

Legal Analysis of the Responsibility of Perpetrators of The Criminal Act of Theft with Violence Resulting in Death in a Dualistic Perspective

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Abstract. *Indonesia is a country of law, so all aspects of state administration and management are regulated by a system of laws and regulations. Criminal acts and crimes in human life are social phenomena faced by every person and even every country at all times. Theft is one of the crimes that often occur in society. This thesis aims to analyze the construction of the crime of theft with aggravating violence resulting in death and the implementation of criminal responsibility for perpetrators of the crime of theft with violence resulting in death in the perspective of the dualistic conception. The approach method used in this study is a normative legal approach. The research specifications used are descriptive analysis, primary and secondary data sources and this study will be processed using qualitative analysis. The problem is analyzed using the theory of Legal Certainty, criminal liability, and Piana's Accountability theory. Based on the research results, the construction of the crime of theft with violence resulting in death in the concept of legal certainty is regulated in Article 365 paragraph 4 of the Criminal Code. A trial process ends with the passing of a final decision (verdict) in which there is still a criminal sentence (punishment) against the guilty defendant and in that decision. Criminal liability for the perpetrators involved in the crime of fraud in Decision Number 8 / Pid.B / 2024 / PN Mgg has fulfilled the value of criminal liability in accordance with the provisions of the actus because the defendants have committed prohibited acts in accordance with those contained in Article 365 paragraph 4 of the Criminal Code. Then in accordance with the provisions of mens rea which is due to the existence of evil intentions that can be seen or have been proven by the Panel of Judges in the trial. So these two elements have been fulfilled, then criminal liability arises so that based on these provisions the defendant must be responsible for his actions by undergoing a sentence or criminal sanction.*

Keywords: *Accountability; Criminal; Liability.*

1. Introduction

Crime or criminal behavior is a form of behavior deviations that always exist and are inherent in all forms of society. Criminal acts and crimes in human life are phenomena. social issues faced by every person and even every country at all times. This is a

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phenomenon that often occurs in society because of space and time cannot be separated. Whoever commits a crime will held criminally responsible for committing a mistake.¹Country Indonesia is a country of law, so all aspects of state administration and its management is regulated by a system of laws and regulations.

Theft is one of the crimes that often occurs in society. Theft is a crime that targets property or someone's assets. Theft accompanied by violence is one of the crimes serious crimes that often occur in society. These crimes are not only causes material losses for the victims, but also causes deep psychological trauma and, in the most extreme cases, loss of life. In Indonesian law, this crime is clearly regulated in Criminal Code (KUHP).

Reported from the national crime information center, there were 434,768 cases throughout 2023. From the same report, there were three cases of crime highest, Aggravated Theft (Curat) cases as many as 63,355 cases, Abuse as many as 51,312 cases, and Fraud/Deceitful Acts as many as 49,007. The national crime rate is still quite high every month. However Entering 2024, the national crime rate appears to be slowly decreasing. According to the same report, from January-April 2024, there were 138,880 cases crime. in April 2024 there were 25,113 cases with the most types of crimes There were 3,371 cases of aggravated theft (Curat).

One example of a case in this writing is a criminal case. aggravated theft resulting in the death of a person tried by the Magelang District Court in the case study decision Number: 8/PID.B/2021/PN MGG. That it started from the Defendant IYI bin BS and the Defendant R Bin ST stole the cellphone belonging to the victim AGV which resulted in the victim passed away.

Based on Article 365 paragraph 4 of the Criminal Code (KUHP) regulates theft with violence resulting in death.

This article explains that if the act is punishable by death or life imprisonment or a certain period of time of no more than two years

twenty years, if the act results in serious injury or death and committed by two or more people. This article shows that theft which is carried out with violence and results in death has severe criminal consequences.

Based on the description above, there is a phenomenon regarding Criminal Acts The theft became a special attraction for the author to study this matter. in more depth by conducting research, for writing a thesis that entitled "Legal Analysis of the Responsibility of Perpetrators of the Crime of Theft" With Violence Resulting in Death in a Dualistic Perspective (Decision Study Number: 8/PID.B/2021PN MGG)."

2. Research Methods

The approach method used by the author in compiling the journal using normative legal methods. The research specifications used in this study is a descriptive analysis type. In this study, the author focuses on library research and materials

primary material in the form of applicable laws and secondary material in the form of expert opinions, law books, journals and magazines.

The data collection technique used in this study was literature study, by collecting data

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from the results of a review of library materials and secondary data which include primary legal materials, secondary legal materials secondary law and tertiary legal materials. Data analysis techniques in research This is done by qualitative data analysis, namely data collection by using laws, theories and legal principles.

3. Results and Discussion

3.1. Construction of the crime of theft with violence resulting in death

The crime of theft is regulated in Article 365 of the Criminal Code also is qualified medical doctor or theft with qualifications or constitutes theft with aggravating elements. the crime of theft is a social phenomenon that often occurs.

