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Implementation of Criminal Sanctions Against Perpetrators of Theft Crimes Based on Legal Certainty (Case Study of Decision Number 144/Pid.B/2024/PN.Smg

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Abstract. *The case study in this research is Decision Number 144/Pid.B/2024/PN Smg. By considering Article 362 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations, the court declares that the Defendant Rilly Pradana Purnama Putra Bin Slamet Bowo Mulyono has been proven legally and convincingly guilty of committing the crime of "Theft" as in the Single Indictment of the Public Prosecutor; imposes a sentence on the Defendant, therefore with a prison sentence of 1 (one) year and 8 (eight); Declares that the length of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed. Law enforcement against crime in Indonesia, especially in criminalization, should refer to a normative approach that is punitive to criminals so that it can have a deterrent effect. Minor crimes, especially minor theft, have recently attracted public attention because their handling is considered no longer proportional to the level of seriousness of the regulated crime. The current regulation of minor crimes is assumed to be a kind of protection from disproportionate law enforcement against crimes whose losses are considered not serious. Minor crimes do not only include violations, but also include minor crimes contained in Book II of the Criminal Code consisting of minor animal abuse, minor insults, minor abuse, minor theft, minor embezzlement, minor fraud, minor vandalism, and minor receiving of goods. Understanding of Supreme Court Regulation Number 2 of 2012 needs to be accompanied by efforts to educate the public about minor crimes. This is because not all people understand the things included in minor crimes (Tipiring). The crime of theft with a relatively small value of goods can go to court because currently the Public Prosecutor (PU) charges defendants with minor theft using Article 362 of the Criminal Code and not Article 364 of the Criminal Code because the limitation of minor theft regulated in Article 364 of the Criminal Code is limited to goods or money with a value of less than Rp. 250,- (Two Hundred and Fifty Rupiah). This value is certainly no longer relevant to the current situation, because there are almost no goods with a value of less than Rp. 250,-.*

Keywords: *Crimes; Criminal; Sanctions; Perpetrators.*

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1. Introduction

The case study in this research is Decision Number 144/Pid.B/2024/PN Smg. By considering Article 362 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations, the court declares that the Defendant Rilly Pradana Purnama Putra Bin Slamet Bowo Mulyono has been proven legally and convincingly guilty of committing the crime of "Theft" as in the Single Indictment of the Public Prosecutor; imposes a sentence on the Defendant, therefore with a prison sentence of 1 (one) year and 8 (eight); Declares that the length of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed. Law enforcement against crime in Indonesia, especially in criminalization, should refer to a normative approach that is punitive to criminals so that it can have a deterrent effect.[1]Efforts and policies to create good criminal law regulations, in essence, cannot be separated from the goal of combating crime. So criminal law policies or politics are also part of criminal politics. In other words, seen from the perspective of criminal politics, criminal law politics is identical to the concept of crime prevention policies with criminal law.[2]So, punishment for the crime of theft in the future must be fair and can have a deterrent effect. The settlement of criminal cases within the framework of the Republic of Indonesia cannot be separated from Dutch criminal law which was adopted as Indonesian national criminal law. The implementation of Dutch criminal law in Indonesia is based on Law Number 1 of 1946 which is an affirmation of the Indonesian government to implement the Dutch Criminal Code (Criminal Code) which came into effect on March 18, 1942 as the criminal law applicable in Indonesia.[3]

Minor crimes, especially minor theft, have recently attracted public attention because their handling is considered no longer proportional to the level of seriousness of the regulated crime. The current regulation of minor crimes is assumed to be a kind of protection from disproportionate law enforcement against crimes whose losses are considered not serious. Minor crimes do not only include violations, but also include minor crimes contained in Book II of the Criminal Code consisting of minor animal abuse, minor insults, minor abuse, minor theft, minor embezzlement, minor fraud, minor vandalism, and minor receiving of goods. Understanding of Supreme Court Regulation Number 2 of 2012 needs to be accompanied by efforts to educate the public about minor crimes. This is because not all people understand the things included in minor crimes (Tipiring). Technically, the law called Tipiring is a criminal act that is threatened with imprisonment or confinement for a maximum of three months and/or a maximum fine of seven thousand five hundred rupiah.

The public's expectation to obtain legal guarantees and certainty is still very limited. Law enforcement and implementation have not been carried out in accordance with the principles of justice and truth. In relation to the foundation of the life of the Indonesian nation, the study of the principles is appropriate, for example, the legal principles in criminal law/criminal

[1]Andri Winjaya Laksana, Review of Criminal Law Against Narcotics Abusers With Rehabilitation System, Journal of Legal Reform Volume II No. 1 January - April 2015
[2]Bambang Tri Bawono, SH., MH, Criminal Law Policy in Efforts to Combat Medical Professional Malpractice, Jurnal Hukum, Vol XXV, No. 1, April 2011
[3] Eman Sulaeman, 2008, Licensing Offenses, Walisongo Press, Surabaya, p. 132.

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procedural law, the legal principles in administrative law and so on. The absolute elements in law are principles and rules. The strength of the legal soul lies in these two elements, that the elements of the legal principles are the heart of the defense of legal life in society. The more the legal principles are maintained, the stronger and more meaningful the life and implementation of law in society. On the other hand, the more the enforcement of the principles of criminal law against acts that harm or endanger members of society is denied and the more the principles of criminal law are abandoned or ignored in practice, criminal law seems to be "unwilling to live, unwilling to die." The existence of guarantees for Human Rights (HAM), can be interpreted that in every constitution there is always a guarantee for human rights (citizens). This is also found in the 1945 Constitution of the Republic of Indonesia, in several of its articles that regulate HAM. One of them is Article 27 paragraph (1) which is implemented in the criminal justice process as the Principle of Presumption of Innocence (APTB) which is regulated in Article 8 (1) of Law Number 48 of 2009 concerning Judicial Power, namely that:

"Any person who is suspected, arrested, detained, charged or brought before a court must be considered innocent until a court decision declares his guilt and has obtained permanent legal force."

