

The Implementation of the Application of Law of Criminal Acts with Violence

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Abstract.

The purpose of this study is to determine the implementation of the application of the law of criminal acts with violence in the Demak District Court. The approach method used is normative legal research which is descriptive analytical in nature with legal research that is carried out by examining library materials or secondary data as the basic material for research. Conclusions in the defendant's research in the decision of the judges of the Demak District Court sentenced to imprisonment for 1 (one) year 4 (four) months and pay court fees in the amount of IDR 3,000 (three thousand rupiah). The sanctions imposed by the Panel of Judges on the defendant can be snared is 9 (nine) years.

Keywords: Analysis; Application; Crime; Theft; Violence.

1. Introduction

The incident case someone commits a crime to get victims easily. For example the case of motorcycle stolen, theft with murder so that the victim is powerless to easily get what the perpetrator wants.¹ The causes of crime are motivated by various factors, low education, religious morals, environmental factors, but the factors that greatly influence the emergence of criminal acts are economic limitations.²This will not happen if the community has the awareness to behave well with the prevailing interests in people's lives to behave in accordance with the norms that apply in society. Because behavior that is not in accordance with the norm or can be referred to as a deviation from the norm turns out to cause disruption of the order and peace of human life.³ Misappropriation is usually labeled by the community as a violation and even a crime. even though according to Article 28G paragraph (1) which reads: "everyone has the right to personal protection, family, honor, dignity, and property under his control, and has the right to a sense of security and protection from the threat of fear to act or not act according to which is a basic right.

Crime in people's lives is a social phenomenon that will always be faced by every human being, society, and even the State. This is with the advancement of culture and technology, human behavior in social and state life is even more complex. The existence of acts of theft with violence in life will always be faced by

¹ Ahmad Ghifar Al Ahfaqsyi and Siti Rodhiyah Dwi Istinah. Manifestation Of Criminal Sanctions In The Judicial Process On Criminal Actor Of Negligence (*Culpa*). *Law Development Journal Volume 2*

No 2, Juni (2020). P. 107 – 114. URL: <u>http://jurnal.unissula.ac.id/index.php/ldj/article/view/11445</u> accessed 17 March 2022.

²M Van Bemmelen.(2014). *Hukum Pidana I Hukum Material Bagian Umum*. Bandung: Bina Cipta, p.4 ³Bagir Maknan.(2006). *Hukum Pidana*. Bandung: Sinar grafika, p.25



the community and the state.⁴ Thus, the crime of theft accompanied by violence is carried out by a person or several people forming a group, against people whose property is confiscated accompanied by acts of violence, not infrequently even fatalities.⁵

Prevention of theft by violence can only be prevented and overcome but difficult to eradicate completely. Because the higher the ability of humans, it actually causes a bad impact in the form of increasingly sophisticated methods used to commit crimes with theft with violence.⁶

According to PAF Lamintan and Jisman Samosir, what is meant by theft with violence or weight: "The act of theft which has elements of the act of theft in its main form, and because it is added with other elements, so that the threat of punishment becomes aggravated".⁷ In Adami Chazawi's view, theft in an aggravated form is a form of theft as formulated in Article 362 of the Criminal Code (its main form) plus other elements, both objective and subjective, which are aggravating the theft, and are therefore threatened with a heavier sentence than theft in its principal form.⁸

The classification of criminal acts is based on the way in which the provisions of criminal law are formulated by the legislators, i.e., if the crime referred to in a criminal law provision (Strabepaling) is formulated as an act that causes a certain effect without formulating the form of the act, then this crime Among legal science, it is called a material crime.⁹If the intended crime is formulated as a form of action without mentioning the consequences caused by the act, then there is now a formal crime (formeel delict).¹⁰So that the two formulations of the offense, the investigator must be able to formulate a form of action that can fulfill elements such as what form of action can eliminate the soul of another person, carried out by the perpetrator in a material offense. Likewise, in material offenses, formal offenses of investigation must also be able to prove the existence of an item that can support the element of taking the victim's property.¹¹The crime of theft is regulated in the Criminal Code (KUHP) Article 362 of the Criminal Code, Article 363 of the Criminal Code (theft with weight), Article 364 of the Criminal Code (light theft), Article 365 of the Criminal Code (theft accompanied by violence/threats of violence), Article 367 KUHP (theft

