

Application of Minimum Criminal Sentences for Violent Theft Criminal Offences Committed by Children (Case Study at Batang Police Office)

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Abstract. *This research aiming for u to find out and analyze the application of minimum sentences for perpetrators of violent theft committed by children at the Batang Police and the considerations of Batang Police investigators in applying minimum sentences for perpetrators of violent theft committed by children. This study uses a legal research approach. empirical Data collection through interviews, literature studies and documentation studies. Data analysis was carried out qualitatively. Based on the research, it was concluded that pThe application of minimum sentences for perpetrators of violent theft committed by children at the Batang Police is part of law enforcement as a response to laws and regulations, especially Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, especially those regulating the principles of Juvenile Criminal Justice and Children's Rights in the criminal justice process. The application of minimum sentences is carried out by implementing the provisions of Article 365 of the Criminal Code which regulates the crime of violent theft with a minimum sentence of a maximum of 9 (nine) years, either singly or cumulatively with other theft crimes such as ordinary theft (Article 362 of the Criminal Code) with a minimum sentence of a maximum of 5 (five) years or aggravated theft (Article 363 of the Criminal Code) with a minimum sentence of a maximum of 7 (seven) years.*

Keywords: *Children; Minimum; Sentence; Violence.*

1. Introduction

One of the crimes against property is theft. Theft crimes generally occur due to economic factors. The object of the crime of theft is property, especially property that has economic value. The crime of theft develops in various ways and modes. The perpetrators of theft generally carry out their actions by trying so that when

taking goods from their victims they are not known by their victims, for example theft is carried out at night when people are sleeping or during the day when it is quiet and so on.

The act of theft is formulated in the provisions of Article 362 of the Criminal Code which defines the crime of theft as the act of taking something, which in whole or in part belongs to another person, with the intention of possessing it unlawfully.¹ Based on the formulation, it can be said that the act of theft does not need to be done secretly or without the knowledge of others, especially the owner of the goods. For example, someone takes goods in front of the owner of the goods but the owner of the goods does not want or does not allow the taking of the goods or is done unlawfully to be owned by himself, then the act is an act of theft. So the actions of a person who meets the formulation of elements in Article 362 of the Criminal Code can be said to be an act of theft.

One of the acts that can be categorized as theft is the act of taking someone else's property by force, even carried out with violence to facilitate the achievement of the act of taking someone else's property. The act of theft with violence is an act that has attracted public attention because the act in question is very disturbing to the public. The act of theft with violence is the act of taking someone else's property from the owner's control by force accompanied by violence. The perpetrator openly intends to take control of someone else's property for himself through forceful means, even with violence. Victims of theft with violence generally suffer injuries to death. For such incidents, the victim usually tries to defend his property from the coercive efforts made by the perpetrator of theft so that the perpetrator of theft uses violence so that his efforts are successful. Against victims who try to defend their property that the perpetrator wants to take, the perpetrator does not hesitate to use violence or even murder.

Violent theft perpetrators can be charged with Article 365 of the Criminal Code because before taking someone else's property, the perpetrator made threats and committed violence against the victim. Even if the perpetrator of the violent theft causes the death of the victim, he can be threatened with a maximum prison sentence of fifteen years to the death penalty or life imprisonment.²

The phenomenon of violent theft has claimed many victims and has been very disturbing to the community. Perpetrators of violent theft often do not consider the time, place and victims in carrying out their actions. This has become a concern for law enforcement officers and the community. Acts of violent theft have made the community restless so that the community sometimes takes the

¹Visi Media Team, (2014), *Criminal Code (KUHP) and Criminal Procedure Code (KUHP)*, Jakarta: Visi Media, p. 132

²Hamidah Abdurrahman, (2015), *What are the Threats of Punishment for Motorbike Robbers?* <http://metro.tempo.co/read/news>, accessed on October 15, 2024

law into their own hands against perpetrators of violent theft, such as perpetrators being mobbed or burned alive.

Viewed from the perspective of criminal law, the act of theft followed or accompanied by violence can be associated with several criminal acts, such as the crime of theft, both ordinary theft (Article 362 of the Criminal Code) and theft with violence (Article 365 of the Criminal Code), assault (Article 251 of the Criminal Code), even murder (Article 338 of the Criminal Code). To determine which crime occurs in the act of theft with violence, the perpetrator's actions must be proven. For this, the perpetrator's intent and/or intention in the act of theft with violence must be proven.

If in an act of theft with violence the victim suffers minor or serious injuries or even dies, it is not necessarily the case that the act is considered an act of assault or murder. It could be that the perpetrator's actions were purely to take the victim's belongings, thus categorizing them as theft, for example theft with violence resulting in serious injuries as referred to in Article 365 paragraph 2 to 4 of the Criminal Code or theft with violence resulting in the death of the victim as referred to in Article 365 paragraph (3) of the Criminal Code.