In the life of society, there are laws that must be obeyed. In order for the law to be obeyed properly, it requires certainty. This certainty in the law is called legal certainty. The law cannot be a just law without legal certainty. The importance of this legal certainty makes it an inherent principle in society. This principle of legal certainty is also often called the principle of legality. Thus the meaning of legality is "the validity of something according to the law". Historically, the principle of legality was first initiated by Anslem Van Voirbacht (1775-1833), a German criminal law scholar in his book Lehrbuch des penlichen recht in 1801. According to Bambang Poernomo, which was formulated by Feuerbach has a very deep meaning, which in Latin is: nulla poena sine lege; nulla poena sine crimine; nullum crimine sine poena legali. The three phrases were later developed by Feuerbach into nullum delictum, nulla poena sine pravevia legi penali. Its application in Indonesia can be seen in Article 1 paragraph (1) of the Criminal Code (KUHP) which reads "an act cannot be punished except based on the power of criminal legislation".[4]

The crime of theft with a relatively small value of goods can go to court because currently the Public Prosecutor (PU) charges defendants with minor theft using Article 362 of the Criminal Code and not Article 364 of the Criminal Code because the limitation of minor theft regulated in Article 364 of the Criminal Code is limited to goods or money with a value of less than Rp. 250,- (Two Hundred and Fifty Rupiah). This value is certainly no longer relevant to the current situation, because there are almost no goods with a value of less than Rp. 250,-. Based on this thinking, the Supreme Court issued Supreme Court Regulation (Perma) Number 2 of 2012 Concerning Adjustments to the Limits of Minor Crimes and the Amount of Fines in the Criminal Code, with the hope that handling minor crimes such as minor theft, minor assault, minor embezzlement, minor fraud and the like can be handled proportionally and can reach the sense of justice of the community.[5] Supreme Court Regulation (Perma) Number 2 of 2012

[4]Eddy OS Hiariej, 2009, Principles of Legality and Legal Discovery in Criminal Law, Erlangga, Jakarta, p. 7.
[5]CST Kansil, 2000, Introduction to Legal Science, Balai Pustaka, Jakarta, p. 123.

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regulates the increase in the value of fines or loss values. The increase in the value of fines listed in Article 364 (minor theft), Article 373 (minor fraud), Article 379 (minor embezzlement), Article 384, Article 407, and Article 482 of the Criminal Code, namely Rp. 250 to Rp. 2,500,000,- (Two Million Five Hundred Thousand Rupiah), the maximum amount of the value (loss) of the fine in the Criminal Code, except for Article 303 Paragraph (1), (2), Article 303 bis Paragraph (1), Paragraph (2), is multiplied (multiplied) to a thousand times. This Perma is to avoid the application of the theft article, ordinary fraud to cases of minor theft / embezzlement, so that there is no need to detain and file a cassation appeal and the examination is carried out with a fast procedure.[6]

2. Research Methods

Research approach usedin this study is normative legal research or commonly called normative legal research. In this study,The normative legal method plays an important role in analyzing and understanding the law. This method not only focuses on applicable laws and regulations, but also on legal principles, doctrines, and jurisprudence.[7]

3. Results and Discussion

3.1. Implementation of Criminal Sanctions Against Perpetrators of Theft Crimes Based on Legal Certainty (Case Study of Decision Number 144/Pid.B/2024/PN.Smg)

In the concept of the rule of law, laws and regulations are the mecca for handling problems, especially in cases of violations of the law. The law must be enforced when violations occur. This is in line with the adage "even if the sky falls, justice must be upheld". This adage shows that the law is very strong and ideal. However, in practice, to create justice is something that is difficult to find in the law itself. The law seems to turn a blind eye to human values.[8]

The crime of theft is still a dilemma and is a serious problem that requires a solution, therefore it requires efforts to overcome it or at least good prevention from all parties, both law enforcement and the community, which must be identified so that it can run in an orderly, directed and planned manner.[9]Regarding criminal law regulations, Indonesia has the Criminal Code (KUHP) which is the parent of the regulations applicable in Indonesia.

Law functions to protect human interests in general. In order for the interests of the people to be protected, the application of the law must be carried out properly. However, sometimes in the implementation of the law there is still the potential for violations of the law. Enforcement in an effort to enforce the law, there are 3 (three) goals to be achieved, namely, legal certainty, benefit (zweckmassigkeit), and justice (Gerechtigkeit). The law is expected by

[6]Hilman Hadikusumo, 1989, Customary Criminal Law, Alumni, Bandung, p. 44.
[7]Ronny Hanitijo Soemitro, 1990, Legal Research Methodology and Jurimetrics, Ghalia Indonesia, Jakarta, p. 33.
[8]Prayogo Kurnia, Resti Dian Luthviati, Restika Prahanela, Law Enforcement Through Ideal Restorative Justice as an Effort to Protect Witnesses and Victims, GEMA, Year XXVII/49/August 2014 - January 2015, p.1504
[9]Cut Nurita, Application of Criminal Law Sanctions Against Perpetrators of Animal Theft Crimes, Jurnal Hukum Kaidah.

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society to be applied in a concrete case. Therefore, the element of legal certainty is very important.

The police's duties are not only related to the law enforcement process, but also related to steps to overcome the occurrence of criminal acts or criminality. Efforts to overcome these crimes are strategic steps to deal with criminal acts that have been growing lately. Crimes that have increased from year to year require crime prevention, especially by the Police, so that they do not happen again in the following years.

Legal certainty is a form of legal protection against deviant acts. Then the element of benefit in law enforcement means that society expects benefits to arise in law enforcement efforts. The third element is the element of justice which means that the law has a general nature that binds everyone and also equalizes.

The conventional criminal process, as it applies in Indonesia, does not provide space for the parties involved, namely victims and perpetrators to actively participate in resolving their problems. Criminal cases are included in public issues, where the state has the authority to handle them. State officials, in this case the police, prosecutors, and judges, are obliged to resolve the case in question on behalf of the state. Every indication of a criminal act, without taking into account the escalation of the act, will continue to be rolled out into the realm of law enforcement which is only the jurisdiction of law enforcers.[10]Active participation from the community seems to be no longer important, everything only leads to a criminal decision in the form of imprisonment. The settlement of criminal problems in Indonesia already knows the term peace although not as much as the litigation process in court. Every criminal act must be resolved based on formal legal instruments. This is what hinders the implementation of the termination of criminal cases, even though the victim and the perpetrator accept it. This formal problem has implications for the fullness of correctional institutions and the accumulation of criminal cases in court.

On the other hand, criminalization does not provide a sense of justice, both to the perpetrator and the victim. So even though the perpetrator has been punished (given punishment), it has not been able to restore peace between the perpetrator and the victim of the crime. This is where the importance of progressive law enforcement lies, by prioritizing aspects of justice and the benefits of the law.[11]Progressive law is part of the never-ending process of searching for truth, law that is seen from the empirical reality of how law works in society in the form of dissatisfaction and concern for the performance and quality of law enforcement.

Progressive law places humans as the main center of all legal discussions. Based on progressive legal policies, it is suggested to pay more attention to human behavioral factors. Therefore, from here it is questioned, for whose benefit is the determination of the criminal law, whether for the perpetrator of the crime, the victim, or for the state? Related to the problem of the crime of theft as regulated in Article 367 of the Criminal Code, it can be

[10]Ibid, p.15.
[11]Ali Imron, et.al, Reorientation Of Rehabilitation Institutions In Law Enforcement Against Narcotics Abuse In Progressive Legal Perspective, (USA: Multicultural & Education Journal, 2022) p.155.

