

The Inaccuracy of the Public Prosecutor in Applying the Article of the Charge as the Basis for the Judge to Decide Acquit

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Abstract: This study aims to determine and analyze the inaccuracy of the Public Prosecutor (JPU) in applying the indictment article as the basis for the judge to acquit in Decision Number 195/Pid.B/2017/PN.Skg and the correct application of the indictment article as the basis for the judge's decision in Decision Number 195/Pid.B/2017/PN.Skg. This study uses a normative legal approach method, analytical descriptive research specifications. The data used are secondary data with data collection methods including literature studies and documentary studies, while the data analysis method is qualitative. The theory used is the theory of legal certainty and the theory of evidence. Based on the results of the study, it can be concluded that the inaccuracy of the Public Prosecutor in applying the indictment article in Decision Number 195/Pid.B/2017/PN.Skg can be seen in the formulation of the indictment of Article 363 Paragraph (1) Jo Article 56 Paragraph (1) of the Criminal Code, namely the crime of livestock theft, intentionally providing assistance at the time the crime was committed. However, based on the legal facts at trial, there is one element that is not fulfilled. The legal consequence of the prosecutor's carelessness in applying the indictment article is that the judge acquitted the defendant according to Article 182 Paragraph (4) of the Criminal Procedure Code. The correct application of the indictment article as the basis for the judge's decision in Decision Number 195/Pid.B/2017/PN.Skg is the crime of receiving stolen cattle as regulated in Article 480 point 1 of the Criminal Code. This is because based on the legal facts, the defendant only helped sell the stolen cattle and was not directly involved in the theft process, so the defendant's role is more appropriately categorized as a receiver.

Keywords: *Acquittal; Indictment; Negligence; Prosecutor's.*

1. Introduction

According to Article 1 Paragraph (3) of the Constitution of the Republic of Indonesia (UUD 1945), the Republic of Indonesia is a country based on law. Law is a collection of regulations that are mandatory in nature, which determine human behavior in the community, which are made by official state bodies and contain strict sanctions for these regulations.¹Law has a

¹Ishaq, 2012, Basics of Legal Science, Sinar Grafika, Jakarta, p. 3.

strategic and dominant position in social, national and state life.²The law serves as a guideline for everyone in behaving regarding what can be expected from every action taken by each person.³

One of the legal problems in society is criminal acts, which are resolved through the criminal justice system. The Criminal Justice System consists of supporting subsystems, namely the Police, Prosecutors, Courts, and Correctional Institutions. This system is based on the principle of functional differentiation among law enforcement officers in accordance with the authority process granted by law.⁴

Law enforcement agencies that are given the authority the authority to carry out prosecution lies with the prosecutor's office,⁵where according to Article 14 letter d of the Criminal Procedure Code (KUHAP), one of the authorities is to prepare the indictment.⁶The indictment has a very important role, because the indictment is the basis for compiling the judge's decision (Panel of Judges). The final deliberation to make a decision by the Panel of Judges must base it on the contents of the indictment (Article 182 paragraph 4 of the Criminal Procedure Code).⁷

The prosecutor's carelessness in applying the articles of the indictment can result in an acquittal for the defendant, even though the defendant has basically committed a crime.⁸If the Public Prosecutor is not careful or misapplies the article in making the indictment, then the result is that the defendant must be acquitted. This is as happened in decision Number 195/Pid.B/2017/PN.Skg, namely the defendant was charged with a single charge, namely "having committed livestock theft, those who intentionally provided assistance at the time the crime was committed" as regulated in Article 363 paragraph (1) 1 Jo. Article 56 paragraph (1) of the Criminal Code. In the evidence at the trial, the defendant was not proven to have committed a crime as charged by the Public Prosecutor, but the defendant's actions can be categorized as an act of assistance after the theft crime was completed. However, the Public Prosecutor did not include the article as an indictment in his indictment, so the judge acquitted the defendant. This is because Article 183 of the Criminal Procedure Code states that "a judge may not impose a sentence on a person unless with at least two valid pieces of evidence, he obtains the conviction that the crime actually occurred and the defendant is

²Marwan Effendy, 2010, *Eradication of Corruption and Good Governance*, First Printing, Timpani Publishing, Jakarta, p. 1

³Alfi Nur Fata and Umar Ma'ruf, *The Prosecutor's Authority In Criminal Law Enforcement With Restorative Justice Approach*, Jurnal Khaira Umma, Vol. 16 No.3, 2021, p.1

⁴Mohd. Yusuf et all, *Law Enforcement in the Criminal Justice System in Indonesia (A Study of Advocates, Police, Prosecutors and Judges)*, Journal of Education and Counseling, Volume 5 Number 2 of 2023, p. 2912

⁵Ngakan Nyoman Agung Aswatama and I Dewa Gede Dana Sugama, *Benchmarks for Determining the Limits of Indictments That Are Not Accurate, Clear, and Complete Reviewed in the Criminal Procedure Code*, Kertha Desa Journal, Vol. 11 No. 1, p. 1504.

