



The Role of Customary Law in Regarding Theft Offenses by Minors

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Abstract

In accordance with the provisions in the articles of the 1945 Constitution of the Republic of Indonesia, it can be said that customary law is recognized for its existence or existence as long as the customary law is still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia. This research method uses a descriptive research method using a sociological empirical research approach, namely research carried out through field research at the Palakka District police office, as a provider of justice for every problem that occurs in the community, especially in cases of criminal acts. Child theft which was resolved according to custom. This research uses a normative juridical research type, namely research that uses library methods to produce secondary data as main data and basic data, while primary data is in conservative form and interviews as complementary data. So the obstacle encountered by investigators is the very short time factor for the examination process. Of course, with this the problem arises that actually uncovering cases of theft with violence committed by children is quite difficult, especially if the perpetrator carries out the action not alone but in a group. External obstacles are generally technical obstacles, for example because the residence of the perpetrator and witnesses is far from the place of investigation. If in this case there is more than one perpetrator, whose residence is different, then investigators must also often adjust the investigation time.

Introduction

The cultural identity and rights of traditional communities are respected in accordance with developments over time and civilization as regulated in Article 28 I paragraph (3) of the 1945 Constitution of the Republic of Indonesia (RiverOfLife et al., 2020). One of the customary laws that is still valid today and has been studied in more depth is customary law in Bali (Sassler & Lichter, 2020; Teng et al., 2022). This customary law, which is firmly adhered to by the people of Bone Regency, covers all aspects of human life, including natural resources, marriage, and so on (Silviana et al., 2021).

Customary reaction is an action that is necessary in the series of restoring balance to society in cases of customary offenses, especially those which according to the customary law community are acts that can result in magical imbalance (Wiessner, 2020).

Human problems in social life in society, nation and state are bound by norms that have been agreed at both the national, regional and local levels. The norms contained in society can be in the form of religious norms, moral norms, politeness norms and legal norms (Valentini, 2021; Forbes et al., 2020). Social phenomena that every human being, society, and even country will always face. Reality has proven that crime can only be prevented and reduced but difficult to eradicate completely.

Indigenous people in Bone Regency in their lives always want a balance between physical and spiritual life. There is a view that considers theft to be a customary offense, the consequence of which is that resolving the case also requires the imposition of a sanction which in customary law is known as "customary reaction" or "compliance customary obligations" (Dambe & Fombad, 2020; Anggraeni, 2020).

Sociologically, crime is all speech, actions and behavior that are economically, politically and socially psychologically very detrimental to society, violate moral norms and attack the safety of citizens, whether covered by law or not yet included in law. -criminal law.

Children have a childhood assessment system that displays the child's own dignity and its own normative criteria, because since birth the child has displayed independent characteristics and behavior. According to Article 1 point 2 of Law Number 3 of 1997 concerning Children's Courts, what is meant by a naughty child is; (1) Children who commit criminal acts; (2) Children who commit acts that are declared prohibited for children, either according to statutory regulations or according to other legal regulations that exist and apply in the society concerned.

In this case, you can commit a criminal act, namely by committing theft, whereas theft under Article 362 of the Criminal Code is subject to a maximum prison sentence of five years or a maximum fine of nine hundred rupiah. Based on Law Number 23 of 2002 concerning Child Protection, children are those who are not yet 18 (eighteen years old), including children who are still in the womb.

The development of crime, especially the crime of theft, is increasing, something which is a negative impact of the progress that has been achieved by our country. For example, the crime of theft is often committed by individuals due to the increasingly deteriorating economic structure caused by frequent increases in the price of goods and quite high inflation while the distribution of income for society is unequal, and also the high unemployment rate caused by the difficulty of getting a job. and Theft is a disgraceful act, but it is still carried out by minors.

Methods

This type of research was carried out using a descriptive method (descriptive research) using a sociological empirical research approach, namely research carried out through field research at the China District police office, as a provider of justice for every problem that occurs in the community, especially in cases of resolved crimes of child theft. traditionally in Palakka District, Bone Regency. This research uses a normative juridical research type, namely research that uses library methods to produce secondary data as main data and basic data, while primary data is in conservative form and interviews as complementary data. This type of research also uses empirical research by directly examining the field, namely at the Palakka Police Office, Palakka District, Bone Regency. The population in this study was taken from data available at the Bone Police Office. The population sampled in this study was taken based on the purposive sampling method (deliberate selection). The number of respondents determined in this study were 3 (three) investigators who had handled criminal cases of theft committed by minors at the office. Palakka District Police, Bone Regency.

