

# **Juridical Analysis of Criminal Acts of Theft Committed by Children**

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**Article History: Received: July 15, 2024; Accepted: September 09, 2024**

## **ABSTRACT**

This research aims to juridically analyze criminal acts of theft committed by children in accordance with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The crime of theft by children is an important issue that requires a special legal approach, considering the behavioral characteristics of minors. In this analysis, a normative juridical approach is used to assess the application of the law in handling cases of theft committed by children, as well as to evaluate the effectiveness and fairness of the juvenile justice system. This study includes an assessment of relevant legal provisions, implementation of child protection principles in the justice system, as well as comparisons with international standards regarding the handling of juvenile criminals. The research results show that although Law Number 11 of 2012 provides an adequate legal framework for handling cases of theft by children, there are challenges in its implementation that require further attention, including in terms of rehabilitation and social reintegration of children's behavior, that the law In general, it is in accordance with the principles of justice for children, but there needs to be improvements in several aspects to increase the effectiveness of protection and rehabilitation. It is hoped that this research will contribute to balancing the juvenile criminal justice system in Indonesia.

**Keywords:** Crime of Theft, Children, Juvenile Criminal Justice System Law

## **1. INTRODUCTION**

The Republic of Indonesia is a country based on law (*rechtsstaat*), not based on power (*machtstaat*). This is clearly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the formulation of which is "The State of Indonesia is a state of law" (Affandi, 2017). The rule of law requires that the law be enforced by all members of society. This means that every action must be based on applicable legal rules (Ridwan & Sudrajat, 2020). Law is a series of regulations regarding people's behavior as members of society, with the aim of establishing safety, happiness and order in society. Each member of society has various interests, so that members of society, in fulfilling their interests, enter into relationships that are regulated by intuitive law to create balance in society's life (Laia et al., 2023).

As The rule of law, the aim of the Republic of Indonesia is also clearly stated in the 1945 Constitution of the Republic of Indonesia that the State aims to protect the entire Indonesian nation and all of Indonesia's blood, promote general welfare, educate the life of the nation, participate in efforts for world peace based on independence. , lasting peace and social justice. The goals of the Republic of Indonesia include protection for the community and guaranteed community rights in



every aspect of their lives (Suhardjono, 2010). However, the facts that are happening in society are starting to be inversely proportional to the goals of our country. Nowadays, various kinds of legal problems are starting to occur. Human behavior patterns also become increasingly deviant and inconsistent with the norms that apply in society, which can ultimately lead to violations and even crimes (Soemarso, 2007).

Crime is one of the realities of social life that deserves special attention. This is not only because the types of crime have changed from time to time, the discovery of crime has also caused deep unrest and disrupted security and order in social life (Puspita, 2022). One of the forms of crime that is common among society and constitutes a criminal act is theft. Theft is the act of taking someone else's property without the owner's knowledge. In criminal law, theft is a crime against individual interests which is a crime against objects/wealth. Theft can be done intentionally, surreptitiously, or surreptitiously. Theft is regulated in several articles of the Criminal Code, including Article 362 which explains that theft can be punished with imprisonment for a maximum of 5 years (Manuaba et al., 2020).

When The "child" commits a criminal act, then as a legal country, Indonesia will follow up on the child's actions through the legal route of fasting. Settlement through legal means will certainly be very worrying for both parents and the Indonesian nation itself, because children are the nation's next generation who will continue the leadership of this nation (Fitriana & Pura, 2023). If a child is punished, there will be pressure, both physical and psychological, which will hinder the child's growth and balance. In the consideration of Law Number 35 of 2014 concerning Murder Due to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it is said that:

Children are a trust and gift from Almighty God, who in themselves have the dignity and honor of being a complete human being. It is further said that children are the shoots, potential, and successors of the young generation to the ideals of the nation's struggle, have a strategic role and have special characteristics and traits that guarantee the continued existence of the nation and state in the future. Therefore, in order for every child to be able to bear these responsibilities in the future, he needs to have the widest possible opportunities for development and optimal balance, both physically, mentally and socially, and to have noble morals. It is necessary to make efforts to protect and realize the welfare of children by providing guarantee of the fulfillment of their rights and treatment without discrimination. This is also regulated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia that: "Every child has the right to prosperity,



prosperity and balance as well as the right to protection from violence and discrimination (Fitri et al., 2015).

Children are not to be punished but must be given guidance and guidance, so that they can grow and be balanced as normal children who are completely healthy and intelligent. Sometimes children experience difficult situations that can lead them to commit unlawful acts. However, children who break the law do not deserve to be punished, let alone sent to prison. Because the presence of children in places of detention and imprisonment placed together with older people will place children in situations where they are vulnerable to becoming victims of various acts of violence (Saraswati, 2015).

