

The Legal Logic of Criminal Liability of Children as Perpetrators of Begal

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Abstract: *The purpose of this study is to identify, examine and analyze criminological reviews of children as robbers and the contextualization of legal logic in the criminal responsibility of children as criminals..The approach method used in this paper is normative juridical. The specification of this writing is descriptive analytical. The perpetrators of motorbike robbery are mostly teenagers and in a juridical formulation it covers existing juvenile crimes by assuming motorcycle robbery by teenagers is juvenile delinquency in which the execution of the street bandits does not hesitate to injure and even kill the victims. However, can we treat robbery which includes violent crimes, even classified as sadistic crimes, as a form of juvenile delinquency? Adolescent involvement in this sadistic crime needs to be a concern, because it shows deviant behavior from an early age. The young perpetrators of robbery take refuge in the child protection law and are not significant with the impact on victims in terms of physical harm, material, and mental, especially when the victim dies. In this case the need for legal reasoning that is attached to the way a judge considers and analyzes the actions of criminal law subjects. Judges need to have high integrity in finding a fair legal discovery point of view.*

Keywords: Criminal; Liability; Perpetrators.

1. Introduction

State power must be based on existing law. Which in the supremacy of law must include 3 (three) ideas from the legal basis, namely justice, benefit, and certainty. Therefore, in a rule of law, the law must not ignore the "sense of social justice".¹

¹M. Muslih. The Indonesian Law State in the Perspective of Gustav Radbruch's Legal Theory (Three Basic Values of Law). Legality: Journal of Law. Master of Law. Batanghari University. Vol. 4 No. 1. (2013). p. 141

Legal products that have a responsive character, in the process are participatory, namely inviting as much participation as possible from all elements of society, both in terms of individuals and community groups, and must also be aspirational in nature which originates from the wishes or will of the community itself.² That is, the legal product is not the will of the authorities to legitimize their power.

As we know today, so many incidents of juvenile delinquency take place. Various negative or deviant acts are committed by some teenagers, which they think are just mediocre, moreover some see them as something to be proud of. They often mention this behavior only as showing a symbol of their courage, however, this negative adolescent behavior, many people perceive as a behavior that is very concerning for teenagers in Indonesia.³

The consequences of juvenile crime are of great concern in modern society. Several countries have reacted with frustration to adolescents and youth about crime. For example, there has been an increase in youth crime violence. For example: based on voting in Massachusetts stated that the murderer is as young as 14 years old, in Oregon the youngest age of a criminal is 14-12 years and in Wisconsin at 10 years old.⁴

A criminologist from the University of Indonesia, Josias Simon, said that the rampant theft of motorcycles and the widening of crime areas was the result of weak law enforcement. "There is an assumption that mugging is a street crime which is only a matter of routine. Addressing this problem must involve the community and local community organs, and outreach to motorbike users. Handling the crime of begal is not only in the form of repressive action, but also preventive. Josias classifies begal as are still teenagers as perpetrators of crimes who are still in the experimental group. This means that the perpetrators are teenagers who are aggressive, looking for self-identity, are still unstable, or are teenagers who join gangs trying to exist in that group. begal has now updated his mode.

In this case, law enforcement agencies, namely the police, prosecutors and judges need to apply a legal logic in carrying out the judicial process on the phenomenon of crimes committed by children who have entered their teens. It is deemed necessary to apply legal logic to collaborate on a consideration from a philosophical, sociological, anthropological and juridical perspective.

² Erwin Chan and Jawade Hafidz, Policy For Crime Murder Investigation By The Children In Polrestabes Semarang, *Journal of Daulat Hukum* Volume 3 Issue 1, (2020), p.29

³ Nunung Unayah and Muslim Sabarisman, The Phenomenon of Juvenile Delinquency and Criminality, *Sosio Informa* Vol. 1, No. 02, (2015), p.122

⁴ Ari Widiyanta, 2009, Literature Review on Crime in the United States (A Proposed Intervention), *USU Repository*, p.11

The author's research objectives are to know, study and analyze criminological reviews of children as robbers and the contextualization of legal logic in the criminal responsibility of children as criminals..

2. Research Methods

To conduct an assessment in this writing the author uses a normative juridical approach or a written legal approach (statutory approach).⁵Writing specifications are carried out using a descriptive analytical approach. The data used for this writing is secondary data. The main data collection method used in the literature study is secondary data obtained from library books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed with qualitative analysis.

3. Results and Discussion

3.1. Criminological Review of Children as Begal Actors

Chainur Arrasjid emphasized that psychologically crime is a psychological manifestation that is revealed in human behavior, which is contrary to the norms that apply in a society. It can be said that a crime is an abnormal act (not in line with the norm) or abnormal, which, when viewed from the perspective of the perpetrator, the appearance of this abnormal behavior can occur due to several possibilities:⁶

- 1) By factors that are psychological in nature, namely those carried out by people who suffer from mental illness, or those who are not mentally ill, but have abnormalities due to their IQ condition.
- 2) By factors of reasonable mental activity, but compelled to agree to violate the law carried out by people with unlawful acts in a professional manner.
- 3) By social factors that directly affect individuals or groups so that those concerned experience psychological difficulties, namely those carried out by people who are unable to adapt to the social conditions they face.