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classified into 4 (four) types of theft, namely; ordinary theft regulated in Article 362 of the Criminal Code, minor theft regulated in Article 364 of the Criminal Code, aggravated theft regulated in Article 365 of the Criminal Code, where the severity of the penalty for the crime of theft is always related to the crime of theft committed.[12]So it can be ensured that every perpetrator of the crime of theft, if proven in court, will be put in a correctional institution as a reward for the crime he committed. Therefore, it is necessary to consider another approach to resolve criminal cases such as "attempted theft", in order to realize the purpose of punishment as above "imprisonment". In fact, this case of "attempted theft" can be resolved in other ways, for example with a restoration approach or "restorative justice".

The procedure for resolving criminal acts has been regulated in the Criminal Procedure Code. However, the procedures in formal law are often used as a repressive tool alone and ignore the values of justice, even the nature of the law as a preventive measure also tends not to be taken into account. This situation positions the criminal system as no longer valuable as a system that provides a deterrent effect for its violators.

The placement of prisoners in detention centers or correctional institutions that are already over capacity results in a lack of focus on handling, coaching and supervision of convicts. This results in correctional institutions becoming a place or container for convicts to further hone their abilities and imitate the criminal behavior of other convicts.

Criminal or punishment (straf) is the most important thing in criminal law. So that J. Van Kan said that criminal law itself is essentially a law of sanctions (het strafrecht is wezenlijk sanctierecht).[13]According to Tri Andrisman, punishment is defined as suffering or misery that is intentionally imposed on a person who commits an act that meets certain requirements. Punishment is absolutely necessary in criminal law which aims to be a means of general or specific prevention for members of society so that they do not violate criminal law.[14]

The crime of theft includes crimes against property or called offenses against property and possession. What is meant by theft is the act of taking something that is wholly or partly owned by another person with the intention to own it and is done unlawfully.[15]Theft is generally formulated in Article 362 of the Criminal Code which reads as follows: "Anyone who takes something, which in whole or in part belongs to another person, with the intention of unlawfully possessing it, is threatened with theft, with a maximum prison sentence of five years or a maximum fine of sixty rupiah."[16]

Theft is one of the most common crimes in the world. In various countries, there are laws that regulate the crime of theft and also the sanctions given to perpetrators of theft. However,

[12]Criminal Code.
[13]AZ Abidin Farid & A. Hamzah, Special Forms of Manifestation of Crimes (Attempted, Participation and Combined Crimes) and Penitentiary Law, (Jakarta: Raja Grafindo Persada, 2010), p. 277.
[14]Tri Andrisman, Principles and General Rules of Indonesian Criminal Law, (Bandar Lampung: University of Bandar Lampung, 2009), p. 8
[15]Gerson W. Bawengan, Criminal Law in Theory and Practice, (Jakarta: Pradnya Paramita, 1979), p. 150.
[16]Salahuddin, Criminal Code, Criminal and Civil Procedure (KUHP, KUHAP and KUHAPdt), 1st ed. (Jakarta: Visimedia, 2008), p. 86.

there is still a lot of law enforcement about whether the criminal regulations for perpetrators of theft are based on the value of justice. Several experts and human rights activists have stated that the sanctions given to perpetrators of theft are not always based on justice.[17]

Context of Criminalization of Theft Criminal sanctions against perpetrators of theft have been regulated by law in many countries. These sanctions can be in the form of imprisonment, fines, or even the death penalty in some countries. However, there is still difficulty about whether the sanctions given are based on justice or not. Some experts argue that the sanctions given to perpetrators of theft do not consider the social and economic context of the theft. Meanwhile, there is also a view that the sanctions given are fair enough and consider the losses suffered by the victim.

Theft is one of the most common crimes in the world. However, in many countries, criminal regulations for perpetrators of theft are still not based on the value of justice. This can lead to injustice in punishment and cause social problems.[18]There are several factors that can influence the regulation of punishment for perpetrators of theft crimes: First, there is a tendency to consider economic losses as the main factor in paying the penalty. However, other factors such as the perpetrator's motivation and the social consequences of the act must also be considered.[19]Second, the regulation of the criminal justice system is often based on the assumption that harsher punishments will have a greater deterrent effect. However, research shows that this is not always true. Punishments that are too harsh can create social stigma on perpetrators and hinder their ability to return to society.

Third, criminal regulations can be influenced by politics and public views on the crime of theft. Sometimes, the crime of theft is considered an act that is detrimental to society and must be subject to severe punishment. However, this view does not always take into account factors such as poverty and social injustice that can influence the perpetrator's behavior.[20]In order to improve the regulation of the criminal system for perpetrators of theft, a more holistic approach is needed and based on the value of justice. This can be done by considering social, economic, and psychological factors that can influence the behavior of the perpetrator. In addition, there also needs to be public awareness and consciousness about this problem in order to improve views and actions towards the crime of theft.[21]The regulation on sentencing of perpetrators of theft crimes has been a controversial issue for years. Despite efforts to reform the criminal justice system, it seems that the regulation on sentencing of theft crimes still does not sufficiently reflect the values of justice.

This paper examines why sentencing for theft is not based on justice, and what can be done to address this problem. The current sentencing system for theft is based primarily on the severity of the crime and the value of the stolen property. This sentencing approach has been criticized for failing to take into account the broader social and economic factors that

[17]Zimring, F.E. (2007). The great American crime decline. Oxford UniversityPress
[18]Garland, D. (1990). Punishment and modern society: A study in social theory. University of Chicago Press.
[19]Pratt, J., & Brown, D. (2011). The power of punishment: Reassessing the value of imprisonment. Routledge
[20]Tony, M. (2004). Punishment and politics: Evidence and reform. Brookings Institution Press.
[21]von Hirsch, A. (1993). Censure and sanctions. Oxford University Press

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contribute to theft. In addition, this sentencing approach has been shown to disproportionately affect individuals from marginalized communities. One of the main reasons why sentencing for theft is not based on justice is because the criminal justice system often places more emphasis on punishment than rehabilitation.

This approach to criminal justice is based on the assumption that punishment is an effective deterrent to crime. However, research has shown that punishment is not always an effective deterrent to crime, and a more nuanced approach to criminal justice is needed. Another reason why sentencing decisions for theft offenders are not based on values of justice is the political nature of criminal justice policy. In many cases, sentencing policies are shaped more by political considerations than by a desire to promote justice. This can lead to policies that are punitive rather than rehabilitative. In addition, sentencing decisions for theft offenders are often influenced by societal attitudes toward crime and punishment. In many cases, these attitudes are shaped by stereotypes and misinformation about crime and criminals. This can lead to policies that are overly punitive and fail to consider the underlying causes of criminal behavior.[22]

There are four benchmarks for moral law enforcement according to Satjipto Rahardjo, namely as follows.