Based on this, in the process of investigating violent theft, investigators must be observant, thorough and precise in conducting investigations to determine the act of violent theft. This is so that there are no mistakes in determining the type of crime or the severity of the punishment for the perpetrator of violent theft. The basis for investigators' considerations in determining the act of violent theft is very important considering that the investigation is the initial stage in the criminal justice process which will determine the subsequent criminal justice process such as prosecution to examination in court. Appropriate legal considerations are needed so that violent theft can be subject to the criminal justice process and the perpetrator can be given appropriate criminal sanctions.

When a child is suspected of committing a crime, the existing formal justice system ultimately places the child in prison status, which of course has quite significant consequences for the child's growth and development. The punishment process given to children through the formal criminal justice system by putting the child in prison has not succeeded in making the child deterred and become a better person to support their growth and development process. Prison often makes children more professional in committing crimes.³

The Juvenile Criminal Justice System Law upholds the principle that the penalty of loss of liberty or imprisonment is the last resort for children. As much as

³Fiska Ananda, "Implementation of Diversion as an Effort to Protect Children Who Are Criminal Offenders Fiska Ananda", *Jurnal Daulat Hukum* Vol. 1. No. 1 March 2018. P. 78 url:<https://jurnal.unissula.ac.id/index.php/RH/article/view/2566/1923>, accessed 15 October 2024

possible, children's cases are resolved outside the court through diversion efforts as stipulated in the Juvenile Criminal Justice System Law. If it is absolutely necessary for a child to commit a crime to be processed through criminal law, efforts are made to keep the child away from prison. This means that as much as possible, the child is subject to the lightest possible punishment. Likewise, for children who commit violent theft, law enforcement must try to handle their cases by prioritizing the principle of the best interests of the child as mandated by the Juvenile Criminal Justice System Law. If possible, with various considerations, it is attempted to apply the article on violent theft with minimal punishment.

2. Research Methods

The research approach method is empirical legal research with analytical descriptive specifications. Empirical legal research approach method namely a method that uses various empirical facts by taking from human actions, both verbal and real actions, namely through interviews or direct observation. On the other hand, the observed actions are those that reflect the gap between theory and reality or vice versa that occurs in the field.⁴ This research can be called empirical research because the author conducted the research to discuss the problem of implementing minimum sentences for perpetrators of violent theft committed by children. This study uses primary data and secondary data collected through interviews, literature studies and documentation. In this study, the data obtained will be analyzed qualitatively, namely a method that produces data analysis based on what is stated by respondents in writing / orally. The data from the analysis will then be used to draw conclusions using the deductive thinking method. "Deductive is a way of thinking that is based on the general, and from the general determines the specific".⁵

3. Results and Discussion

3.1. Implementation of Minimum Sentences for Violent Theft Crimes Committed by Children at Batang Police

The settlement of criminal cases of theft with violence in the Batang Police area is specifically carried out by the Women and Children Service Unit (PPA Unit) of the Batang Police. As in other areas, the jurisdiction of the Batang Police is also one of the areas facing the problem of criminal acts committed by children. For

⁴Muhammad Fajar Sidiq Widodo, et al., (2022), Various Legal Research Methods, Kediri: Criminal Law Study Institute, p. 47

⁵Ibid, p. 21.

this reason, special handling is needed as mandated by law, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.⁶

The application of minimum sentences for perpetrators of violent theft committed by children at the Batang Police means applying the lowest sentence for children who commit violent theft. If we pay attention to the provisions of Article 365 of the Criminal Code concerning violent theft, the lowest or minimum sentence for perpetrators of violent theft is a maximum of 9 (nine) years. This is as referred to in Article 365 paragraph (1) of the Criminal Code. For children who commit violent theft, the criminal threat that can be applied to them is half of the criminal threat for adults. This is as referred to in Article 79 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which states that the criminal restriction of freedom imposed on children is a maximum of 1/2 (one half) of the maximum prison sentence threatened against adults. Based on this, the minimum sentence that can be imposed on children who commit violent theft is a maximum of 4.5 years or 4 years 6 months.

Furthermore, in the provisions of Article 79 (1) of Law Number 11 of 2012 concerning the Child Criminal Justice System, it is stated that criminal restrictions on freedom are imposed in cases where a child commits a serious crime or a crime accompanied by violence. Based on these provisions, a child who commits a crime of theft with violence can be subject to criminal restrictions on freedom or imprisonment.

The problem is that in the case of a crime of theft with violence committed by a child that fulfills the elements in the provisions of Article 365 of the Criminal Code paragraph (2), paragraph (3) and paragraph (4), then the child who commits the crime of theft with violence is subject to a penalty in accordance with his actions adjusted to the elements of the article violated. In the provisions of Article 365 paragraph (2) of the Criminal Code, the perpetrator of the crime of theft with violence is threatened with a maximum imprisonment of 12 (twelve) years. In the provisions of Article 365 paragraph (3) of the Criminal Code, the perpetrator of the crime of theft with violence is threatened with a maximum imprisonment of 13 (thirteen) years. While in the provisions of Article 365 paragraph (4) of the Criminal Code, the perpetrator of the crime of theft with violence is threatened with the death penalty or life imprisonment. As for children who commit the crime of theft with violence, the maximum prison sentence that can be applied to them is 1/2 (one half) of the maximum prison sentence threatened to adults as referred to in Article 79 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.⁷

⁶Interview with Ipda Eko Nugrahanto, Investigator of the PPA Unit, Batang Police, December 20, 2024.