If we look at the framework of the Indonesian state, creating quality Indonesian human resources capable of leading and maintaining national unity within the framework of the Unitary State of the Republic of Indonesia which is based on Pancasila and the 1945 Constitution, then the development of children is an integral part of this effort (Jamaludin, 2021). By Therefore, problems regarding children in conflict with the law must be resolved appropriately in order to protect children's rights so that they are able to become high-quality Indonesian human resources as has been mentioned.

On this basis, attention and concern for children was expressed in the formation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in lieu of Law Number 3 of 1997 concerning Juvenile Courts. Replacing this law is deemed necessary, because the old law is no longer relevant to legal needs in society and does not comprehensively provide legal protection to children in conflict with the law (Ariani, 2014). Objective The enactment of this new law is so that justice can be realized that truly guarantees the protection of the best interests of children who are in conflict with the law. Punishment should be the last resort, so that in its implementation this new law prioritizes the restorative justice model, namely choosing to return to the original condition, that is, other methods outside the court need to be prioritized. One way is by diversion, namely transferring the resolution of children's cases from the criminal justice process to a process outside criminal justice. This diversion is the most appropriate way out so that children are not brought to court. For this reason, diversion must be an obligation in handling children who are in conflict with the law, both at the level of investigation, prosecution, and even examination of cases in court (Widodo, 2016).

Already Law enforcement officials should provide appropriate sanctions for perpetrators of criminal acts of theft so that the law is truly enforced and order is created in society. However, apart from that, law enforcement officials must also pay attention to other, more comprehensive



considerations in imposing sanctions when the perpetrator of the crime is a child. Because sanctions are not only expected to have a deterrent effect on children as perpetrators of criminal acts so that they do not repeat their actions and prevent other people from committing these criminal acts, but they must also pay attention to the best interests of children as is the aim of the establishment of Law Number 11 of 2012 concerning the Justice System Child Crime.

## **2. RESEARCH METHODS**

Study Normative juridical, namely research that describes in detail social phenomena that are the main problems in everyday life in relation to the applicable positive criminal law regulations. A normative legal research is intended to provide data that is as thorough as possible regarding criminal acts committed by children, legal arrangements or other phenomena.

Normative ones always focus on secondary data sources. Secondary data in the research was obtained from primary legal materials, secondary legal materials and tertiary legal materials.

## **3. RESULTS AND DISCUSSION**

### **Legal Regulations for Criminal Acts of Theft Committed by Children**

Country The Republic of Indonesia is a country based on law (rechtsstaat). The rule of law requires that the law be enforced by all members of society. This means that every action must be based on applicable legal regulations. Deviant behavior in children is something that is vulnerable to occurring because of the child's unstable soul. Children who are in conflict with the law can be punished if they are proven to have committed a criminal act. The type of research in this paper is legal research using literature study and a legislative approach. That the purpose of criminal penalties is not merely revenge, but to provide guidance and protection. This provision is also applied to the punishment of children, in fact the punishment of children is given more attention considering the characteristics of the child. Limitations on the use of criminal law for children can be seen from the diversion regulations for children who are in conflict with the law. However, for crimes of disappearance or recidivism, child diversion cannot be carried out.

### **Application of Material Criminal Law to Criminal Acts of Theft Committed by Children in Decision Number 40/Pid.Sus-Anak/2024/PN Sby**

Judges, when examining criminal cases, try to find and prove material truths based on the facts revealed in the trial and adhere strictly to the indictment formulated by the Public Prosecutor. Before The author explains the application of material criminal law to criminal acts of theft against children committed by children in Decision Number 40/Pid.Sus-Anak/2024/PN Sby, so it is



necessary to first know the police of the case, the Public Prosecutor's indictment, the Public Prosecutor's demands, and the Decision, which is as follows:

a. Case Position

Begin on Tuesday 28 November 2023 at around 00.30 WIB Children together with Witness MUHAMMAD RIZKI, Witness RIZAL AFTARAJA, Witness MOiCH. UMAR PRANYOTO, Witness MUSTAQIM DEiDY RISWAN SANDY and Br. IRMAWAN PRASYANTi who is at the Pasar Besar Hotel which is located on Jln. Pasar Besar, Surabaya City, East Java Province agreed to find targets as additional pocket money for children and their friends who want to go on holiday to Pacet District, Mojokerto Regency, East Java Province. Next, the child and his friends leave using 1 (one) Xenia Car (Goods Search List) to search for the target by carrying tools that have been prepared in advance, namely 1 (one) magnet, 1 (one) T quince, and 1 (satui) make a sharpened key. While searching for the target, Anak and his colleagues passed Jln. Semarang until arriving at the intersection of Demak, Surabaya City, East Java Province, then Br. IRMAWAN PRASYANTi asked Witness MUSTAQIM DEDY RISWAN SANDY to turn left towards the Temple Warkop which is located on Jalan Gemak 162, Surabaya City, East Java Province. After arriving at Warkop Kui, Anak and his colleagues determined the target key for 1 (one) unit of the 2019 Silver Honda Beat Street Motorcycle Noi.Poil L 3866 KEi Noi.Ka. MH1JFZ216KK573726 Noi.Sin. JFZ2Ei1573669. Next, Mr. IRMAWAN PRASYANTOi immediately got down and approached the motorbike and immediately took the motorbike using the tools he had prepared while Anak together with Witness MUHAMMAD RISKI, Witness RIZAL AFTARAJA, Witness MOCH UMAR PRANYOTO. Witness MUSTAQIM DEDY RISWAN SANDY waited in the car and monitored the situation. After the motorbike managed to start. then Bro. IRMAWAN PRASYANTi immediately took the motorbike to the Pasar Besar Hotel. Next, Mr. IRMAWAN PRASYANTi sold the motorbike and then shared the profits with the child amounting to IDR 100,000 (one hundred thousand rupiah). Due to this incident, Witness ALFIANSYAH ALI ANDRI reported the actions of Anak and his colleagues to the Police for further processing;

That the Child's actions took 1 (one) unit of the 2019 Silver Honda Beat Street Motorcycle Noi.Foil L 3866 KEi Noi.Ka. MH1JFZ216KK573726 Noi.Sin. JFZ2Ei1573669 without ALFIANSYAH ALI ANDRI's permission and resulted in Witness ALFIANSYAH ALI ANDRI experiencing material loss worth Rp. 12,000,000,- (Twelve Million Rupiah).

b. Public Prosecutor's Indictment



The basis for making an indictment letter must be based on the investigation report which has been qualified as a criminal act by the investigator. When making an indictment, what must be taken into account are the results of the investigation and the articles of the criminal offense that were violated. The Public Prosecutor who carries out prosecution duties makes an indictment based on the minutes provided by the investigator to proceed to the examination stage at the court hearing.

In decision case number 40/Pid.Sus-Anak/2024/PN Sby, the Public Prosecutor made an alternative indictment model. The contents of the Public Prosecutor's indictment regarding the crime of theft against children committed by the child defendant which was read out in court before the Panel of Judges at the Surabaya District Court are as follows:

QUESTIONABLE That the Children together with Witness MUHAMMAD RIZKI bin YUSUF OiCHi DEROSARI (deceased), Witness RIZAL AFTARAJA bin DUiL PATA, Witness MOiCH. UMAR PRANYOTO bin H. ALI PRANYOTO, Witness MUSTAQIM DEDY RISWAN SANDY als. SETIAWAN bin DI GEiL PAiNAN (each prosecuted separately), and Br. IRMAWAN PRASYANTI (People Wanted List Number: DOi/R40/XII/Reis.1.8/2023/Satreskrim dated 20 December 2023) on Tuesday 28 November 2023 at around 00.30 WIB or at least at another time in November 2023 or at least -at least at another time in 2023 in an alley located in the Warkop Temple located at Jalan Demak 162, Surabaya City, East Java Province or at least in another place which is still included in the jurisdiction of the Surabaya District Court, taking something 1 (one) unit of 2019 Silver Honda Beat Street Motorcycle Noi.Poil L 3866 KEi Noi.Ka. MH1JFZ216KK573726 Noi.Sin. JFZ2Ei1573669 which partly or wholly belonged to another person, namely Witness LUTFIANSYAH ALI ANDRI with the intention of possessing it unlawfully, by two or more people, who apparently had the potential to commit a crime, or for samples of goods which were taken, carried out by breaking, cutting or climbing, or by using fake keys, fake orders or fake official clothes, which is done in the following way:

Begin on Tuesday 28 November 2023 at around 00.30 WIB Children together with Witness MUHAMMAD RIZKI, Witness RIZAL AFTARAJA, Witness MOiCH. UMAR PRANYOTO, Witness MUSTAQIM DEiDY RISWAN SANDY and Br. IRMAWAN PRASYANTI who is at the Pasar Besar Hotel which is located on Jln. Pasar Besar, Surabaya City, East Java Province agreed to find targets as additional pocket money for children and their friends who want to go on holiday to Pacet District, Mojokerto Regency, East Java Province. Next, the child and his friends leave using 1 (one) Xenia Car (Goods Search List) to search for the target by carrying tools that have been prepared in advance, namely 1 (one) magnet, 1 (one) T quince, and 1





(satui) make a sharpened key. While searching for the target, Anak and his colleagues passed Jln. Semarang until arriving at the intersection of Demak, Surabaya City, East Java Province, then Br. IRMAWAN PRASYANTI asked Witness MUSTAQIM DEIDY RISWAN SANDY to turn left towards the Temple Warkop which is located on Jalan Demak 162, Surabaya City, East Java Province. After arriving at Warkop Kui, Anak and his colleagues determined the target key for 1 (one) unit of the 2019 Silver Honda Beat Street Motorcycle Noi.Poil L 3866 KEi Noi.Ka. MH1JFZ216KK573726 Noi.Sin. JFZ2Ei1573669. Next, Mr. IRMAWAN PRASYANTOI immediately got down and approached the motorbike and immediately took the motorbike using the tools he had prepared while the child together with Witness MUHAMMAD RIZKI, Witness RIZAL AFTARAJA, Witness, MOCH UMAR PRANYOTO Witness MUSTAQIM DEIDY RISWAN SANDY waited in the car and monitored the situation. After that he managed to live then Br. IRMAWAN PRASYANTI immediately took the motorbike to the Pasar Besar Hotel. Next, Mr. IRMAWAN PRASYANTI sold the motorbike and then shared the profits with his children amounting to Rp. 100,000,- (one hundred thousand rupiah). Regarding this incident, witness LUTHFIANSYAH ALI ANDRI reported the actions of Anak and his colleagues to the parties Police for further processing, that the Child's actions took 1 (one) unit of the 2019 Silver Honda Beat Street Motorcycle Noi.Foil L 3866 KEi Noi.Ka. MH1JFZ216KK573726 Noi.Sir JFZ2Ei1573669 without Sakshi LUTHFIANSYAH ALI ANDRI and resulted in Witness ALFIANSYAH ALI ANDRI experiencing material loss worth Rp. 12,000,000,- (Twelve Million Rupiah). As regulated and punishable by crime in Article 363 paragraph (1) 4th and 5th of the Criminal Code.

KEA

That the Children on Tuesday 28 November 2023 at around 00.30 WIB or at least at another time in November 2023 or at least at another time in 2023 will be located in the alley located at the Warkop Shrine located at Jalan Demak 162, Surabaya City. East Java Province or at least in another place which is still included in the jurisdiction of the Surabaya District Court, withdraws profits from the proceeds of an object in the form of 1 (one) unit of the 2019 Silver Honda Beat Street Motorcycle Noi.Poil L 3866 KEi Noi. Ka MH1JFZ216KK573726 Noi Sin. JFZ2Ei1573669, which is known or should be reasonably suspected to have been obtained from crime, which was committed in the following manner:

Begin on Tuesday 28 November 2023 at around 00.30 WIB Children together with Witness MUHAMMAD RIZKI, Witness RIZAL AFTARAJA, Witness MOICH UMAR PRANYOTO, Witness MUSTAQIM DEIDY RISWAN SANDY and Br. IRMAWAN



PRASYANTI who is at the Pasar Besar Hotel which is located on Jln. Pasar Besar, Surabaya City, East Java Province wants to go on holiday to Pacet District, Mojokerto Regency. East Java Province. Next, the children and their reikas departed using 1 (one) Xenia Car (Goods Search List) by passing Jln. Semarang until arriving at the intersection of Demak, Surabaya City, East Java Province, then Br. IRMAWAN PRASYANTI asked Witness MUSTAQIM DEiDY RISWAN SANDY to turn left towards the Temple Warkop which is located on Jalan Demak 162, Surabaya City. East Java Province. After arriving at Warkop Kui, Anak and his colleagues saw 1 (one) unit of the 2019 Silver Honda Beat Street Motorcycle Noi.Foil L 3866 KEi Noi.Ka. MH1JFZ216KK573726 Noi.Sin. JFZ2Ei1573669. Next, Mr. IRMAWAN PRASYANTOI immediately got down and approached the motorbike and immediately took the motorbike using 1 (one) magnet, 1 (one) T key, and 1 (one) key that had been sharpened while Anak together with Witness MUHAMMAD RIZKI , Witness RIZAL AFTARAJA, Witness MOiCH. UMAR PRANYOTO, Witness MUSTAQIM DEiDY RISWAN SANDY was waiting in the car and monitoring the situation. After the motorbike managed to start, then Mr. IRMAWAN PRASYANTI immediately took the motorbike to the Pasar Besar Hotel. Next, Mr. IRMAWAN PRASYANTI sold the motorbike and then shared the profits with his children amounting to Rp. 100,000,- (one hundred thousand rupiah). Due to this incident, Witness ALFIANSYAH ALI ANDRI reported the actions of Anak and his colleagues to the police for further processing.

