

Legal Analysis of Criminalization of Children Perpetrators of the Crime of Theft with Aggravation Based on Pancasila Justice (Criminal Case Study Decision Number: 57/Pid.B/2024/PN Nab)

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Abstract. *Law is a norm or rule that contains mandatory legislation and anyone who violates the article will receive legal sanctions. The legal subjects who are to be prosecuted are not only those who have actually committed unlawful acts, but also legal acts that may arise and equip the state to act in accordance with the laws currently in force. Crime is an offense, namely things that are contrary to or in conflict with the legal principles that are the beliefs of human life and are not bound by law. Crimes that often occur in society lately include robbery, burglary, murder and rape. One type of crime that often occurs in society is theft. The crime of theft is a crime that is officially stipulated as prohibited and punishable, in this case it is an act defined as "stealing". If translated from the word "zich toeigenen" it is "to control", because after discussing the numbers, the reader will understand that "zich toeigenen" has a very different meaning from the meaning of "owning" which is clearly widely used and widely known until now in the Criminal Code which has been translated into Indonesian in the article, even though it is true that the statute of "ownership" itself is also included in the meaning of "zich toeigenen" as understood in Article 362 of the Criminal Code. The case in Decision Number 57/Pid.B/2024/PN Nabire relates to a criminal act of aggravated theft that occurred on Tuesday, March 5, 2024 at around 04.00 WIT, at Jalan Mongonsidi RT/RW 002/003, Oyehe Village, Nabire District, Nabire Regency. The defendant Andika Wisnu Wijaya together with Child Witness ISBA PELLU alias IBAX (who was processed in the child case file Number 4/Pid.Sus-Anak/2024/PN Nap), as well as two other people who currently have DPO status, namely Brian Rumbewas and Sedek Kum, committed the theft together. The perpetrators used two motorbikes to get around and monitor the location. When crossing Jalan Mongonsidi, they saw the window of the boarding house open, then decided to commit the theft.*

Keywords: *Aggravation; Children; Criminalization; Perpetrators.*

1. Introduction

Law is a norm or rule that contains mandatory legislation and anyone who violates the article will receive legal sanctions. The legal subjects who are to be prosecuted are not only those who have actually committed unlawful acts, but also legal acts that may arise and equip the state to act in accordance with the laws currently in force.¹ The crime of theft itself is regulated in Article 362 of the Criminal Code and the crime of aggravated theft is regulated in Article 363 of the Criminal Code. The crime of theft is one of the types of crimes in Indonesia, this violation is regulated in Article 362 of the Criminal Code. There are many ways to classify the types of theft crimes, one of which is the crime of theft with its level adjusted according to Article 363 of the Criminal Code. Although this has been clearly regulated in the Criminal Code and the sanctions that will be imposed on the perpetrators, this does not deter the Indonesian people and prevent them from committing crimes. The proof is that these crimes still occur frequently. Usually, whether reported to the police or not, theft crimes are still widely committed. This has not been fully revealed and not infrequently the perpetrators of this crime are not revealed.²

Crime is an offense, namely things that are contrary to or in conflict with the legal principles that are the beliefs of human life and are not bound by law.³ Crimes that often occur in society lately include robbery, burglary, murder and rape. One type of crime that often occurs in society is theft. The crime of theft is a crime that is officially stipulated as prohibited and punishable, in this case it is an act defined as "stealing". If translated from the word "zich toeëigenen" it is "to control", because after discussing the numbers, the reader will understand that "zich toeëigenen" has a very different meaning from the meaning of "owning" which is clearly widely used and widely known until now in the Criminal Code which has been translated into Indonesian in the article, even though it is true that the statute of "ownership" itself is also included in the meaning of "zich toeëigenen" as understood in Article 362 of the Criminal Code.⁴

The crime of theft is regulated in Chapter 22 of Law Number 1 of 1946, Book 2 of the Criminal Code, Articles 362 to 367. Five types of theft are regulated, namely:

1. Ordinary theft (Article 362 of the Criminal Code);
2. Aggravated theft (Article 363 of the Criminal Code);
3. Petty theft (Article 364 of the Criminal Code);
4. Theft with violence (Article 365 of the Criminal Code);
5. Family Theft (Article 367 of the Criminal Code).

