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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

A Legal Study of Criminal Sanctions as a Means of Achieving a Deterrent Effect for Perpetrators of the Criminal Acts of Theft with Violence Against Women

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Abstract. *Theft with violence is a serious crime, this is because the perpetrator makes threats or even attempts at physical violence to obtain the victim's property, this causes victims of the crime of theft with violence not only to experience property losses but also losses that threaten the victim's life and physical well-being, including for victims of the crime of theft with violence in Cirebon City. The type of research in this paper is sociological juridical approach with an empirical approach. Based on the research results, it is known that Current regulations regarding the crime of violent theft do not explicitly recognize violent theft, which is as dangerous as theft, as a more serious crime than non-violent theft, as violent theft can result in the loss of life and property. Therefore, the punishment imposed on the perpetrator is not commensurate with the victim's losses. The weakness of the regulations regarding the crime of theft with violence contained in Case Decision Number 40/Pid.B/2023/Pn Cbn is that the judge views that theft with violence is not a serious and dangerous crime that can result in serious injury and threaten the victim's life. The solution that can be implemented is to emphasize in the Criminal Code regulations that theft with violence is included in the category of serious crimes that can be punished with a maximum penalty of death if the perpetrator's actions result in the death of the victim. Especially for women who are vulnerable groups.*

Keywords: *Deterrent; Theft; Violence; Women.*

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1. Introduction

Low income and limited access to education ultimately lead to the breakdown of cultural order within a social ecosystem. This leads to social behavior that deviates from established legal norms. The problems of ignorance and hunger resulting from poverty have led most poor people to resort to criminal activity that deviates from established norms.¹The link between poverty in Indonesia and the increasing number of thefts in 2024 can be seen in data presented by the National Police's Criminal Investigation Agency (Pusiknas Polri). Data from the National Police Criminal Investigation Agency's (Bareskrim Polri) EMP (Education and Action Plan) shows that from the beginning of the year to June 15, 2024, police prosecuted 25,350 theft cases. On average, 4,609 theft cases occur each month across Indonesia. This data was obtained from the EMP, accessed on Monday, June 17, 2024.²This dilemma can also be seen in Cirebon, a city with a developed industrial base.³Cirebon, a developed industrial city in West Java Province, also faces challenges with high poverty rates. According to the Central Statistics Agency, the number of poor people (those with monthly per capita expenditure below the poverty line) in Cirebon Regency will reach 245,920 in 2024.⁴Meanwhile, the number of violent theft cases in Cirebon City throughout August 2024 reached three cases with four suspects.⁵Cirebon City Police Chief AKBP M. Rano Hadiyanto then said that in 2024 there were 12 cases of theft with violence handled by the Cirebon City Police.⁶In reality, theft with violence is also included as a crime of aggravated theft.

M. Sudrajat Bassar believes that aggravated theft can be considered a special kind of theft, namely, theft committed in certain ways and under certain circumstances, making it more serious and carrying a higher maximum penalty. For example, theft at night has elements that increase the crime by giving it a more intense criminal nuance. Theft by two or more people working together, where the perpetrators plan and one person enters to steal while the other stands guard outside, also falls into this category.⁷Theft with violence is regulated in Article 365 of the Criminal Code which states that:

- 1) Theft that is preceded, accompanied, or followed by violence or threats of violence against people is punishable by a maximum prison sentence of 9 years.
- 2) Theft committed with violence or the threat of violence by two or more people with aggravation is punishable by a maximum prison sentence of 12 years.

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Based on the provisions above, it is clear that the elements of the crime of theft with violence have the following elements:

1. Preceded, accompanied, or followed by violence or threats of violence
2. Intent to prepare or facilitate theft
3. If caught red-handed, it gives an opportunity for yourself or other participants in the crime

Article 365 of the Criminal Code considers that the perpetrator not only takes the victim's belongings, but also uses violence such as tying the victim's hands and taping the victim's mouth to prevent them from screaming. The purpose of violent theft is not only to seize the property, but it can also cause serious injury or even death to the victim, making it a very dangerous and worrying act for the community. Violent theft also often occurs against women. The actions of snatch thieves are one of the crimes that are a major problem for society, especially for women. This is because women are often vulnerable to being victims of snatch theft. There have been many cases of snatch theft in various regions, and the victims are indeed mostly women.

