# REVIEW OF IMPLEMENTATION OF CRIMINAL JURIDICAL CRIME AGAINST THEFT WITH VIOLENCE

Achmad Sulchan, Afrida Adzfar TR
Faculty of Law UNISSULA
ach.sulchan@unissula.ac.id

***Abstract***

*In the implementation of law enforcement does not always correspond with what is written in the legislation. Law is created, grow and thrive in the community with the aim to regulate people's lives in order to create order, peace, tranquility and prosperity in society. This is reflected from one of the statutory functions as a tool of social control. Related criminal in the theft with violence as stipulated in Article 365 Book of the Criminal Justice Act. Application of the law against the crime of theft with violence shall comply with the applicable substantive criminal provisions and requirements can dipidananya defendant based on the facts revealed in court, there are two valid evidence, sworn testimony of witnesses who based their religion and beliefs of judges in deciding a defendant, to consider things that are burdensome and ease; To achieve the rule of law and the rule of law and justice with dignity, the judge legally consider also that the discovery of things that can release the defendant from criminal liability, either as an excuse or reason pemaaaf, the existence of a fault, is against the law and the absence of any reason as criminal eraser, so the judge can be found sane defendant considered to be able to be responsible*

***Keywords:*** *Application of Criminal; Criminal Acts of Theft; Violence.*

## A. INTRODUCTION

In order to realize the State with the aim of a just and prosperous society the problem of crime should receive serious attention from all sides. So in this case the need for cooperation between governments and the public so that the crime rate can be reduced in intensity as much as possible. The increase in the crime rate is a manifestation of behavior that does not fit the norm, or can be called as a diversion against the agreed norm in society and causing disruption of order and peace of human life. Diversion norms agreed upon by the public is an offense even crime. Crime in society is a social phenomenon that will have to be faced and a solution found by each man, society, and even the State.

The occurrence of a criminal offense there are two (2) parties involved, namely the perpetrators and the victims, so that the criminal law determines the actions which should not be done and is prohibited, with the threat or sanctions in the form of a specific criminal for anyone who violates the prohibition the. Imposition of criminal law, it is as an effort to address social problems, including in the field of law enforcement policies. Because the goal is to achieve the welfare of society in general, the law enforcement policies and even then included in social policy, that all rational efforts to achieve a dignified public welfare.

Theft crime is one crime that is often the case, the number of reports in various mass media, both the electronic and print

media. The criminal act of theft is usually motivated by state actors everyday life, such as economic conditions or income levels are relatively low so it can not meet the cost of everyday living needs and influenced by the low level of education.

Crime of theft with violence is a criminal offense that is most often the case, the number of reporting on the various print and electronic media that was terrible and should be addressed immediately. The criminal act of theft is usually motivated by state actors of daily life, the state of the economy or their income level is low so it can not meet the needs of everyday life and low education levels. In the Criminal Code Article 365 set theft with violence or weighting is an act of theft punishable by more serious than theft form anyway, because it has met its elements as follows: whoever, pick up something, in whole or in part belonged to another person, with intent to possessed unlawfully.

If you look at the legislation that is now mainly criminal law material (substantive) prevailing in our country, until today still use the Wetboek van Strafrecht (WvS) or referred to the Penal Code, which is a legacy of the government of the colonial era the Netherlands, which included family / continental legal systems (Civil Law System) and influenced by the teachings that accentuates individualism and liberalism.[1]

Issues related to the formulation of criminal elements in the Indonesian criminal law, criminal elements formulation has a very important function. When examined, the formulation of criminal elements has two (2) functions:[2]

The first (in substantive criminal law), related to the implementation of the principle of legality, the only criminal sanctions can be applied against the first act which defined as an act that can be imprisoned by the legislators ". Legislators do this through the formulation of the offense. The second one (in the criminal procedural law) "can be used as evidence the help function.

The criminal act of theft with violence or commonly known in public as a robbery. Actually the term of theft with violence and robbery in terms of editorial, the two terms are different but have the same meaning, for example, if mentioned theft with violence or threats of violence the same as robbing. Also robbing is evil, therefore, though not recognized in the Criminal Code, but its formulation as a clear criminal act has been arranged so as culpable as well as theft with violence.