⁴Saherodji Day. (2001). *Pokok-Pokok Kriminologi*. Jakarta: Aksara Baru, p.20

⁵Abuddin Nata. (2000). Criminal Law Lessons. Jakarta: PT Raja Grafindo Persada, p.75

⁶ Arif Septria Hendra Saputra,Gunarto and Lathifah Hanim. Penerapan Restoratife Justice Sebagai Alternatif Penyelesaian Tindak Pidana Penganiayaan Di Satreskrim Polsek Lasem. *Jurnal Daulat Hukum* Vol. 1. No. March 1 (2018). P. 157. URL:<u>http://jurnal.unissula.ac.id/index.php/RH/article/view/2629/1978</u> accessed 17 March 2022. ⁷PAF Lamintan and Jisman Samosir. (2010). *Delik-delik Khusus Kejahatan yang Ditujukan terhadap Hak Milik & Lain-Lain Hak yang Timbul dari Hak Milik*. Bandung: Nuansa Aulia, p.67

⁸Adam Chazawi. (2004). Kejahatan terhadap Harta Benda. Malang: Bayumedia, p.19.
⁹ Harjanto Mukti Eko Utomo, Umar Ma'ruf. The Criminal Law Enforcement Policy in Online

Prostitution Treatment. *Law Development Journal Volume 2 No 2, June (2020)*, (115 - 120). URLs:<u>http://jurnal.unissula.ac.id/index.php/ldj/article/view/11438/4494</u>accessed 17 March 2022. ¹⁰Wirjono in <u>http://lielylaw.multiply.com/journal/item/68/KEJAHATAN</u>, accessed 26 September 2021, at 15.00 WIB.

¹¹ Suwarno,Sri Endah Wahyuningsih.Urgency of Suspect Determining In the Investigation Process on Human Rights Perspective. *Law Development Journal* Volume 2 No 2, June (2020). P.241. URLs:<u>http://jurnal.unissula.ac.id/index.php/ldj/article/view/11700/4559</u> accessed March 16, 2022.



within the family). This study aims to determine and analyze the application of the law of theft with violence in the decision of the Demak District Court.

2. Research Methods

The writing method in this study was a legal approach normative juridical (normative legal research) which was descriptive analytical by examining library materials or secondary data as the basic material for research. The research specification used analytical descriptive with an attempt to describe the application of the law on the crime of theft with violence in the decision of the Demak District Court. The data collection method used was primary data and secondary data.¹² With using statutory document materials and library materials.¹³ Method Data analysis used descriptive analysis qualitative approach to primary and secondary data¹⁴, by using a deductive mindset to analyze the application of the law on the crime of theft with violence in the Demak District Court.

3. Results and Discussion

3.1 Application of the Criminal Act of theft with violence in the Demak District Court Decision

The legal certainty contained in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the third amendment, states that everyone has the right to recognition, protection and fair legal certainty and equal treatment before the law. According to Apeldroon's opinion, legal certainty has two aspects, namely, regarding the question of its formation (*bepaalbaarheid*) law in concrete matters. This means that parties seeking justice want to know the law in a specific way before starting a case. Legal certainty means legal security which means protection for the parties against the arbitrariness of the judge.¹⁵ Due to legal certainty as one of the goals of law and can be said to be an effort to realize justice. The real form of legal certainty is the implementation and enforcement of the law against an action regardless of who does it. The theory of legal certainty is a certain thing (condition). The law must essentially be certain and fair and legal certainty is a question that can only be answered normatively, not sociologically. Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates in a definite and logical manner.¹⁶

The positivism paradigm of legal definition must prohibit all rules that are similar to law, but are not orders from a sovereign authority, legal certainty is always upheld regardless of the consequences and there is no reason not to uphold it. Because in its paradigm positive law is the only law.¹⁷Real legal certainty has a more juridical dimension, according to Jan Michiel Otto's opinion. This opinion

 ¹² Moleong, Lexy J,(2005), *Metode Penelitian Kualitatif*, Bandung: PT Pemuda Roadkarya, p.144
 ¹³Ali, Zainudin, (2009), *Metodologi Penelitian Hukum*. Jakarta: Sinar Grafika, p.107