1. The goal of law enforcement is justice and not merely the application of the law.

2. Creativity in law enforcement is highly preferred over logic.

3. Rationality and conscience are used together to create justice.

4. Law enforcement is an effort to implement the law with commitment and sympathy.

Furthermore, Satjipto Rahardjo said that resolving cases through the judicial system with the final result in the form of a verdict is a slow-track law enforcement. This is because law enforcement takes a long way through various levels, starting from the police, prosecutors, district courts, high courts, even to the Supreme Court. This condition triggers a backlog of cases in court.

Responsibility is a state of being obliged to bear everything if there is something that can be blamed. Mistakes are the core of the perpetrator's criminal responsibility. Only a guilty person can be sentenced to a criminal penalty. Thus an innocent person cannot be sentenced to a criminal penalty. The perpetrator of the crime of theft can be held responsible or sentenced to a criminal penalty if the perpetrator is guilty because his actions fulfill the elements in Article 362 of the Criminal Procedure Code, as follows:

[22]Tony, M. (2002). The future of punishment. New York: Oxford University Press

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1. Whoever

2. Pick up items

3. Goods that are taken in whole or in part from another person

4. The purpose of possessing goods in violation of the law

The element of whoever in the Criminal Code refers to an individual. The element of whoever is the subject of a criminal act or the perpetrator of a criminal act. In the sense of the perpetrator, it includes those who are called the maker (dader) by Article 55 of the Criminal Code, namely, those who do (plegen), order to do (doen plegen), participate in doing (medeplegen) and encourage doing (uitlo/cken); and those who are called helping to do (medeplichtiger) by Article 56 of the Criminal Code. That in the Criminal Code only humans (Bld. natuurlijk persoon) can commit a crime. Legal entities (Bld. rechtpersoon), or more broadly a corporation, cannot commit a crime.

Many criminal acts outside the Criminal Code have accepted corporations as the subject of the crime. For example, Law Number 31 of 1999 concerning the Eradication of Corruption which has been amended by Law Number 20 of 2001, where the subject of the crime of corruption is Every person in Article 1 number 3 it is stated that every person is an individual or including a corporation while in Article 1 number it is stated that a corporation is a group of people and or wealth that is organized either as a legal entity or not a legal entity. However, the Criminal Code has not changed, so that criminal acts in the Criminal Code, including Article 372 and A Article 374 of the Criminal Code concerning embezzlement, can only be committed by humans/individuals. The element of anyone, both men and women, who are able to be responsible for their actions. The crime of theft can be committed by anyone, both men and women.

The crime of theft often occurs in society. The factors that cause perpetrators to commit the crime of theft are:

1. Internal factors

a. Education factors

b. Individual factors

2. External factors

a. Economic factors

b. Environmental factors

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The education factor is one of the motivating factors for someone to commit a crime of theft. This is caused by their lack of knowledge about things like the rules in how to live in society. The level of education is considered as one of the factors that influences someone to do evil (stealing), education is a means for someone to know what is good and what is bad. And by doing an act, does the act have a certain benefit or does it create a certain problem/loss.

Someone who behaves well will result in that person getting appreciation from society, but on the other hand if someone behaves badly then that person will cause chaos in society. Those who can control and develop their positive personality will be able to produce many benefits both for themselves and for others. While those who cannot control their personality and tend to be swayed by developments will continue to be swept away by the current wherever it flows. Whether it is good or bad they will continue to follow it. There are also reasons why someone commits a crime, as mentioned above that human desires are things that never have limits. Someone also commits the crime of theft sometimes because there is an opportunity. Apart from the perpetrator, the victim is a factor that is no less important in the occurrence of a crime. The victim's negligence is the key to a crime, for example, the victim who will use a motorbike to go to a place, then takes the motorbike out in front of the house by turning on the engine first, then the victim goes back into the house to get something left behind. At this point the victim's negligence can cause a crime to occur. Someone who happens to pass by the house and sees a motorbike ready to be taken away can easily take the motorbike without thinking twice, even though the person had no intention of taking the motorbike.

Another factor that causes perpetrators to commit theft is poverty. Poverty is a phenomenon that cannot be denied in every country. Until now there has been no way out to resolve this phenomenon. Plato stated that in every country where there are many poor people, there are secretly many criminals, religious violators and criminals of various types. Almost every year the price of basic necessities continues to increase, while the income of each individual is not necessarily able to meet the increase. So that this causes a reason for someone to commit theft. In addition to economic factors, environmental factors are one of the factors that have an influence on the occurrence of theft. Someone who lives/resides in an environment that supports theft, then at some point he will also commit theft. Many things make the environment a factor that causes a crime (theft). For example, the need to socialize with peers, lack of control from the environment and socializing with someone who has a job as a thief. 2. Taking Goods The element of taking goods is clearly absent if the goods are handed over to the perpetrator by the rightful party. Although the formulation of Article 362 of the Criminal Code on theft does not mention the word intentionally, it can be understood that in the crime of theft, taking goods must be done intentionally by the perpetrator. Intentionally is an element related to the attitude of mind or error (schuld). The definition of intention (Bld.: opzet; Lat.: dolus), according to the explanatory treatise (memorie van toelichting) of the Dutch Criminal Code of 1881, is the same as widens en wetens (willed and known). In current developments, the definition of intention has included three forms of intention, namely:

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1. The intent in question;

2. Intentionality as certainty, necessity, and

3. Intention as possibility (docus evantualis). Intention as intention, according to Andi Hamzah, is the simplest form of intention, namely when the perpetrator desires the consequences of his actions. He would never have done his actions if the perpetrator knew that the consequences of his actions would not occur. Intention as certainty/necessity, for example, the case of Thomas van Bremerhaven, where Thomas van Bremerhaven sailed to Southampton and asked for very high insurance there. He installed dynamite so that the ship would sink in the open sea. His intention was to sink the ship (intention as intention). If the person sailing with the ship drowned, then it was intentional with certainty. Intention as possibility (dolus eventualis) for example, the case of cakes from the city of Hoorn (Hoornsetaart-arrest). In this case, a person who had a grudge against another person who lived in the city of Hoorn had sent a cake (taart) that had been poisoned. He knew that his enemy had a wife who might also eat the cake (taart). It turned out that it was not his enemy who ate the poisoned cake he sent but his enemy's wife. In this case, he was found guilty of intentionally taking another person's life. In this case, even though he did not actually want the death of his enemy's wife, he had clearly seen the risk but still took the risk. The 7 elements of "intentionally" listed in Article 362 of the Criminal Code include 3 (three) types of intention, namely intention as intent, intention as necessity/certainty, and intention as possibility.