¹Rosana, E., Law and Social Development, Tapis Journal: Journal of Islamic Political Aspiration Observation, 2013, p. 99-118.

²Rezna Fitriawan and R. Sugiharto, The Role of the Criminal Investigation Unit in Revealing Aggravated Theft in the Jurisdiction of the Demak Police Resort, Proceedings of the Unissula Student Scientific Constellation (Kimu) 5, 2021, p. 330

³Bawengan, GW, Examination Techniques and Criminal Cases, Pradnya Paramita, Jakarta, 1974, p. 22

⁴PAF Lamintag, Basics of Indonesian Criminal Law, PT. Citra Aditya Bakti, Bandung, 1997, p. 49.

It can be concluded that taking is taking from the place where the object was originally located or taking an object from the control of another person.⁵

The following are some elements or characteristics of theft:

1. Objective: The condition that accompanies an object, where the object in question is wholly or partly owned by someone, there is an act of taking, there is an object in the form of an object.
2. Subjective: Against the law, there is a motive to possess, there is an intention.

The case in Decision Number 57/Pid.B/2024/PN Nabire relates to a criminal act of aggravated theft that occurred on Tuesday, March 5, 2024 at around 04.00 WIT, at Jalan Mongonsidi RT/RW 002/003, Oyehe Village, Nabire District, Nabire Regency. The defendant Andika Wisnu Wijaya together with Child Witness ISBA PELLU alias IBAX (who was processed in the child case file Number 4/Pid.Sus-Anak/2024/PN Nap), as well as two other people who currently have DPO status, namely Brian Rumbewas and Sedek Kum, committed the theft together. The perpetrators used two motorbikes to get around and monitor the location. When crossing Jalan Mongonsidi, they saw the window of the boarding house open, then decided to commit the theft.

The first theft occurred at the boarding house owned by witnesses Azmicko Widya Alfirozaki and Elrado Simbolon. Sedek Kum and IBAX entered through an open window and then opened the door from the inside. They took a number of items such as an ASUS laptop, Samsung TV, Playstation 3, iPhone 11, Lenovo laptop, wallet containing ID, and the witness' Yamaha Aerox motorcycle. In this incident, Andika Wisnu Wijaya and Brian Rumbewas waited outside while monitoring the situation. Next, IBAX committed the second theft at the boarding house of witness Uum Dista Pangestin. He climbed the fence, opened the window, then opened the door from the inside using a hanging key. Inside the house, IBAX took a VIVO Y02 cellphone and a blue iPad 10. The stolen items were then taken by the perpetrators to the defendant's in-laws' house in Kampung Sanoba Bawah, Jalan Padat Karya, Kali Mangga. Some items were hidden in the cemetery area near the house, while other items were taken by the perpetrators to be controlled by each. The Playstation 3 was taken by IBAX, while the Lenovo laptop, iPhone, and wallet were taken by Sedek Kum. On March 6, 2024 at around 17.00 WIT, the Defendant was successfully secured by the Nabire Police.

The approach to punishment for children cannot be equated with that for adults, because the main goal of the legal process for children is not retaliation, but rather the development, rehabilitation, and social reintegration of children into society. Thus, the juvenile criminal justice system needs to be directed at protecting children's rights and implementing social justice values that are oriented towards recovery.

⁵PAF Lamintang., Special Offenses, Crimes Against Property, First Edition, Bandung, Sinar Baru, 1989, p. 11.

2. Research Methods

The approach method used in this study is the normative legal approach. The normative legal approach comes from two words, namely:

- a. Juridical, which means relating to law as a norm that regulates human behavior in society.
- b. Normative, which means relating to applicable norms or legal rules.

