Selatan IV Sambiroto Tembalang, Semarang, the perpetrator, the brother of IBRAN JAYA PERKASA from behind, grabbed the victim with his left hand and right hand holding a knife that was stuck in the neck followed by the movement until he injured the victim's neck, DENI SETYAWAN, while the perpetrator DIRGANTARA YUDHO HANGGORO was in charge of holding the victim's hand, after the victim became weak and did not move, the perpetrator, brother IBRAN JAYA PERKASA, got out of the car and forcibly lowered the victim, DENI SETYAWAN, from the steering seat and brother IBRAN JAYA PERKASA moved to sit in the steering wheel, When IBRAN JAYA PERKASA closed the steering door, it turned out that the victim's feet were still stuck in the door, then the perpetrator DIRGANTARA YUDHO HANGGORO got out of the car then lowered the victim's legs until the victim's entire body was lying on the road, then the 2 perpetrators (IBRAN JAYA PERKASA and DIRGANTARA YUDHO HANGGORO) carrying/driving 1 (one) unit of Nissan Grand Livina With police number H 8849 D, after arriving at St. Hos Cokroaminoto Semarang brother IBRAN JAYA PERKASA parked the car on the side of the road and took the wallet and 2 (two) cellphones belonging to the victim, DENI SETYAWAN, then the 2 perpetrators (IBRAN JAYA PERKASA and DIRGANTARA YUDHO HANGGORO) walked back to the house of IBRAN JAYA PERKASA St Lemah Gempal V No. 18 Kel.Barusari Semarang,

The investigation mechanism in the IBRAN JAYA PERKASA case was carried out starting from the existence of police reports, investigations, investigations, arrests and detention, searches, confiscation, statements of witnesses, and statements of suspects. The child investigation mechanism carried out by the Semarang Police still takes into account the suspect's rights as children who must be protected.

The investigation mechanism carried out by the Semarang Police is in line with the theory of fairness justice (in English) is "honesty, fairness, worthiness". So in other words, justice is an honesty, a fairness and worthiness. Rawls's theory is often called Justice as fairness (justice as fairness). So the main thing is which principle of justice is the fairest, and must be guided "that free and rational people who wish to develop their interests should obtain an equal position at the time they start and that is a fundamental condition for them to enter the association they wanted."⁹

There are so many various definitions of justice that are a consequence of the substance of the theory of justice developed by thinkers about justice itself. Each thinker has a substance (theory) of justice that is definitely different, depending on their respective approaches.¹⁰

With regard to the theory of justice, John Rawls tries to build his theory carefully. According to him, justice does not only include the moral concept of the individual, but also questions the mechanism of achieving justice itself, including how the law can participate in supporting these efforts.¹¹

3.2. Constraints in the Implementation of Investigation Mechanisms Against Children Perpetrators of Violent Theft

According to the author's point of view, when conducting field research on a criminal offense in which the suspect is a child, there are several obstacles experienced during the investigation process at the Semarang Police Office, divided into 2 factors, namely:¹²

3.2.1. Internal Factor Constraints

Internal factors are the obstacles that come from the *Polrestabes* of Semarang itself, namely that in the investigation process the suspect must be accompanied by his biological parents, legal counsel for the child suspect, and BAPAS (Jail) in order to guarantee the fulfillment of the protection of children's rights in the investigation process. In this process, child suspects are examined in the room of the Women and Children Servant (PPA) unit, the examination of the suspect which allows the implementation of the investigation process, in order to reveal the case being investigated. The constraints that occur on these intern factors include:

- Constraints with legal advisors, legal counsel for child suspects often do not accompany their clients, when the police make an examination report on crimes committed by children;
- At the time of detention in the Semarang Police Cell, sometimes the child suspect was put together with adult detainees, so that the child suspect often received harsh treatment from adult detainees, this was because he did not exist and to build a separate detention room for children. In cases involving children, if according to the results of the examination, the investigator believes that the

⁹Manullang, E. Fernando. (2007). *Menggapai Hukum Berkeadilan*. Jakarta: Kompas.p. 99.