Results and Discussion

Obstacles of Investigators in tackling Theft Crimes committed by minors

During the inspection process at the Palakka Police in the field, several obstacles were encountered in carrying out law enforcement against the crime of theft of children under the age of minors, namely internal and external obstacles. In general, the obstacles encountered in resolving legal enforcement in criminal cases committed by minors are the same as cases

involving adults. Some of these obstacles include, according to the results of the interview, the following: The obstacles encountered by investigators themselves are mainly the problem of time, because the period for examining children is shorter than for adults. Often, if the child is still at school, the examination time also conflicts with the child's school time. So investigators actually have to adapt to the time the child has. For the cases raised, the child does not have status, but generally the obstacle faced is the examination period.

Apart from inspection time, the number of personnel is also an internal obstacle. Internal constraints or obstacles faced by investigators in the law enforcement process for cases of robbery committed by minors are limited examination time because the detention period is only short, the 1 x 24-hour initial examination must provide evidence that the perpetrator committed a criminal act or not. The examination mechanism for child criminals is only given 7 days and an additional 8 days to complete the examination files. The examination process must follow the schedule of criminals who are usually still students, so that the examination process cannot take place optimally. Child investigators in the Palakka Police Unit are very limited and the time given is very short, so as much as possible for investigators to complete the examination of children who are perpetrators of criminal acts of theft with violence as optimally as possible. Because the detention period is short, the specified time means that the inspection process cannot run optimally. The examination also experienced a few obstacles because it was adjusted to the schedule of the perpetrator who was still a minor. So investigators sometimes have problems for this reason

Thus, the obstacle encountered by investigators is the very short time factor for the examination process. Of course, with this the problem arises that actually uncovering cases of theft with violence committed by children is quite difficult, especially if the perpetrator carries out the action not alone but in a group. As for external obstacles, generally these obstacles are from actors or other technical obstacles. These obstacles, according to the results of the interview, are as follows:

External obstacles are generally technical obstacles, for example because the residence of the perpetrator and witnesses is far from the place of investigation. If in this case there is more than one perpetrator, whose residence is different, then investigators must also often adjust the investigation time. Because of this, the costs required are also greater. Likewise, if there are many witnesses whose residences or domiciles are far from each other, then this also often becomes an obstacle. Regarding internal and external obstacles to law enforcement in cases of robbery committed by children, the following are the results of interviews with the police. According to informant 3 August 2022 said that:

"It can run optimally. Another obstacle that is often encountered is that in general the mediation process carried out with the families of the perpetrators and victims does not obtain maximum results because the victim refuses to carry out a peace process. However, in cases of robbery, the main obstacle is that diversion cannot be carried out. There are also external obstacles encountered by the police, including obstacles from the perpetrators and from the perpetrators who are underage."

The following are the obstacles: The external obstacle from the Palakka Police was finding an obstacle where the perpetrator was still a student and was trying to return to school, but the school concerned refused to let the perpetrator go back to school at that place, because for the school the child's behavior could not be tolerated. Based on the results of the interview, the external obstacles encountered by investigators in enforcing the law in cases of robbery against minors are the perpetrators and witnesses. The difficulties that arise are from the perpetrators, especially if the perpetrators are more than one person who is located outside the city and is

located far from the police station. Palakka. This sometimes makes investigators have to adapt to carrying out the investigation process. If the perpetrator happens to still be at school, then investigators must also adapt to this, namely by carrying out the investigation according to the time the children are at school. However, children should not be examined at night. Due to the domicile of the perpetrators and witnesses, not all of whom are from Semarang, investigators experienced difficulties or financial constraints, because presenting them required quite a large amount of money. The absence of witnesses due to distance constraints also means that investigators sometimes have to rearrange their time.

Results of interviews with Mr. AIPTU Purdianto, as. BABINSA Palakka Police 3 August 2022 said that: regarding factors that hinder Law Enforcement, there are several factors that can be explained here, namely: Legal factors Law no. 11 of 2012 concerning the Juvenile Criminal Justice System has determined that for juvenile cases, diversion efforts can only be carried out for criminal offenses that are sentenced to less than 7 years. This is in accordance with the results of an interview with informant as Police Chief (3 August 2022) as follows:

"In the case raised, because the case is a case of theft with violence (burglary) which carries a sentence of 9 years, the existing provisions must be followed, namely no diversion attempts. "Even though the legislation regulates this, it must also be looked at on a case-by-case basis, whether the case being examined is a very dangerous case so that the best interests of the child can still be protected."

