

PENJATUHAN PIDANA PENJARA TERHADAP ANAK PELAKU TINDAK PIDANA PENCURIAN DENGAN PEMBERATAN

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INTISARI

Penelitian ini bertujuan mengetahui dan menganalisis dasar pertimbangan yang digunakan oleh Hakim dalam penjatuhan pidana penjara terhadap anak yang melakukan tindak pidana pencurian dengan pemberatan Serta mengkaji dan merumuskan mengenai penjatuhan pidana penjara terhadap anak yang melakukan tindak pidana pencurian dengan pemberatan di masa mendatang.

Penelitian ini menggunakan metode penelitian normatif untuk memperoleh data sekunder melalui penelitian kepustakaan dan didukung dengan data primer melalui wawancara dengan narasumber, kemudian data tersebut dianalisis secara kualitatif dengan metode deskriptif analitis dan preskriptif.

Berdasarkan hasil penelitian dan pembahasan disimpulkan sebagai berikut: *Pertama*, Dasar pertimbangan yang digunakan oleh Hakim dalam penjatuhan pidana penjara terhadap anak yang melakukan tindak pidana pencurian dengan pemberatan dibedakan menjadi pertimbangan yang bersifat yuridis dan non yuridis. Pertimbangan bersifat yuridis, antara lain pertimbangan mengenai surat dakwaan dan surat tuntutan dari Penuntut Umum, alat bukti, barang bukti, masa penahanan, adanya hal-hal yang memberatkan Anak yang telah meresahkan masyarakat dan merugikan korban secara materi, sanksi pidana penjara dipilih karena hal tersebut telah diatur dalam Pasal 71 ayat (1) huruf e Undang-Undang Nomor 11 Tahun 2012 padahal pidana penjara terhadap Anak hanya digunakan sebagai upaya terakhir, sehingga masih mengedepankan retributif dan menggunakan sanksi yang bersifat *custodial*. Hakim kurang memperhatikan dasar pertimbangan yang bersifat non yuridis seperti dari segi filosofis, psikologis, sosiologis dan kriminologis. *Kedua*, Penjatuhan pidana penjara terhadap anak ke depan sebaiknya diarahkan pada penerapan prinsip keadilan restoratif dan memperhatikan asas kepentingan terbaik bagi anak, asas perampasan kemerdekaan dan pemidanaan sebagai upaya terakhir serta asas penghindaran pembalasan. Perlu segera ditetapkan peraturan pelaksana Undang-Undang Nomor 11 Tahun 2012 berupa Peraturan Pemerintah tentang Pedoman Pelaksanaan Pidana dan Tindakan, perlu panduan pemidanaan bagi Hakim Anak dari Mahkamah Agung, pengaturan Anak yang didakwa dengan dakwaan tunggal dengan ancaman pidana penjara paling lama tujuh tahun agar dapat dilakukan diversifikasi, perlu penyelenggaraan pendidikan dan pelatihan terpadu tentang sistem peradilan pidana anak bagi aparat penegak hukum dan pihak terkait secara berkala di setiap daerah.

Kata Kunci: *Pidana penjara, Anak, Pencurian dengan pemberatan.*

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THE IMPRISONMENT OF CHILDREN WHO CONDUCT A LARCENY WITH A DENUNCIATION

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ABSTRACT

This research is aimed to discover and analyze the basis of consideration used by Judge in giving sentences towards children who conduct larceny with a denunciation as well as studying and formulating the sentences given to children who conduct larceny with a denunciation for the future causes.

This research was using a normative research method to acquire secondary data through library study and supported by primary data obtained through interview with informants, the data then being analyzed in qualitative manner through analytic descriptive and prescriptive methods.

According to the research results and discussion, it has been concluded that firstly, the basic considerations used by Judge in giving sentences of imprisonment towards children who conduct larceny with a denunciation are divided into a juridical and non-juridical considerations. The juridical considerations consist of the consideration regarding the letters of indictment and accusation from Public Prosecutor, evidences, detention period, the conditions which incriminate the Children who have been concerning the community and cause the disadvantages for the victims in material context, the imprisonment is selected because that punishment has been regulated in Article 71 verse (1) letter e of Law No.11/2012 although the imprisonment on children has been solely used as the final action/last resort, therefore, retributive and custodial sanctions are still positioned as a priority. The judge has been less considering the non-juridical considerations such as the perspective of philosophy, psychology, sociology, and criminology. Secondly, the imprisonment on children for future causes should be directed towards the implementation of a principle of restorative justice and considering the best concern for the children, the principle of deprivation of liberty and punishment should be positioned as the last resort/final action as well as the principle of an avoidance of retaliation. The guideline of action of Law No.11/2012 is required immediately in the form of Government Regulation about the Guidelines of Criminal Charges and Actions, the guideline of punishment for Children Offenders Judge from Supreme Court is also required, the regulation for children who being accused with a single charge with the possibility of 7 years of maximum imprisonment is required for the diversion to be able to be implemented, the continuous/routine integrated educations and training regarding the judicial system for the crimes of children for the law enforcement apparatuses and the related parties in every region are required.

Keywords: *Imprisonment, Children, Larceny with denunciation.*

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