

The Crime of Theft with the Threat of Violence in View of Criminal Law

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Abstract.

This research aims to examine and analyze the qualifications of the criminal act of theft with the threat of violence in the view of criminal law. In this paper, the author uses a normative juridical method with research specifications in the form of descriptive analysis. Based on the discussion, it was concluded that the application of the article or law should be adjusted to the concrete events (the crime scene/TKP), while the sentencing is up to the judge's conviction. Of course, it is not only in vain if the legislators distinguish between theft with violence (Article 365 paragraph 1) and theft accompanied by violence with added weight (Article 365 paragraph 2), it also contains the intention of providing a deterrent effect for criminals as well. The definition of theft according to the law and its elements formulated in Article 362 of the Criminal Code is in the form of the formulation of theft in its main form "Whoever takes an object wholly or partly belongs to another person, with the intention of being owned against the law, is threatened with theft, with a maximum imprisonment of 10 years. 5 years or a maximum fine of Rp. 900.00. The types of theft according to the Criminal Code consist of 5, namely ordinary theft regulated in Article 362, theft weighting regulated in Article 363 of the Criminal Code, minor theft in Article 364 of the Criminal Code, theft accompanied by violence/threats of violence Article 365.

Keywords: Criminal; Theft; Threats; Violence.

1. Introduction

Law serves to regulate the relationship between humans and the state so that everything goes in an orderly manner. Therefore, 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.¹

The Republic of Indonesia is a developing country that is carrying out development in all fields, with the main objective of providing physical and spiritual prosperity and well-being for all Indonesian people.² This can be achieved if the community has awareness of the state and strives to create a just, prosperous and prosperous society. The community is said to be prosperous if the economic level is middle and above and the security conditions are harmonious.³ This can be achieved by how each community behaves in harmony with the prevailing interests in community life which is manifested by behaving in accordance with the norms that apply in society. However, recently with the occurrence of the

¹Abdul Kholiq Nur and Gunarto. (2021). *Concept of Criminal Law on Corruption of Corporate Criminal Liability System Based on Justice Value*. Jurnal Daulat Hukum, 4 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/14205/5388>

²R. Abdoel Djamali. (2010). *Pengantar Hukum Indonesia*, Edisi Revisi, Jakarta: Rajawali Pers, p.1

³Lee S, Weinberg, & Judith W. Weinberg. (1980). *Law and Society (An Interdisciplinary Introduction)*, University Press of America, New York, p 67

monetary crisis that had a major impact on society, resulting in the Indonesian people experiencing a moral crisis.⁴

Seeing the current state of society, it is very possible for people to find shortcuts by stealing. From the mass media and electronic media, it is shown that the frequent occurrence of theft crimes of various types is motivated by the need for life that is not fulfilled. With the development of the crime of theft, other forms of theft have also developed. One of them that is often done is the crime of theft with violence. The reasons behind the criminal act of theft with violence are economic factors, low levels of education, increasing unemployment, lack of legal awareness, loosening of family and social ties to society. The crime of theft is regulated in the Criminal Code book II chapter XXII Articles 362 to 367.⁵

Theft with violence in a legal perspective is one of the crimes (delict) that is troubling and detrimental to the community. Regarding the so-called violence, Prof. Simons said: "*Onder geweld zal ook hier mogen worden verstan, elke uitoefening van lichamelijke kracht van niet al te geringe betekenis*". Which means: "It can be included in the definition of violence, namely any use of body energy that is not too light".⁶ Ideally as a state of law, Indonesia adheres to a system of rule of law over the rule of law, namely the law has the highest power in the state. As a state of law, Indonesia adheres to one important principle, namely the presumption of innocence. Such a principle is not only found in Law Number 8 of 1981 (KUHAP), it can also be observed in Law Number 48 of 2009 concerning Judicial Power. It is stated that every person who is suspected, arrested, detained, prosecuted and/or brought before a court hearing, must be presumed innocent until a court decision declares his guilt and obtains permanent legal force.⁷

The crime of theft is the most common offense and is listed in all the Criminal Codes in the world. Hamzah called it a neutral offense, because it occurs and is regulated in all countries.⁸ The offense of theft with violence is a qualification of the offense of theft (ordinary). This offense is known colloquially as robbery⁹, but in society there is also a relatively new term, namely *begal*. However, *begal* is a special term used when the locus is on the road.

From the things described above, the author's intention arises to establish the purpose of writing, namely to study and analyze the qualification of the criminal act of theft with the threat of violence in the view of criminal law.

2. Research Methods

⁴Bambang Waluyo. (2008). *Pidana dan Pemidanaan*, Jakarta: Sinar Grafika, p.1.