Thus, the normative legal approach is a research approach that only focuses on the study of written legal rules and relevant legal documents, without looking at the implementation or empirical practice in the field. This approach is used to analyze the applicable positive legal rules and regulates the punishment of children who commit crimes, especially aggravated theft, and is studied based on the values of Pancasila justice as the philosophical basis of the Indonesian national legal system. This approach is used to examine the laws and regulations related to the punishment of children who commit aggravated theft. Researchers use this approach to examine how written legal norms (*ius constitutum*) regulate punishment for children and how it should be carried out according to the principles of Pancasila justice.⁶

3. Results and Discussion

3.1. Application of Criminal Sanctions Against Children Who Perpetrate the Crime of Theft with Aggravation Based on Pancasila Justice Values in Decision of Case Number 57/Pid.B/2024/PN Nab

In answering this research, the author uses the theory of punishment and the theory of Pancasila justice, this theory emphasizes a corrective, rehabilitative, and educational approach. The purpose of this theory is to protect children's rights and their future, not to provide a deterrent effect as in adult punishment. In this context, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPA) is the normative basis that punishment of children must prioritize a diversion and guidance approach.⁷

In this thesis, the theory of child punishment is applied to analyze the form of punishment imposed by the judge in Decision Number 57/Pid.B/2024/PN Nab. The focus is on whether the criminal sanctions given reflect protection for children, for example through correctional punishment at the Special Child Correctional Institution (LPKA), or whether they are repressive and ignore the rehabilitative principle. In this case, the analysis is directed at the suitability between the form of punishment and the principle of restorative justice which is the main characteristic of juvenile criminal law. The Pancasila Justice Theory is used as the main philosophical framework in answering the two problem formulations. This theory is derived from the values in the second and fifth principles of Pancasila, namely Just and Civilized Humanity and Social Justice for All Indonesian People. This theory rejects justice that is purely legalistic-formal, and prioritizes comprehensive justice, which considers moral, social, and spiritual aspects. The Pancasila justice theory is the basis for assessing whether the form of punishment imposed is in accordance with the principles of humanity and social

⁶Soerjono Soekanto & Sri Mamudji, *Normative Legal Research (A Brief Review)*, Rajawali Pers, Depok, 2019, p. 13-14.

⁷ Decision Number: 31/Pid.B/2021/PN.Skh

justice. Children as perpetrators should not be treated the same as adults because their psychological and social conditions are different. The following is a review of the author's analysis in the decision research that the author raised as a thesis:⁸

1. Description of Case Decision Number 57/Pid.B/2024/PN Nab

Research from case study of decision no. 57/Pid.B/2024/PN Nab discussing a theft case that occurred on Jalan Mongonsidi RT/RW 002/003, Oyehe Village, Nabire District, Nabire Regency. That the Defendant ANDIKA WISNU WIJAYA together with the Child Witness ISBA PELLU alias IBAX (Decision Number: 4/Pid.Sus- Anak/2024/PN Nap), brother BRIAN RUMBEWAS (DPO), and brother SEDEK KUM (DPO) on Tuesday, March 5, 2024 at approximately 04:00 WIT or at least at another time in March 2024 or at least in 2024, located at Jalan Mongonsidi rt/rw 002/003 Oyehe Village, Nabire District, Nabire Regency or at least in a place that is still included in the jurisdiction of the Nabire District Court which has the authority to try, committed the crime of taking something that is wholly or partly owned by another person with the intention of possessing it unlawfully at night in a house or closed yard where the house is located, which was carried out by an unknown person who was there. or not desired by the authorized party, which is carried out by two or more people in collusion, who in order to enter the place of the crime, or to get to the goods taken, are carried out by damaging, cutting or climbing, or by using the ISBA PELLU alias IBAX Child Witness fake keys, fake orders or fake official clothing, which is carried out in the following ways:

At the time and place as mentioned above, it started when the Defendant together with the Child Witness ISBA PELLU alias IBAX, brother BRIAN RUMBEWAS and brother SEDEK KUM crossed Jalan Mongonsidi riding 2 (two) motorbikes, where the Child Witness ISBA PELLU alias IBAX was riding pillion with brother BRIAN RUMBEWAS and brother SEDEK KUM was being carried by the Defendant, upon arriving at Jalan Mongonsidi, precisely in front of the boarding house of witness UUM DISTA PANGESTIN, witness AZMICKO WIDYA ALFIROZAKI, and witness ELRADO SIMBOLON, then brother SEDEK KUM said to stop because he saw the victim's house window was open;

Brother SEDEK KUM opened the gate of the boarding house of witnesses AZMICKO WIDYA ALFIROZAKI and witness ELRADO SIMBOLON which was unlocked by pushing/pulling until the gate opened and then entered the boarding house of witnesses AZMICKO WIDYA ALFIROZAKI and witness ELRADO SIMBOLON through the window which was already open and opened the front door of the house, then the child of the witness ISBA PELLU alias IBAX entered the house through the door that had been opened by brother SEDEK KUM (DPO), while the Defendant and brother BRIAN RUMBEWAS waited outside while monitoring the situation. After Child Witness ISBA PELLU alias IBAX and brother SEDEK KUM were in the house, then brother SEDEK KUM entered the boarding house room and took items in the form of 1 (one) black ASUS laptop, 1 (one) black Samsung television unit, and 1 (one) PS 3 unit in the living room and then handed them over to Child Witness ISBA PELLU alias IBAX, then Child Witness

⁸ The 1945 Constitution of the Republic of Indonesia.

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ISBA PELLU alias IBAX took the items out and then handed them over to brother BRIAN RUMBEWAS;⁹

Witness Child ISBA PELLU alias IBAX came to the boarding house of witness UUM DISTA PANGESTIN and climbed over the fence of the house, after being in the yard of the house then Witness Child ISBA PELLU alias IBAX opened the boarding house window which had a bar, after the window was open then Witness Child ISBA PELLU alias IBAX put his hand through the window bar then opened the door using the key which was hanging/stuck on the inside of the boarding house door, then Witness Child ISBA PELLU alias IBAX entered the boarding house and entered the room seeing witness UUM DISTA PANGESTIN sleeping, then Witness Child ISBA PELLU alias IBAX took items in the form of 1 (one) VIVO Y02 brand cellphone in gray and 1 (one) I Pad 10 64GB in blue / YF2MHT67PK, after taking the items then Witness Child ISBA PELLU alias IBAX took them out and left together with the Defendant, brother BRIAN RUMBEWAS and brother SEDEK KUM left the boarding house by riding a motorbike, where the child of witness ISBA PELLU alias IBAX rode a red SCOPY motorbike and the defendant together with brother SEDEK KUM rode a gray MIO J motorbike, while brother BRIAN RUMBEWAS rode a red Yamaha AIROX motorbike with Police No.: PA 9989 KG, Frame No.: MH3SG6410MJ027216, Engine No.: G3P2E-0034656, belonging to witness ELRADO SIMBOLON which was taken from the boarding house of witness AZMICKO WIDYA ALFIROZAKI together with witness ELRADO SIMBOLON;

The defendant together with the child of witness ISBA PELLU alias IBAX, brother BRIAN RUMBEWAS and brother SEDEK KUM took the belongings of witness AZMICKO WIDYA ALFIROZAKI in the form of 1 (one) black ASUS ROG brand laptop / J6NROX 05F7B42B1, 1 (one) black iPhone 11 brand cellphone / 353977100029125, 1 (one) wallet containing AZMICKO's KTP, SIM and Identity Card, 1 (one) Samsung 32 inch TV. Meanwhile, the items belonging to witness ELRADO SIMBOLON are 1 (one) Unit of Lenovo brand Laptop in silver, 1 (one) Unit of Playstation/PS 3, 1 (one) Unit of Yamaha AEROX brand motorbike in red with police number PA 6689 KG Frame No.: MH3SG6410MJ027216 Engine No.: G3P2E-0034656. And the items belonging to witness UUM DISTA PANGESTIN are 1 (one) I Pad 10 in Blue / YF2MHT67PK, 1 (one) VIVO Y02 brand cellphone in Gray / 863329061243910 without the knowledge and permission of witness AZMICKO WIDYA ALFIROZAKI, witness ELRADO SIMBOLON, and witness UUM DISTA PANGESTIN as the legitimate owner of the goods;¹⁰

