

## Legal Protection for Child Victims of Exploitation in Criminal Acts of Theft

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### *ABSTRACT*

This research is motivated by child victims of exploitation in the crime of theft. During the growth period of children, both physically and mentally, they need proper care and protection in accordance with applicable legal provisions. This type of research method uses normative juridical research using statutory approaches and conceptual approaches. From the above writing, it can be concluded that the legal protection of child victims of exploitation in the crime of theft is very important. Because children are categorized as victims of exploitation, they are used as perpetrators of theft by adults. In this case, the form of legal protection using diversionary settlement is regulated in Law Number 11 of 2012 concerning the Child Criminal Justice System and regulated in Article 59A as intended by Article 59 Paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

**Keywords:** Exploitation, Children, Theft Crime

### **Introduction**

In connection with the increasing working-age population, the opportunity for economic growth also increases. This can have a negative impact, especially on social problems such as poverty and high crime rates. Social problems due to inequality in the economy create new problematic situations where people cannot meet their daily needs. People who are on the line of deprivation fall into the realm of poverty culture. Based on the Theory of Culture of Property explained by Oscar Lewis, quoted from (Diamar Dwi Diyan Fitri) people with a mentality of poverty culture will look for easy ways to emerge from poverty. Among them is exploiting humans to be used to generate wealth easily.<sup>1</sup>

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<sup>1</sup> Diamar Dwi Diyan Fitri. **Eksplorasi Anak Jalanan Karena Faktor Ekonomi Sebagai Pengemis di Kota Tua Jakarta**. Pendidikan Ilmu Pengetahuan Sosial. Fakultas Ilmu Tarbiyah

Economic and social problems in people's lives are often used as an excuse to seek profit with the pretext of exploiting children for the benefit of the perpetrators of exploitation without considering a sense of propriety, justice, and welfare compensation. Where this treatment refers to a discriminatory attitude or arbitrary treatment of children.

Based on the KPAI information center in October 2023, there were 1,478 reports of violence against children, consisting of 615 cases of children who were victims of sexual crimes, 303 cases of physical/psychological violence, 126 cases of children breaking the law, and 55 cases of minors who experienced violence from economic exploitation.<sup>2</sup> Exploitation takes many different forms, from child exploitation to criminal activities such as theft, shoplifting, and drug trafficking.<sup>3</sup>

Children who adults exploit are ordered to commit theft. This is a form of violence that is detrimental and threatens children's rights. This exploitation practice is carried out by ordering, forcing, persuading, seducing, and luring something and promising something to the child so that the child is willing to commit the crime with the aim of the perpetrator gaining economic benefits.

Adults use children as perpetrators of theft, which is very concerning and places the child in direct conflict with the law. If the child is a perpetrator of a crime, it does not seem to be directly proportional to his age. In addition, children also have limitations in understanding and protecting themselves from the various environmental influences they face.

Children need special protection to ensure that they are free from evil treatment, violence, discrimination, exploitation, or other despicable treatment. Therefore, it is very important for parties who have great authority and responsibility who guarantee the future of the Indonesian state to properly provide regulations that guarantee protection. And provide strict law enforcement against those who try to take advantage of the situation for personal gain.

In this case, during the child's growth period, both physically and mentally, the child requires proper care and legal protection by applicable legal provisions, and in the

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dan Keguruan UIN Syarif Hidayatullah Jakarta. 2020. terbitan ke-1. dikutip dari Oscar Lewis. *The Culture Of Property*. Jurnal. Vol 215 No.4. 1966. h.5.

<sup>2</sup> Humas KPAI, Rakornas dan Ekspose KPAI 2023: Membangun Indonesia Bebas Kekerasan Terhadap Anak.

Sumber: <https://www.kpai.go.id/publikasi/rakornas-dan-ekspose-kpai2023-membangunindonesia-bebas-kekerasan-terhadap-anak> diakses pada 16 Desember 2023.

<sup>3</sup> Andi Fajar Agusnawan, Perlindungan Hukum Terhadap Anak Sebagai Korban Kejahatan Eksploitasi Secara Ekonomi, Fakultas Hukum Universitas Muslim Indonesia, 2023, terbitan ke-2

Child Protection and Juvenile Criminal Justice System Law, it is mandated that children involved in criminal acts must be treated as victims and not as the main perpetrators. With the right steps, we can ensure that these children get the protection and support they need for a better future.

### **Metode Penelitian**

This study uses a type of normative legal research conducted to solve the legal issues faced based on the rule of law, legal principles or legal doctrines to answer the legal issues faced. by using 2 (two) approaches, namely: the Legislation Approach and the Conceptual Approach.