⁷Interview with Ipda Eko Nugrahanto, Investigator of the PPA Unit, Batang Police, December 20, 2024.

To apply the minimum sentence to children who commit the crime of theft with violence, it can also be applied together with the provisions of other articles regarding the crime of theft which carries a threat below the minimum sentence of the crime of theft with violence with a minimum sentence of a maximum of 9 (nine) years as referred to in Article 365 paragraph (1) of the Criminal Code. Other crimes of theft which can be applied together with the crime of theft with violence, for example, the crime of ordinary theft as referred to in Article 362 of the Criminal Code with a maximum sentence of 5 (five) years or the crime of aggravated theft as referred to in Article 363 of the Criminal Code with a minimum sentence of a maximum of 7 (seven) years.⁸

To analyze the application of minimum penalties for perpetrators of violent theft committed by children at Batang Police, the following case example is provided:⁹

1) Position case

The crime of violent theft committed by a child in the jurisdiction of the Batang Police occurred on Saturday, June 11, 2022 at around 21.30 WIB in Ds. Klidang Wetan, Kec. Batang, Kab. Batang, which was committed by Jaka (not his real name) together with Agus (not his real name) who is already an adult. The crime of violent theft in question was carried out by initially on Saturday, June 11, 2022 at around 18.30 WIB, Jaka and Agus (being processed in another case file) were walking around riding 1 (one) unit of a black and red Honda Vario motorbike with the police number G 2206 ZL belonging to Jaka with the intention of looking for a victim to steal his cellphone until they arrived at the Pekalongan Toll Road entrance into the Sokoduwet Village area, Kec. South Pekalongan, Pekalongan City, Jaka and Agus (processed in another case file) saw 2 (two) boys (Muhammad Nafis Kurniawan and Bagus Arya Wira Yuda) riding a Honda Vario motorbike in red and black, then Jaka and Agus asked for help from the 2 (two) boys and pretended that the motorbike they were riding had broken down, then told the victim to push or stop at the repair shop, after that the 2 (two) boys helped push or stop the motorbike ridden by Jaka and Agus (processed in another case file) until they reached the edge of the river in Klidang Wetan Village, Batang District, Batang Regency. Furthermore, Agus (processed in another case file) hit one of the victims using his bare hands, then threatened the victim using 1 (one) silver toy gun and asked for 1 (one) brand cellphone Oppo A16 black Crystal color, IMEI 1: 865245050298673, IMEI 2: 865245050298665 belonging to the victim, at that time Jake holding tightly to the body of one of the victim then elbowed him and asked for 1 (one) Infinix Itel Vision 1 Pro brand cellphone in blue (cosmic shine) IMEI 1: 355010713640068,

⁸Interview with Ipda Eko Nugrahanto, Investigator of the PPA Unit, Batang Police, December 20, 2024.

⁹Police Report Investigation File Number: LP / B / 59 / VI / 2022 / SPKT.SATRESKRIM / BATANG POLICE / CENTRAL JAVA REGIONAL POLICE, dated June 12, 2022.

IMEI 2: 355010713640076 belonging to him. After that Agus (processed in another case file) told the 2 (two) boys to buy cigarettes on foot and leave the victim's red and black Honda Vario motorbike with police number: G 6375 CH along with the ignition key. after the 2 (two) boys walking to buy cigarettes, Jaka left riding 1 (one) unit of a red and black Honda Vario motorbike with the number plate G 6375 CH belonging to the victim and Agus (being processed in another case file) riding 1 (one) unit of a black and red Honda Vario motorbike with the number plate G 2206 ZL belonging to Jaka.

2) Case analysis

To find out the guilt of the suspects for the actions they have committed, a case analysis is carried out to reveal the facts that have occurred. The case analysis carried out by investigators on the case in question is based on existing evidence such as statements from suspects, statements from witnesses, and evidence, namely as follows:

- a. That it is true that on Saturday, June 11 2022 at approximately 21.30 WIB, a criminal case of theft with violence and/or aggravated theft occurred.
- b. That the perpetrator is Agus (*processed in another case file*) together with Jaka with 2 (two) victims.
- c. That the goods have been Agus Taken together with Jaka is 1 (one) Honda Vario motorbike and 2 (two) units Mobile phone. These items belong to the victim
- d. That the role Agus and Jaka in the theft case were the same, namely approaching and taking the above items together
- e. That Agus committed theft together with Jaka using tools and means in the form of 1 (one) black Honda Vario motorbike with license plate number: G 2206 ZL, 1 (one) iron rack and 1 (one) silver pistol
- f. That the crime of theft with violence and/or the crime of aggravated theft was committed by Agus and Jaka by initially Agus and Jaka walking around riding 1 (one) unit of black and red Honda Vario motorcycle with the police number G 2206 ZL belonging to Jaka with the intention of looking for victims to steal their cellphones until they arrived at the entrance to the Pekalongan Toll Road entering the Sokoduwet Village area, South Pekalongan District, Pekalongan City, Agus and Jaka saw 2 (two) victims who were still children riding a red and black Honda Vario motorcycle, then Agus and Jaka asked for help from the victim and pretended that the motorcycle Agus was riding had broken down, then told him to push or stop at the workshop, after that the 2 (two) victims helped push or stop the motorcycle that Agus was riding with Jaka until they arrived at the edge of the river in Klidang Wetan Village, Batang District, Batang Regency.