¹⁴Moleong, *Op Cit*, p.288

¹⁵ LJ Van Aveldoorn in Shidarta. (2006). *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berfikir*. Bandung:PT Revika Aditama, p.82

¹⁶ Cst Kansil. (2009). Kamus Istilah Hukum. Jakarta: Gramedia Pustaka Utama, p.85.
¹⁷Ibid,



provides a further limitation of legal certainty which defines legal certainty as the possibility that in certain situations. $^{18}\,$

Gustav Radbruch's opinion says 4 basic things related to the meaning of legal certainty, namely:

- That positive law means legislation.
- That the law is based on facts, meaning that it is based on reality.
- That the facts must be in a clear way so as to avoid mistakes in meaning, as well as being easy to implement.
- That positive law cannot be changed.¹⁹

Understanding the law is a collection of rules or rules in a common life, the overall rules of behavior that apply in a common life that can be enforced with a sanction. Legal certainty is a feature that cannot be separated from law, especially for written legal norms. While the crime of theft with violence or weighting (gequalificeerde diefstal) is regulated in Articles 363 and 365 of the Criminal Code, what is meant by theft with violence or weighting is an act of theft that has elements of the act of theft in its main form, and because it is added to other things/other elements, so that the threat of punishment becomes heavier.²⁰In the opinion of Adami Chazawi, theft in an aggravated form is a form of theft as formulated in Article 362 of the Criminal Code (its main form) plus other elements, both objective and subjective, which are aggravating the theft, and are therefore threatened with a heavier sentence than the main form of theft.²¹ The explanation of the crime of theft accompanied by violence is regulated in Article 365 of the Criminal Code as follows:

- By a maximum imprisonment of nine years, theft which is preceded, accompanied or followed by violence or threats of violence, against a person, with the intent to prepare or facilitate the theft, or in the case of being caught red-handed, to enable the escape of oneself or another participant, or to retain control of the property in their possession.
- By a maximum imprisonment of twelve years: if the act is committed at night in a house or enclosed yard with a house, on a public road, or on a moving train or tram; if the act is done by two or more people in partnership; if the entry into the place of committing a crime, by breaking or climbing or by using a false key, a false order or a false official attire; if the act results in serious injury.
- If the act results in death, then a maximum imprisonment of fifteen years is imposed.
- Threatened with capital punishment or imprisonment for life or for a certain period of twenty years, if the act results in serious injury or death and is committed by two or more people in partnership, also accompanied by one of the things described in no. 1 and 3.

¹⁸ Jan Michiel Otto. (2006). Moralitas Profesi Hukum Suatu Tawaran Kerangka Berfikir. Bandung: PT. Revika Aditama, p.85

¹⁹ Gustav Radbruch Terjemahan Shidarta. (2012). *Tujuan Hukum*. Jakarta:Gramedia Pustaka Utama, p.56

²⁰ PAF Lamintan and Jisman Samosir. (2010). *Delik-delik Khusus Kejahatan yang Ditujukan terhadap Hak Milik & Lain-Lain Hak yang Timbul dari Hak Milik*. Bandung: Nuansa Aulia, p.67

²¹ Adam Chazawi. (2004). Kejahatan terhadap Harta Benda. Malang: Bayumedia, p.19



The description above explains that criminal law is an important tool in crime prevention in eradicating crimes that are troubling and detrimental to society in general and victims in particular. Crime prevention can be done preventively (prevention) and repressive (action). However, preventive efforts are not effectively implemented if it is not known what exactly is the reason someone commits a crime.

In the criminal case with the decision of the Demak District Court Number: 155/Pid.B/2018/PN Dmk with a chronology of events starting on Monday 21 May 2018 at 18.30 WIT when the defendant was visiting the mess of witness WW Bin (late) W and witness AL BIN K resided, after a short chat with each other, witness WW Bin (late) W and witness AL BIN K said goodbye to buy food and left the defendant alone in MESS. The defendant took the initiative to make coffee drinks, while the defendant took out the DANGKE brand of insect medicine which the defendant opened the insect medicine package with scissors. Then the insect medicine is put in a jar filled with sugar, and the defendant took a spoon to mix/stir the insect repellent to mix it with the sugar. Furthermore, the defendant made three (3) cups of coffee. In addition, the defendant kept the remaining insect medicine pack in the back pocket of the right pants that the defendant was used to stir the coffee.