In this research data uses 2 (two) legal sources, namely primary and secondary legal materials. Primary legal materials are sourced from Legislation, including; Criminal Code (KUHP), Law Number 17 of 2016 concerning the Stipulation of Government Regulation instead of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law, Law Number 39 of 1999 concerning Human Rights, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Government Regulation Number 78 of 2021 concerning Special Protection for Children.

While secondary legal materials are in the form of legal publications that are not official documents. Publications in the field of law, namely, textbooks, legal dictionaries, legal journals and websites related to current problems.<sup>4</sup>

The collection of materials is done by tracing tracking, and linking legal materials that are relevant to the problems that are occurring. Both primary legal materials and secondary legal materials have been classified based on their sources and hierarchies.

Regarding the materials obtained in the literature study research, Legislation, which the author presents sequentially and logically, to respond to the formulated problems. Data management through deductive means, making conclusions from general to specific regarding the problems that are occurring. Then, the legal materials are analyzed to compile the research results.

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<sup>4</sup> Peter Mahmud Marzuki. *Penelitian Hukum Edisi Revisi*. Kencana Prenada Media Group. Jakarta 2013

## Results and Discussion

### Exploitation in the Crime of Theft

According to Meivy R. Tumengko, as quoted from (Sefira Wahida), exploitation is an action in the form of activities that utilize children's labor in an unethical manner in other similar activities, carried out by humans to obtain material benefits.<sup>5</sup>

In general, exploitation means the politics of arbitrary or excessive use of a subject. Exploitation is only for economic interests without considering a sense of propriety, justice and welfare compensation. This refers to a discriminatory attitude or arbitrary treatment of children by adults.

Conflicts like this are often exploited by certain individuals for their interests. This conflict is considered an important aspect of social change. However, ironically, the existence of this kind of conflict is often ignored or even exploited by parties who have hidden interests, such as perpetrators of crimes or abuse to achieve their goals, such as financial gain for perpetrators of crimes.

Thus, the exploitation of children does not only occur because of social indifference or weaknesses in the child protection system but also because the conflict is exploited by irresponsible parties.

However, in this study, there are weaknesses/gaps in the inadequacy of the law and all existing laws and regulations do not yet have a clear definition of exploitation in the crime of theft. However, several laws and regulations can criminalize (determine a certain action) exploitative behavior for a certain purpose.

Based on Law No. 23 of 2002 concerning Child Protection, which has been amended by Law No. 35 of 2014, CHAPTER XIA concerning prohibitions in Article 76I stipulates that all persons are prohibited from allowing, carrying out, placing, ordering or participating in economic and/or sexual exploitation of children.

Exploitation through the use of children as thieves or to commit other crimes requires firm handling to protect children from harm and abuse. The following are the types and causes of exploitation of children.

1. Types of Exploitation of Children:
  - a. Physical Exploitation

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<sup>5</sup> Syefira Wahida. **Perlindungan Hukum Terhadap Anak Korban Eksploitasi Ekonomi Di Kota Parepare**. Fakultas Hukum. Institut Ilmu Sosial Dan Bisnis Andi Sapada Parepare. 2021. h. 18. dikutip dari Meivy R. Tumengko. Jurnal Skripsi. **Eksploitasi Anak Pada Keluarga Miskin**. Universitas Sam Ratulangi. Manado. 2016. h. 4.

This type of exploitation is done by ordering children to do work that is not yet appropriate for minors. This is done by forcing children with full strength and sometimes even threatening their lives.

b. Social Exploitation

It is an act that can cause emotional and mental disturbances in children to become unstable due to trauma. And if the child's growth and development are disturbed, it can result in the child losing his rights.

c. Sexual Exploitation

In this case, sexual exploitation is an indecent, inappropriate treatment that amounts to pornography carried out by adults against minors.

d. Ekonomik Exploitation

Instead of economic needs, adults often exploit children to do excessive work or other things, even leading children into the world of prostitution and other crimes for the perpetrator's needs.<sup>6</sup>

2. The Reasons why adults exploit children are:

- a. Economic weakness is one of the causes of child exploitation, resulting in many adults placing demands on their children to fulfill their desires rather than going to school.
- b. Destruction of household relationships, where domestic violence often occurs, infidelity causes children to become victims, abandoned and ultimately become the backbone of earning an income
- c. The environment and place of residence can push children into negative relationships that cause them to earn a living on the streets instead of going to school..<sup>7</sup>

Exploitation in the crime of theft means exploitation in the form of the crime of theft. We can call this economic exploitation because, in the act of exploitation there is something that contains a form of exploitation for material/economic gain by the party giving the order. This reflects the abuse of circumstances to achieve certain goals.