That the Child buys, rents, exchanges, receives a pawn, receives a gift, or to withdraw profits, sells, rents, exchanges, pawns, transports, stores or hides an object in the form of 1 (one) unit of the 2019 Silver Honda Beat Street Motorcycle Noi .Foil L 3866 KEi Noi.Ka. MH1JFZ216KK573726 Noi.Sin. JFZ ZEi1573669 is known or should reasonably be suspected that it was obtained by crime and resulted in Witness LUTFIANSYAH ALI ANDRI experiencing material loss worth Rp. 12,000,000,- (Sei Puil Uih Juwita Rui Piah).

#### c. Public Prosecutor's Demands

Based on the public prosecutor's indictment, the Public Prosecutor in the case of a criminal act of theft committed by a child, the prosecutor uim uim requests the Panel of Judges at the Surabaya District Court who examined and tried this case to decide:

1. Declaring that the CHILD has been legally proven and convincingly guilty of committing the criminal act in Indictment One Article 363 paragraph (1) 4th
2. Sentencing children to be punished with guidance at Marsudi Putra for 8 (eight) months





3. Declare Evidence in the form of: according to Confiscated in the case of Muhammad Rizki bin Yusuf Oichi Deiroisari Confiscation Order Number SPRIN-TA/750/XII/REiS.18/2023/SATRESKRIM dated 27 December 2023
4. Entrust the child to pay court costs amounting to NIL
- d. Announcement of Decision

Considering, that regarding court costs, it must be determined to be borne by the state in the amount of NIL; Notice, Article 363 paragraph (1) 4th of the Criminal Code, Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and Republic of Indonesia Law Number 8 of 1981 concerning the Criminal Procedure Law and other relevant laws and regulations;

**JUDGE**

- a. Declare that the children mentioned above have been legally proven and convincingly guilty of committing the crime of "Theft Under Aggravating Circumstances",
- b. Sentencing children to be punished with criminal training at the Marsudi Putra Institute in Surabaya for 5 (five) months;
- c. Determining that evidence has been confiscated in the case of Mohammad Rifki bin Yusuf Oichi Deiroisari in accordance with Confiscation Order Number SPRIN-TA/750/XII/REiS.1.8/2023/SATRESKRIM dated 27 December 2023;
- d. Charging costs to the state amounting to NIL; and. Judge's Considerations

The judge's judicial considerations are based on the indictment of the General Prosecutor's Office, legal evidence and the subjective and objective conditions that a person can be convicted of.

- a. Considering that the Huikuim Counselor and the Child's parents have submitted a request to the Judge so that the Child can be given leniency in his sentence.
- b. Considering that, by paying attention to the results of Litmas from the Father, the letter of demand from the Public Prosecutor, and the requests submitted by both the Child, the Child's Legal Advisor and the Child's parents, the Judge will consider the following:
- c. Considering that, while observing the legal facts revealed at the trial, the Judge considered that the background to the Child committing the criminal act was due to the influence of his friends and spies to have fun from selling goods resulting from the crime;

Considering, that at the trial, the Judge was also willing to try

Restorative Justice between

- a. Considering, that in the future the Judge will consider whether based on the legal facts mentioned above, the Child can be declared to have committed the criminal act for which he is charged;
- b. Considering that the child has been accused by Peinuintuit Uimuim with an alternative form of indictment, the judge, taking into account the above legal facts, will consider the first alternative indictment as regulated in Article 363 paragraph (1) 4th of the Criminal Code, the elements of which are as follows:
  1. Whoever;
  2. Taking something that partly or wholly belongs to another person with the intention of possessing it unlawfully, carried out by two or more people in partnership

Considering that this is considered as follows:

Ad. 1. "Whoever" element; those elements Judge

1. Considering, that what is meant by who is a legal subject who is accused of having committed a criminal act, which in this case is a child named Anak with complete identity as contained in the indictment and confirmed by the child as his identity, so that there is no mistake regarding person or subject.
2. Considering, that in aquioi cases specifically suibyeik huikuim what is meant is a Child in Conflict with the Law who can be held responsible for his actions if his guilt is proven;
3. Considering, that the definition of a Child in Conflict with Huikuim refers to the provisions of Article 1 point 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as "SPPA Law"), namely a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a criminal act;
4. Considering, that based on the facts revealed in the trial, the Public Prosecutor has confronted a person named Child who is the Child of Behavior in the a quo case and after being directly confirmed during the identity check at the trial the Child was born on May 9 2006, with these facts it can be withdrawn conclusion that at the time of the criminal incident as described by the Public Prosecutor in his indictment, a child aged 17 (seventeen) years, as determined in the law, could therefore be qualified as a child; considering that in this way, whoever's element is fulfilled

Ad.2. The element "Taking something that partly or wholly belongs to someone else

Ad.3. with the intention of unlawful possession,

Ad.4. which is done by two or more people by following through. Considering, what is meant by drawing is moving an object that was not initially under the control of the behavior into the control of the behavior. Meanwhile, what is meant by goods is everything, both tangible and intangible,



even if it has no economic value and the goods do not belong to the perpetrator, but to someone else; What is meant by the element "wholly or partially belongs to another person" is more aimed at the right of ownership of goods which have been taken by the perpetrator of a criminal act legally belonging to another person (either in whole or in part);

Considering that the word "intended intention" in this uinsuir definition is the same as doing something intentionally. According to the explanatory memory (Memorie van Toelichting), what is meant by intentionally is wanting and realizing the occurrence of an action and its consequences (will eins ein weites van een gevolg) ". This means that someone who carries out an action intentionally must intend and be aware of the action and/or its consequences and that the action is against the law.

Considering that the meaning of meilawan huikuim here is formal, which includes:

1. Violates other people's subjective rights;
2. Contrary to the perpetrator's legal obligations;

Considering, that what is meant by an offense carried out by two or more people in partnership is that the criminal act was committed by two or more people working together (allied), with the intention of facilitating the commission of the said act,

Considering, that based on the legal facts at the trial it was revealed that on Tuesday 28 November 2023 at 00.30 WIB the Child was with Witness Muhammad Rizki, Witness Rizal Aftaraja, Witness Moich. Umar Pranyoto, Witness Mustaqim Deidy Riswan Sandy and Br. Irmawan Prasyantoi at Warkop Kui JL Raya Demak 162 Surabaya has taken goods in the form of 1 (one) unit of a 2019 Silver Honda Beat Street motorbike with registration number L-3866-KEi. Nokia. MHJFZ216KK573726 Noisin JFZ2Ei1573669 STNK in the name of Mochamad Slamet address Ngaglik IV/RT,006 RW.009 Keil. Cotton Keic. Genteng Surabaya using 1 (one) Xenia car which had previously been rented by Witness Moch Umar Pranyoto and Br. Irmawan Prasyantoi Meinimbang, that Beirmuila Anak together with Witness Muhammad Rizki, Witness Rizal Aftaraja, Witness Moich. Umar Pranyoto, Witness

Mustaqim Dedy Riswan Sandy and Br. Irmawan Prasyanti who is at the Pasar Besar Hotel which is located on Jln. Pasar Besar, Surabaya City, agreed to achieve the target as additional pocket money for children and their friends who want to go on holiday to Pacet District, Mojokerto Regency. Next, the child and his rekan-reika leave using 1 (one) Xenia Car (Item Search List) to search for the target by carrying tools that have been prepared in advance, namely 1 (one) magnet, 1 (one) T-key, and 1 (satui) make a sharpened key. While searching for the target, Anak and his colleagues passed Jln. Semarang until arriving at the intersection of Demak, Surabaya City, East Java



Province, then Br. Irmawan Prasyanti asked Witness Mustaqim Deidy Riswan Sandy to turn left towards the Temple Warkop which is located on Jalan Demak 162, Surabaya City. After arriving at Warkop Kui, Anak and his colleagues determined the target key for 1 (one) unit of the 2019 Silver Honda Beat Street Motorcycle Noi.Poil L 3866 KEi Noi.Ka. MH1JFZ216KK573726 Noi.Sin. JFZ2Ei1573669

Considering that next, Mr. Irmawan Prasyantoi immediately got down and approached the motorbike and immediately took the motorbike using the tools he had prepared while Anak together with Witness Muhammad Rizki, Witness Rizal Aftaraja, Witness Moich. Umar Pranyoto, Witness Mustaqim Deidy Riswan Sandy were waiting in the car and monitoring the situation. After the motorbike managed to start. then Bro. Irmawan Prasyanti immediately took the motorbike to the Pasar Besar Hotel. Next, Mr. Irmawan Prasyanti sold the motorbike and then shared the profits with the children amounting to IDR 100,000.00 (one hundred thousand rupiah). Due to this incident, Witness Luthfiansyah Ali Andri reported the actions of Anak and his colleagues to the police for further processing