The coffee made by the defendant was drunk by witness WW Bin (late) W and witness AL BIN K, at around 23.00 WIB witness WW Bin (late) W and witness AL BIN K felt nauseated, dizzy and became unconscious. The defendant contacted witness YZ BIN AM who lived next door to inform him that witness WW Bin (late) W and witness AL BIN K were poisoned. Using a pickup, witness YZ BIN AM and the defendant brought witness WW Bin (late) W and witness AL BIN K to the Godong Health Center. After returning from the Godong health center, witness YZ BIN AM asked to take care of all matters witness WW Bin (late) W and witness AL BIN K while being treated at the Puskesmas.

The defendant used a black 2008 Honda Vario Nopol W5752AK motorcycle belonging to witness WW Bin (late) W to take care of everything, including administration at the Godong Health Center and the needs of witness WW Bin (late) W and witness AL BIN K when referred to the hospital. YAKKUM PURWODADI, then Tuesday 22 May 2018 At 03.00 WIT witness WW Bin (late) W who is still being treated at YAKKUM PURWODADI Hospital asked the defendant about the presence of a black Honda Vario motorcycle Nopol W5752AK 2008 and the defendant answered by lying by saying The defendant has returned it to its original place, namely the mess on the back porch of the house.

Tuesday morning at around 05.00 WIB on May 22, 2018, the suspect brought a Honda Vario Motorcycle Nopol W5752-AK to Purwodadi, when he arrived at Vil. Nambuhan Dist. Purwodadi, Reg Grobogan, the suspect visited a place where double locks were made by paying a fee of IDR 40.000,- to key expert witness R Bin S, the defendant has obtained a duplicate key from the original key of 1 (one) unit of black Honda Honda Vario motorcycle Nopol W5752AK year 2008. Then at 15.00 WIT the defendant went to the house of sister SS, a woman, the address is Ds Kuwu, Kec Kradenan, Kab Grobogan with the aim of selling or pawning the Vario Motorcycle,



when she arrived at sister's house SS the motorbike was pawned for IDR 1,500,000, - with a 5% discount so that the suspect only receives IDR 1,425,000,

That night, at around 20.00 WIB, witness M BIN H, who was a friend of witness WW Bin (late) W, came to the defendant's rented house asking the defendant the whereabouts of the motorbike belonging to witness WW and the defendant gave a key to a 2008 Honda Honda Vario motorcycle, Nopol W5752AK. witness WW black color while telling a lie to witness M BIN H by telling that the motorbike had been returned and was on the back terrace of the mess. Then the witness M BIN H turned out that 1 black Honda Vario motorcycle No. W5752AK 2008 was not found. Then the Witness WW Bin (late) W reported the actions of the defendant who had taken a black Honda Vario motorcycle Nopol W5752AK 2008 to the police.

Analysis of the application of the law to the crime of theft with violence in the decision of a criminal case Number: 155/Pid.B/2018/PN Dmk from the description above the public prosecutor based on the facts revealed in the trial, the proof of the elements of the criminal act that was charged, because the indictment arranged in a subsidiary manner, which is considered to have violated Primary Article 365 paragraph (1) of the Criminal Code, Subsidiary Article 363 paragraph (1) to 1-5 of the Criminal Code. The public prosecutor proved one by one the articles indicted with the following elements:

- 1. Whoever
- 2. Have taken something
- 3. Wholly or partly belongs to someone else
- 4. With the intent to unlawfully possess
- 5. Which is preceded, accompanied or followed by violence or threats.

Elements:

1. Whose Element

The element who points to a human being as a legal subject who has committed a criminal act. In this case, SH Bin S and at the beginning of the trial have confirmed all identities as stated in the indictment. The defendant can be held criminally responsible, because the defendant is physically and mentally healthy, and there are no obstacles justified by law to release or forgive him from all charges. This is supported in the facts of the trial.