- h. That the act of theft had been planned beforehand by Jaka with Agus
- i. That the person who initially planned to carry out the theft was Jaka, but at that time Agus agreed, which finally resulted in Agus and Jaka carrying out the theft together.
- j. That at that time Jaka said "golek hape wae po" (let's just look for a cellphone) and at that time Agus already knew what he meant by that statement, which was to snatch/steal a cellphone. Initially Agus didn't want to because he was afraid of being caught, but finally Agus changed his mind and wanted to snatch/steal the cellphone together with Jaka.
- k. stolen, then sell them and Agus would use the money for personal needs.
- l. That next Agus and Jaka sold the goods in the form of 2 (two) cellphones belonging to the victim for a total of money amounting to IDR 1,700,000, (one million seven hundred thousand rupiah). Whereas 1 (one) unit of the victim's red and black Honda Vario motorcycle is still at Agus' house, then Agus and Jaka plan to sell 1 (one) unit of the victim's red and black Honda Vario motorcycle, so that it is not recognized and to eliminate traces Agus and Jaka changed its shape by painting the motorcycle which was originally red and black painted using white London brand spray paint, after changing color to white the sticker was replaced with a new one. Furthermore, Agus removed the frame number and engine number of the motorcycle by drilling it using 1 (one) blue Makita brand drill until the number disappeared or was no longer visible, then threw away the number plate attached to the motorcycle and replaced it with another plate.
- m. That Agus and Jaka had committed acts of violence against the victims so that the victims would be afraid and easily willing to hand over their belongings.
- o. That the item in the form of 1 (one) iron racking is Agus's property who was in the workshop at that time, while 1 (one) silver toy gun is a toy belonging to Agus' nephew who was in the workshop. Furthermore Jaka brought these items to threaten and scare the victim when committing theft.
- p. That Agus and Jaka had never previously asked the owner's permission, but instead took it by force using violence (threatened and beaten)
- q. That when Agus and Jaka took the items, the situation was at night on the edge of the river in a quiet area.
- r. That the evidence in the case of the crime of theft with violence is in the form of:
- 1 (one) sheet of STNK for a red and black Honda Vario motorcycle with license plate number G 6375 CH year 2013, Registration Number: MH1JF8114DK857595,

Registration Number: JF81E – 1852391 in the name of MUHAMMAD MASYKUR, address Podosugih Subdistrict, West Pekalongan.

- 1 (one) OPPO A16 brand cellphone box, Crystal black, IMEI 1: 865245050298673, IMEI 2: 865245050298665

-1 (one) box for INFINIX ITTEL Vision 1 Pro brand cellphone, cosmic shine color, IMEI 1: 355010713640068, IMEI 2: 355010713640076

-1 (one) unit of white Honda Vario motorbike. Number plate installed: G-3365-UK

-1 (one) silver colored toy gun

-1 (one) piece of railing made of iron

-1 (one) Makita brand drill machine, blue color

-1 (one) empty white London brand Piloc bottle

3) Legal analysis

Based on the facts and analysis of the case as mentioned above, there are indications of a crime of Theft with violence and/or Aggravated Theft which occurred on Saturday, June 11, 2022 at around 21.30 WIB in Ds. Klidang Wetan, Batang District, Batang Regency, as referred to in Article 365 paragraph (1), (2) 2 of the Criminal Code and/or Article 363 paragraph (1) 4 of the Criminal Code, namely:

Article 365 paragraph (1), (2) 2 of the Criminal Code “Theft with violence”

The elements contained in Article 365 paragraph (1), (2) 2 of the Criminal Code

a. Whoever;

Based on the facts, statements from witnesses, statements from the suspect himself and supported by evidence that has been confiscated, the legal subjects who can be held responsible for the act are Agus, who is an adult (processed in another file) and Jaka, who is still a child (aged 16 years and 10 months).

b. Intentionally taking goods that partly or wholly belong to another person;

That Agus and Jaka deliberately took items in the form of 1 (one) red and black Honda Vario motorbike and 2 (two) cell phones belonging to the victim.

c. With the intention of possessing against rights;

That Agus and Jaka took goods without permission in the form of 1 (one) red and black Honda Vario motorbike and 2 (two) mobile phones belonging to the victim

with the intention of owning them and to gain profit from the sale of these goods.

d. preceded, accompanied or followed by violence or threats of violence against people;

-That Agus previously held and then hit the victim using his bare hands 1 (one) time until it hit the head, and was followed by Jaka holding and hitting using his elbow 1 (one) time.