⁵Supriyono. (2020). *Criminology Study of Crime of Fencing the Stolen Goods*, Jurnal Daulat Hukum, 3 (1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8407/4068>

⁶Simons. (2005). *Leerboek van het Nederlandse Strafrecht II*, PT Raja Grafindo Persada, Jakarta, p.106

⁷Rustanto and Sri Endah Wahyuningsih. (2019). *The Element Of State Financial Losses In Corruption Offenses In The Process Of Procuring Sugarcane Seeds (Case Study on Case No. 100 / Pid.Sus-TPK / 2017 / PN.Smg)*. Jurnal Daulat Hukum, 2 (2), <http://jurnal.unissula.ac.id/index.php/RH/article/view/5416/5091>

⁸Andi Hamzah. (2014). *Delik-Delik Tertentu (Speciale Delicten) Di Dalam KUHP*, Jakarta, p.100

⁹Darmoko Yuti Witanto and Arya Putra Negara Kutawaringin. (2013). *Diskresi Hakim Sebuah Instrumen Menegakkan Keadilan Substantif dalam Perkara-Perkara Pidana*, Alfabeta, Bandung, p.76

To conduct an assessment in this writing, the author uses a normative juridical method. The specifications of the writing were carried out using a descriptive analytical approach. The data used for this writing is secondary data. To obtain the data in this paper, secondary data collection methods were used which were obtained from literature books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed by qualitative analysis.

3. Result and Discussion

3.1. Qualification of the crime of theft with the threat of violence in the view of criminal law

The regulation of the crime of theft as regulated in the Criminal Code is contained in Book II Chapter XXII Article 362 to Article 367. The definition of theft is regulated in Article 362, concerning types of theft and theft with weight are regulated in Article 363, regarding light theft is regulated in Article 364, concerning theft with violence is regulated in Article 365, and Article 367 regulates theft in the family.¹⁰ One of the things that burdens the perpetrators of criminal acts is the theft which is accompanied by violence.

The types of theft according to the Criminal Code consist of 5, namely:

- Ordinary Theft; Ordinary theft is regulated in Article 362 which reads: "Anyone who takes an item, which is wholly or partly owned by another person, with the intention of unlawfully possessing it, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs".
- Weight Theft; Article 363 of the Criminal Code stipulates that: Threatened with a maximum imprisonment of seven years: Livestock theft; Theft in the event of a fire, eruption, flood, earthquake, or sea quake, volcanic eruption, shipwreck, shipwreck, train accident, riot, rebellion or tribulation in wartime; Theft at night in a house or a closed yard with a house, carried out by the person who is there, is not known or desired by the person entitled; Theft committed by two or more people in alliance; Theft which is to enter the place of committing the crime, or to arrive at the stolen goods, is carried out by breaking, cutting or climbing, or by using false keys, false orders or false official clothing. If the theft described in point c is accompanied by one of the things in points d and e, it is punishable by a maximum imprisonment of nine years. Theft in this article is called "theft by weighting" or "theft with qualifications" and is punishable by a heavier penalty.¹¹
- Minor Theft; Article 364 of the Criminal Code stipulates that: "The acts described in Article 362 and Article 363 point 4, as well as the acts described in Article 363 point 5, if they are not committed in a house or a closed yard where there is a house, if the price of the stolen goods is not more than twenty-five rupiahs, they are threatened with for minor theft with a maximum

¹⁰Adami Chazawi. (2002). *Pelajaran Hukum Pidana*, PT Raja Grafindo Persada, Jakarta, p. 112-114

¹¹Moeljatno. (2008). *Asas-Asas Hukum Pidana*, Edisi Revisi, Jakarta: Rineka Cipta, p. 129-130

imprisonment of three months or a maximum fine of two hundred and fifty rupiahs.

- Theft accompanied by violence/threats of violence Article 365 stipulates that:
 - By a maximum imprisonment of nine years, theft which is preceded, accompanied or followed by violence or threat of violence, against a person with the intent to prepare or facilitate the theft, or in the case of being caught red-handed, to enable the escape of himself or another participant, or to maintain control.
 - Threatened with a maximum imprisonment of twelve years: If the act is committed at night in a house or enclosed yard with a house, on a public road, or on a train or tram that is running; If the act is committed by two or more people in partnership; If entering a place of committing a crime by breaking or climbing or by using a false key, false order or false official attire. If the act results in serious injury.
 - If the act results in death, it is punishable by a maximum imprisonment of fifteen years.
 - Threatened with the death penalty or imprisonment for life or for a certain period of twenty years, if the act results in serious injury or death and is committed by two or more people in partnership, accompanied by one of the things described in no. 1 and 3.

The provisions in Article 365 paragraph (1) of the Criminal Code above, are called theft with violence (the violence referred to here is based on Article 89 of the Criminal Code), for example, including binding people who own a house, closing and locking it in a room, and so on. This violence or threat of violence must be done to a person not to the property or property of the victim, it can be done jointly before or after the theft has been completed, provided that the intention is to prepare or facilitate the theft, and if caught red handed so that there is an opportunity for him or her his friend who did this would either run away or keep the stolen item in his hands. A thief by destroying his house or yard, does not include the offense regulated in Article 365 of this Criminal Code,

The elements of the criminal act of theft with violence are mentioned in Article 365 of the Criminal Code which must be fulfilled, for example in paragraph (1) "followed by violence to facilitate theft", paragraph (2) 1 "the theft is carried out at night", paragraph (2) 2nd "the theft is carried out by two or more people jointly", paragraph (2) 3rd "by dismantling or climbing, using fake keys, false orders, or false positions", paragraph (2) 4th "theft which causes another person to be seriously injured", paragraph (3) "causes death", paragraph (4) "causes another person to be seriously injured or killed by two or more persons jointly".