The items were taken to the Defendant's in-laws' house at Kali Mangga on Jl. Padat Karya, Sanoba Bawah Village, then the Defendant put the following items there:

- a. 1 (one) unit of black Samsung brand television,
- b. 1 (one) blue I Pad unit,
- c. 1 (one) unit black ASUS laptop, and

⁹ <https://www.neliti.com/id/publications/368780/justice-based-on-pancasila-as-the-philosophical-and-ideological-basis-of-the-nation>

¹⁰ Siregar, ARM, The Authority of the Constitutional Court in Testing Laws Against the 1945 Constitution, Responsive Law Journal, 2018

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d. 1 (one) red YAMAHA AEROX motorbike was placed in a grave near the Defendant's in-laws' house.

Meanwhile, the evidence taken by the witness's child was:

- a. Plastation/PS 3
- b. LENOVO laptop black color,

Meanwhile, the evidence taken by DPO Sedek Kum was:

- a. Hainphone i-Phone and
- b. Wallet

Furthermore, on March 6, 2024 at around 17.00 WIT, the Defendant was secured by Nabire Police members for further processing;

That as a result of the actions of the Defendant together with the Child Witness ISBA PELLU alias IBAX, Witness ISBA PELLU alias IBAX, brother BRIAN RUMBEWAS and brother SEDEK KUM, resulted in witness UUM DISTA PANGESTIN, witness AZMICKO WIDYA ALFIROZAKI, and witness

ELRADO SIMBOLON as the owner of the goods suffered material losses amounting to IDR 64,000,000.00 (sixty four million rupiah);

The Defendant's actions as regulated and threatened with criminal penalties in Article 363 Paragraph (1) 3, 4 and 5 of the Criminal Code;

Considering, that regarding the Public Prosecutor's charges, the Defendant stated that he understood the contents of the indictment and did not submit an exception/objection, so that the examination of the case was continued with the presentation of evidence;

2. Analysis of Case Decision Number 57/Pid.B/2024/PN Nab

This verdict reflects the complexity of handling the crime of aggravated theft involving adult and minor perpetrators together. In this case, the defendant Andika Wisnu Wijaya and Child Witness ISBA PELLU alias IBAX, along with two other colleagues who have DPO status, carried out the theft in a planned, structured manner, and at night, by breaking into a boarding house while the occupants were asleep.

The modus operandi used shows the existence of aggravating elements as regulated in Article 363 Paragraph (1) 3, 4 and 5 of the Criminal Code. The act also meets the formal and material requirements of aggravated theft because it was carried out:

- a. At night,

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- b. In a residential home or enclosed yard,
- c. Done jointly (as an alliance),
- d. Accompanied by the action of forcing open a door, window, or climbing.

However, in this case, one of the perpetrators is a minor, namely ISBA PELLU alias IBAX, who was examined and tried in a separate file (Decision Number: 4/Pid.Sus-Anak/2024/PN Nap). Therefore, it is important to observe how the juvenile criminal justice approach is applied in order to uphold the values of Pancasila justice, especially the second and fifth principles, namely:¹¹

The Second Principle emphasizes the principle of just and civilized humanity, which mandates that children as criminals must continue to be treated humanely and must not lose their future due to mistakes made at an early age.

The Fifth Principle on social justice for all Indonesian people is the basis for ensuring that the legal process is not only aimed at punishing, but also restoring and fostering, especially for children who are still growing. Law Number 11 of 2012 on the Juvenile Criminal Justice System (UU SPA) is an important instrument that requires a restorative justice approach and emphasizes the principle of diversion, namely the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system.

Decision Number 57/Pid.B/2024/PN Nab, indeed stated that one of the perpetrators was the Child Witness ISBA PELLU alias IBAX, and stated that the child's case was separated in a separate file, namely Decision Number: 4/Pid.Sus-Anak/2024/PN Nap.