Prohibition of Economic Exploitation of Children Based on Law Number 35 of 2014 Concerning Child Protection:

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<sup>6</sup> Tama Yaktafia, Perlindungan Hak Asasi Manusia Dalam Kasus Eksploitasi Anak Dibawah Umur Yang Di Pekerjaan Sebagai Pengemis, Jurnal Ilmu Sosial, 2023, terbitan ke-1

<sup>7</sup> Andi Irma Ariani, Eksploitasi Anak di Kota Makassar: Studi Kasus Anak diPekerjaan Paksa Orangtua, Program Pasca Sarjana Universitas Neggeri Makassar, 2022, terbitan ke-1

Article 76I states that:

"Everyone is prohibited from placing, allowing, carrying out, ordering to be carried out, or participating in carrying out economic and/or sexual exploitation of children."

So, the purpose of this article is to protect children from various forms of exploitation, both in economic and sexual contexts. This prohibition includes any act involving the use of children for profit, as well as involving individuals who are directly or indirectly involved in such acts.

### **Legal Process of Theft Involving Children**

The legal process involving children refers to a series of procedures and mechanisms that are specifically designed to be treated with attention to their needs and rights. In this case, the crime of theft that occurs in society is a phenomenon that cannot be separated from the broader social context. This phenomenon is influenced by various elements of the social structure that exist in society. The involvement of children in theft, is a serious problem that has a broad impact on the individual child himself and society.

This illustrates the importance of ensuring that children remain on the educational path and receive all the support they need to grow and develop into productive and responsible members of society. Children are considered responsible for all their behavior including criminal behavior that they commit. However, according to an approach that is appropriate to their age and development. The implementation of a child handling through the juvenile justice process is ultimately directed at "acts", "offenders", and the improvement of "victims" what is then referred to as a justice model that is oriented towards victim reparation.<sup>8</sup>

In Indonesia, the Criminal Code also explains various types of theft with varying degrees of seriousness. In the Criminal Code Chapter XXII on Theft, Articles 362 to 367. Each article provides a definition and specific provisions that are by the situation and method of theft. This aims to provide fair and proportional punishment according to the severity of the crime committed.<sup>9</sup>

The differences in these arrangements also reflect the legal understanding that theft can occur in various contexts. In the legal process, theft involving children is different from the general legal process because it involves children and must be treated specifically by the principles of child protection.

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<sup>8</sup> Makhrus Munajat. Op.cit. h. 191

<sup>9</sup> Salma D, Tindak Pidana Pencurian Yang Dilakukan Oleh Anak Dalam Perspektif Hukum Islam, Fakultas Syariah dan Hukum, UIN Alauddin Makassar, 2012

In the process of resolving cases involving children in this legal problem, there are several roles that children can play, namely children as perpetrators, victims, and witnesses. All children involved in this legal context, whether they commit a crime, become victims of a crime or become witnesses to a crime are referred to as "Children in Conflict with the Law" based on the Child Criminal Justice System Law (UU SPPA) which aims to provide special protection and ensure that they are treated fairly and by the principle of the child's best interests.

Children involved in criminal acts can be processed in the Criminal Justice System in Indonesia, by the Child Criminal Justice System Law (UU SPPA). In the context of the SPPA Law, children in conflict with the law refer to children aged between 12 and 18 years who are suspected of committing a crime. In the SPPA Law, there are 3 (three) categories of children involved in a crime, namely children who are perpetrators of crimes, children who are victims of crimes, and children who are witnesses to crimes.

This is related to detrimental sanctions, Article 69 Paragraph (2) two of the Juvenile Criminal Justice System Law (SPPA Law) states that children who commit crimes can be subject to 2 (two) types of sanctions. First, there are sanctions for perpetrators who are under 14 years old and sanctions for perpetrators who are 15 years old and over.

Article 82 of the SPPA Law explains that sanctions include returning the child to parents or guardians, surrendering to someone, and treatment at LPKS. treatment at a mental hospital, the obligation to attend formal education or training organized by the government or private sector, revocation of driving licenses, and making amends for criminal acts.

While Article 71 of the SPPA Law explains that criminal sanctions include principal and additional penalties as explained in the previous sub-chapter. In this case, the SPPA Law also regulates children's rights when children are serving their sentences, as well as the right to receive legal

The law on the juvenile criminal justice system divides 3 (three) definitions of the role of children in relation to criminal acts as follows::

1. The definition of a child as a perpetrator (Children in Conflict with the Law) is a child who is suspected of committing a crime, aged 12 to 18 years. In the legal process, this child will go through a legal process involving investigation, prosecution, and special child justice with the main goal of rehabilitation and reintegration into society.