¹⁰Muladi & Barda Nawawi Arief. (2005). *Teori-Teori & Kebijakan Pidana*. Bandung: Alumni.p. 44

¹¹*Ibid*, p. 100

¹² Interview with AIPDA Bayu Budi Praseto as Assistant Investigator at the Semarang Police, on September 1, 2020

child has not reached the age of 12 (twelve) years of committing or is suspected of committing a criminal offense can still be fostered by the parent, guardian or foster parent, the investigator returns the child to parents, guardians or foster parents, this is in accordance with article 21 of Act No. 11 of 2012 concerning the Juvenile Justice System;

- Investigators find it a little difficult with the existence of the detention period for children as stipulated in Act No. 11 of 2012 concerning the Juvenile Justice System. Detention for the purpose of investigation is carried out for a maximum of 7 (seven) days and at the request of the investigator can be extended by the Public Prosecutor for a maximum of 8 (eight) days. This makes investigators have to work quickly and precisely. In cases like the one above, it takes time to find evidence due to attempts to remove evidence in the form of the suspect's cellphone. In addition, this case is related to the use of social media as a mode.

3.2.2. *Obstacles External Factors*

External factors are constraints that come from outside the Semarang Police Headquarters. The constraints in external factors encountered by the author in research in the field are:¹³

- In the investigation process, sometimes the child is just silent, and does not speak clearly, making it difficult for the investigator during the investigation stage;
- When conveying a suspect's rights, sometimes the suspect and his parents do not understand what protection is, because there are some suspects who come from families who do not attend school;
- During the investigation process, the suspect's parents sometimes scolded the suspect, making the suspect feel cornered and refused to speak;
- At the time of detention there were several suspects in the detention cell crying continuously and did not want to eat, and sometimes the child behaved strangely. The possibility of this happened because the child felt guilty (child psychologist) and was afraid of the threat of punishment that would be imposed on him, when the judge handed down a criminal verdict on him in the district court.

Relative theory or goal theory, also called utilitarian theory, was born as a reaction to absolute theory. Broadly speaking, the goal of crime according to theory is not relative just retaliation, but to bring about order in society. Imposing punishment is not to satisfy the absolute demands (retaliation) of justice, but retaliation as a means to protect the interests of society. The imposition of crimes against juvenile offenders is in line with the relative theory or objective theory because in essence the imposition of the crime is a means of protecting society.

4. Conclusion

Obstacles in the implementation of the mechanism of investigation against the child perpetrators of the crime of theft with harshness that cause the death of people are internal and external obstacles. Internal constraints include: legal

¹³ *Ibid.*

advisers for child suspects often do not accompany their clients, detention in Semarang Police cells, sometimes child suspects are combined with adult detainees, and the period of detention of children as stipulated in Act No. Detention for the purpose of investigation is carried out for a maximum of 7 (seven) days and at the request of the investigator can be extended by the Public Prosecutor for a maximum of 8 (eight) days. While external constraints include: the child is just silent and the solution to the obstacles in the implementation of the investigation mechanism against the child perpetrators of criminal theft with harshness that causes the death of people in the form of: the investigator informs and confirms to the suspect's legal adviser to always be present and accompany the suspect in the investigation process, detention of children is carried out in LPKS, detention period fairly fast, the investigator maximizes his performance to look for evidence in accordance with the maximum time limit, the investigator tries to take an emotional approach to the child so as not to give the child the impression of fear, the investigator tries to first provide insight to the child and his guardian regarding the law and criminal justice against the child and/or his guardian, the investigator will tell the parents not to get emotional and calm the person parents, the investigator is assisted by the Correctional Center (BAPAS) to provide understanding to children to stay calm because in detention there will be no harshness.

5. References

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Interview:

Interview with AIPDA Bayu Budi Praseto as Assistant Investigator at the Semarang Police, on September 1, 2020