The verdict against the child perpetrator in the a quo case is not fully stated in the Decision document Number 57/Pid.B/2024/PN Nab, but is only stated in the statement that the child's case was tried separately in Decision Number: 4/Pid.Sus-Anak/2024/PN Nap. However, due to limited access to the child's verdict, this analysis was carried out normatively based on positive legal provisions and the principles of Pancasila justice. The author's analysis is based on Article 7 paragraph (1) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, every handling of a child's case must be attempted through diversion. If diversion is unsuccessful, then the imposition of a sentence must take into account the child's age, psychological condition, and background. The values of Pancasila, especially the 2nd principle "Just and Civilized Humanity" and the 5th principle "Social Justice for All Indonesian People", demand that sanctions against children be more restorative and rehabilitative than repressive. Therefore, even though the involvement of children in this case is quite dominant, the state is obliged to ensure that the treatment of children continues to uphold the principles of justice for children.

3. Perspectives in the Latest Criminal Code

¹¹ Rusmiati, Syahrizal, Mohd. Din, The Concept of Theft in the Criminal Code and Islamic Criminal Law, Syiah Kuala Law Journal, Vol. 1, No. 1 April 2017.

The perspective of the New Criminal Code (Law No. 1 of 2023) explains that the articles on aggravated theft in the New Criminal Code are regulated in:

- a. Article 473 of the New Criminal Code: "Anyone who takes another person's property with the intention of unlawfully possessing it, is threatened with theft, with a maximum prison sentence of 5 years."
- b. Article 475 of the New Criminal Code: regulates aggravated theft, the punishment of which can be up to 7 years, depending on aggravating circumstances such as committing it at night, with more than one person, or entering a closed place.

However, in Article 598-603 of the New Criminal Code, special treatment is regulated for children in conflict with the law. The imposition of criminal penalties on children must consider the best interests of the child, the purpose of development, and imprisonment as the ultimum remedium. Although the New Criminal Code has not yet come into effect, the approach used in the Nabire District Court Decision is in line with the direction of future national criminal policy which is more oriented towards restorative justice and child protection.¹²

3.2. Judge's Considerations in Handing Down Criminal Verdicts Against Children Who Perpetrated the Crime of Theft with Aggravation Based on Pancasila Justice Values in the Decision of Case Number 57/Pid.B/2024/PN Nab

In answering this research, the author uses the Theory of Judge's Consideration, this theory emphasizes that in making a decision, the judge does not only rely on the legal aspect, but must also consider philosophical and sociological values. These considerations include the age of the perpetrator, psychological condition, social background, level of legal awareness of the child, and the possibility of self-improvement. In other words, the judge's decision must be based on substantively fair considerations.¹³

1. Position of Child Witnesses in Adult Verdicts

Decision Number 57/Pid.B/2024/PN Nab, the Panel of Judges explicitly stated that the crime of aggravated theft committed by the adult defendant, namely Andika Wisnu Wijaya, was carried out together with several other people. One of the parties involved in the implementation of the crime was a child who was referred to in the trial as "Child Witness" with the identity Isba Pellu alias Ibax. In the description of the legal facts considered by the judge, it was stated that the child played an active role in the implementation of the crime, namely by helping the defendant load the stolen goods onto the motorbike and even storing the stolen goods at his house. However, the child's case was not examined together with the case of the adult defendant, but was processed through a separate juvenile justice mechanism and recorded in the case register with the number: 4/Pid.Sus-Anak/2024/PN Nab.

¹² Rezna Fitriawan and R. Sugiharto, The Role of the Criminal Investigation Unit in Revealing Aggravated Theft in the Jurisdiction of the Demak Police, Proceedings of the Unissula Student Scientific Constellation (Kimu) 5, 2021.

¹³ Ferry Irawan Febriansyah, Justice Based on Pancasila as the Philosophical and Ideological Basis of the Nation, DiH Journal of Legal Studies, Volume 13 Number 25, February 2017.

