

Juridical Analysis of Crimination against Civilizers of Civil Crimination

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Abstract.

The formulation of the problem in this research is: What is the process of convicting the perpetrators of criminal acts of detention at the Kendal District Court? What are the obstacles faced by judges in examining and deciding cases of criminal detention at the Kendal District Court and what are the solutions? What is the judge's consideration in deciding criminal cases at the Kendal District Court? The method used by researchers is a sociological juridical legal approach and the specifications in this study include descriptive analytical. Based on the results of research that pThe criminal process for the perpetrators of a criminal act of detention at the Kendal District Court is that the defendant is charged under Article 480 paragraph (1) of the Criminal Code concerning detention. The convictions of the perpetrators of criminal acts at the Kendal District Court in this case the verdict handed down by the Panel of Judges against the defendant was lighter than the charges. Obstacles, namely the imposition of crimes by judges who may be considered lightly by some people in general. The solution is efforts to prevent criminal acts in society, as it is known, the provision of a deterrent effect through the provision of sanctions. Judges' considerations in Deciding Criminal Cases at Kendal District Court are correct, because based on the evidence presented at the trial, it shows that the defendant is found guilty of committing the criminal act of detention and matching all the elements in Article 480 of the Criminal Code. However, the imprisonment imposed by the panel of judges is relatively lighter than the demands of the public prosecutor in which the demands of the public prosecutor are also considered light so that they can provide a deterrent effect on the perpetrators of criminal custody.

Keywords: Criminalization; Perpetrators of Crime; Detention.

1. Introduction

Indonesia is one of the developing countries in the world that carries out development in all fields. The efforts undertaken by this state include the development of science and technology and no less important is the development in the field of law from year to year that endeavors for legal reform in accordance with the development and needs of society. As contained in the explanation of the 1945 Constitution states that the Indonesian state is based on law (*rechtsaat*) not based on mere power (*machtstaat*), as a rule of law Indonesia has a series of rules or laws so that the interests of the people can be protected.¹ The fourth paragraph of the Preamble of the 1945 Constitution, which is the country's constitutional foundation, states that one of the goals of the state is to create public welfare.

¹ Constitution of 1945 after the third amendment. Article 1, paragraph 3

Evil is an eternal problem, as long as humans inhabit this earth. Evil arises from ancient times until now. Its existence has never been erased, only the frequency of crime has changed somewhat. Emile Durkheim stated that “crime is a normal symptom in any society characterized by heterogeneity and social development, therefore it is impossible to eradicate it to the end.”²

Legal instruments are needed to resolve conflicts or crimes that exist in society. One of the efforts to prevent and control the crime is to use criminal law with penalties in the form of penalties.³ Therefore, the role of the police is very necessary in enforcing the law, as well as providing protection, protection and services to the community in the context of maintaining domestic security. In accordance with the function of the police as regulated in Article 2 of Act No. 2 of 2002, namely “the function of the police is one of the functions of the state government in the field of maintaining security and public order, law enforcement, protection, protection and services to the community”.

The criminal act of detention as regulated in Article 480 of the Criminal Code, where one of the elements of detention that is often proven by the Public Prosecutor in daily trial practice is the element of deliberation (*dolus*), which means that the perpetrator of detention can be deemed appropriate and must be able to suspect the origin of the goods is from a crime and it is rarely possible to prove that the collector really knows about it (the origin of the goods). In this case “the intention to make a profit” is the element of all restraint. This deliberate element is alternatively mentioned against another element, namely that the goods were obtained by crime. It is not necessary that the custodian knows or should be able to suspect what crime the goods were obtained, namely whether by theft, or embezzlement, or extortion, or fraud.⁴ The problems that will be examined in this research are: How is the process of convicting perpetrators of criminal acts of detention at the Kendal District Court ?; What are the obstacles faced by judges in examining and deciding cases of criminal detention at the Kendal District Court and what are the solutions? And what is the judge's consideration in deciding criminal cases at the Kendal District Court?

2. Research Methods

The research approach method used in this research is the Sociological Juridical approach. The sociological juridical approach method is a study in which it looks at the discipline of regulations or laws based on the reality or reality that occurs in society.⁵ This research is descriptive, descriptive research aims to make descriptions, descriptions or paintings systematically, factually and accurately regarding the facts, characteristics and relationships between the phenomena

² Soejono Dirjosisworo. (2007). *Sosio Kriminologi, Amalan Ilmu-Ilmu Sosial Dalam Studi Kejahatan*. Bandung: Seminar Baru. p. 195.