Theft with violence is not a composite in the sense that the combination of the crime of theft by criminal acts of violence or threats of violence, violence in this case is a state qualified, means that violence is a condition that transforms ordinary theft qualifications be theft with violence. Thus the elements are said to be similar to Article 362 of the Criminal Code added element of violence or threat of violence.

The formulation of the crime of showing what is to be proved, so all of which are within the provisions of the offense must be proven. Thus the law enforcement officers must be meticulous in applying verbatim, because in law the wrong word will be a major impact on legal

1 Sri Endah Wahyuningsih, *Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai-Nilai Ketuhanan Yang Maha Esa*, Journal of Law Reform, Volume I 1 January-April 2014.p.18

2 D.Schaffmeister, N.Keijzer, and E.PH.Sutorius, 2007, *Hukum Pidana*, Citra Aditya, Bandung, p.24.

products to generate. Then the indictment and the charges and plea the accused / counsel in the decision making process of judges in the trial is a single entity, in which the indictment is the basis for the public prosecutor and the judge and counsel in checking accused of theft with violence, and the base is also in demand as well as plea and judges in deciding. Therefore, the terms of the warrant as well as the conditions set on the indictment.

## B. DISCUSSION

- **Application of Criminal Law Against Theft With Criminal Acts of Violence.**

  Theft with violence criminal offense under Article 365 of the Criminal Code is merely a crime and not two crimes that consisted of the crime of theft and violent crimes against people. So the crime of theft is *gequalificeerde diefstal* or a theft by classification or a theft with aggravating elements. According to the Hoge Raad arrst burdensome meaning of the word is because in the theft, people have been using violence or threats of violence. From the formulation of Article 365 of the Criminal Code to mention the elements of the crime of theft with violence of paragraphs (1) through (4). The elements of the crime of theft with violence is as follows:

  Loading elements: theft by: preceded, accompanied, followed, by violence or threat of violence against a person. Their subjective elements: prepare for or facilitate the theft, or if caught in the act provides an opportunity for self or other participants in the crime. So that essentially has the following elements:

  a. Intent to prepare theft, namely acts of violence or threats of violence that preceded the making of goods;
  b. The intention to facilitate theft, which is taking things easy with violence or threat of violence.

  That the actions of the defendant committed theft with violence can be said to have known that his actions were wrong, but still the defendant did. And the defendant wanted his actions to get something stolen easily to make ends meet. Then the elements in Article 365 of the Criminal Code have been met, and did not find things that can abolish criminal responsibility, both as a justification or an excuse, so that the defendant accountable for his actions and criminal disconnected because of guilt.

  Elements of Article 365 paragraph (1), paragraph (2) 2nd Penal Code, is as follows:

  1) Whoever.
  2) Taking goods things.
  3) Wholly or partially belongs to someone else.
  4) With the intent to unlawfully possessed.

  The formulation of criminal elements mentioned above, the formulation of the elements of the crime of writing. Means that the failure by a person to be convicted, the formulation must be proven. As in the theory of criminal law that: Terms written to may be liable to be charged and disconnected, but the general condition was not written to be convicted and the accused need not be proved, but there are exceptions if desired considered logically .

Therefore all the elements contained in the element of subjective and objective element in the passage dituntutkan public prosecutor is a unity that can not be separated and must be alleged and proved. Thus the use of criminal law as alleged and proven proved titambah the judge's conviction, the defendant must be sentenced according pidan acts committed theft with violence. Legally the crime of theft with violence in the trial process, is based on two legal evidence the judge had to prove that all the elements of the article accused the public prosecutor to the accused have been met by the defendant, causing confidence in the judge that the defendant is the person who can punished for what he did.