According to a criminologist from the University of Indonesia (UI), Ahmad Mustofa, apart from economic factors, there are other factors which are the rampant theft of motorcycles. According to him, there was never a single motive for social problems, including robbery. "Usually the motive is because the

⁵Soemitro. 1998. Legal and Jurimetric Research Methodology, Jakarta, Ghalia Indonesia, p. 24

⁶Rahmat Ramadhani. Crime Against Land Control. EduTech Journal Vol.2 No. 2 (2016), p.90.

perpetrator knows how to make money like that." He explained, the main factor for someone to commit a crime is the result of dropping out of school. Moreover, the majority of the robbers who have been caught by the police are teenagers around 17 to 20 years old who should still be in high school. Apart from that, wrong association also has a big influence on the character of the perpetrators of crimes, coupled with the absence of guidance from the family. "The main problem is dropping out of school, then there are family problems and falling into the wrong company."⁷

The report "United Nations Congress on the Prevention of Crime and Treatment of Offenders" stated that there was an increase in the number of juvenile delinquencies (juvenile crimes) in the quality of the crime, and an increase in the ferocity and cruelty which was carried out more in group actions than in criminal acts individual (Mindendorff), one of which was stolen by a motorcycle gang. In general, there are three groups of opinions on the causes of crime, namely:

- a. The opinion that crime is caused by influences outside the perpetrator.
- b. The opinion that criminality is the result of evil talents contained in the perpetrators themselves.
- c. Opinions that combine, that crime is caused either due to outside influences or because of the perpetrator's nature or talent.⁸

The crimes committed by these teenagers are essentially a product of the conditions of their society with all the social upheavals that exist within it. The crime of motorbike robbery by teenagers is referred to as one of the diseases of society or social disease. Social disease or community disease is any form of behavior that is considered inappropriate, violates general norms, customs, formal laws, or cannot be integrated into general patterns of behavior.

3.2. Contextualization of Legal Logic in the Criminal Responsibility of Children as Perpetrators of Begal

In implementing the scope of law with knowledge of logic, it will be easy to do legal reasoning and be able to understand the events that are being faced. For a judge, logic is needed, especially in formulating a decision, because without this logic a judge will go astray in imposing a sentence on the accused, which will result in legal uncertainty. We will talk about this legal logic in the next chapter. this is a

⁷Moh. Ihsan, and Muliadi. Criminological Review of Children as Motorcycle Robbers Using Sharp Weapons, Maleo Law Journal, Volume 4 Issue 1 April (2020). p. 19

⁸James M, Kaufman, 1989. Characteristics of Behavior Disorders of Children and Youth, Toronto: Merril Publishing Company Columbus London, p.124

function of logic, where each area requires logic, one reason. why does each area of knowledge require the study of logic, because logic can guide the mind or ability to think logically and critically, and can develop human intuitive powers that have reasoning and creative thinking.

Legal logic is used in the minds of judges to balance positivistic thoughts with legal reasoning in considering a criminal case in order to produce a just decision. In this case the paradigm in looking at just punishment for children, in this case the majority have entered their teens as perpetrators of robbery with a balance towards victims who experience both material and physical losses and even the risk of loss of life is also a consideration as a result of the actions of young perpetrators of robbery.

Mugging is a crime that goes beyond the scope of normal juvenile delinquency behavior. Indonesia's social and legal system is still ambiguous in distinguishing delinquency and crime. These unclear boundaries often rely on conscience in deciding punishments for violating norms. This causes a variety of disciplinary efforts which results in a lack of consistency in efforts to change adolescent deviant behavior.

However, is it possible to treat robbery which includes violent crimes, even classified as sadistic crimes, as a form of juvenile delinquency? How does a delinquency shift into a crime by teenagers?. Adolescent involvement in this sadistic crime needs to be a concern, because it shows deviant behavior from an early age.

In psychology, Santrock (1995) defines juvenile delinquency as a wide range of behavior, ranging from socially unacceptable behavior to criminal behavior. Moffitt explained that adolescents commit acts of delinquency impulsively, if handled in a way that reduces their desire to carry out these behaviors and returns them to the right track, most forms of delinquent behavior will disappear in adulthood.⁹

However, those associated with serious offenses may be affected, and reinforce antisocial behaviors. This can happen if the behavior is repeated. That way, deviant behavior that continues to be strengthened will have an impact on adolescents and will be difficult to eliminate when entering adulthood.¹⁰

The sadistic nature is the difference between the crime of motorbike theft and

⁹E. Moffitt, Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy. *Psychological Review*, Vol.100 No.4, (1993). p. 681.