³ Muladi, dkk. (1992). *Teori-teori dan Kebijakan Pidana*. Bandung: Alumni. p. 148

⁴ Wirjono Prodjodikoro. (2003). *Tindak-Tindak Pidana Tertentu Di Indonesia*. Bandung: Refika Aditama. p. 61

⁵ Bambang Sunggono. (2007). *Metode Penelitian Hukum*. Jakarta: Raja Grafindo Persada. p.72

being investigated.⁶ As for the sources and types of data in this study are primary data obtained from field studies interviews with Kendal District Court Judges. And secondary data obtained from literature study. The data were analyzed qualitatively.

3. Results and Discussion

3.1. The Criminal Process of Perpetrators of Detention at Kendal District Court

According to Barda Nawawi Arief, the pattern of punishment is more of a reference or guideline for legislators in making or drafting laws that contain criminal sanctions. Thus it can be said that the pattern of punishment is a guideline for drafting laws or "legislative guidelines".⁷

For the perpetrators of a criminal act of detention, the cause of committing the crime is more directed at gaining or taking advantage for themselves or others by performing "evil help", however, the meaning of "evil help" does not mean "helping to commit crimes" (medeplichtigheid), as referred to in Article 55 of the Criminal Code. Detention is classified as one of the triggers for people to commit crimes. Because it can be said that most of the proceeds from stolen goods are actually for sale in order to obtain profits in the form of money, goods, etc. As regulated in Article 480 paragraph (1) of the Criminal Code.

The terms of punishment are determined by the existence; In essence, the crime is an imposition of suffering or sorrow or other unpleasant consequences; The punishment was given intentionally by a person or body that has the power/authority; The punishment is imposed on a person who has committed a criminal act according to law. So that when it is seen that the criminal act committed by the defendant has fulfilled the elements in the article charged by the public prosecutor, and there are no justification reasons or things that abolish the crime, then the conditions for the punishment have been fulfilled and the defendant can be convicted and in accordance with current regulation.

In this regard, when the author conducted research at the Kendal District Court, the author had the opportunity to be able to conduct a direct interview with the judge who decided this case. The author interviewed the judge who decided the case, namely Mrs. Popi Juliani, SH., MH.,⁸ who at that time acted as member judge, stating that the decision was passed based on the demands of the public prosecutor and the facts that were revealed in the trial. Then this matter becomes material for consideration for the Panel of Judges to make a verdict.

The process of convicting the perpetrator of a criminal act of detention at the Kendal District Court is that the defendant is charged under Article 480 paragraph (1) of the Criminal Code concerning detention. After examining all the

⁶ Soerjono Soekanto. (2001). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo. p.8.

⁷ Andi Irawan Haqiqi, Jawade Hafidz, *Kebijakan Formulasi Sistem Pemidanaan Tindak Pidana Penjara Minimum Khusus Dalam Pembaharuan Hukum Pidana Di Indonesia*, Jurnal Hukum Khaira Ummah Vol. 12. No. 2 June 2017

⁸ Results of an interview with Mrs. Popi Juliani.SH., MH., as the Chief Judge at the Kendal District Court, on November 25, 2020, at 10:45 WIB

facts revealed in the trial, the Panel of Judges was convinced that the defendant was legally and conclusively proven guilty of violating the provisions of Article 480 paragraph (1) of the Criminal Code concerning detention. After that, the Panel of Judges considers whether there are reasons that can become the basis for abolishing the criminal offense against the defendant, either for forgiving reasons or justification. The convictions of the perpetrators of criminal acts at the Kendal District Court in this case the verdict handed down by the Panel of Judges against the defendant was lighter than the demands of the Public Prosecutor.

3.2. Obstacles Faced by Judges in Examining and Deciding Cases of Crime of Detention in Kendal District Court and their Solutions

The role of judges in making decisions is not just done, because what is decided is a legal act and is certain in nature. The process of ruling by judges is a complex and difficult process, requiring training, experience and wisdom.

The indictment is the basis for criminal examination in court proceedings, while the indictment is a letter containing the prosecutor's demands for a criminal act. In essence, a public prosecutor must prepare an indictment and indictment that prevents the defendant from escaping from legal bondage. Judges in examining a case must not deviate from what is formulated in the indictment. A defendant can only be sentenced because it has been proven in court that the defendant has committed a crime as stated by the prosecutor in the indictment.