Non-juridical consideration by a judge based on a consideration of the facts revealed in the hearing juridical and by Act defined as things that must be included in the decision. Non-juridical considerations can be seen:[3]

a. Background Defendant,
   Understanding the background defendant is any act that causes the urge or desire hard on themselves defendants in the commission of that offense. The economic situation is an example of the most frequent background of the crime, the poverty, misery is a lack or weak economic conditions that made it difficult to make ends meet to encourage the defendant committed the offense. But not only the less fortunate who commit crimes, including the wealthy, the economic needs of the system and is currently offering luxury products that create the desire to have that is not right, then that's sometimes commit criminal acts such as corruption related to his post. Social interaction defendant,
b. As A Result of Defendant
   Criminal acts committed by the defendant certainly bring harm to the victim and the other parties, the offenses of theft with violence, in addition to the victims of material loss can also suffer injuries that can lead to death, including other crimes that may be harmful to the public at large, at least security and public tranquility is threatened.
c. Condition Yourself Defendant
   Understanding the condition of the accused in this discussion is the physical state or physical defendant before committing the crime, including the social status attached to him. The physical state meant is aging, and psychological circumstances associated with feelings, the emotional state or the accused at the time the offense was committed as anger, feelings of revenge, getting threats or pressure from others, the mind in a state of chaos or not normal. As for what is meant by social status is the predicate is inherent in each person whether he is an official, public figure or as a tramp and so on.
d. Socio-economic conditions the defendant
   In Criminal Law Book as well as in the Criminal Code itself is no one rule that ordered that the defendant's socio-economic situation should be considered in the verdict, this is different from the concept of the new Criminal Code, which contained

3 Rusli Muhammad, 2007, *Hukum Acara Pidana Kontemporer*, Aditya Bakti, Bandung, p.203

provisions on sentencing guidelines that should consider this concept.

In the draft Criminal Code, just noted that in making the decision, the judge shall consider the manufacturer, the motive and objective of a crime, how do the crime, inner attitudes makers, curriculum vitae and also socio-economic circumstances, attitudes, and actions of after committing a crime, influence against future criminal-makers and public opinion against the criminal acts committed by the defendant. Socioeconomic circumstances maker, such as income level and living expenses. The provision is not binding on the court because it is still in the concept, but even then the above can be considered judges in decisions to the extent they are facts and revealed in court.

Lilik Mulyadi further argued that the facts of the trial were presented oriented scene (*locus delicti*), time of occurrence (*tempus delicti*), and the modus operandi of how the criminal offense was committed. Furthermore it should be noted resulting directly or indirectly from the actions of the defendant, the evidence is used, and the defendant may account for his actions or not. After the facts in the trial has been disclosed, then the judge's decision to consider the elements of the offenses charged by the public prosecutor that had previously been considered the correlation between facts, offenses are charged, and the elements of guilt of the accused, after which the judges consider and examine whether the defendant has fulfilled the elements of the offenses charged and proved legally assured by law. Judicial consideration of criminal acts indicted must master the theoretical aspects, the view doctrine, jurisprudence, and the position of the cases handled, then a limited manner set stance.[4] Irsan Koesparmono[5], Argues that criminal liability exists if:

a. Objectively continuation of censure against the act which declared a criminal offense under criminal law and;
b. Subjectively to criminals who meets the requirements to be subject to criminal because of his actions.

While Moeljatno[6], Said about the criminal responsibility that:

a. There should be the ability to discriminate between good and bad repair, lawful and unlawful.
b. There should be the ability to determine the conviction of his will according to his good and bad deeds earlier.

So regarding the criminal responsibility, then there are some things you should consider judges in decisions, it is:

a. Their error.

   Whether or not a convicted seen from the error factor / can be censured. Errors in criminal law consists of two forms. However, before discussing more about the shape of the error, first author will elaborate on the meaning of intent.

   Deliberateness in the criminal law literature has two meanings, each of

4 Lilik Mulyadi, 2007, *Putusan Hakim dalam Hukum Acara Pidana : Teori, Praktek, Teknik Penyusunan dan Permasalahan*, Citra Aditya Bakti, Bandung p.194.