Although the Panel of Judges mentioned the involvement of children in the criminal incident, in the verdict or the legal considerations section in Decision Number 57/Pid.B/2024/PN Nab, there is no further description of the process or substance of the decision against the child. It is not explained whether the child has been sentenced, what type of punishment was imposed, or whether the diversion mechanism or restorative justice approach has been used in handling the child's case. This shows that although children have an important role in the series of criminal events considered in adult decisions, the aspect of criminal responsibility for children is not described in detail in the adult decision document. As a result, information regarding the legal treatment of children can only be traced through a direct review of child decisions, which in this context, unfortunately, are not openly available.

2. Ambiguity of Diversion or Restorative Approach

Although the description of the legal facts states that one of the perpetrators of the crime of aggravated theft is a child, namely Child Witness Isba Pellu alias Ibax, in Decision Number 57/Pid.B/2024/PN Nab there is no explanation whether the handling of the child uses a diversion or restorative justice approach as mandated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In fact, according to Article 7 of the SPA Law, diversion must be attempted in every case of a child who is threatened with imprisonment of less than 7 years and is not a repetition of the crime. Meanwhile, in this context, even though the crime committed is categorized as serious, it does not automatically eliminate the obligation of law enforcement officers to consider a restorative justice approach.

In the verdict, the judge only mentioned the child as a party who participated in the theft, without providing any notes regarding the child's age, social background, psychological condition, or attitude in the trial process. This has the potential to ignore the principle of the best protection for children (the best interest of the child) which is one of the essential values in Pancasila justice, especially the second and fifth principles. The second principle emphasizes the importance of respect for human values, including treating children with a humane and educational approach, while the fifth principle encourages fair treatment based on the conditions and responsibilities of each individual. The absence of a narrative about the diversion approach or restorative justice in this verdict raises questions about the extent to which the justice system has implemented the principles of Pancasila justice in handling children's cases.

3. The Rehabilitative Role of Law Towards Children

Rehabilitative Role in the context of Pancasila justice, the imposition of criminal penalties on children should not be solely oriented towards revenge, but rather emphasize the recovery and social rehabilitation of children. Justice based on Pancasila, especially the second and fifth principles, demands that law enforcement be carried out by considering humanitarian values and a balance between individual rights and community interests. The second principle emphasizes the recognition and protection of human dignity, including children, who are not yet fully mature in their age and psychological conditions. Meanwhile, the fifth principle demands a proportional distribution of justice, including in terms of criminal sanctions imposed on children.

Decision Number 57/Pid.B/2024/PN Nab, the considerations are not explicitly stated in the legal considerations of the panel of judges. There is no explanation whether the judges have considered the aspects of child protection as mandated in Article 64 of the Criminal Code, the SPA Law, or other regulations that guarantee special treatment for children in conflict with the law. In fact, justice according to Pancasila emphasizes that children are not only seen as perpetrators, but also as victims of social and environmental situations that influence their behavior.¹⁴

The absence of a rehabilitative approach in the judge's consideration narrative shows the minimal integration of Pancasila justice values in the decision-making process for children's cases that are tried separately. Ideally, in cases involving adult and child perpetrators, the judge would still convey his/her views regarding the entire incident, including how the child is handled legally. With the lack of explicit disclosure of the handling of children in this adult decision, it is difficult to measure the extent to which consideration of Pancasila justice values truly forms the basis for the decision.¹⁵

a. Conclusion of the Judge's Consideration Analysis

Decision Number 57/Pid.B/2024/PN Nab shows the involvement of children in aggravated theft committed together with adult defendants. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPA) is a concrete manifestation of the implementation of this protection theory. Article 3 of the SPA Law states that the juvenile criminal justice system is organized based on the principles of protection, justice, non-discrimination, the best interests of children, respect for children's rights, and avoidance of violent acts. The SPA Law also introduces the concept of diversion and restorative justice as the main approaches in resolving cases of children in conflict with the law, which aims to prevent children from formal judicial processes that have the potential to cause trauma. The juvenile criminal justice system must operate differently and independently in accordance with the provisions of the SPA Law.¹⁶