-That Agus threatened the victim using 1 (one) silver toy gun while saying "don't mess around", while Jaka holds 1 (one) rack made of iron.

e. If the act is carried out by two or more people in partnership;

That the act was carried out by Agus and Jaka with the following roles:

a) Agus hit and threatened the victim using 1 (one) silver toy gun, then took 1 (one) branded cellphone belonging to the victim.

b) Jaka held 1 (one) piece of iron rack, then hugged and elbowed one of the victims, then took it by force. 1 (one) of the victim's cellphone.

Article 363 paragraph (1) 4 of the Criminal Code "Aggravated theft"

The elements contained in Article 363 paragraph (1) 4 of the Criminal Code

a. Whoever ;

Based on the facts, statements from witnesses, statements from the suspect himself and supported by evidence that has been confiscated, the legal subjects who can be held responsible for the act are the suspects Agus, who is an adult (being processed in another case) and Jaka, who is still a child.

b. Intentionally taking goods that partly or wholly belong to another person, namely:

That Agus and Jaka deliberately took items in the form of 1 (one) red and black Honda Vario motorbike and 2 (two) mobile phones belonging to the victims.

c. With the intention of possessing against rights;

That Agus and Jaka took goods without permission in the form of 1 (one) red and black Honda Vario motorbike and 2 (two) mobile phones belonging to the victims with the intention of owning them and to gain profit from the sale of these goods.

d. Theft committed by 2 (two) or more people in partnership.

That Agus committed the theft together with Jaka with the following roles:

- Agus hit and threatened one of the victims, then took 1 (one) cellphone belonging to the victim.
- Jaka held 1 (one) piece of iron rack, then hugged and elbowed the victim's body and then took it by force. 1 (one) victim's cellphone in question.

Based on the discussion of the facts/evidence in the case analysis and the legal analysis above, that there has been a criminal act of Theft with violence and/or Theft with aggravation that occurred on Saturday, June 11, 2022 at around 21.30 WIB in Ds. Klidang Wetan, Batang District, Batang Regency which was carried out by Agus who is an adult (processed in another case file) and Jaka who is still a child.

There is sufficient evidence against Jaka and he can be suspected of having committed the crime of Theft with violence and/or Aggravated Theft which occurred on Saturday, June 11, 2022 at around 21.30 WIB in Ds. Klidang Wetan, Batang District, Batang Regency, as referred to in Article 365 paragraph (1), (2) 2 of the Criminal Code and/or Article 363 paragraph (1) 4 of the Criminal Code.

The application of the provisions of the article regulating the crime of theft with violence is carried out through a legal analysis, namely an analysis carried out on the suspect's actions based on evidence obtained with elements of the alleged crime, namely the crime of theft with violence. Based on the legal analysis in question, a conclusion will be obtained regarding the suspect's actions as a basis for suspecting the provisions of the article regarding the crime committed, in this case the crime of theft with violence as referred to in the provisions of Article 365 of the Criminal Code.

In the legal analysis of the criminal case, a conclusion was obtained that the child suspect was suspected of committing the crime of theft with violence as referred to in Article 365 paragraph (1), (2) 2 of the Criminal Code and/or aggravated theft as referred to in Article 363 paragraph (1) 4 of the Criminal Code. The criminal threat in the provisions of the article threatened to the suspect includes theft with violence as referred to in Article 365 paragraph (1), (2) 2 of the Criminal Code with a maximum criminal threat of 9 (nine) years for the criminal threat in the provisions of Article 365 paragraph (1) of the Criminal Code and a maximum criminal threat of 12 (twelve) years for the criminal threat in the provisions of Article 365 paragraph (2) 2 of the Criminal Code. While the criminal threat for the provisions of Article 363 paragraph (1) 4 of the Criminal Code is a maximum prison sentence of 7 (seven) years.

When viewed from the theory of criminal law enforcement from Chambliss Seidman, the application of minimum sentences in the investigation of violent theft crimes committed by children is a response from the state through

investigators to legal regulations, especially criminal law regulations related to cases reported by victims as members of society. Members of society in this case, victims, are the ultimate goal of the criminal investigation process in question. The ultimate goal is the realization of a sense of justice in society as the goal of the law itself.

The application of minimum sentences to children who commit violent theft is an implementation of the principles of the Juvenile Criminal Justice System in the form of the principle of protection, the principle of justice, the principle of the best interests of the child, the principle of the child's survival and development, and the principle of deprivation of liberty and punishment as a last resort. Based on the principles of the Juvenile Criminal Justice System, efforts must be made to keep children away from prison for children who commit crimes and if the child is forced to undergo a sentence, the lightest possible sentence or minimum sentence should be applied.