5 Irsan Koesparmono, *Kejahatan Korporasi dan Korupsi*, Universitas Pembangunan Nasional Veteran Jakarta Jakarta, p.270.

6 Moeljatno, 2002, *Asas-asas Hukum* Pidana Rineka Cipta, Jakarta, p.165.

a different scope of its content, namely:[7]

1) Understanding common error is used as a condition to be able to act in addition to the nature dipidanya against the law. In this case, the error is defined as the properties can be censured. Properties can be criticized in this sense is used when we talk about without sila or about the reasons for the abolition of the criminal.
2) Definition of error used also for special sections formulation of the offense, namely as a synonym of nature are not careful, for example, Article 365 of the Penal Code which states: Due to mistakes or negligence, resulting in the loss of others . Although similar, omission here is not used in the first sense. So, instead of as nature can be criticized, but rather as a less cautious nature. Typically for understanding the error in the narrower sense is used negligence. In criminal law, the error is divided into two, namely: intentional and negligence.
   a. Deliberate, is divided into three, namely:[8]
      1) As a deliberate intent (Opzet als oogmerk);
      2) Deliberate as a foregone conclusion (Opzet bijzekerheids bewuztzijn);
      3) Certainty as possibility (Opzet bij mogelijkheidsbewutzijn, of voorwaardelijk opzet, og dolus eventualis).

      To deliberate as intent, the defendant was actually willed actions and consequences. Deliberate as aware of new possibilities deemed to exist if the defendant by his actions do not aim to achieve a result which is the basis of a criminal offense, but he knew that the results will surely follow his actions. Deliberate as a possibility is a specific condition that all might happen, then it really happened.
   b. Negligence is divided into two, namely:[9]
      1) Conscious negligence, and;
      2) Omission is not realized.

      The basics that lead to criminal statutory divided into two, namely basic common criminal weighting and weighting basis of specific criminal. Basic common criminal weighting is basic weighting applicable to all kinds of crime, both offenses are set in the Criminal Code, as well as crimes regulated outside the Criminal Code. Basic weighting specific crimes are formulated and apply to the specific criminal

7 *Ibid*, p.80-81.

8 Bambang Pornomo, 1982, *Asas-asas Hukum Pidana*, Ghalilea Indonesia, Yogyakarta, p.159.

9 *Ibid*, P. 81.

level only, and does not apply to other offenses.

b. Is against the law.

Unlawful means contrary to what is stipulated in the law. Nature against the law in general is known in two forms, namely: unlawful nature of the formal and substantive legal fighting properties. Nature against formal law is: that all the written part of the formulation of the offense have been met. The nature of formal legal fight happen because, meet offense formulation of legislation. Nature against formal law is a requirement to be able to act derived from the principle of legality.[10]

While the nature of the unlawful material means, violate or endanger the legal interest protected by the legislators in the formulation of a specific offense [11], This means that the nature of the unlawful material occurs when the act has fulfilled the formulation of offense and actions perceived and considered inappropriate or reprehensible by society in the form of unwritten.

c. Absence Reason Removal of Criminal.

Reason for removal of criminal consist of excuses and justifications. Excuses addressed to the circumstances of the defendant or perpetrator, while justifying acts addressed to state actors.

a. Forgiving reasons.
   1) Able to be responsible (Article 44 of the Criminal Code). In Article 44 paragraph (1) of the Criminal Code, the legislators make special rules for manufacturers who can not account for his actions. In Article 44 paragraph (1) of the Criminal Code was formulated as follows:
   (1). Defective in its growth;
   (2). Impaired due to illness.
   2) Forced power (Article 48 of the Criminal Code).
      (1) The defense forced the transgressors (Article 49 paragraph (2) of the Criminal Code).
      (2) Unauthorized command positions (Article 51 paragraph (2) of the Criminal Code).

b. Justifiers reasons.
   1) Emergency state.
   2) The defense forced (Article 49 paragraph (1) of the Criminal Code).
   3) Carry out orders law (Article 50 of the Criminal Code).
   4) Carry out orders of office (Article 51 paragraph (1) of the Criminal Code).

In the crime of theft with violence, based on the above-mentioned legal theory can judge found the defendant sane so they are considered able to be responsible. The defendant committed the actions by the element of intent, and actions are legally and convincingly is against the law, so the judges do not see any criminal eraser, either against themselves or against the perpetrators of the act of the accused. On this basis, the judge concluded that the accused in addition to already

10 Ibid, p. 45.
11 Ibid, p. 47.

comply with Article 365 of the Criminal Code and the presence of two items of evidence and witnesses the corresponding statement, so be sure to judges juridical defendant guilty of acts against the law and should be punished.