2. Elements Have taken something item

 The definition of taking an item is to move an item from its original place to another place, in other words, the item becomes the real owner's power, in this case based on the testimony of the witness and the defendant's own confession, that the defendant has taken a black Honda Vario Nopol W5752AK 2008 motorcycle along with its STNK belonging to WW Bin (late) W by taking the initiative to make coffee drinks, while the defendant took out the DANGKE brand of insect medicine which the defendant opened the insect medicine package with scissors. Then the insect medicine was put in a jar containing sugar, and the defendant took a spoon to mix/stir the insect medicine to mix it with the sugar. Furthermore, the defendant made three (3) cups of coffee. In addition, the defendant kept the remaining insect medicine pack in the back pocket of the right pants that the defendant was wearing. The defendant went



to the back of the mess to throw away the spoon that was used to stir the coffee.

• The coffee made by the defendant was drunk by witness WW Bin (late) W and witness AL BIN K, at around 23.00 WIB witness WW Bin (late) W and witness AL BIN K felt nauseated, dizzy and became unconscious. The defendant contacted witness YZ BIN AM who lived next door to inform him that witness WW Bin (late) W and witness AL BIN K were poisoned. Using a pickup, witness YZ BIN AM and the defendant brought witness WW Bin (late) W and witness AL BIN K to the Godong Health Center. After returning from the Godong health center, witness YZ BIN A M asked to take care of all matters witness WW Bin (late) W and witness AL BIN K while being treated at the Puskesmas.

3. Elements that are wholly or partly owned by someone else

The definition of goods in general is tangible goods, but due to the development of the times, the definition of goods includes goods that are intangible, and have economic value, these goods belong to someone other than the defendant, or partly belongs to the perpetrator. In the trial, it was revealed that the witness WW Bin (late) W and the witness AL BIN K, the witness AL BIN K, the witness M BIN H and the testimony of the defendant himself. Furthermore, it produced evidence indicating that in the form of (one) unit SPM Honda Vario Nopol: W-2167-EV, Color: Black, Year: 2008, Noka: MH1JF12128K407889, Nosin: JF21E1412377, Here is 1 (one) sheet of STNK SPM Honda Vario W- 2167-EV.

4. Elements with the intent to unlawfully possess

This term is manifested in the will, desire or purpose of the perpetrator to choose an item without rights, this implies that the defendant has acted knowingly that what he took is the owner of another person, and the defendant is as if the item belongs to him. If it is related to the statements of the witnesses and the testimony of the defendant himself, that (one) unit SPM Honda Vario Pol Number: W-2167-EV, Color: Black, Year: 2008, Number: MH1JF12128K407889, Nosin: JF21E1412377, 1 (one) SPM STNK Honda Vario W-2167-EV. To then be sold/pawned IDR 1.425.000,- thus the defendant has acted as if the defendant is the owner.

5. What is preceded, accompanied or followed by violence or threats.

Based on the facts revealed in the trial from the statements of the witnesses, defendants, evidence and instructions, the following legal facts were obtained: that the defendant SUHARI Bin SISWO, had taken 1 (one) unit of SPM Honda Number: W-2167-EV. Color: Vario Pol Black. Year: 2008. Noka: MH1JF12128K407889, Nosin: JF21E1412377, 1 (one) SPM Honda Vario W-2167-EV STNK on Monday, 21 May 20218 at 20.30 WIB at Griya Permata Indah Housing, Paseban Vil. Mangunrejo District Kebonagung Demak Regency, namely by issuing the DANGKE brand of insect medicine which the defendant had previously prepared from noon before coming to visit, and the defendant opened the insect medicine package with scissors. Then the insect medicine is put in a jar filled with sugar, and the defendant took a spoon to mix/stir the insect repellent to mix it with the sugar. Furthermore, the defendant made three (3) cups of coffee. In addition, the defendant kept the remaining insect medicine pack in the back pocket of the right pants that the defendant was wearing. The



defendant went to the back of the mess to throw away the spoon that was used to stir the coffee. The defendant contacted witness YZ BIN AM who lived next door to inform him that witness WW Bin (late) W and witness AL BIN K were poisoned. Using a pickup, witness YZ BIN AM and the defendant brought witness WW Bin (late) W and witness AL BIN K to the Godong Health Center.