3. Goods taken in part or in whole belonging to another person The crime in Article 362 of the Criminal Code is formulated as taking goods, in whole or in part belonging to another person, with the aim of possessing them unlawfully. The third element of the crime of theft is the act of taking goods. The word taking (wegnemen) in the narrow sense is limited to moving the hands and fingers, holding the goods, and transferring them to another place. It is common to include the term theft when someone steals liquid goods, such as beer, by opening a tap to drain it into a bottle placed under the tap. In fact, electricity is now considered to be able to be stolen with a wire that drains the electricity to a place other than that promised. The act of taking clearly does not exist if the goods are handed over to the perpetrator by the rightful party. If this transfer is due to persuasion by trickery, then there is a crime of fraud. If this surrender is due to coercion with violence by the perpetrator, then there is a criminal act of extortion (afpersing) if the coercion is in the form of direct violence, or it is a criminal act of threat (afdreiging) if this coercion is in the form of threatening to reveal secrets.

4. The purpose of possessing goods in violation of the law. The element of unlawful act (wederrechtelijk) in Article 362 of the Criminal Code is a written element, namely it is stated explicitly in the formulation of the law.

Against the law if it is a written element in an article, according to the Explanatory Memoir of the Dutch Criminal Code, the term against the law is used whenever it is feared that a person who is doing something that is basically against the law, even though in that case he is using his rights, will later also be subject to the prohibition of the relevant article of the law. The

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responsibility of the perpetrator of the crime of theft based on Article 362 of the Criminal Code is a maximum imprisonment of five years. However, in reality the prison sentence imposed by the judge on the perpetrator of the crime is lighter than five years so that often the perpetrator after experiencing punishment commits the crime of theft again.

This study examines Decision Number 144/Pid.B/2024/PN Smg. By considering Article 362 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations, the court declares that the Defendant Rilly Pradana Purnama Putra Bin Slamet Bowo Mulyono has been legally and convincingly proven guilty of committing the crime of "Theft" as in the Single Indictment of the Public Prosecutor; imposes a sentence on the Defendant, therefore with a prison sentence of 1 (one) year and 8 (eight); States that the length of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed.

We already know that the crime of theft is generally formulated in Article 362 of the Criminal Code which reads as follows: "Anyone who takes something, which in whole or in part belongs to another person, with the intention of unlawfully possessing it, is threatened with theft, with a maximum prison sentence of five years or a maximum fine of sixty rupiah."

3.2. Obstacles in the Implementation of Criminal Sanctions Against Perpetrators of Theft Crimes Based on Legal Certainty (Case Study of Decision Number 144/Pid.B/2024/PN.Smg)

In order to answer the development of the legal needs of the community, as well as to fulfill the sense of justice of all parties, the Indonesian National Police as an institution that is given the authority as an investigator and investigator to formulate a new concept in the criminal law enforcement system, especially the criminal investigation process that is able to accommodate the values of justice in society while providing legal certainty, especially certainty of the process.[23]

No peace agreement was reached between the perpetrator and the victim. A peace agreement between the two parties (the perpetrator and the victim) is one of the formal requirements in the implementation of restorative justice as regulated in Police Regulation Number 8 of 2021 and Article 12 of Police Regulation Number 6 of 2019 concerning Criminal Investigation.

The laws and regulations must be able to reflect the values that are the basis of customary law, so that the laws and regulations can be actively applied. The five weaknesses above are closely related, because they are the main things in law enforcement, as well as a benchmark for the effectiveness of law enforcement. Of the five weaknesses of law enforcement, the weakness of law enforcement itself is the central point. This is because the laws are drafted by law enforcers, their implementation is also carried out by law enforcers and law enforcement itself is also a role model for the wider community.

[23]Vide, Circular Letter of the Chief of Police Number SE/8/VII/2018

Article 362 of the Criminal Code on ordinary theft, where the article states: "Anyone who takes something, which is wholly or partly owned by another person, with the intention of possessing the item unlawfully, is punished for theft, with a maximum imprisonment of five years or a maximum fine of Rp. 900". Thus, perpetrators of ordinary theft can be sentenced to a maximum imprisonment of one year and two months or a maximum fine of nine hundred rupiah.

The choice of punishment between imprisonment and fines can be determined by the judge based on certain considerations in certain cases. It is important to remember that the punishment for criminal acts, including petty theft, can vary depending on several factors, such as the severity of the crime, the condition of the perpetrator, the losses incurred, and other legal considerations. The judge has the authority to consider all of these factors in determining a fair and proportionate punishment. Although the legislator does not expressly state that the crime of theft as referred to in Article 362 of the Criminal Code must be committed intentionally, it is undeniable that the crime of theft must be committed intentionally, namely because the applicable criminal law does not concern the institution of the crime of theft that is committed unintentionally.[24]

Ordinary theft is regulated in Article 362 of the Criminal Code which has been explained previously. This article covers the theft of another person's property by using violence or physical threats that directly seize it from the hands of another person. Ordinary theft is a serious crime that violates property rights and can cause harm to the victim. However, in the justice system, mitigating factors, such as the urgent need to meet the family's basic needs, must also be considered. There is a principle in criminal law called "force majeure" where a defendant can be considered not responsible for committing a criminal act because he was forced to avoid a greater threat or danger. This principle can be a consideration in determining the sentence. Corruption cases involve acts of abuse of power or position to enrich oneself or others in an unlawful manner. Corruption is considered a very destructive crime and has a major negative impact on society and the state. The difference in punishment between ordinary theft and corruption cases can reflect the different levels of damage caused by the two types of crimes. Because of its major impact on society and the state, corruption is often punished more severely than ordinary theft.

The purpose of punishment for the implementation of the perpetrator's responsibility, as one of the most important issues in the science of criminal law, should not only be associated with the social, cultural and structural values that live and develop in Indonesian society, but must also be associated with the values contained in Pancasila. The great attention and thought devoted to the problem of the purpose of punishment has been part of the plan to form the National Criminal Code. Various forms and efforts to overcome the problem of crime have been carried out, but crime has not decreased. Punishment as a last resort (ultimatum remidium) which some people consider capable of providing psychological pressure so that others do not commit crimes, seems questionable. Therefore, it is necessary to conduct a review of the punishment system that has been used so far, whether it is adequate or not.

[24]Lode Walgrave, "Restorative Justice: The Concept and Practice of Victim-Offender Mediation", Loc. Cit. - 234

For this reason, the court as an institution tasked with imposing punishment must be fully aware of whether the punishment imposed has a positive impact on the convict or not. Therefore, the issue of sentencing is not just a matter of the severity of the punishment, but also whether the punishment is effective or not, and whether the punishment is in accordance with the social, cultural and structural values that exist and develop in society.