In the case of decision Number 12/Pid.B/2019/PN Kdl: and decision Number: 53/Pid.B/2013/PN.Kdl in general, the Panel of Judges before making a decision made considerations both from the juridical aspect and from the psychological and sociological. Juridical considerations for the criminal offense charged are the most important context in the Judge's decision and are the elements of an offense whether the accused's act has met and is in accordance with the formulation of the offense charged by the Public Prosecutor. These juridical considerations will directly influence the verdict of the Panel of Judges.

In connection with the imposition of crimes committed by judges who may be considered serious by the public in general, the judge Mr. Ari Kurniawan.SH., MH.,⁹ in his interview with the author stated: *"In the case of the old crimes imposed on the defendant, we were always guided by the facts revealed in the trial and we sentenced the criminal to nothing more than the prosecution of the Jakarta Prosecutor. Many elements were considered, such as things that lightened and incriminated the defendant."*

Based on the results of an interview with Mr. Ari Kurniawan.SH., MH.¹⁰ Obstacles in the punishment of perpetrators of criminal acts of detention at the Kendal District Court include the imposition of crimes by judges who are likely to be considered light by some people in general, some of the people interviewed were of the opinion that the imposition of sanctions of 1 (one) year 3 (three) months and 2 (two) months and 15 (fifteen) days and months for the accused, the

⁹ Results of an interview with Mr. Ari Kurniawan.SH., MH., As Chief Judge at the Kendal District Court, on November 26, 2020, at 10:45 WIB

¹⁰ Results of an interview with Mr. Ari Kurniawan.SH., MH., as Chief Judge at the Kendal District Court, on November 26, 2020, at 10:45 WIB

criminal act of detention is considered light because it is seen from the point of view that detention is one of the triggers for the rampant crime of theft, fraud, etc., and the imposition of minor crimes has a major impact.

The solution to overcoming obstacles in the punishment of perpetrators of criminal acts of detention at the Kendal District Court is an effort to prevent criminal acts in the community, as is known to provide a deterrent effect through the provision of sanctions.

3.3. Judges' Considerations in Deciding Criminal Cases at Kendal District Court

Judges are judicial organs that hold judicial power, namely the power of an independent state to administer justice in order to uphold law and justice based on Pancasila for the sake of implementing a rule of law.¹¹ The position of the judges referred to above has been regulated in Act No. 4 of 2004 concerning Judicial Power, as well as the details of their powers and duties in the Criminal Code, specifically regarding the field of criminal procedure.¹²

Judges, in examining and deciding criminal cases, have the duty not to refuse to try a case on the pretext that the law is unclear or unclear, because he is obliged to explore the written law and decide based on the law, as a wise person and fully responsible to God Almighty. One, self, society, nation and state. The obligations of active judges are related to the obligations of judges as law enforcers and justice enforcers, obliged to explore, follow and understand the legal values that live in society.¹³

3.3.1. Judge's legal considerations

In the case of decision Number 12/Pid.B/2019/PN Kdl: and decision Number: 53/Pid.B/2013/PN.Kdl, in this case the Defendant is brought to trial based on the indictment filed by the Public Prosecutor as previously described where The defendant violated the provisions of the single indictment, namely Article 480 Paragraph (1) of the Criminal Code.

Actions taken by the judge must be proven by examining the elements of the article then adjusted to the facts revealed in the trial as well as the evidence by analyzing them. Before examining these elements, it is necessary to see what legal facts have been revealed in the trial.

3.3.2. Amar Verdict

In order to impose a sentence against the Defendant, it is necessary to first consider the conditions that are burdensome and which relieve the Defendant as follows:

Decision Number 12/Pid.B/2019/PN Kdl

Burdensome circumstances;

¹¹ Bambang Pornomo. (2001). *Orientasi Hukum Acara Pidana Indonesia*. Yogyakarta: Amarthu Buku. p. 30.