Considering that the activities carried out by Anak were together with Witness Muhammad Rizki, Witness Rizal Aftaraja, Witness Moich. Umar Pranyoto, Witness Mustaqim Deidy Riswan Sandy and Br. Irmawan Prasyanti taking and selling a motorbike and using the money from the sale of the motorbike is an act that should only be carried out by the owner of the goods, namely Witness Alfiansyah Ali Andri and in carrying out this act he also never obtained permission from Witness Alfiansyah Ali Andri as the owner of the goods:

Considering, that in the process of taking the moitoir property belonging to Witness Alfiansyah Ali Andri, there was clear cooperation between Br. Irmawan Prasyanti, who took the motorbike, used tools that he had prepared for Anak together with Witness Mohammad Rizki, Witness Rizal Aftaraja, Witness Moich. Umar Pranyoto, Witness Mustaqim Dedy Riswan Sandy in the car as a supervisor of the surrounding situation;

1. Considering, that as a result of the child's actions and his companions, Witness Alfiansyah Ali Andri suffered material losses worth IDR 12,000,000.00 (Twelve Million Rupiah);

2. Considering, that from the description of the child's actions, there is a child. then the Child's actions in uin su ad 2 to ad4 have been fulfilled;

Considering that, because all the principles of Article 363 paragraph (1) 4 of the Criminal Code are fulfilled, the child must be declared legally and convincingly proven to have committed the criminal act as charged in the first alternative indictment.



Considering, that in the trial the Judge did not find anything that could eliminate criminal responsibility, either as a justification or excuse, and the Child was capable of responsibility, the Child must be declared guilty and sentenced to a crime;

Considering that, because the child is capable of taking responsibility, he must be declared guilty, however, the judge, while reviewing the poem, is obliged to consider the report of the Community Researcher and Community Supervisor as regulated in the provisions of Article 60 paragraph (3) of Republic of Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Considering that, based on the Community Research Report for Children in Conflict with the Law Number BKA-28/SIDANG/1/2024 in the name of the Children which was made and signed on January 31 2024, Heiny Fitri Khumaidah was selected as Community Supervisor at the Surabaya Correctional Center, which is basically the result of the Litmas provide a recommendation to the Judge that the Child be sentenced to the principal criminal decision for Children in Institutional Development in accordance with Article 71 Paragraph 1 letter d UiUi of the Child Protection System. leniency

Considering that, by paying attention to the results of Litmas from the Father, the letter of demand from the Public Prosecutor, and the requests submitted by both the Child, the Child's Legal Advisor and the Child's parents, the Judge will consider the following:

Considering that, while observing the legal facts revealed at the trial, the Judge considered that the background to the Child committing the criminal act was due to the influence of his friends and spies to have fun from selling goods resulting from the crime;

Considering, that at the trial, the Judge also sought Restorative Justice between the Child, the Child's parents and Witness Alfiansyah Ali Andri as the victim, and Witness Lutfiansyah Ali Andri had forgiven the Child's actions;

Considering that, based on the considerations above and agreeing with the position of the Public Prosecutor, the Recommendations of BAPAS Surabaya, and the Children's Legal Advisor, the Judge is of the opinion that the appropriate punishment for the Child is the punishment of formation at the Marsudi Putra Surabaya institution, as stipulated in Article 71 paragraph (1) letter d in conjunction with Article 80 of Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, so that children will receive coaching, mentoring, supervision, mentoring, education and training as well as other rights in accordance with the provisions of statutory regulations;



Considering that the evidence in this case was confiscated in the case of Muhammad Rizki bin Yusuf Oichi Deiroisari in accordance with Confiscation Order Number SPRIN-TA/750/XIV/REiS.1.8/2023/SATRESKRIM dated 27 December 2023:

Considering that it is intuitive to impose a crime on a child, it is necessary to take into account more aggravating and mitigating circumstances.