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As a crime that threatens the property rights of valuables and a person's life, the crime of theft with violence against women can be said to be a crime that also has serious consequences. The position of theft with violence against women as a crime that has serious consequences because it can take away someone's property and life, is not directly proportional to the type of punishment imposed on the perpetrator of the theft with violence, this can be seen by the severity of the criminal sanctions as regulated in Article 365 of the Criminal Code, namely 9 years imprisonment if committed by the perpetrator alone and 12 years for theft with violence committed by more than one perpetrator. This is clearly seen in Case Number 40 / Pid.B / 2023 / PN Cbn. Where in the decision it is shown that on Friday, April 16, 2021 at around 02.00 WIB the defendant together with Mr. MOH. RIZAL SAPUTRA Bin SUMARDI rode a red Honda Beat motorcycle with the defendant riding pillion towards Jalan KS Tubun Gg. Sudarma No. 182 RT 05 RW 03, Kejaksan Village, Kejaksan District, Cirebon City, then when the defendant together with Mr. MOH. RIZAL SAPUTRA Bin SUMARDI passed the road, Mr. MOH. RIZAL SAPUTRA Bin SUMARDI saw the witness's child Nabela Ramadiani, the witness's child Retno Ningsih and the witness's child Regina sitting in the hall on the side of the road while playing with their cellphones. Seeing this situation, the defendant together with Mr. MOH. RIZAL SAPUTRA Bin SUMARDI turned around the motorbike he was riding to approach the witness's child Nabela Ramadiani, the witness's child Retno Ningsih and the witness's child Regina with the intention of taking 1 (one) black Samsung J6 Plus brand mobile phone which was being held by the witness's child Nabela Ramadiani, then after arriving the defendant pretended to ask the address to the witness's child Nabela Ramadiani, the witness's child Retno Ningsih and the witness's child Regina, then when the witness's child Nabela Ramadiani was off guard, Mr. MOH. RIZAL SAPUTRA Bin SUMARDI who at that time was being ridden by the defendant immediately took 1 (one) black J6 Plus brand mobile phone which was being held by the witness's child Nabela Ramadiani, then when the mobile phone was taken by force by Mr. MOH. RIZAL SAPUTRA Bin SUMARDI, the witness's child Nabela Ramadiani spontaneously pulled the collar and the seat iron of Mr. MOH. RIZAL SAPUTRA Bin SUMARDI's motorbike so that the defendant and Mr. MOH. RIZAL SAPUTRA Bin SUMARDI fell from the motorbike he was riding, when the defendant and Mr. MOH. RIZAL SAPUTRA Bin SUMARDI fell, Mr. MOH. RIZAL SAPUTRA Bin SUMARDI had time to run away but was successfully chased and secured by the witness's son Faisal, the witness's son Regina while the defendant managed to escape and the defendant was successfully arrested by witness Rangga Putra Yondhika (a member of the Cirebon City Police Criminal Investigation Unit) on January 17, 2023 at around 13.00.30 WIB in front of the Cirebon City Police Office. For the actions of the defendant and his co-perpetrators, they were subject to criminal penalties as stipulated in Article 365 paragraph (2) of the Criminal Code. When compared to

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the victim's losses, they reached Rp. 2,800,000 (two million eight hundred thousand rupiah) and suffered psychological injuries and trauma. Even though the defendant has been tried and found guilty and has served his sentence, the material and non-material losses of the victim cannot be recovered.⁸

This situation clearly contradicts the objectives of criminal law. In the new Criminal Code, the objectives of punishment are stated in Chapter III, Article 51, namely:

- 1) prevent criminal acts by enforcing legal norms for the protection and care of society;
- 2) socialize convicts by providing guidance and mentoring so that they become good and useful people;
- 3) resolving conflicts arising from criminal acts, restoring balance, and bringing a sense of security and peace to society; and
- 4) foster a sense of regret and free the convict from guilt.