Article 1 of the Criminal Code stipulates that "no criminal act can be punished if there is no regulation governing it" so that whether or not an act can be subject to legal sanctions depends on whether the act has been regulated in statutory regulations.

The substance of law, according to Friedman, is: "Another aspect of the legal system is its substance. By this is meant the actual rules, norms, and behavioral patterns of people inside the system ... the stress here is on living law, not just rules in law books". Another aspect of the legal system is its substance. What is meant by its substance is the rules, norms, and real behavioral patterns of people who are in the system. So, the substance of law concerns the applicable laws and regulations that have binding force and serve as guidelines for law enforcement officers.

Law as a tool to change society or social engineering is nothing more than ideas that the law wants to realize. To ensure the achievement of the function of law as engineering society towards a better direction, it is not only the availability of law in the sense of rules or regulations that is needed, but also the guarantee of the realization of the legal rules into legal practice, or in other words, the guarantee of good law enforcement. So the working of the law is not only a function of its legislation, but also the activities of the implementing bureaucracy.

In line with M. Friedman, Sajtipto Rahardjo stated that talking about law basically cannot be separated from the principles of the legal paradigm which consists of legal fundamentals and legal systems. Some legal fundamentals include legislation, enforcement, and justice, while the legal system includes the substance, structure, and culture of law. All of these greatly influence the effectiveness of the performance of a law. From several of these definitions, we can interpret that the functioning of a law is a sign that the law has achieved the purpose of the law, namely trying to maintain and protect society in social interaction. The level of effectiveness of the law is also determined by how high the level of compliance of citizens is with the legal rules that have been made.

According to Achmad Ali, if a rule of law can be obeyed by most of the targets of its obedience, then it can be interpreted that the rule of law is effective. However, even though a rule that is obeyed can be said to be effective, the degree of its effectiveness still depends on the interests of obeying it. If the community's obedience to a rule of law is due to interests that are of a compliance nature (fear of sanctions), then the degree of obedience is considered very low. It is different when obedience is based on interests that are of an internalization nature, namely obedience because the rule of law really matches the intrinsic values that are adhered to, then this degree of obedience is the highest degree of obedience.

Law is inseparable from social life, all individual behavior is regulated by law, both laws that apply in a region or customary law and laws that apply throughout Indonesia. This means that law is inseparable from the reciprocal influence of all aspects that exist in society. Law functions to regulate relations between one human being and another and relations between humans and the state so that everything runs orderly. The purpose of law is to achieve peace by realizing legal certainty and justice in society. But in reality there are still many people who try to break the law. Law is a social institution that functions as a tool to regulate society. In legal science, theoretically good law must fulfill sociological, juridical, and philosophical elements. Likewise with the lawmaterial law, if its creation ignores one of them, then in its implementation it will meet obstacles in the midst of society.[25]

The law must be applied firmly in society, containing openness so that anyone can understand the meaning of a legal provision. One law with another must not be contradictory so as not to become a source of doubt. Legal certainty becomes a legal instrument of a country that contains clarity, does not cause multiple interpretations, does not cause contradictions, and can be implemented, which is able to guarantee the rights and obligations of every citizen in accordance with the existing culture of society.

Law has many aspects and is very broad in scope because law regulates all areas of community life, not only the community of a nation but also the world community which is always experiencing continuous development and change. The development of the history of human life has always caused changes in what is meant by law from time to time, before humans knew the Law, law was identical to customs and traditions that became guidelines in life.[26]

Law can be defined by choosing one of the five possibilities below, namely:

a). According to its basic, logical, religious, or ethical characteristics.

b). According to the source, namely the Law.

c). According to its effects on people's lives.

d). According to the method of formal statement or exercise of authority.

e). According to the objectives to be achieved.[27]

According to Utrecht, law is a collection of regulations (commandments and prohibitions) that regulate the order of a society and therefore must be obeyed by that society.4 Hans Kelsen defines law as a system of rules about human behavior. Thus, law does not consist of a single rule but a set of rules that have a unity so that it can be understood as a system, the

[25]Waluyadi, Basic Knowledge of Criminal Procedure Law, Mandar Maju, Bandung, 1999, p. 91.
[26]Ahmad Ali, Unveiling the Veil of Law, Jakarta, Ghalia Indonesia, 2008, p. 12.
[27]Riduan Syahrani, Summary of the Essence of Legal Science, Citra Aditya Bakti, Bandung, 2009, p. 18.

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consequence is that it is impossible to understand the law if you only pay attention to one rule.[28]

According to Sudikno M, the law has several elements, namely: Regulations regarding human behavior in social interactions. These regulations are made by authorized official bodies. Sanctions for violating these regulations are strict.[29]Indonesia is a country of law, thus everything in the country is regulated based on laws that must be obeyed by all citizens. Actions or behaviors that are not in accordance with or violate agreed legal norms, and disrupt the order and tranquility of individuals are considered a crime.

Since being born into the world, humans have socialized with other humans in a community called society.[30]Crime is an act that violates ethics and morals so that from a crime committed by someone, of course the act has a very detrimental impact on other people as legal subjects. Crime is a name or label given by people to judge certain acts, as evil acts, thus the perpetrator is called a criminal.[31]The various influences and causes of the growth of crime can reflect the reality of increasingly complex crimes with various types, degrees, and different natures. Some of these new crimes are classified as unconventional.[32]The problem of evil and suffering can appear in various forms.

In the author's opinion, criminal responsibility through sentencing the perpetrator should not only consider the past as retribution, but should also simultaneously consider the future. Thus, the imposition of a sentence must provide a sense of satisfaction, both for the judge and for the criminal himself and for society. So there must be a balance between the sentence imposed and the crime that has been committed.

The imposition of criminal penalties intended to prevent criminal acts is actually not very accountable, because this is proven by the increasing quality of crimes and crimes. So the imposition of criminal penalties does not guarantee a reduction in crime. In relation to the scope of punishment, criminal penalties have an influence on the person who is subject to them and also on other people in general. The influence of special prevention is imposed to influence people in general. Both types of prevention are based on the idea that starting with the threat of being punished and then with the imposition of punishment, people will be afraid to commit crimes.

The threat of punishment has a psychological coercive power, meaning that by threatening an act, it is expected that people will not commit the act, even though the act will bring them benefits. The person who is directly affected by the imposition of punishment is the person who is subject to the punishment. This punishment has not been felt in real terms by the

[28]Jimly Asshidiqie and Ali Safa'at, Hans Kelsen's Theory of Law, Secretary General and Clerk of the Constitutional Court of the Republic of Indonesia, Jakarta, 2006, p. 13.
[29]Sudikno Mertokusumo, Understanding an Introductory Law, Liberty, Yogyakarta, 1999, p. 5.
[30]Soerjono Soekanto, Principles of Legal Sociology, Rajawali Press, Jakarta, 2011, p. 1
[31]Ryan Dirgantara, "Analysis of Begal Crimes with Robbery Motivation in PalU City," Tadulako Master Law Journal 4, no. 2 (June 20, 2020): 159–73.
[32]Bambang Poernomo, The Growth of Deviant Law Outside the Codification of Criminal Law, Bina Aksara, Jakarta, 1984, p. 10.