According to Prasetyo, in enforcing criminal law for children, there are 4 (four) aspects of community protection that must receive attention, namely:¹⁰

- a. Society needs protection against antisocial acts that are detrimental and dangerous to society. Based on this aspect, it is natural that law enforcement aims to combat crime;
- b. Society needs protection against the dangerous nature of a person. It is also natural that criminal law enforcement aims to improve the perpetrator of the crime or try to change and influence his behavior so that he returns to obeying the law and becomes a good and useful citizen;
- c. Society also needs protection against abuse of sanctions and reactions from law enforcement and from the general public. It is also natural that criminal law enforcement must prevent arbitrary treatment or actions outside the law;

When viewed from the theory of justice, the application of minimum sentences for children who commit violent theft is a form of fulfilling the right to justice for children in addition to legal certainty. To apply minimum sentences for children who commit violent theft, legal justice must often be prioritized in addition to legal certainty. This means that in practice, legal breakthroughs are sometimes needed to be able to apply minimum sentences for children who commit violent theft. This is due to the provisions of criminal law that regulate violent theft with a minimum sentence of 9 (nine) years. The threat of minimum sentences is sometimes felt to be unfair to children who commit crimes in certain cases, for example, the value of the loss is small or there is compensation for the victim and/or the return of stolen goods.

¹⁰Teguh Prasetyo, 2010, *Criminal Law*, Rajawali Press, Jakarta, p. 7

Another legal breakthrough that investigators can make in resolving violent theft crimes committed by children is to resolve cases using a restorative justice approach through diversion efforts or efforts to divert the settlement of cases from resolving criminal cases through the courts to resolving criminal cases outside the courts. This is because violent theft crimes are threatened with a minimum sentence of 9 (nine) years. Based on the provisions of Article 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, that diversion is carried out in cases where the crime committed is punishable by imprisonment of less than 7 (seven) years and is not a repetition of the crime. then the crime of theft with violence does not meet the requirements for diversion efforts. However, with consideration of legal justice, investigators can make a breakthrough by making diversion efforts for cases of theft with violence committed by children with conditions that can be legally accounted for.

The conditions referred to are for example based on the provisions of Article 12 of Regulation of the Chief of Police Number 6 of 2019 concerning Criminal Investigation which states that in the investigation process, restorative justice can be carried out if the following conditions are met:

a. Material, including: 1. does not cause public unrest or there is no public rejection; 2. does not result in social conflict; 3. there is a statement from all parties involved not to object, and to waive the right to sue before the law; 4. limiting principles: a) for the perpetrator: 1) the level of the perpetrator's guilt is relatively not serious, namely the error in the form of intent; and 2) the perpetrator is not a recidivist; b) for criminal acts in the process: 1) investigation; and 2) investigation, before the SPDP is sent to the Public Prosecutor;

b. Formal, including: 1. a letter of request for peace from both parties (the reporter and the reported party); 2. a statement of peace (deed of marriage) and settlement of the dispute between the parties in the case (the reporter, and/or the reporter's family, the reported party and/or the reported party's family and representatives of community leaders) acknowledged by the superior investigator; 3. minutes of additional examination of the parties in the case after the case has been settled through restorative justice; 4. recommendation for a special case title that approves the restorative justice settlement; and 5. the perpetrator does not object and is carried out voluntarily for responsibility and compensation.

Apart from that, there is no express prohibition against diversion efforts for criminal acts that are threatened with a criminal sentence of more than 7 (seven) years. except for the crimes of murder, rape, drug dealing and terrorism as explained in Article 9 paragraph (1) letter a of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which states that Diversion is not intended to be implemented against perpetrators of serious crimes, for example

murder, rape, drug dealing and terrorism, which are subject to a sentence of more than 7 (seven) years.

In addition, in the Secret Telegram of the Head of Criminal Investigation Unit of the Indonesian National Police No. Pol.: TR/1124/XI/2006 there is an understanding of diversion, namely a transfer of the form of settlement from a formal criminal process to an alternative settlement in another form that is considered best in the interests of the child. "The police can take other actions according to responsible law with the limitation that the action does not conflict with applicable law, is in line with legal/professional obligations that require the action of the position, the action must be appropriate and reasonable and included in the scope of the position, based on proper considerations based on compelling circumstances and respecting Human Rights. In other words, it can be interpreted that diversion means the transfer of cases related to children who are suspected of having committed violations outside of formal judicial procedures with or without certain conditions.

3.2. Basic Considerations of Batang Police Investigators in Applying Minimum Sentences to Perpetrators of Violent Theft Committed by Children

Punishment is an effort to make convicts aware so that they regret their actions, and return them to being good citizens, obedient to the law, upholding moral, social and religious values, so that a safe, orderly and peaceful community life is achieved.¹¹ Likewise, the punishment of children who commit crimes is basically intended to provide awareness and a deterrent effect for children so that they do not commit crimes again, either the same crime or new crimes.

The provisions regarding the imposition of criminal penalties or actions in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System have responded to a number of child protection principles in various international documents that culminate in the recognition and guarantee of children's growth and development both physically, mentally, and socially. This means that these provisions are relevant to the objectives of the criminal justice system in the form of resocialization of perpetrators of criminal acts, community prevention, and community welfare. With these possibilities, judges are given the opportunity to consider and determine the appropriate punishment to be imposed on the child.¹²

¹¹Bilher Hutahaean, "Implementation of Criminal Sanctions for Child Criminals Study of Decision Number 50/Pid.B/2009/PN.Btg", *Jurnal Yudisial*, Vol. 6 No. 1 April 2013, p. 73 url: <https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/119>.