Based on the formulation of the objectives of criminal punishment stated clearly in this article, it is clear that the punishment imposed on perpetrators of theft with violence has not been able to realize the resolution of the conflict caused by the crime, and restore balance, as well as bring a sense of security and peace in society, including for women.

2. Research Methods

In accordance with the title and problems that will be discussed in this research and in order to provide useful results, this research was conducted using sociological juridical research, namely a type of research that studies the influence of society on law, the extent to which the symptoms that exist in society can influence law and vice versa and is based on the paradigm of empirical science.⁹

⁸Cirebon District Court, Case Number 40/Pid.B/2023/PN Cbn, https://jdih.mahkamahagung.go.id/storage/uploads/produk_hukum/Putusan%20Pengadilan%20Negeri%20Cirebon%20Nomor%2040/Pid.B/2023/PN%20Cbn/1689061296_PN_Cbn_2023_Pid.B_40_putusan_akhir.pdf, January 3, 2025, 14.00 WIB.

⁹Johnny Ibrahim, *Normative Legal Research Theory & Methodology*, Bayumedia Publishing, Malang, 2013, p. 40.

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3. Results and Discussion

3.1. Current Regulations on the Crime of Theft with Violence Against Women

The definition of the crime of theft with violence or aggravated (gequalificeerde diefstal) is regulated in Articles 363 and 365 of the Criminal Code. According to PAF Lamintan and Jisman Samosir, what is meant by theft with violence or aggravated is the act of theft that has elements of the act of theft in its basic form, and because it is added with other elements, so that the threat of punishment becomes heavier.¹⁰

According to Adami Chazawi, aggravated theft is a form of theft as formulated in Article 362 of the Criminal Code (its basic form) plus other elements, both objective and subjective, which are aggravating to the theft, and therefore is subject to a heavier penalty than theft in its basic form.¹¹

After understanding the definition of the crime of theft with violence as stated above, the word "criminal act" itself is a translation of the Dutch term "straafbaarfeit", but the law makers in Indonesia do not explain in detail about "straafbaarfeit". The word "feit" itself in Dutch means "part of a reality" or "een gedeelte van de werkelijkheid", while "strafbaar" means "punishable", so that literally the word "strafbaar feit" can be translated as "part of a reality that can be punished", which is certainly not appropriate, because later it will be known that what can be punished is actually a human being as a person and not a reality, act or action.¹²

As stated above, the legislators did not provide any explanation regarding what they actually meant by the term "strafbaar feit", so various opinions arose in the doctrine regarding what exactly is meant by "strafbaar feit", for example criminal acts, criminal events, punishable acts, things that are threatened by law and acts that can be punished as well as criminal acts. In this connection, Satochid Kartanegara tends to use the term "delict" which is commonly used. R. Tresna uses the term "criminal event". Sudarto uses the term "criminal act",⁸ likewise Wirjono Projodikoro uses the term "criminal act" which is an act whose perpetrator can be subject to criminal punishment. However, Moeljatno uses the term "criminal act" which is an act prohibited by a legal rule, the prohibition of which is accompanied

¹⁰Evi Hartanti, *Criminal Acts of Corruption*, Jakarta: Sinar Grafika, 2006, p. 5.

¹¹K. Wancik Saleh, *Criminal Acts of Corruption and Bribery*, Jakarta: Ghalia Indonesia, 2007, p. 15

¹²Satochid Kartanegara, *tth*, *Criminal Law Lecture Collection Part I*, tk, Student Lecture Hall, p. 74.