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convict when the verdict has just been issued, it will only be felt seriously if it has been implemented effectively, with punishment here it is desired that the convict will not commit another crime. If the punishment is the death penalty or the punishment of deprivation of liberty, then during the criminal sentence he will not be able to commit another crime. If the punishment is the death penalty or the punishment of deprivation of liberty, then during the sentence he will not be able to commit a crime and during that time the community will be protected from his actions. But the results will be much more encouraging if with the punishment, except in the case of the death penalty, the convict changes his behavior and becomes better. How the punishment works or the effect of the punishment on the convict is actually not worth knowing.

Nowadays, most law enforcement officers have reduced the understanding that enforcing the law is interpreted as the same as enforcing the law. This understanding implies that the law (statutes) becomes the center of attention. In reality, the problem of law enforcement cannot only be seen from the aspect of the law, but must be seen as a whole, involving all elements, such as morals, behavior, and culture. Therefore, a new orientation and perspective are needed in law enforcement, namely by changing the perspective, mindset and paradigm of law enforcement officers who no longer place the law as the center, but instead shift to humans. Humans become central or central in law. The law only becomes a guideline in enforcing the law, not as a normative rule that must be followed according to their will. This is what is then known as the idea of Progressive Law. Satjipto Rahardjo through his thoughts on Progressive Law has provided a legal concept with a new perspective, spirit, and way to overcome "legal paralysis" in Indonesia. Progressive comes from the word progress which means progress. The law should be able to follow the developments of the times, be able to respond to changes in the times with all the basis therein, and be able to serve the community by relying on the moral aspects of the human resources of law enforcement itself.

Progressive Law proposed by Satjipto Rahardjo is very possible to be applied in the law enforcement process, considering that law enforcement that has been implemented so far cannot run effectively and efficiently. Law enforcement that has been implemented by law enforcement institutions has been far from the sense of justice in society. Law enforcement through the Progressive Law approach will be more effective and efficient in realizing the objectives of the law itself, namely the sense of justice in society without reducing/ignoring other objectives of the law, namely legal certainty and legal benefits, especially for criminal cases where the perpetrators are from the weak or lower class, as well as cases that result in material losses and are classified as minor criminal cases. The application of Progressive Law as an effort to improve the resolution of criminal cases requires Police Investigators who are able to carry out their duties and authorities professionally, accountably, and morally so that Progressive Law Enforcement can be in line with the objectives of the law itself, namely providing legal certainty, legal benefits, and a sense of justice in society. Therefore, the implementation of this Progressive Law requires readiness for the Police both in terms of improving the quality and quantity of Polri human resources, strategic policies in carrying out duties and authorities, and increasing supervision of the attitudes and behavior of Polri Investigators through empowering the investigation supervision function. Polri also needs the

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support and trust of the community in law enforcement efforts by improving the resolution of criminal cases through the implementation of Progressive Law Enforcement, quickly, simply, cheaply and with legal certainty, legal justice and its benefits. With the improvement within the Polri and strong support from the community, it is hoped that the enforcement of Progressive Law with substantive justice will be realized in order to improve the resolution of criminal cases by upholding the values of legal rules and norms that apply in society, so that it can fulfill the community's hopes for the realization of legal certainty, legal justice and legal benefits.

Law enforcement mandated by the constitution is essentially carried out based on law (rechstaat) and not based on mere power (machstaat). However, this constitutional basis is often interpreted narrowly by viewing law as only understood through a legal-positivistic way of thinking, namely that law is only limited to the formulation of laws and regulations. In fact, law is not only what is formulated by laws and regulations but has a deeper meaning (to the very meaning) to realize the purpose of the law itself. Satjipto Rahardjo raised the awareness of all related parties, that in fact the law continues to move, changing following the dynamics of human life so that it is able to create harmony, peace, order, and social welfare. Law is for humans, and not humans are bound by law. The way of law is generally feared by Progressive Legal Theory because of the possibility of error or inaccuracy in understanding the fundamentals of law, so that legal development cannot be directed to the right goal. The reality that exists so far shows that law enforcement is only carried out based on the formulation of 12 laws and regulations. This is what then forces law enforcement institutions to be placed as mouthpieces of the law without any space and willingness to act progressively, when law enforcement is no longer able to present the spirit and substance of the existence of the law itself, such as in the case of Minah's grandmother who stole cocoa beans and the case of the theft of a watermelon, where these cases are categorized as minor crimes.

The settlement of the handling of minor criminal cases in the case of Minah's grandmother and the case of the theft of a watermelon handled by the Police and other law enforcement institutions, shows that the Police Investigators only base it on the formulation of the articles listed in the law by referring these cases to the court, without having the courage to seek alternatives to resolving minor criminal cases outside the court. The settlement of the handling of minor criminal cases shows the imposition of the will of law enforcement institutions on alleged minor criminal acts which ultimately lead to trial. The forced settlement of minor criminal cases that end up in court will obscure the professionalism and proportionality of law enforcement officers, both investigators, public prosecutors, and judges. Therefore, the Police Investigator as the spearhead in resolving the handling of minor criminal cases, must be able to act progressively by seeking alternative solutions without having to follow the usual process, namely through the courts. For example,through peaceful settlement and there is legal certainty regarding law enforcement by terminating the investigation. This alternative settlement for handling minor criminal cases is not intended to obscure or set aside the 13 legal certainties themselves. Precisely because law enforcement in minor criminal cases that end up in court is unable to present the spirit and substance of the existence of the law, namely creating harmony, peace, order, and public welfare. Therefore, the alternative settlement for handling minor criminal cases outside the court

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supports the creation of a cheap, simple judicial process that can provide protection for human rights, as well as the existence of checks and balances or balance in enforcing material criminal law in order to seek material truth in order to realize legal certainty that is oriented towards a sense of justice in society.