¹² Andi Hamzah. (2008). *Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika. p. 100

¹³ Sugiyono, Umar Ma'ruf, *Penanganan Perkara Tindak Pidana Penadahan Di Pengadilan Negeri Semarang*, Jurnal Hukum Khaira Ummah Vol. 12. No. 3 September 2017

The defendant's actions disturbed the public;

Relieving circumstances;

- The defendant pleaded guilty and regretted his actions;
- The defendant was polite in court;
- The defendant has never been convicted;

Considering, based on the aforementioned matters, the punishment imposed on the defendant has been commensurate with his actions and as long as the defendant is in a period of arrest and detention will be deducted entirely from the sentence imposed and orders that the defendant be kept in detention;

Considering that the evidence in the form of:

- 1 (one) Honda Beat mptpr bicycle unit without a police number plate with a STNK in the name of Sutriyono;
- Because this evidence is still used in other cases, it is therefore returned to the Cepiring Police investigator;
- 1 (one) Samsung 12 black primewarna cellphone;

Because it is proven that it is used to commit a crime, the evidence is seized to be destroyed;

Considering, that because the defendant has been sentenced to a crime, he must also be burdened with paying the costs of the case;

Taking into account, Article 480 of the Criminal Code and Act No. 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations;

3.3.3. Judge

- To declare that the defendant JOKO SULISTIYO Bin MUHAMAD SAEBANI, as mentioned above, was legally and convincingly proven guilty of committing the criminal act of "ENDUCTION" as in the indictment of the Public Prosecutor;
- Imposing the punishment to the defendant is therefore punishable by imprisonment of 1 (one) year and 3 (three) months;
- To determine that the entire period of arrest and detention the defendant has served is deducted from the sentence imposed;
- To determine that the defendant will remain in detention;
- To determine the evidence in the form of:
 - 1 (one) unit of a Honda Beat motorcycle without a police number plate with a STNK in the name of Sutriyono;
Returned to the Cepiring Police investigator;
 - (one) black Samsung 12 prime cellphone;
Looted to be destroyed;
- Charged the defendant with a court fee of Rp 2,500 (two thousand and five hundred rupiah);

Decision Number: 53/Pid.B/2013/PN.Kdl

The things that are burdensome:

- The actions of the defendants disturbed the public
- The actions of the defendants were detrimental to other people, especially witnesses
- Defendant II has enjoyed the proceeds of his crime

Things to lighten up:

- The defendants acted politely in court and admitted frankly and regretted their actions;
- The defendants have never been convicted
- The defendant has family dependents

In view of the articles related to this case, in particular Article 480 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) 1 of the Criminal Code in conjunction with the relevant laws, the panel will decide which amendment reads as follows:

Adjudicate:

- State Defendant I. Budi Prasetyo bin Abdul Sahid and Defendant II. Kiswanto bin (late) Kasmadi has been legally proven and convicted of committing the crime of "joint detention".
- Imposing the criminals to the defendants with imprisonment for 2 (two) months and 15 (fifteen) days, respectively;
- To stipulate that the duration of the defendants in detention is subject to the full amount of imprisonment imposed
- Ordered the accused to remain detained in detention
- Determine evidence in the form of cash amounting to Rp 560,000 (five hundred and sixty thousand rupiah)
- Charge the defendants to pay each case fee of IDR 20,000 (twenty thousand rupiah)

In the decision Number 12/Pid.B/2019/PN Kdl: and decision Number: 53/Pid.B/2013/PN.Kdl, the Panel of Judges decided that the defendant had been legally and convincingly proven guilty of committing the criminal act of "detention". According to the indictment of the public prosecutor, the defendant committed a criminal act by violating Article 480 Paragraph (1) of the Criminal Code concerning Detention, reads as follows:¹⁴ "Anyone who buys, rents, exchanges, accepts a pledge, receives a gift, or to profit, sell, rent, exchange, pawn, transport, store or hide something which is known or should be presumed to have been obtained from crime." The author considers that the judge's decision which found the defendant guilty was correct.

What is really interesting about the criminal act of detention is what if the Defendant does not know that the item he bought was the result of a crime. Based on the results of an interview with one of the judges at the Kendal District Court, namely Mrs. Popi Juliani.SH., MH, it was said that:¹⁵

Basically, everyone wants to get goods at affordable prices, in this case getting goods at low prices. However, everyone is required to obtain goods fairly and properly. Reasonable means that if someone buys an item, the price offered to him is a price that is in accordance with the value and usefulness of the item or according to the market price. Should be interpreted as when buying goods, the identity or origin of said goods must be clearly known by the buyer, which is

¹⁴ See Article 480 Paragraph (1) of the Criminal Code.