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by a threat (sanction) in the form of a certain penalty, for anyone who violates the prohibition.¹³

Some of the definitions above, although worded differently, have the same substance. Article 365 paragraph 4 of the Criminal Code threatens with severe punishment, if the theft with violence results in the death of a person, namely if the theft is committed by two or more people together accompanied by the circumstances as regulated in paragraphs 1 and 2 of the same article, with the death penalty, life imprisonment or temporary imprisonment for a maximum of twenty years. It should be noted, that where it is determined that there is a possibility of someone being seriously injured or dying, it does not matter who is seriously injured or dead, as long as the occurrence of the serious injury or death is a direct result of the crime of theft with violence in question. So the person who is seriously injured or dies does not need to be the person who was the victim of the theft, but it can also be a family member, a warehouse guard, a guest who happens to meet at that place, a person who catches the thieves or people who chase the thieves when they escape from arrest. Several *Arrest Hoge Raad* (Supreme Court decisions) regarding the crime of "theft with violence" are as follows:¹⁴

1. *Arrest Hoge Raad* dated June 27, 1932 (NJ 1932 page 1407, W 12520) which states that: "If more than one person is involved in the crime, then each person is responsible for the crime as a whole, including for acts which he did not commit alone, but which were committed by other participants. This provision also applies to attempted theft with violence";
2. *Arrest Hoge Raad* dated August 27, 1937 (NJ. 1938 No. 29), which stated that: "By tying up a person, there is a restriction of movement against his rights. This act is included in the definition of violence in Article 365 of the Criminal Code";
3. *Arrest Hoge Raad* dated August 25, 1931 (NJ. 1932 page 1255, W. 12358) which stated that: "The fact that there was no money in the sales counter drawer, did not prevent an attempt to commit theft by force";
4. *Arrest Hoge Raad* dated 22 October 1923 (NJ. 1923 page 1368, W. 11122) which states: "Article 90 of the Criminal Code does not explain what is meant by "zwaar lichamelijk letsel" or "serious injury". This article only mentions incidents, which the Judge must consider as such regardless of what term is

¹³R. Tresna, *Principles of Criminal Law*, Jakarta: PT Tiara Limit, n.d., p. 27.

¹⁴PAF Lamintan and Jisman Samosir, *Special Offenses Criminal Acts Directed against Property Rights and Other Rights Arising from Property Rights*, Bandung: Nuansa Aulia, 2010, pp. 95-98

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used in everyday speech. The Judge has the freedom to consider every wound on the body or lichamelijk letsel as a serious injury or "zwaar lichamelijk letsel", outside the above incidents, which according to everyday speech indicate such a thing";

5. *Arrest Hoge Raad* dated 22 October 1902 (W. 7505) which states that: "Article 90 of the Criminal Code only mentions several incidents which are considered as "zwaar lichamelijk letsel". This definition is not limited to these incidents only. What is important is that the injury must be so serious and not an injury which causes continuing harm to the injured person";
6. *Arrest Hoge Raad* dated 31 October 1904 (W. 8136) which said: "It is an injury with serious permanent consequences, the loss of most of the earlobe is a "zwaar lichamelijk letsel" or serious injury";
7. *Arrest Hoge Raad* dated January 18, 1949 No. 423, which said: "In the letter of accusation it can be stated that the person who was shot has received "zwaar lichamelijk letsel" or serious injuries. This statement is not only a qualification, but also a true meaning or a "feitelijk begrip".

Article 365 Paragraph (4) of the Criminal Code is the fourth form of theft with violence. This form of theft is the most serious form of theft, because it is threatened with the death penalty, or life imprisonment or temporary imprisonment of up to 20 years. This penalty is imposed if the following elements are combined:¹⁵

1. All elements of theft in basic form (Article 362);
2. All elements of theft with violence (Article 365 paragraph 1);
3. Elements of consequences: serious injury or death of a person;
4. Performed by two people in alliance;
5. Plus one of:
 - a. The time of the theft was at night, plus the element of place was in a residence or enclosed yard where the residence is located, or

¹⁵*Loc, cit.*

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- b. The elements of the methods to enter or reach the place of committing the crime by means of damaging, climbing, using fake keys, using fake orders, and wearing fake official clothing. The location of the aggravation of the crime in this last form of theft with violence, from a maximum criminal threat of 12 years in prison (365 paragraph 2) to the death penalty or life imprisonment or for a certain period of time of no more than twenty 20 years, is from the combination of the elements mentioned in points 3, 4, and 5 above.