⁶Melati Theresia Terok, Vonny A. Wongkar and Herlyanty Y. A Bawole, *Material Requirements for an Indictment According to Doctrinal Views and Criminal Justice Practices*, Lex Crimen Vol. X/No. 2/Mar/EK/2021, p. 140

⁷Muhammad Rizky Fauzi, Gianyta Aprilia, Edy Witoko, *Public Prosecutor's Carelessness in Drafting the Form of the Indictment as the Defendant's Legal Basis in Submitting a Cassation Appeal Against the Corruption Court's Decision*, Verstek Journal, Vol. 2 No. 1, 2014, p. 147

⁸Boyman Berkhat Humendru, Devi Anggara Br Ginting & Riko Natanael Sitorus, *Legal Analysis of Determining the Type of Charges Charged to the Defendant in a Narcotics Crime Case*, Journal of Education, Humanities and Social Sciences (JEHSS), Vol. 1 No. 1, August 2020, p. 224.

guilty of committing it". The valid evidence is regulated in Article 184 of the Criminal Procedure Code, namely witness statements; expert statements; letters; instructions; and statements of the accused.⁹

The principle of proof in positive law is the same as proof in Islamic law (al-bayyinah), namely it must be able to prove what actually happened and can convince a judge. This is reflected in the word of Allah in Surah Al Hujurat verse 6 which means, "O you who believe, if a wicked person comes to you with important news, then examine its truth so that you do not harm a people because of your ignorance, which will result in you regretting your actions."¹⁰

This study aims to determine and analyzing the inaccuracy of the Public Prosecutor (JPU) in applying the indictment article as the basis for the judge to acquit in Decision Number 195/Pid.B/2017/PN.Skg, as well as the correct application of the indictment article as the basis for the judge's decision in Decision Number 195/Pid.B/2017/PN.Skg.

2. Research methods

This research uses a normative legal approach method that places law as a building block of normative systems.¹¹ The research specification is descriptive analytical. The type of data uses secondary data. The research method uses field studies and literature studies. The data analysis method uses qualitative analysis.

3. Results and Discussion

3.1. The Public Prosecutor's (JPU) Carelessness in Applying the Articles of the Indictment as the Basis for the Judge to Decide Acquittal in Decision Number 195/Pid.B/2017/PN.Skg

The indictment has a very important role, because the indictment is made by the prosecutor in his position as public prosecutor, which becomes the basis for examination in court.¹² The formulation of the indictment must be in line with the investigative examination. The formulation of the indictment that deviates from the results of the investigative examination is a false and incorrect indictment.¹³

The prosecutor in formulating the indictment article must be in line with the results of the investigation examination, so that the prosecutor may not deviate from the results of the investigation examination. Therefore, the prosecutor must be careful and precise in examining the investigation case files including in the formulation of the alleged articles from the investigator. In decision Number 195 / Pid.B / 2017 / PN.Skg, it appears that the prosecutor was not careful and precise in conducting research on the investigation case files, so that in applying the indictment article it was also inappropriate.

⁹Mulyadi, The Legal Position of Fingerprints in Revealing Criminal Acts of Murder, Ratio Legis Journal (RLJ), Volume 2 No 1, March 2023, p.252

¹⁰ Nur Ahmad U and Kasjim Salenda, The Role of Visum Et Repertum in Revealing the Criminal Act of Murder from an Islamic Law Perspective at the District Court of Sangatta' *Shautuna Journal*, Vol.2 No. 3, 2021, p.630.

¹¹Mukti Fajar ND and Yulianto Achmad, 2013, Dualism of Normative and Empirical Legal Research, Pustaka Pelajara, Yogyakarta, p. 34.

¹²Muhammad Rizky Fauzi, Gianyta Aprilia, Edy Witoko, Op.Cit., p. 167.

¹³M.Yahya Harahap, 2009, Discussion of Problems and Application of Criminal Procedure Code, Investigation and Prosecution, Sinar Grafika, Jakarta, p.. 387.

The inaccuracy of the prosecutor in applying the indictment article in decision Number 195/Pid.B/2017/PN.Skg can be described by the author as follows:

1. Inconsistency of the elements of the article with the defendant's actions

The prosecutor's carelessness in formulating the indictment articles occurs if there are elements of the articles that are not fulfilled or do not correspond to the facts resulting from the examination at trial.

2. Lack of analysis of facts and evidence

Based on the legal facts obtained from the statements of the witnesses, it can be seen that the one who committed the cattle theft was the witness SY himself, and at the time of the cattle theft, there was no fact that the defendant provided assistance when SY took the victim's cow from SN's cage and brought it to the defendant's garden house. cattle theft. The assistance provided by the defendant was to find a buyer, where the crime of theft had occurred and was completed previously. The defendant's actions were categorized as an act of assistance after the completion of the theft crime, not when the crime was committed. Thus, it can be said that the prosecutor was not careful in analyzing the existing facts.