In order to convict the accused who had committed the crime of theft with violence, it is essential first judge to consider the aggravating and ease. Furthermore, after deciding the case of the defendant and the prosecutor not to take legal actions, the verdict already have permanent legal force. For that a judge may order the prosecutor to execute on the judge's decision, in order to achieve the rule of law and legal certainty and justice with dignity.

The authority of judges enormous demands responsibility, the obligation to uphold truth and justice, for dropping the criminal decisions relating to the responsibility to the community and God Almighty. So it can be concluded that, a man who was confronted in court for allegedly committing a criminal act may be punished only if didasakan by two legal evidence and two evidence is not enough to convict someone accused, but must be coupled with the judge's conviction obtained of two items of evidence and witness testimony that the two had been in the oath according to their religion.

Under these conditions, the system of evidence in the Code of Criminal Procedure (Criminal Procedure Code), according to Lamintang and Theo Lamintan, called *negatief wettelijke stelsel* or authentication system according to the legislation that is negative .[12]

Verification system adopted by the Criminal Procedure Code in more detail described as follows:

a. *Wettelijk* Known or statutory due to the evidence, the law that determines the type and amount of evidence that should be there.
b. Called negative, because of the types and amount of evidence prescribed by law may not be able to make the judge must impose punishment for a defendant, if the types and the number of tools such evidence can not cause the judge's conviction that follow criminal it really has occurred and the defendant has been guilty of that offense.

In the trial, based on two legal evidence the judge had to prove that all the elements of chapter didakwakandan or dituntutkan public prosecutor to the accused have been met by the defendant, causing confidence in the judge that the defendant is guilty person and can be punished for what he did , Regarding criminal liability, then there are some things that should be considered by the judge in the verdict, it is: the existence of a fault, is against the law and the absence of any reason as an eraser criminal, senigga judge may argue that the defendant was sane considered able to be responsibility. Another consideration is the aspect of non-judicial and judicial aspect,

After the facts in the trial of the crime of theft with violence unfold, then the verdict mempertimbangakan elements of the offenses charged by the

12 PAF Lamintang, 2010, *Pembaharuan KUHAP, Menurut Ilmu Pengetahuan Hukum Pidana dan Yurisprudensi*, PT.Citra Aditya Bakti, Bandung, p.408-409.

public prosecutor that had previously been considered the correlation between facts, offenses are charged, and the elements of the guilt of the accused , Only later judges to consider and examine whether the defendant has fulfilled the elements of the offenses charged and proven legally and convincingly by law. Judicial consideration of criminal acts indicted must master all aspects of theoretical, doctrinal views, jurisprudence, and the case of positions revealed in the trial, and then a limited manner specified establishments judge who had previously been discussed by the members of the panel of judges.

That on the basis of the above description the judge concluded that the elements of Article indicted / dituntutkan been met and proven, so legally and convincingly elements: whoever, pick up something, in whole or in part belonged to another person, with intent to owned against the law, actually fulfilled the law. So the judge believes that the defendant legally and convincingly violating Article 365 of the Criminal Code. After doing the verdict, the judge ordered the prosecutors to implement the decision, if the accused / his legal counsel and the public prosecutor did not conduct an appeal, an appeal or other legal remedy.

## C. CONCLUSION

Application of the law against the crime of theft with violence shall be in accordance with the provisions of material criminal force and requirements can dipidananya defendant based on the facts revealed in court, there are two valid evidence, witnesses are sworn in by the religion and beliefs of judges in deciding defendant, to consider things that are burdensome and ease; To achieve the rule of law and the rule of law and justice with dignity, the judge legally consider also that the discovery of things that can release the defendant from criminal liability, either as an excuse or reason to forgive, the existence of a fault, is against the law and the absence of any reason as criminal eraser, so the judge can be found sane defendant deemed able responsible. Another consideration is the aspect of non-judicial and judicial aspect, an opinion or reason to use judges as legal considerations which form the basis of criminal matters deciding theft with violence with penalties commensurate with the actions, in order to achieve a dignified justice.

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