¹⁵ Results of an interview with Mrs. Popi Juliani.SH., MH ,, as the Chief Judge at the Kendal District Court, on November 25, 2020, at 10:45 WIB

usually proven by a documentary evidence. Buyers are required by law to be able to review the goods to be purchased. As stated in the formulation of Article 480 of the Criminal Code, which determines that any object which is known or reasonably presumed to have resulted from a crime. Based on the formulation of the Article, it can be seen that although the buyer does not know that the goods purchased are the proceeds of crime, the buyer should be suspicious when the goods he wants to buy have an unreasonable price and the identity of the goods is not clear.

Based on the explanation above, it can be concluded that if a person does not know that the item he has bought is the result of a crime, this cannot be an excuse for him not to be subject to a criminal act of detention. This is because each person must use his mind properly to assess an item he will buy and with his mind should be suspicious if the item he is going to buy is unnatural and inappropriate.

Furthermore, related to the imposition of imprisonment by the Panel of Judges. In this case the Panel of Judges handed down a sentence, namely decision Number 12/Pid.B/2019/PN Kdl imprisonment for 1 (one) year and 3 (three) months and verdict Number: 53/Pid.B/2013/PN.Kdl imprisonment 2 (two) months and 15 (fifteen) days. The judge's decision was lower than the demands of the public prosecutor. The author considers that the verdict of imprisonment for 1 (one) year 3 (three) months and 2 (two) months and 15 (fifteen) days passed by the panel of judges is not correct. This is based on the author's judgment that the criminal act of detention is tantamount to the criminal act of facilitating, in this case it makes it easier for the perpetrators of other crimes to hide their actions. So that every action that makes it easy to carry out another criminal act, the sanctions must also be heavy. As in the previous explanation where the writer criticized the prosecutor's demands because it was considered too light, in this case the writer also criticized the prison sentence handed down by the judge because imposing a relatively lighter prison sentence did not provide a deterrent effect for the perpetrator.

4. Closing

From the research results, a conclusion can be drawn as follows:

- The process of convicting the perpetrator of a criminal act of detention at the Kendal District Court is that the defendant is charged under Article 480 paragraph (1) of the Criminal Code concerning detention. The conviction of the perpetrator of a criminal offense at the Kendal District Court in this case the verdict handed down by the Panel of Judges against the defendant was lighter than the demands of the Public Prosecutor, this was because there were things burdensome to the defendant which became the consideration of the Panel of Judges in making a verdict, namely an act the defendant was very disturbing to the community.
- Obstacles Faced by Judges in Examining and Deciding Cases of Crime of Detention in Kendal District Court and their Solutions. Obstacles include the imposition of crimes committed by judges who may be considered light by some people in general, some of the people interviewed by the author argued that the imposition of sanctions 1 (one) year 3 (three) months and 2 (two) months 15

(fifteen) the day of the month for the accused of a criminal act of detention was considered light because it was seen from the point of view that detention was one of the triggers for rampant criminal acts of theft, fraud, etc., and the imposition of minor crimes had a major impact. The solution is to prevent criminal acts in society, as is known to be a deterrent by imposing sanctions.

- Judges' considerations in Deciding Criminal Cases at Kendal District Court are correct, because based on the evidence presented at the trial it shows that the defendant was found guilty of committing a criminal act of detention and matching all the elements in Article 480 1 of the Criminal Code. However, the imprisonment imposed by the panel of judges is relatively lighter than the demands of the public prosecutor in which the demands of the public prosecutor are also considered light so that they can provide a deterrent effect on the perpetrators of criminal acts of detention.

Then suggestions can be submitted It is hoped that law enforcement officials can provide heavier sanctions for perpetrators of criminal acts of detention because these acts can disturb the public and the application of light penalties does not provide a deterrent effect at all for the perpetrators; The public is expected to always be vigilant and suspicious, especially of used goods that are sold at prices that are very far from the market price, especially if they are not equipped with letters or proof of purchase notes because these items may be the proceeds of crime.

5. References

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- [7] Soejono Dirjosisworo. (2007). *Sosio Kriminologi, Amalan Ilmu-Ilmu Sosial Dalam Studi Kejahatan*. Bandung: Seminar Baru.

Regulation:

- [1] Article 480 Paragraph (1) of the Criminal Code.
- [2] Constitution of 1945 after the third amendment. Article 1, paragraph 3