3. Improper application of the article

In accordance with the facts that occurred, the statements of several witnesses and the clues and statements from the defendant, it can be seen that the one who took without permission the cattle with the characteristics of the female cow belonging to the victim witness OD was Witness SY. The role of the defendant is known to only find a buyer and then sell the cow to RS and the defendant RS also enjoyed the money from the sale of the cow.

The above facts were not observed by the Public Prosecutor in formulating the indictment article, where there was no description that explained carefully, clearly and completely regarding the defendant having provided assistance when witness SY committed the crime of theft. In fact, when the crime was committed, the defendant RS had returned home with his wife in Padaelo, Lampulung Village, Pammana District, Wajo Regency. Thus, the element of intentionally providing assistance when the crime was committed was not fulfilled.

The prosecutor's carelessness in applying the articles of the indictment resulted in the defendant being acquitted of the public prosecutor's charges because it was not legally and convincingly proven that he had committed a crime as charged in the public prosecutor's single indictment.

3.2. Correct Implementation of the Article of the Indictment as the Basis for the Judge's Decision in Decision Number 195/Pid.B/2017/PN.Skg

In decision Number 195/Pid.B/2017/PN.Skg, the judge opined that the defendant's actions as a legal fact were, the defendant who already knew or at least should have suspected that the cow was the result of a crime (theft) committed by witness SY, but the defendant instead helped sell the cow by finding a buyer and the defendant also enjoyed the proceeds of the sale of the cow. Thus, the defendant's actions are categorized as an act of assistance after the completion of the theft crime, which is a stand-alone crime, which was not charged by the Public Prosecutor.

The act committed by the defendant was to find a buyer and then sell cattle that were suspected or known to have come from the theft committed by SY, and the defendant had

enjoyed the proceeds of the sale of the cattle. The defendant RS's actions should be charged with Article 480 point 1 of the Criminal Code, namely anyone who buys, offers, exchanges, accepts a pawn, receives a gift, or to make a profit, sells, rents, exchanges, pawns, transports, stores or hides something that is known or must be suspected, that it was obtained from a crime. The elements of Article 480 number 1 of the Criminal Code are related to the facts of the trial, including the following:

1. Whoever

That basically what is meant by this element is to show who can be held responsible for the actions taken. In this case, the defendant RS has admitted the truth of his identity.

2. Buying, offering, exchanging, accepting as a pledge, receiving as a gift, or for the purpose of making a profit, selling, exchanging, pawning, carrying, storing or hiding, renting out an object.

That this element is alternative in nature so that not all elements of the act must be proven, linked to the main case, the defendant has committed an act "because he wanted to make a profit, selling" according to the statement of witness SY and the statement of the defendant himself who explained that the defendant helped find a buyer for the cow to RS for Rp. Rp. 6,500,000, - (six million five hundred thousand rupiah) and the money from the sale of the cow was used by the defendant for daily needs and witness SY for shopping and paying debts.

3. Which is known or should be suspected to be obtained from a crime

That regarding this element according to the statement of witness Sy and the statement of defendant RS who explained that initially on Thursday, June 29, 2017 at around 17.30 WITA, the witness came to the defendant at the defendant's garden house and said that there was a cow that the witness would take and would be sold, so the witness asked the defendant to help find a buyer, then the defendant agreed and told his wife named to contact his friend, RS, via cellphone and then the defendant RS told his friend that there was a cow of his that would be sold and told him to come and pick up the cow at the defendant's garden house at around 20.30 WITA. The defendant already knew that the cow that the witness told the defendant to find a buyer for was a cow from a crime/stolen because the defendant knew that witness SY did not have any cows at all.

The application of the article on receiving goods when compared to Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code), the defendant's actions have fulfilled the elements of Article 591 letter a, namely buying, offering, renting, exchanging, accepting guarantees or pawns, accepting gifts or to make a profit, selling, renting, exchanging, pawning, transporting, storing or hiding an object that is known or reasonably suspected to have been obtained from a criminal act.

The application of Article 480 point 1 of the Criminal Code in the formulation of the indictment according to the author is more appropriate, considering that the defendant only helped sell the stolen cattle so that the defendant's role does not include the perpetrator of theft as regulated in Article 363 Paragraph (1) of the Criminal Code. The act of assistance carried out by the defendant was also not carried out at the time the crime was committed as regulated in Article 57 Paragraph (1) of the Criminal Code, but the defendant's actions in helping sell the stolen cattle were carried out after the crime of theft by witness SY. On the other hand, the act of helping sell the stolen cattle fulfills the element of receiving.

4. Conclusion

The inaccuracy of the Public Prosecutor (JPU) in applying the indictment article in Decision Number 195/Pid.B/2017/PN.Skg can be seen in the formulation of the indictment where based on the legal facts in the trial there is one element that is not fulfilled so that it is more appropriate to be charged with the crime of receiving money as regulated in Article 480 point 1 of the Criminal Code. Therefore, the public prosecutor should apply the principle of caution and not force the application of the indictment article to the perpetrator that is not in accordance with the legal facts.

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