2. Children as victims (Child Victims), are children who experience physical, mental, or economic suffering due to a crime committed by another person. Including children who are not yet 18 years old, in this case, child victims have the right to receive protection and support, including medical, psychological, and social assistance services for recovery.
3. Children as witnesses (Child Witnesses) are children who provide information in the legal process about a crime that they have heard, seen, or experienced themselves. Including children who are not yet 18 years old, child witnesses in this case must also receive protection so that they do not experience pressure or trauma during the legal process and the procedure for taking testimony is carried out in a child-friendly manner.

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the role of Police Investigators is regulated in various articles, including Article 1 Paragraph (7), Article 6, Article 7, Article 9, Article Article 10, Article 11, Article 12, Article 26, Article 27, Article 28, and Article 29. From these articles, it can be concluded that after arresting a child suspect, investigators are required to attempt diversion.

In the Juvenile Criminal Justice System Law, the concept of child diversion is carried out by Police Investigators in Article 7 Paragraph (1) of the Juvenile Criminal Justice System Law. In this case, the provisions of the Juvenile Criminal Justice System Law are firm and mandatory and can be seen with several variations that refer to the fact that the Juvenile Criminal Justice System Law (Juvenile Criminal Justice System Law) has clear and mandatory rules (imperative) and that these rules cover various aspects in handling cases involving children as follows:

- a. Diversion must be attempted at the investigation, prosecution, and examination stages of children's cases in court.
- b. If diversion is carried out at the investigation stage and is successful, then the case is declared finished by the decision of the Head of the District Court. However, if it fails, the case will proceed to the prosecution stage.
- c. If diversion is carried out at the prosecution stage and is successful, then the case is declared finished by the decision of the Head of the District Court. However, if it fails, the case will proceed to the examination stage of children's cases in court.



- d. d. If diversion is carried out at the examination stage of children's cases in the District Court and is successful, then the case is declared finished by the decision of the Head of the District Court. However, if it fails, the case will proceed to the children's trial.<sup>10</sup>

In the Juvenile Criminal Justice System Law, provisions regarding diversion efforts at the investigation stage are regulated in Article 7, Article 27, Article 28, and Article 29. Diversion carried out at the investigation stage in practice is carried out as follows:

1. After a crime has been reported or filed and a police report has been made, the investigator is required to provide a request letter to obtain written considerations and suggestions from the Community Guidance Officer or Correctional Center (Bapas).
2. Bapas must submit the Community Research Results to the investigator within a maximum of 3x24 hours after receiving the request from the investigator.
3. The investigator is required to begin diversion efforts no later than 7 (seven) days after the investigation begins, and the diversion process must be completed within a maximum of 30 (thirty) days from the start of the diversion effort.
4. If the perpetrator and victim agree to carry out diversion, the Community Guidance Police, Bapas, and Professional Social Workers will facilitate the case resolution deliberation process by involving the relevant parties. This deliberation must be completed within a maximum of 30 (thirty) days from the start of the diversion effort, and the investigator will make a Diversion Process Report. However, if the perpetrator or victim does not agree to diversion, the investigation will be continued, an Investigation Report will be made, and the case will be transferred to the Public Prosecutor.
5. If the diversion is successful and the parties reach an agreement, the results of the agreement are stated in the form of a diversion agreement. The results of this agreement must be submitted by the superior officer responsible at each level of examination to the district court according to its jurisdiction within a maximum of 3 (three) days since the agreement was reached to obtain a decision. The court will issue a decision within a maximum of 3 (three) days after receiving the diversion agreement. This decision is then submitted to the Community Guidance Officer, the Investigator will issue a letter of termination of the investigation. However, if the diversion fails, the investigator will make a diversion report and is required to continue the investigation and attach the diversion report and the community research report from the Community Guidance Officer/Bapas.<sup>11</sup>

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<sup>10</sup> Victor Sefanya. Op.Cit. h. 75

<sup>11</sup> *Ibid*

## **Conclusion**

Legal protection for children involved in the crime of theft can be categorized as victims because children are victims of exploitation and they are used as the perpetrators of theft by adults. Children are tried in a juvenile court that has special procedures to protect children's rights. The form of legal protection uses a diversionary settlement regulated in Article 7 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System and regulated in Article 59A as intended in Article 59 paragraph (1) of Law No. 35 of 2014 concerning child protection. So, in the legal process of theft involving children, the focus is on protection and rehabilitation rather than punishment.

Legal sanctions against adult perpetrators who exploit children to commit the crime of theft are tried in a general court with strict sanctions and heavier penalties because they involve children in a crime where, regulated in Article 363 Jo Article 55-56 of the Criminal Code and regulated in special laws and regulations, namely, in Law No. 35 of 2014 concerning child protection, it is stated in Article 88 that "Any person who violates the provisions as referred to in Article 76I, shall be punished with imprisonment of a maximum of 10 (ten) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah)".

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