Legal certainty in the alternative settlement for handling minor criminal cases outside the court is in line with the Progressive Law paradigm itself. Progressive Law does not set aside the law itself, but creativity in interpreting the law progressively with a logical line of thought that touches on justice in society. The implementation of the Progressive Law Paradigm has clearly placed the law more honorable and functional because it appears as humanist, which places human interests above the law. Although the progressive legal paradigm places humans as the core or center of the working of the law and tries to release the shackles of legal rigidity in the sense of statutory texts, it does not mean that it actually denies the law. So that the progressive legal paradigm does not get trapped in absolutism, in the sense of eliminating the rule of law, the progressive concept should be rooted in the attitude of "Respecting and Placing the Law as a Footing Even Though It Is Not Absolute". This alternative settlement outside the court is not a procedure that requires the Police to use it, but rather becomes an option for resolving criminal cases. Alternative settlement outside the court cannot be applied to all types of crimes, but can only be applied to minor crimes with perpetrators being weak or lower class who have disturbed the sense of justice of the community, as well as cases that result in material losses and are classified as minor criminal cases. Alternative settlement outside the court carried out by the Police is a form of application of Progressive Law that will depend heavily on subjective assessments. The progressive behavior of the Indonesian National Police will always reject all assumptions that legal institutions are final and absolute institutions, on the contrary, the progressive behavior of the Indonesian National Police believes that legal institutions are always in the process of continuing to become (law as a process, law in the making).The progressive behavior of the Police positions itself as a "liberating" force, namely freeing itself from legal-positivist types, ways of thinking, principles and legal theories. This means that the behavior of the Police prioritizes goals over procedures.

Criminal penalties are given to perpetrators of crimes that commit crimes as stated in the Criminal Code (KUHP). For perpetrators of crimes who repeat crimes, they should be punished more severely than the criminal verdict imposed by the previous judge. The judge's decision must also not be separated from the results of evidence during the examination and the results of the court hearing. The process of resolving criminal cases can take up to weeks or even months and may take up to a year before a case can be held or completed in court. The obstacles or difficulties encountered by judges in making decisions stem from several causal factors, such as advocates who always hide a case, witness statements that are too convoluted or fabricated, and conflicting statements between one witness and another and incomplete material evidence needed as evidence in the trial. Article 28D paragraph (1) of the 1945 Constitution reads: "Everyone has the right to recognition, guarantees, protection, and certainty of fair law and equal treatment before the law". It is possible that a person will still be sentenced. This is because the perpetrator of the crime has harmed the nation, state, and surrounding community. Repeated crimes committed by perpetrators of criminal acts or

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those considered the same type by law can be punished more severely. A perpetrator of a crime who commits several crimes, if one of them has been sentenced by a judge, is called a recidivist (repetition). If one crime with another crime has not been sentenced by a judge, then it is a combination of crimes called samenloop.

The basis for the judge's consideration in making a decision should look at the perpetrator's actions. The judge's consideration must be seen from the facts in the trial, evidence, and evidence presented at the trial. If the judge knows that the perpetrator of the crime has committed a crime that was committed in the past, either a repetition of the same crime or a repetition of a different crime. According to the regulations in the Criminal Code (KUHP), a recidivist who commits the same crime can be subject to the threat of punishment as regulated in the legislation plus 1/3 (one third). In contrast to criminals who commit crimes that are different in type from crimes that have been committed previously, the punishment from the legislation must be seen. Crimes for which the punishment is for a period of 5 (five) years or more since the person concerned committed one (1) of the same crimes,then the sentence imposed or part or since the sentence is abolished (expired). Based on this, recidivism is regulated in CHAPTER XXXI concerning provisions that are used together for various CHAPTERS concerning Repeated Committing of Crimes in Article 486 of the Criminal Code, Article 487 of the Criminal Code, and Article 488 of the Criminal Code as the basis for increasing the sentence. As a note, it can be stated that repetition is not applied to all criminal acts. In his considerations, the judge must make choices that are aware of himself providing justice and a sense of humanity when faced with legal rules, facts, arguments of the prosecutor, arguments of the defendant, advocates, and more than that and must see social pragmatics in society. Viewed from the perspective of judicial bureaucracy, the judge's decision will be related to 3 criteria, namely effectiveness, efficiency, and honesty.

The view of check and balance, separation of powers, freedom or independence of the judiciary, due process of law, which are vital foundations and rechtstaat (state of law) have not been discussed in depth by competent parties so that there has been no concrete solution. This causes the guarantee and protection of the human rights of suspects and defendants to face a less favorable situation, although various improvements have been made through new regulations, including Law Number 8 of 1981 concerning the Criminal Procedure Code. Based on the results of research on the articles in the Criminal Procedure Code and its implementing regulations, it turns out that legally it still does not support the implementation of the Principle of Presumption of Innocence (APTB) harmoniously.

The ineffectiveness of developing the quality of the supervision and control system from related agencies and the lack of increasing professionalism from law enforcers who must be accompanied by dedication and a high sense of devotion to uphold justice. In this case, including the mentality of lawyers who should have high humanitarian qualities, not distinguishing between the weak and the strong in economic matters of position or work.

In addition, the reality shows that legal awareness from the community is an important indicator to support the implementation of a quality criminal justice process. In the practice

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of enforcing the supremacy of law, there is still no good cooperation between law enforcers, the community and the government.

To ensure respect and protection of human rights in the criminal justice process, the function of legal counsel is very important as a companion to suspects and defendants to defend their rights. This is inseparable from the existence of legislation that regulates the position, function and role of legal counsel so that they can carry out their duties properly and with dedication and high integrity, and not only act for the victory of their clients but must think broadly for the sake of justice and the interests of society nationally.

Lawrence M. Friedman argues thatThe higher the legal awareness of the community, the better the legal culture will be created and can change the mindset of the community regarding the law so far. Simply put, the level of community compliance with the law is one indicator of the functioning of the law.

The relationship between the three elements of the legal system itself is as powerless as mechanical work. The structure is likened to a machine, the substance is what is done and produced by the machine, while the legal culture is whatever or whoever decides to turn the machine on and off, and decides how the machine is used. Associated with the legal system in Indonesia, Friedman's theory can be used as a benchmark in measuring the law enforcement process in Indonesia. The police are part of the structure together with the prosecutor's office, judges, advocates, and correctional institutions. The interaction between these components of law enforcement determines the strength of the legal structure. However, the upholding of the law is not only determined by the strength of the structure, but is also related to the legal culture in society.

4. Conclusion

The application of criminal sanctions against perpetrators of theft crimes based on legal certainty (case study of Decision Number 144/Pid.B/2024/PN.Smg) that in the imposition of criminal sanctions by the judge on the defendant, it has not fulfilled the objectives of punishment contained in the relative theory, the criminal sanctions of imprisonment imposed by the judge are not based on existing facts, the imposition of criminal sanctions must also be viewed from the perspective of legal objectives, namely justice, legal certainty, and benefit. The obstacle to the application of criminal sanctions against perpetrators of theft crimes based on legal certainty (case study of Decision Number 144/Pid.B/2024/PN.Smg) is the lack of understanding of the parties regarding the mechanism for applying criminal sanctions against perpetrators of theft crimes based on legal certainty.

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