There are several factors that cause someone to commit a crime theft. With the existence of economic factors, the necessities of life must be fulfilled, even though he knows that the crime that what he did was wrong, he didn't care about the criminal punishment that he received. imposed for the crime. Likewise with the existence of individual factors with the emergence of intentions until there is an opportunity opportunity to commit a crime.

The theory of legal certainty is a matter (condition) that is certain. Law must be essentially certain and fair in legal certainty questions that can only be answered normatively, not sociologically. Normative legal certainty is when a regulation is made and enacted with certainty because it regulates with certainty and logic.

Construction can be interpreted as the arrangement and relationship of words in sentence or group of words. The meaning of a word is determined by its construction. in a sentence or group of words. So, the meaning of the construction can be interpreted as a meaning related to a sentence or group of words is in a word in linguistic studies. Construction can also efined as the arrangement (model, layout) of a building (bridge, house, etc.).

This construction word is in fact a fairly broad concept. difficult to understand and agree on. the word construction has various interpretation, cannot be defined singly, and is very dependent in context. Some definitions of construction based on context need to be differentiated on the basis of: process, building, activities, language and planning.

One of the orientations of the purpose of law according to Gustav Radbruch is legal certainty. According to him, legal certainty is first claim to the law. The demand is for it to be positive, that is, it applies with certainty. The law must be obeyed, so that the law is truly really positive. Criminal acts are a form of behavior that deviate from societal norms and are considered a significant threat towards social norms and values.

Theft in criminal law is a criminal act that involves taking or embezzling another person's property without permission or without rights. This act of theft is regulated in various legal systems. throughout the world and is generally considered a serious offense.

The crime of theft is regulated in Book II Chapter XXII of the Law Number 1 of 1946 concerning the Criminal Code (KUHP). Articles 362 to 367 explain various forms of theft. and the sanctions imposed on violators. These articles regulates the definition of theft, the elements that must be present, and various types of theft.

In the case of the crime of theft with violence, it is regulated in Article 365 of the Criminal

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Code is actually only one crime, and not two. crimes consisting of theft and use crimes violence against people.⁸According to the arrest Hoge Raad the meaning of the word is aggravating is because in the theft, the person had used violence or threat of violence. Article 365 paragraph 4 of the Criminal Code threatens with severe penalties, if the theft is with violence causing death of a person, namely if the theft is committed by two or more people together accompanied by circumstances - circumstances as regulated in paragraphs 1 and 2 of the same article, with the death penalty, life imprisonment or punishment temporary imprisonment for a maximum of twenty years.

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

- a) All elements of theft in basic form (Article 362);
- b) All elements of theft with violence (Article 365 paragraph 1);
- c) The element of consequence: serious injury or death of a person;
- d) Carried out by two people in alliance;

Plus one of:

- a. The time of the theft was at night, plus the element place, namely in a residence or yard closed which has a residence, or
- b. Elements of the ways to enter or arrive at a place committing crimes by vandalism, climbing, using fake keys, using fake commands, and wearing fake office attire.

In the concept of legal certainty, a judicial process ends using the final decision (verdict) which still contains

the imposition of a criminal sentence (punishment) against the accused who guilty and in the verdict the judge stated his opinion regarding what has been considered and what is considered his decision.

In imposing a sentence, the judge may not impose a sentence to someone except with at least two pieces of evidence legitimately he obtained the conviction that a crime was truly committed happened and that the accused was guilty of doing it. This is regulated in Article 183 of the Criminal Procedure Code, and there are 2 (two) valid pieces of evidence according to article 184 paragraph (1) of the Criminal Procedure Code in the form of witness statements, statements expert, letter, instructions, defendant's statement. Law Number 48 2009 on Judicial Power, the Judge's duty is to try cases with dimensions of upholding justice and upholding the law.

Based on the descriptions above, if it is related to construction criminal act of theft he crime of theft can be prosecuted under Article 362 to Article 363. Article 367 contained in Chapter XXII Book II of the Code Criminal Code (KUHP). The application of these articles is very depending on the characteristics and form of theft committed by perpetrators, where each article covers various forms of theft with certain elements. In this case, the judge plays a role central with the authority and obligation to carefully review and determine the elements that have been fulfilled in each the perpetrator's

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actions. This assessment process is very important to ensure that the criminal act committed by the perpetrator truly fulfills the qualifications stipulated in the law, so that the application of sanctions law can be given appropriately, fairly, and in accordance with the law. applies. The judge's decision does not only reflect safeguarding efforts justice for victims, but also provides legal certainty for actors and society as a whole.

If associated with the theory of legal certainty, Articles 362 - 367 Chapter XXII Book II of the Criminal Code has provided a clear legal basis and firm, both for perpetrators and victims of theft.