From the formulation of the article, we can know that the crime of theft is a formally formulated offense where what is prohibited and threatened with punishment, in this case is an act that is defined as "taking". The crime of theft as regulated in Article 365 of the Criminal Code is actually only one crime, and not two crimes consisting of the crime of theft and the crime of using violence against people.²² In accordance with Hoge Raad's opinion, the meaning of the word aggravating is because in the theft, people have used violence or threats of violence.²³ So that the theft with violence is required to go through several processes whose purpose is to strengthen the existence of ballast elements in Article 365 of the Criminal Code against the defendant, namely by looking at the types of evidence available, including: witness statements, instructions, and statements from the defendant.²⁴

The judge in giving his decision must include all the elements of evidence as stated above, namely based on articles 183 and 184 of the Criminal Procedure Code and Law no. 48 of 2009 concerning Judicial Power. For the collection of evidence, investigators who in this case have special authority and have been regulated in Law no. 2 of 2002 concerning the National Police of the Republic of Indonesia and Article 1 paragraph (1), Articles 4-6 of the Criminal Procedure Code, while the task of the prosecutor is to make indictments against the accused in accordance with the crime and the evidence obtained by investigators. Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia and Article 1 paragraphs (1) and (2), articles 13-15 of the Criminal Procedure Code to carry out prosecutions and carry out judges' decisions. As for the decision of the Demak District Court in the decision of the criminal case Number: 155/Pid.B/2018/PN Dmk the application of the law by the panel of judges in the facts of the trial in accordance with the demands of the public prosecutor violated Article 365 paragraph (1) of the Criminal Code by imposing a sentence against the defendant in the form of imprisonment for 1 (one) year and 4 (four) months. The sanctions imposed by the Panel of Judges on the defendant are too light, while in Article 365 of the Criminal Code, the defendant can be charged at least 9 (nine) years. As the explanation of theft accompanied by violence is regulated in Article 365 paragraph (1), which reads: "With a maximum prison sentence of nine years, convicted of theft which is preceded, accompanied or followed by violence or threats of violence against people.

²² PAF Lumintang, Theo Lumintang. (2009). *Delik-Delik Khusus Kejahatan Terhadap Harta Kekayaan*. Jakarta: Grafika, p.56

²³Ibid.

²⁴ Agus Widodo, Arpangi. Criminal Threats against the Abuse of Bonded Zone Facilities. *Law Development Journal Volume 2 Issue 4, December (2020)*, P.465. URLs:<u>http://jurnal.unissula.ac.id/index.php/ldj/article/view/13628/5170</u> accessed 19 March 2022.



Based on the position of the case as described above, it can be concluded that the indictment of the Public Prosecutor, the demands of the Public Prosecutor, and the considerations of the court judge in his decision have fulfilled the elements and conditions of the defendant's conviction. This is based on the examination in the trial where the evidence presented by the Public Prosecutor includes the statements of witnesses and the statements of the accused which are interconnected with one another. A statement from the defendant who honestly admits what he has done and regrets it. Therefore, The judge of the Demak District Court stated in his ruling that the defendant has been legally and convincingly proven to have committed a criminal act of theft with violence Article 365 paragraph (1) of the Criminal Code in examining criminal cases and there is formulated in the indictment of the Public Prosecutor, it is difficult for the judge to consider and make a decision. The purpose of criminal law is to fulfill a sense of justice, to educate, to improve people who commit crimes, to become people of good character so that they are beneficial to society.²⁵

4. Conclusion

Implementation of the Law of the Crime of theft with violence in the Demak District Court Decision in its decision in accordance with the indictment submitted by the public prosecutor, namely regulated in article 365 paragraph (1) of the Criminal Code concerning theft with violence. In the trial the defendant was sentenced to imprisonment for 1 (one) year and 4 (four) (months) and paid court fees in the amount of IDR 3,000 (three thousand rupiah). The sanctions imposed by the Panel of Judges on the defendant were too light, while in Article 365 of the old Criminal Code the defendant could be charged with 9 (nine) years.

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²⁵ Dwi Anas Rudiyantoro,Sri Kusriya. Mechanism for Handling of Criminal Action Prohibiting the Use of Land Without Permission. *Law Development Journal Volume 2 Issue 4, December (2020)*. Q. 519 URLs:<u>http://jurnal.unissula.ac.id/index.php/ldj/article/view/13632/5184</u> accessed 19 March 2022.

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