¹⁰E.Setianingsih, Z.Uvun & S. Yuwono, The Relationship Between Social Adjustment and Problem Solving Ability with the Tendency of Delinquent Behavior in Adolescents. *Diponegoro University Psychology Journal*, Vol.3 No.1, (2006). p. 33

robbery. The word sadism was introduced by Krafft Ebing in the late 19th century, originally derived from the sexual pleasure derived from causing pain and suffering to others. Over time, the term expanded to include pleasure derived from sadistic behavior outside of a sexual context. In the past, Sadistic Personality Disorder (SPD) was given its own classification in the Diagnostic and Statistical Manual of Mental Disorder (DSM) to differentiate it from Antisocial Personality Disorder (APD) or Psychopathy.¹¹ Sadistic is a psychological term associated with psychiatric disorders. The last SPD was recorded in DSM III-TR and was removed from later versions of the DSM. Some experts, such as Theodore Millon consider this deletion to be a mistake and hope for it to be reinstated in a future DSM.

SPD is characterized by a pattern of reckless cruelty, aggression, and condescending behavior, which indicates deep contempt for others and a low level of empathy. Some sadistic abusers are "utilitarian": they use explosive violence to establish a position of uncontested dominance in the relationship. Those who experience SPD feel satisfaction from seeing the suffering of others. They also like to embarrass others in public. That way, they feel they have power over the victim who is humiliated.¹²

The sanction for robbery in Article 365 is imprisonment for nine years and a maximum of 12 years if it is committed at night or on public roads. As a consequence, if the victim of a burglary dies, begal can be punished with a maximum penalty of 15 years to death or life imprisonment which is almost the same in the rules of Islamic law. and legs. It must be admitted that the phenomenon of robbery that has been rife lately is also due to the many light court decisions against perpetrators even though the normative basis is very strong and clear in the Criminal Code.

The young perpetrators of robbery take refuge in the child protection law and it does not have a significant impact on the victim in terms of physical, material and mental losses, especially when the victim dies. After a decade in effect, Law (UU) Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) is still triggering polemics. Many consider it unfair. Many parties hope that the revised regulation will bring justice to the victims. At the same time, it is hoped that this regulation will have a deterrent effect on juvenile delinquents or children who commit criminal acts or in the SPPA Law are called children in conflict with the law (ABH). In this case the need for legal reasoning that is attached to the way a judge considers and analyzes the actions of criminal law subjects. Judges need to have

¹¹WCMyers, RCBurket, & DSHusted, Sadistic Personality Disorder and Comorbid Mental Illness in Adolescent Psychiatric Inpatients. *J Am Acad Psychiatry Law*, Vol.34 No.7, (2006), p.61

¹²M. Schmideberg, Psychological Factors Underlying Criminal Behavior. *Journal of Criminal Law and Criminology*, Vol.37 No.6, (1947), p.521

high integrity in finding a fair legal discovery point of view.¹³

In the legal construction method there are 4 (four) methods used by judges when making legal discoveries, namely:

- 1) *Argument Per Analogiam*(analogy) is a legal discovery method in which the judge looks for a more general essence of a legal event or legal action that has been regulated by law or has not been regulated;
- 2) *Argumentum a Contrario*, namely where the judge makes a legal discovery with the consideration that if the law determines certain things for a certain event, it means that the regulation is limited to that particular event and for events outside it the opposite applies;
- 3) Narrowing/concreting law (*rechtsverfijning*) aims to concretize/narrow a rule of law that is too abstract, passive and very general in order to be applicable to a particular event;
- 4) Legal fiction is a method of legal discovery that presents new facts, so that a new personification appears before us.¹⁴

It is further said that legal discovery is the concretization and individualization of general regulations (*das sollen*) by remembering certain concrete events (*das sein*). Paul Scholten stated, that what is meant by legal discovery is something other than just the application of regulations to events. Sometimes and very often it happens that the rules must be found, either by way of interpretation or by way of analogy or *rechtsverfijning* (refining / concretizing the law).

4. Conclusion

Apart from economic factors, there is another factor in the rampant theft of motorbikes by teenagers. There has never been a single motive for social problems, including muggings. Usually the motive is because the perpetrator knows how to make money like that. The main factor for someone to commit a crime is the result of dropping out of school. Moreover, the majority of the robbers who have been caught by the police are teenagers around 17 to 20 years old who should still be in high school. The young perpetrators of robbery take refuge in the child protection law and it does not have a significant impact on the victim in terms of physical, material and mental losses, especially when the victim dies. In this case

¹³Hamzah, Death Penalty Threats for Perpetrators of Begal Crimes as a Solution to Reducing the Level of Begal Crimes in Makassar City, *Al-Daulah Journal* Vol. 5 No. 1, (2016), p.237

¹⁴Gregory Leyh, 2008, *Hermeneutics of Historical Law, Theory and Practice*, translation of M. Khozim, Nusa Media, Bandung, p.1.

the need for legal reasoning that is attached to the way a judge considers and analyzes the actions of criminal law subjects.

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