The legal certainty contained in these articles does not only guarantee justice for victims by providing protection and restoration of rights that have been harmed, but also paying attention to the rights human rights for perpetrators through a fair legal process. However, even though these articles contain legal principles which importantly, implementation in the field still requires special attention. This is to ensure that the implementation is not only consistent and effective, but can also reflect true justice for all parties involved in the case.

3.2. Criminal liability for the crime of theft with violence resulting in death in the dualistic conception

Criminal liability is liability for crimes committed by people. Criminal liability for someone who commits a crime. Criminal liability for basically it is a mechanism created by the Criminal Code to addressing the violation of a "contrary agreement" to a certain act.

In Decision Number 8/Pid.B/2024/PN Mgg on behalf of Defendant I Iksan Yudha Irawan alias Blawu alias Sarap Bin Ramidjo and Defendant II Riyanto Bin Sarwanto (deceased) who committed the crime of theft with violence in aggravating circumstances resulting in death. Based on description of the elements of Article 365 paragraph (4) of the Criminal Code has been fulfilled, then the Para the defendant must be declared to have been proven legally and convincingly committing the crime of theft with violence in a state of aggravating causes death. According to the law, the responsibility is a result of the consequences of a person's freedom regarding his actions relating to ethics or morals in carrying out an action. Furthermore, according to the Quarterly Point, accountability must have basis, namely the thing that causes the emergence of legal rights for a person to suing another person at the same time is something that gives rise to legal obligations others to give their accountability.

Based on the theory of criminal responsibility according to Hans Kelsen in theory, legal responsibility states that:

"a person is legally responsible for a certain act" or that he bears legal responsibility, the subject means that he liable for a sanction in the event of a contrary act. More Furthermore, Hans Kelsen stated that: "Failure to exercise due care the care required by law is called negligence; and mistakes are usually seen as another type of error (culpa), although not as severe as the error that was fulfilled due to anticipation and intending, with or without malicious intent, that result endanger".

All elements of Article 365 paragraph 4 of the Criminal Code have been fulfilled, so the defendant must be declared to have been proven legally and convincingly committing the

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crime of theft with violence resulting in died. Then in the trial the Panel of Judges did not find any reason justification or excuse. The Defendants are adults, healthy physically and mentally, then the Defendants must be held responsible his actions as stated in Article 365 paragraph 4 are in accordance with

The panel of judges' decision to sentence Defendant I Iksan Yudha to a criminal sentence Irawan Als.Blawu Als.Sarap Bin Ramidjo with a prison sentence of 18 years (eighteen) years and against Defendant II Riyanto Bin Sarwanto (deceased) with a prison sentence of 6 (six) years.

The decision of the panel of judges in this case shows the application of the principle of duality in the legal system, where the formal and moral aspects interrelated in law enforcement. By fulfilling the elements From Article 365 paragraph (4) of the Criminal Code, it is clear that the defendants' actions were not not only violates legal provisions, but also violates norms morals held by society. The formal aspect can be seen from how the law is strictly enforced, ensuring that any criminal acts

be subject to appropriate sanctions. However, more than just the application of the law, this decision also takes into account the social and emotional impact of the defendant's actions, which resulted in the loss of life and sense of security in society.

The different sentences for each defendant reflect deeper consideration of justice, where the level of involvement and the intensity of violence in the crime is recognized and appreciated. This shows that law enforcement does not only function to to enforce order, but also to restore a sense of justice for victims and society. In this context, the concept of duality becomes very relevant, because the law functions as a reflection of moral values that exist in society, as well as being a tool to uphold justice.

Thus, the decision taken by the panel of judges is not only create a deterrent effect for perpetrators of crimes, but also encourage society to reflect on the moral responsibilities and consequences of their actions, making the law a means to improve social awareness and integrity.

4. Conclusion

Construction of the crime of theft with violence resulting in death in the concept of legal certainty is regulated in Article 365 Article 4 of the Criminal Code, this article discusses theft with violence which resulting in death. A judicial process ends with the fall of final decision (verdict) which still includes the imposition of a criminal sentence (sentence) against the guilty defendant and in that decision the Judge express his opinion regarding what has been considered and what which is the verdict. Criminal liability for perpetrators involved in the act crime of theft with violence resulting in death in the verdict Number: 8/Pid.B/2024/PN Mgg has fulfilled the criminal responsibility value in accordance with the provisions of the actus due to the defendants, namely Defendant I Iksan Yudha Irawan alias Blawu alias Sarap Bin Ramidjo and Defendant II Riyanto Bin Sarwanto (deceased) has committed an act that is prohibited according to the contained in Article 365 paragraph 4 of the Criminal Code. Then in accordance with the provisions mens rea which is due to the existence of evil intentions which can be seen or have been seen proven by the Panel of Judges in the trial. So these two elements have been fulfilled then criminal responsibility arises so that based on the provisions state that the defendant

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must be held responsible for his actions by undergoing a criminal sentence or sanction.

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