Apart from that, the law also limits the time for examinations, so that investigating officers must strictly carry out examinations according to the specified time. Sometimes the provisions regarding this time also affect law enforcement because of the large number of cases that must be handled by investigators. Shorter time settings for conducting examinations of children are formulated in law in order to protect children, but in reality, this can influence or hinder the progress of the law enforcement process. Law Enforcement Factors From the law enforcement factor, there is a limited number of personnel in units that specifically handle children because to examine children's cases, investigators with certain criteria are needed. 3. Community Factors: From community factors, the domicile or place of residence of witnesses and perpetrators which is far from the place of examination can also influence law enforcement so that it is often hampered by time problems.

Investigators' efforts in suspending the Crime of Theft committed by minors

When conducting investigations into children who have committed crimes, the police must pay attention to various provisions regarding efforts to handle children, from arrest to the placement process. Investigations into criminal acts of theft must take place in a family atmosphere, and for this reason investigators are obliged to ask for considerations or suggestions from Community Counselors in accordance with Law no. 3 of 1997. One of the guarantees that a family atmosphere will be implemented when an investigation is carried out is the presence of a social worker to accompany the child. In addition, because it is the child who is being investigated, it is also very important that the presence of the parent/guardian/foster parent is present, so that there is no fear. or trauma to the child.

If deemed necessary, investigators can also ask for considerations or suggestions from education experts, mental health experts, religious experts, or other community officials. Meanwhile, for the child's own interests, the investigation process must be kept confidential. The mechanism for resolving the application of diversion to criminal acts of theft by minors uses mediation or deliberation by emphasizing restoration to its original state in resolving child conflicts. This deliberative resolution will not be realized if there is no cooperation between the victim, the perpetrator of the crime, the community and investigators.

Diversions as a way of restorative justice, there are positive things in dealing with criminal acts of theft, especially criminal acts of theft committed by minors, including the victim being able to express his complaints, his discomfort, on the other hand he can learn about the perpetrator, how to deal with the crime of theft, have the opportunity and have the right to obtain an apology and appropriate compensation from the perpetrator, show the impact on the perpetrator for the impact caused by the perpetrator's actions, resolve all existing conflicts for personal interests or recovery. For the perpetrator, he has a sense of responsibility for what he did to the victim, and has the right to apologize and pay for the victim's losses, social work according to the agreement agreed upon in the mediation process.

This is in accordance with the results of an interview with informant as Police Chief (3 August 2022) as follows:

"The diversion process requires an admission of guilt first. After an admission of guilt from the perpetrator of the crime, the investigator must also look at the motivation of the perpetrator for committing the crime of theft, whether this child is basically evil, and has previously carried out actions that harm other people, or whether Under such circumstances, there is compulsion to commit the crime of theft."

According to informant 3 August 2022 said that:

"In addition to the motivation, investigators must look at the amount that has been stolen, and distinguish which cases of theft should be brought to court (aggravated theft Article 363 of the Criminal Code), and which cases of theft should not be brought to court (minor theft Article 364 of the Criminal Code)."

This is very important because many cases of theft committed by children are classified as light theft (Article 364 of the Criminal Code) only because there is evidence and reports from the victim as well as the intention of revenge so that cases like this result in conviction and prison sentence. many years. Therefore, a diversion effort is very necessary to prevent children from being involved in the justice process, but the implementation of the results of the agreement on diversion efforts is not only done by diverting children's cases from the justice process to out of court, but there should be follow-up action, this is already implementing diversion efforts in accordance with what is stated. mandated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and has been implemented in accordance with Government Regulation of the Republic of Indonesia Number 65 of 2015 concerning Implementation Guidelines. In implementing diversion efforts to resolve criminal acts of theft committed by children in Buleleng district, diversion is very good as long as the results after diversion are determined, children do not repeat their actions again and do not underestimate the results of diversion. However, not all diversion agreements are successful, there are also diversion attempts that are not successful, this is because it is triggered by the victim still not being able to accept what the perpetrator did to the victim. Sometimes the victim can also ask for material compensation from the perpetrator, but the perpetrator is unable to provide and fulfill what the victim wishes.