Theft with violence, as described above, has similarities and differences with the crime defined in Article 339 of the Criminal Code, which is known as murder preceded or accompanied by another crime. The differences are:¹⁶

1. Theft with violence (Article 365), the main crime is theft, while the main crime in Article 339 is murder.
2. According to Article 365, the death of another person is not intended; the perpetrator's intention is to possess an object. Meanwhile, according to Article 339, death is intended or desired.
3. The efforts used in committing the main crime, in Article 365, are in the form of violence or threats of violence, whereas in Article 339 murder can be considered an attempt to commit another crime.
4. While theft with violence carries the death penalty, murder under Article 339 does not. The similarities are:
 - a. The same subjective element is that the use of efforts in each of these criminal acts is aimed at the same intention:
 - 1) prepare and or
 - 2) facilitate the implementation of the crime.
 - 3) if caught red-handed, then:
 - a) allows for escape (365), or release from punishment (339).
 - b) can retain the objects obtained from the crime.

¹⁶*Loc, cit.*

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- b. The time of use of these efforts is before, during and after the main crime takes place.

Theft with violence is also regulated in Law Number 1 of 2023 concerning the New Criminal Code. This is evident in Article 479, which states that "Any person who commits theft preceded, accompanied, or followed by violence or the threat of violence against another person shall be punished by a maximum of nine years' imprisonment."

The elements in Article 479 of Law Number 1 of 2023 concerning the New Criminal Code consist of:

- a. Violence or threats of violence may be committed before, during, or after the theft is committed.
- b. The goal is to prepare or facilitate theft.
- c. In case of being caught red-handed, to allow escape by yourself or other participants.
- d. To keep control of the stolen goods.

Based on the provisions of Article 479 of Law Number 1 of 2023 concerning the New Criminal Code, theft with violence is also a serious crime in Indonesia under the new Criminal Code. This act includes the use of violence or the threat of violence to steal another person's property.

3.2. Weaknesses in the Regulations Concerning the Crime of Theft with Violence Against Women Contained in Case Decision Number 40/Pid.B/2023/Pn Cbn

The basic form of the crime of theft is regulated in Article 362 of the Criminal Code (KUHP) with its elements: taking, something, wholly or partially belonging to another person, with the intent to own and against the law. While the crime of theft with violence is regulated in Article 365 of the Criminal Code. Often read in the newspaper, hear on the radio and watch on television broadcasts the rise of the crime of theft with violence carried out by a group of robbers. For example, at the end of August 2010, precisely on August 20, 2010, we witnessed the robbery of CIMB Niaga Bank in Medan, North Sumatra, carried out by a group of robbers who used masks and firearms, both short and long barrels, known as assault weapons, AK 47 made in Russia and M 16 made in the United States, where one police officer died due to violence and all bank employees were held captive in a

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place. The incident was recorded on CCTV. The robbers managed to get away with around one and a half billion in cash.

Almost simultaneously, a group of men robbed a gold shop in Bandung, killing three people—the owner's husband, wife, and child. One of the perpetrators was caught with the help of the public. Furthermore, thefts committed by hypnotizing victims have occurred in several supermarkets. These robbers, or perpetrators of violent theft, appear to be willing to abuse and even kill their victims to achieve their goals, whether to prepare for or facilitate the theft, to escape, or to retain possession of the stolen goods. They appear indifferent to the criminal penalties imposed for violent theft, which are the death penalty, life imprisonment, or a fixed term of imprisonment of up to twenty years. Meanwhile, the death penalty, as the most severe form of punishment in the Indonesian criminal system, is still used, according to Article 10 of the Indonesian Criminal Code. Yet, we know that throughout history, the death penalty has been a long-running polemic, sparking pros and cons among academics, practitioners, and politicians. Some accept it, some reject it, and still others remain neutral. Article 365 of the Criminal Code still threatens the crime of theft and violence with the death penalty.