The panel of judges in this case did state that the child's case on behalf of Isba Pellu alias Ibax was tried separately in Decision Number: 4/Pid.Sus-Anak/2024/PN Nab. However, in the consideration of the decision on the adult case, there was no elaboration regarding how the child would be treated legally. There was no explanation as to whether diversion efforts had been made against the child, whether the child had been sentenced to a criminal offense, or whether an educational and restorative approach had been considered by law enforcement. Implicitly, the approach to children as perpetrators of criminal acts still reflects respect for the

¹⁴ Salim HS, Application of Legal Theory in Thesis and Dissertation Research, Jakarta: Rajawali Pers, 2014.

¹⁵ Moeljatno, Principles of Criminal Law, Jakarta: PT. Bina Aksara, 1987.

¹⁶ Donald Albert Rumokoy and Frans Maramis, Introduction to Legal Science, Rajagrafindo Persada, Jakarta, 2014.

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values of Just and Civilized Humanity (the 2nd principle) and Social Justice for All Indonesian People (the 5th principle). This is reflected in:¹⁷

- a. The non-inclusion of the child's responsibility in the verdict against the adult defendant.
- b. Explicit mention that children's cases are tried separately in accordance with the principles of juvenile justice.
- c. There is no stigmatization or cornering of Child Witnesses

In addition, the approach used by judges in separating children's cases is also in line with the principle of corrective justice which is an important part of Pancasila justice. The purpose of punishment in the context of children is not merely to provide a deterrent effect, but more on rehabilitation, social reintegration, and restoration of relations between perpetrators and victims.¹⁸

2. The Perspective of the New Criminal Code in the Judge's Consideration

Article 603 of the New Criminal Code expressly states:

"In cases where the perpetrator of a crime is a child, the punishment imposed must take into account the age, the best interests of the child, and the purpose of the development."¹⁹

This article strengthens the obligation of judges to consider psychological, social and moral aspects when sentencing children, which has been done in this decision. Decision Number 57/Pid.B/2024/PN Nab shows an approach that is in line with the values of Pancasila justice and the direction of the New Criminal Code, namely:

- a. Humanizing child perpetrators as subjects who can still be guided,
- b. Avoid harsh punishments for the sake of the sustainability of the child's future,
- c. Using criminal law as the ultimum remedium,
- d. And make restorative justice a top priority.²⁰

4. Conclusion

¹⁷ Khushal Vibhute and Filipos Aynalem, Legal Research Methods, Teaching Materials, Prepared Under The Sponsorship Of The Justice And Legal System Research Institute, 2009.

¹⁸ Hanjoyo Bono Nimpuno, et al., New Edition of the Indonesian Language Dictionary, Jakarta: Pandom Media Nusantara, 2014.

¹⁹ Barda Nawawi Arief, Anthology of Criminal Law Policy, Citra Aditya Bakti, Bandung, 2002.

²⁰ Amir Ilyas, Principles of Criminal Law, Rangkang Education Yogyakarta & PuKAPIndonesia, Yogyakarta, 2012.

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Decision Number 57/Pid.B/2024/PN Nab describes a case of aggravated theft committed jointly by an adult defendant and a minor. This action fulfills the elements of aggravated theft according to Article 363 Paragraph (1) of the Criminal Code. In handling this case, the child perpetrators were separated in a different judicial process in accordance with the provisions of the Child Criminal Justice System Law (Law No. 11 of 2012). However, in the verdict of the adult defendant, the diversion mechanism or restorative justice approach to the child perpetrators was not explained in detail. The law enforcement approach to child perpetrators displays the principles of Pancasila justice, especially the second principle "just and civilized humanity" and the fifth principle "social justice for all Indonesian people", which demands restorative, rehabilitative treatment and the best protection for children. By not including the responsibility of children in the verdict against adult defendants. Explicit mention that children's cases are tried separately in accordance with the principles of juvenile justice. And there is no stigmatization or cornering of Child Witnesses.

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