¹²I Dewa Putu Gede Anom Danujaya, "Formulation of the Model of the Child Criminalization System in Indonesia", *Jurnal Daulat Hukum* Volume 1 Issue 1, March 2018, p. 112-113, url: <https://jurnal.unissula.ac.id/index.php/RH/article/view/2624/5117>, accessed 15 October 2024

Based on this, children who commit violent theft need to be protected from legal process situations that can threaten their future, such as the application of long prison sentences for children. Therefore, law enforcement needs to make efforts to keep children away from criminalization. If a child is forced to be sentenced to a criminal offense, it is necessary to try to apply a minimum sentence for children who commit crimes, including children who commit violent theft.¹³

However, the application of minimum sentences for children who commit violent theft must be carried out responsibly, especially from a legal aspect. Do not let the application of minimum sentences for children who commit violent theft violate the law or not be in accordance with the law. For this reason, a basis for consideration is needed that can be considered in the application of minimum sentences for children who commit violent theft.¹⁴

The basis for the considerations of Batang Police Investigators in applying the minimum sentence to perpetrators of violent theft committed by children include the following:¹⁵

1) Legal considerations

Legal considerations are legal considerations or considerations based on applicable laws or regulations. Some of the regulations that are considered in the application of minimum sentences for children who commit violent theft include:

a. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

Law Number 11 of 2012 concerning the Criminal Justice System is a criminal procedure provision that is specifically applied to juvenile criminal justice. Based on this, in carrying out the criminal justice process, it must be based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, including in applying criminal provisions.

The provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System that can be used as a basis for the application of minimum sentences for children who commit the crime of theft with violence include provisions concerning the principles of the Juvenile Criminal Justice System as referred to in Article 2 and provisions concerning children's rights in the criminal justice process as referred to in Article 3.

¹³Interview with Ipda Eko Nugrahanto, Investigator of the PPA Unit, Batang Police, December 20, 2024.

¹⁴Interview with Ipda Eko Nugrahanto, Investigator of the PPA Unit, Batang Police, December 20, 2024.

¹⁵Interview with Ipda Eko Nugrahanto, Investigator of the PPA Unit, Batang Police, December 20, 2024.

The application of minimum sentences to children who commit violent theft is an implementation of the principles of the Juvenile Criminal Justice System in the form of the principle of protection, the principle of justice, the principle of the best interests of the child, the principle of the child's survival and development, and the principle of deprivation of liberty and punishment as a last resort. Based on the principles of the Juvenile Criminal Justice System, efforts must be made to keep children away from prison for children who commit crimes and if the child is forced to undergo a sentence, the lightest possible sentence or minimum sentence should be applied.

b. Article 365 of the Criminal Code and Article 362 of the Criminal Code

Article 365 of the Criminal Code provides regulations regarding the crime of theft with violence, which states that:

1) Threatened with a maximum prison sentence of nine years for theft preceded, accompanied or followed by violence or threats 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 imprisonment of twelve years: 1st if the act is committed at night in a house or in a closed yard where there is a house, on the road; 2nd if the act is committed by two or more people in league; 3rd if entering the place of committing the crime by damaging or climbing or by using a fake key, a fake order or fake official clothing. 4th if the act results in serious injuries.

3) If the act results in death, the perpetrator is subject to a maximum prison sentence of fifteen years.

4) Threatened with the death penalty or life imprisonment or a maximum period of twenty years, if the act results in serious injury or death and is committed by two or more people in partnership, accompanied by one of the things described in no. 1.

The provisions of Article 365 of the Criminal Code are guidelines for investigators in determining the crime of theft with violence. In these provisions, the minimum sentence that can be applied to children who commit the crime of theft with violence is a maximum of 9 years. In addition to the provisions of Article 365 of the Criminal Code, the crime of theft with violence can be applied to the provisions of Article 362 of the Criminal Code concerning ordinary theft with a maximum prison sentence of 5 (five) years. The application of the provisions of Article 362 of the Criminal Code is intended so that the elements of the crime of theft are fulfilled so that if the elements of the crime of theft with violence as referred to in Article 365 of the Criminal Code are not fulfilled, they can still be punished based on the provisions of Article 362 of the Criminal Code.

Investigators to apply the provisions of Article 365 of the Criminal Code must provide evidence regarding the suspect's actions and then link them to the elements in Article 365 of the Criminal Code. Evidence regarding the suspect's actions is also carried out to conduct an analysis of which crime was committed, namely whether it was the crime of theft with violence or the crime of ordinary theft.

c. Criminal Procedure Code

KUHAP is a Formal Criminal Law, namely procedural law to enforce Material Criminal Law, namely the Criminal Code. KUHAP is used as the basis for how the criminal justice process is carried out, which includes several stages, namely the investigation stage, prosecution, examination in court, and implementation and supervision of the Judge's decision. In imposing a sentence, the Judge must pay attention to how the criminal justice process is carried out.