This is understandable, because as is known, the Criminal Code currently in force in Indonesia is a legacy of the Dutch colonial government which is still in force today based on the provisions of Article II of the Transitional Provisions of the 1945 Constitution. In fact, in the Netherlands itself, where the Indonesian Criminal Code (*Wetboek van Strafrecht voor Indonesie 1918*) originated, the death penalty has been abolished. Also in many countries the death penalty is no longer applied for humanitarian reasons. The existence of the death penalty as a maximum penalty with aggravation is a punishment intended to prevent damage due to criminal acts that are even greater and can threaten the stability of the state. Theft with violence that can potentially result in the loss of property and life is a serious crime against humanity.

The crime of theft with violence is punishable by death, or life imprisonment or a certain period of up to twenty years, in the following cases:

1. If the act results in serious injury or death and is committed by two or more people in association,
2. One of the reasons explained in Article 365 paragraph (2) number 1.

From the description of the main forms of theft in Article 362 of the Criminal Code and theft with violence in Article 365 of the Criminal Code, the most severe

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punishment that is threatened and can be imposed is the death penalty (Article 365 paragraph (4) of the Criminal Code). It turns out that our Criminal Code still threatens the death penalty for several types of crimes, for example treason (Article 104 of the Criminal Code), premeditated murder (Article 340 of the Criminal Code), theft with violence (Article 365 of the Criminal Code and so on. Likewise, in criminal provisions outside the Criminal Code, the death penalty is still threatened, for example in the crime of corruption. It must be admitted that the death penalty is still recognized in the criminal system in Indonesia as regulated in Article 10 of the Criminal Code as the most severe crime. On the other hand, those who agree with the death penalty reject the arguments put forward by those who reject the death penalty. According to the utilitarian view, the view that wants the abolition of the death penalty based on the reason that the criminal justice system is imperfect so that it allows for errors, namely the imposition of the death penalty on innocent people, cannot be fully accepted for two reasons: First, by still recognizing the imperfection of the criminal justice system, abolishing the death penalty on the one hand does not necessarily make the criminal justice system perfect, on the other hand the abolition of the death penalty is certain harming the sense of justice in society because of the failure to restore social harmony caused by the occurrence of criminal acts that are threatened with the death penalty. Second, the occurrence of errors in the imposition of the death penalty on innocent people, or errors that have occurred in several cases without showing the percentage of errors that occurred, will give rise to suspicions of deliberate attempts to create overly utopian realities, so that people will be fixated on these errors and forget the real substance of the debate.

The debate over the death penalty is also related to the right to life, which in international law and the 1945 Constitution of the Republic of Indonesia is categorized as a right that cannot be reduced under any circumstances (non-derogable rights). However, international legal instruments do not prohibit the death penalty at all, but rather limit its application. The Constitutional Court has submitted a judicial review of the death penalty and concluded that the death penalty does not conflict with the provisions of the 1945 Constitution. In Constitutional Court Decision No. 2-3 / PUU-V / 2007, it was stated that in the future, the formulation, application, and implementation of the death penalty should pay attention to four important things, namely: First, the death penalty is no longer a principal punishment, but rather a special and alternative punishment. Second, the death penalty can be imposed with a probationary period of ten years which, if the convict behaves well, can be commuted to life imprisonment or 20 years. Third, the death penalty cannot be imposed on minors. Fourth, the execution of the death penalty against pregnant women and someone with mental illness is postponed until the pregnant woman gives birth and the convict

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with mental illness recovers. In addition to the two groups that accept and reject the death penalty, there is also a group that stands in the middle. Neither accepts nor rejects it. Or, those who reject the death penalty with exceptions, or those who accept the death penalty with exceptions.

4. Conclusion

Current regulations regarding the crime of theft with violence against women do not explicitly recognize theft with violence, which poses the same danger as violence that threatens life and property, as a more serious crime than non-violent theft, as violent theft can result in the loss of life and property. Consequently, the punishment imposed on perpetrators does not commensurate with the losses suffered by victims, especially women, who are a vulnerable group.

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