In its implementation, it often faces several obstacles, namely understanding the meaning of diversion, the policy limits of diversion implementing officials, and public trust in the rules for implementing diversion and its obstacles, while the supporting factor for implementing diversion efforts in resolving criminal acts of theft committed by children in Palakka District is, in carrying out investigations and inquiries into children who have committed criminal acts must pay attention to various provisions regarding efforts to handle children from arrest to the placement process. Investigations into criminal acts of theft must take place in a family atmosphere, and for this reason investigators are obliged to ask for considerations or suggestions from Community Counselors in accordance with Law no. 3 of 1997. Suggestions

The police as law enforcement officers are the first to examine cases of criminal acts of theft committed by children in order to further increase education about diversion, so that the public understands the application of diversion for children who commit criminal acts of theft, so that in the future there will be more diversion processes who succeeded in realizing an agreement between the litigants so that the concept of restorative justice to be achieved from the diversion process could be implemented optimally.

Criminal acts committed by children are mainly due to their family's low economic condition, neglect, the influence of bad relationships or because they have dropped out of school (Berti & Pivetti, 2019; Mwangangi, 2019). The involvement of children as perpetrators of theft certainly cannot be considered as something that is not important to study, especially if the child is sentenced to prison even if the theft is only the object of relatively low value.

In criminal law, theft is the unlawful taking of another person's property without the owner's permission. The word is also used as an informal term for a number of crimes against other people's property, such as home burglary, embezzlement, burglary, shoplifting, fraud and sometimes criminal exchange. A person who commits acts or makes a career of theft is called a thief, and his actions are called stealing (Korgaonkar et al., 2021). Theft consists of objective elements (the act of taking, the object being an object, and elements of circumstances accompanying/attached to the object, namely the object partly or wholly belongs to another person) and subjective elements (the existence of an intention, which is intended to possess, and against the law) Homer (2020). Theft in its basic form is regulated in Article 362 of the Criminal Code (KUHP) which reads: "Whoever takes something which wholly or partly belongs to another person, with the intention of controlling the object against his or her right, then he punished for committing theft with a maximum prison sentence of five years or a fine of up to sixty rupiah." Looking at the formulation of the article, we can see that the crime of theft is a formally formulated offense which is prohibited and punishable, in this case the act which is defined as "taking". In the narrow sense of the word "take" (wegnamen) it is limited to moving the hands and fingers, holding the item, and transferring it to another place.

Based on the experts' theories regarding offenses, they are: The legal theory according to Vos, says: "Delicts are feits which are stated to be punishable based on the law." The legal theory according to Van Hamel, says: "A crime is an attack or threat to the rights of another person." According to (Bjelajac & Filipovic, 2021; Diamantis, 2020), legal theory states: "A crime is an unlawful act that has been committed intentionally or unintentionally by someone whose action can be accounted for and is declared by law to be an act that can be punished. In criminal law, formal offenses and material offenses are known. What is meant by a formal offense is an offense whose formulation focuses on acts that are prohibited and punishable by law. Here the formulation of the act is clear. Material offenses are offenses whose formulation focuses on consequences that are prohibited and punishable by law. In other words, it is only a formulation of the consequences of an action." Legal theory according to Moeljatno, says: "A crime is an act that is prohibited by a legal rule, a prohibition, which is accompanied by threats (sanctions) in the form of certain penalties for anyone who violates the prohibition." Legal theory according to Teguh Prasetyo, says: "A crime is an act that violates the law carried out by mistake by a person who is capable of being responsible and the perpetrator is threatened with a crime." Previously we have discussed various formulations of criminal acts or offenses prepared by legal experts, both adherents of dualism and monism. The elements in a criminal offense are to look at the formulation that is made. A crime cannot be imposed because of an act that is not included in the formulation of the offense. This does not mean that you can always be punished if the act is included in the offense formula. Two conditions are required for this: the act is against the law and can be blamed. Thus, the formulation of the definition of

"criminal act" becomes clear: a criminal act is a human act that is included in the scope of the offense formulation, is unlawful, and can be blamed.

Conclusion

Obstacles for investigators in dealing with criminal acts of theft committed by minors in the Palakka sub-district, Bone Regency include internal obstacles or constraints faced by investigators in the law enforcement process for cases of theft committed by minors, namely, limited time for examination because the detention period is only short. , that the 1x24 hour initial examination must provide evidence that the perpetrator committed a criminal act or not. The mechanism for examining child criminals is only given 7 days and an additional 8 days to complete the examination files. Investigators' efforts to overcome criminal acts of theft committed by minors in Palakka sub-district, Bone Regency include: For the perpetrator, he has a sense of responsibility for what he did to the victim, and has the right to apologize and pay for the victim's losses, social work according to the agreement agreed in mediation process.

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