Based on the Criminal Procedure Code as the basis for the implementation of the criminal justice process, through evidence, facts will be revealed in court about the defendant's actions. Furthermore, based on the facts revealed in court, the Judge can determine the severity of the sentence. Based on Article 183 of the Criminal Procedure Code, it states that: A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he or she obtains the conviction that a crime actually occurred and that the defendant was proven to have committed it. This provision is to guarantee the upholding of truth, justice and legal certainty for a person. Therefore, the judge in criminal procedural law is obliged to determine:¹⁶

- 1) Which actions can be considered proven according to court examination?
- 2) What has proven that the defendant is guilty of the acts charged.
- 3) What crimes have been committed in connection with these acts.
- 4) What punishment should be imposed on the accused?
- 5) Implementation, inhibition and supervision.

This evidence will provide clarity on the crime being charged and increase the judge's belief that the defendant is truly guilty and is the perpetrator and to determine the severity of the sentence to be imposed.

Based on the provisions of Article 183 of the Criminal Procedure Code, the investigator's task is to obtain two pieces of evidence regarding the occurrence of a crime and to convince the judge of the defendant's guilt. Therefore, in

¹⁶Angga Kurnia Anggoro, Basic Considerations in the Crime of Aggravated Theft, Semarang State University, www.digilib.unnes.ac.id, accessed December 15, 2024.

proving the suspect's actions, investigators must act professionally in carrying out their duties so that the article applied to the suspect in the investigation can be proven with two pieces of evidence as mandated by Article 183 of the Criminal Procedure Code.

d. Law Number 1 of 2023 concerning the Criminal Code

The provisions regarding “criminalization” in the New Criminal Code are regulated in Chapter III Book I. This chapter begins with the formulation of “purpose and guidelines for criminalization” which have not been formulated in the Criminal Code. The general guidelines for criminalization are formulated in Article 54 of the New Criminal Code, namely: In criminalization, the following must be considered: a. the form of the perpetrator’s mistake; b. the motive and purpose of committing the crime; c. the mental attitude of the perpetrator of the crime; d. whether the crime was committed with or without planning; e. the method of committing the crime; f. the perpetrator’s attitude and actions after committing the crime; g. the life history, social situation, and economic situation of the perpetrator of the crime; h. the influence of the crime on the future of the perpetrator of the crime; i. the influence of the crime on the victim or the victim’s family; j. forgiveness from the victim and/or the victim’s family; and/or k. the values of law and justice that exist in society.

The lightness of the act, the personal circumstances of the perpetrator, or the circumstances at the time the crime was committed and what happened afterwards can be used as a basis for consideration not to impose a criminal penalty or not to take action by considering aspects of justice and humanity.

The provisions regarding the purpose and guidelines for sentencing can be used as considerations by investigators in determining the provisions regarding which criminal acts will be applied to the suspect. If possible, by considering these provisions, investigators consider applying the provisions of light criminal articles for child suspects by applying the lightest criminal articles or minimum sentences.

2) Non-juridical considerations

Non-legal considerations are considerations outside the law or outside the laws and regulations. Non-legal considerations in the application of minimum sentences to children who commit violent theft are related to the good and evil nature of the suspect / the suspect's condition.

In non-legal considerations for applying a special minimum sentence, mitigating factors that encompass the child suspect's condition are taken into consideration. These mitigating factors include:

- a. Children are still in school;
- b. The child must be polite and not overly complicated during the examination;

- c. Not yet enjoying the results of his actions;
- d. There is regret for not repeating it;
- e. Never been convicted or not a repeat offender;
- f. There is compensation for victims;

4. Conclusion

The application of minimum sentences for perpetrators of violent theft committed by children at the Batang Police is part of law enforcement as a response to laws and regulations, especially Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, especially those governing the principles of Juvenile Criminal Justice and Children's Rights in the criminal justice process. The application of minimum sentences is carried out by implementing the provisions of Article 365 of the Criminal Code which regulates the crime of violent theft with a minimum sentence of a maximum of 9 (nine) years, either singly or cumulatively with other theft crimes such as ordinary theft as referred to in Article 362 of the Criminal Code with a minimum sentence of a maximum of 5 (five) years or aggravated theft as referred to in Article 363 of the Criminal Code with a minimum sentence of a maximum of 7 (seven) years. The basis for the consideration of the Batang Police investigator in applying the minimum sentence for perpetrators of violent theft committed by children is the legal consideration or legal consideration or legislation, especially Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, especially those regulating the principles of the Juvenile Criminal Justice System as referred to in Article 2 and Children's Rights in the criminal justice process as referred to in Article 3 and non-legal considerations, namely considerations related to the good and bad nature of the suspect / the suspect's condition, especially regarding mitigating factors for the child such as the child is still in school; the child's polite and straightforward attitude during the examination; has not enjoyed the results of his actions; regret not to repeat it; has never been convicted or is not a recidivist; compensation for the victim.

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