According to Mahmud Mulyadi, theft with violence is the same as robbery. It seems that he emphasized this in his book entitled "Criminal Policy" contained in Article 365 paragraph (1) of the Criminal Code, where the object of violence is a person, not objects or property belonging to the victim.¹²

A review of the provisions of Article 365 paragraph (2) of the Criminal Code is an aggravated theft. It means that the threat of punishment according to this

¹²Andi Hamza. (2016). Op.cit, p. 28.

paragraph is added as a weight for the offense of theft he has committed. The categories of weighting in question are:

- If the theft is committed at night in a closed house or yard, which has a house or on a public street or in a running train or tram;
- If the Theft is committed by two or more persons together;
- If the thief enters by breaking or climbing or by forging keys, falsifying a warrant or using a false position; and
- If the act of theft causes someone to be seriously injured.

If the above category occurs when the theft is committed, either one, two or more elements, then it is categorized as a criminal act of theft with increased violence and the threat of sanctions is a maximum of 12 (twelve) years in prison. If we examine more deeply the provisions of this paragraph, it is rational to make it worse because when a person as a victim of theft is resting at night, it is not possible for the victim to ask for help or in public places, it can have a psychological effect on other people who see it.¹³For example, there are other people who have experienced trauma. Likewise, if the perpetrator uncovers, or jointly, or because of falsehood, it is very rational in the category of being a burden on the perpetrator (thief).

When compared to Article 365 paragraph (2) of the Criminal Code with Article 363 of the Criminal Code, in principle there is a very slight difference, the number of sanctions threatened is different, Article 363 of the Criminal Code is a maximum of 7 (seven) years, Article 365 paragraph (2) of the Criminal Code is a maximum of 12 (twelve years). It should be noted that the offense in Article 363 of the Criminal Code is ordinary theft, while the offense in Article 365 paragraph (2) of the Criminal Code is theft accompanied by violence. This is what distinguishes it so that the threat of sanctions is also different from one another.

Likewise, the criminal threat against the offense of theft with violence that results in the death of the victim or other person as confirmed in Article 365 paragraph (3) of the Criminal Code as a weighting. This offense is punishable by a maximum imprisonment of 15 (fifteen) years. In fact, according to this provision, it is possible to impose penalties for the revocation of certain rights, as confirmed in Article 366 of the Criminal Code. It seems that in this provision it is stated explicitly that the perpetrator is single or not more than one person.

As for the number of perpetrators of violent theft consisting of more than one person or together, the appropriate imposition of sanctions for this offense is Article 365 paragraph (4) of the Criminal Code. The threat of sanctions according to this provision is the death penalty or life imprisonment, if the theft with violence results in serious injury to someone.¹⁴ or death committed by more than one person or jointly committing the theft with violence. Death as referred to in Article 365 paragraph (3) of the Criminal Code is an unintentional death by the perpetrator. If the death was intentional by the perpetrator, the perpetrator may be subject to the provisions of Article 339 of the Criminal Code concerning ordinary murder. The punishment that causes death is increased by the threat of punishment if the theft is accompanied by violence resulting in death and is carried

¹³T.J.Gunawan. (2018). *Konsep Pemidanaan Berbasis Nilai Kerugian Ekonomi*, Jakarta, Kencana, p.124

¹⁴Article 90 of the Criminal Code.

out by more than one person at the same time. The increased punishment is subject to Article 365 paragraph (4) of the Criminal Code, namely the threat of life imprisonment or a maximum temporary sentence of 20 (twenty) years.

Article 365 paragraph (4) of the Criminal Code is different from extortion in Article 368 of the Criminal Code. If because of violence or threats of violence, the owner of the goods surrenders, then gives the goods to the person who threatens him, then this is included in the category of extortion (Article 368 of the Criminal Code). However, if the owner of the property with violence or threats of violence still does not give up and then the thief takes the property of that person, then this is included in the category of theft with violence.

Theft by violence is not a combination of the crime of theft with criminal acts of violence or threats of violence, violence in this case is a qualified condition, meaning that violence is a condition that changes the qualifications of ordinary theft into theft with violence, so that this theft is qualified by weighting or with in other words, theft as a qualification plus another qualification.¹⁵

4. Conclusion

A thief by destroying his house or yard is not included in the offense regulated in Article 365 of this Criminal Code, because the destructive violence is not imposed on people but on objects or goods and if caught red-handed so that there is an opportunity for him or his friend who participated in the act, he will run away or so that the stolen item remains in his hands. A thief by destroying his house or yard is not included in the offense regulated in Article 365 of this Criminal Code, because the destructive violence is not imposed on people but on objects or goods.

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