- b. Child Aggravating circumstances.
  - 1. Children's actions disturb society,
- c. Extenuating circumstances
  - 1. The child regrets and openly admits his actions;
  - 2. Children behave politely in front of the court;
  - 3. The child has never been punished;
- 6. Judge's Decision

Declare that the child has been legally proven and is convincingly guilty of committing the crime of "theft under aggravating circumstances". Imposing a criminal sentence on the child by imposing a coaching sentence at the Marsudi Putra Institute in Surabaya for 5 (five) months. Determine the evidence that has been confiscated in the case of Muhammad Rizki Bin Yusuf Oichi Derosari in accordance with Confiscation Order Number SPRIN-TA/750/XII/REiS.1.8/2023/SATRESKRIM dated 27 December 2023. Charge case costs to the state with a determination of NIHIL.

7. Author's Analysis

When examining a case, a judge must not deviate from what is formulated in the indictment. A defendant can only be sentenced because it has been proven at trial that he has committed a crime as stated by the prosecutor in his indictment.

Letter An indictment is the basis for a case examination in a court session, a trial letter of indictment is a letter containing the public prosecutor's demands for a criminal act. In essence, a Public Prosecutor must make an indictment and demand letter so that the defendant of a criminal act cannot escape the law.

#### **4. CONCLUSION**

The regulation of material criminal law against children as perpetrators of criminal acts is based on Undang-Undang Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). This law includes regulations that specifically regulate formal criminal law and the implementation of punishment for children in conflict with the law. Based on these provisions, it can be interpreted that the SPPA Law is the *lex specialis derogate legi generali* of general





regulations, namely the Criminal Procedure Code. The law enforcement process for children in conflict with the law begins with the process of investigation, prosecution and trial in court. Researchers will discuss law enforcement against children who commit crimes of theft at the investigation stage.

The application of material criminal law by judges to perpetrators of acts of theft, especially those committed by children and resulting in material losses worth IDR. 12,000,000 is correct. This is in accordance with the indictment of the public prosecutor and is based on the facts at the trial. Apart from that, the judge's legal considerations in passing the sentence are also appropriate. The judge sentenced the juvenile defendant to a prison sentence at the Marsudi Putra Institute in Surabaya for 5 (five) months. The judge has taken into consideration both from a juridical perspective, the facts in the trial, the statements of witnesses, the available evidence, and based on the judge's beliefs.

## REFERENCES

- Affandi, H. (2017). State responsibility in fulfilling the right to education according to the 1945 constitution. *Positum Law Journal*, 1(2), 218–243.
- Ariani, N. V. (2014). Implementation of Law Number 11 of 2012 concerning the juvenile criminal justice system in an effort to protect the interests of children. *Legal Media Journal*, 21(1), 16.
- Fitri, A. N., Riana, A. W., & Fedryansyah, M. (2015). Protection of children's rights in an effort to improve children's welfare. *Proceedings of Research and Community Service*, 2(1), 45–50.
- Fitria, R. D., & Pura, M. H. (2023). Juridical Review of the Crime of Theft Committed by Minors According to Republic of Indonesia Law Number 11 of 2021 concerning the Juvenile Criminal Justice System. *Mandalika Light Journal ISSN 2721-4796 (Online)*, 4(3), 540–549.
- Jamaludin, A. (2021). Legal Protection for Children Victims of Sexual Violence. *JCIC: Journal of the CIC Institute for Social Research and Consulting*, 3(2), 1–10.
- Laia, F., Hulu, K. I., & Laia, F. (2023). Legal Analysis of Criminal Acts of Abuse Committed by Children. *JURNAL MathEdu (Mathematic Education Journal)*, 6(2), 238–246.
- Manuaba, I. B. A. P., Sujana, I. N., & Karma, N. M. S. (2020). Judge's Considerations in Imposing a Crime for the Crime of Aggravated Theft Committed by a Child. *Journal of Legal Preferences*, 1(1), 207–213.
- Puspita, E. (2022). Juridical Analysis of the Crime of Theft Committed by Children. *Justice Journal*, 5.



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Ridwan, I. H. J., & Sudrajat, M. H. A. S. (2020). *State administrative law and public service policy*. Scholarly Nuance.

Saraswati, R. (2015). *Child protection law in Indonesia* (Issue 2). PT. Aditya Bakti's image.

Soemarsono, M. (2007). Indonesian Legal State Viewed from the Point of State Goal Theory. *Journal of Law & Development*, 37(2), 300–322.

Suhardjana, J. (2010). Constitutional Supremacy Is the State's Goal. *Journal of Legal Dynamics*, 10(3), 253–264.

Widodo, G. (2016). Criminal Justice System for Children as Perpetrators of Criminal Acts Perspective of Law Number 11 of 2012 concerning the Criminal Justice System for Children. *Surya Kencana Dua Journal: Dynamics of Legal and Justice Issues*, 6(1), 65–67.

