

Legal Analysis of Criminal Punishment Against Perpetrators of the Criminal act of Theft with Violence Based on Social Justice (Case Study of Decision Number: 382/Pid.B/2021/Pn.Smg)

Muhammad Abel Putra Mirzan¹⁾ & Jawade Hafidz²⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: MuhammadAbelPutraMirzan.std@unissula.ac.id

²⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: JawadeHafidz@unissula.ac.id

Abstract. *The crime of theft with violence is stealing something that does not belong to someone accompanied by physical action using considerable physical strength or power and directed at the person who is the object of the theft and resulting in that person becoming helpless. The purpose of this paper is to find out and analyze the punishment of perpetrators of violent theft based on social justice in Decision Number: 382/Pid.B/2021/Pn.Smg and to find out the judge's considerations in issuing a verdict against perpetrators of violent theft in Decision Number: 382/Pid.B/2021/Pn.Smg. The research approach used in this study is through a normative legal approach using secondary data obtained through literature studies, then data analysis is carried out using qualitative descriptive analysis. The results of this study are in the case of Case Decision Number 382/Pid.B/2021/PN Smg the defendants were legally and convincingly proven to have committed the crime of theft with violence as regulated in Article 365 Paragraph (2) 2 of the Criminal Code. The Panel of Judges sentenced them to 1 (one) year and 6 (six) months in prison. Responsibility is reflected in a sentence, a sentence is expected to have an educational effect on the perpetrators of the crime. The decision of the Panel of Judges has been able to provide an educational effect on the perpetrators so that they do not repeat their actions. The judge's considerations in applying criminal provisions to the perpetrators have been appropriate where the judge has considered both legal considerations, namely the indictment, the demand letter, evidence and evidence, as well as statements from witnesses and the defendant, as well as non-legal considerations, namely aggravating circumstances and mitigating circumstances of the defendants.*

Keywords: *Criminalization; Theft; Violence.*

1. Introduction

The Republic of Indonesia is a country based on law that upholds the law which is manifested in regulations in the form of laws and is systematically arranged in certain codifications or compilations.¹Based on Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia), which states: "The State of Indonesia is a State of Law."

Indonesia as a country of law makes the law itself an ideology to create order, security, justice, and welfare for every citizen. In order to realize a just and prosperous society, the problem of crime needs to receive serious attention from all parties. Therefore, good cooperation is needed between the government and the community so that the crime that cannot be eliminated can be reduced in intensity as much as possible.²

One form of crime or criminal act that often occurs in society is theft, where seeing the current state of society allows people to find shortcuts by stealing. The crime of theft has been regulated in the Criminal Code (KUHP) Book II Chapter XXII Articles 362 to Article 367. Article 362 regulates the main factors when an act is said to be theft, Article 363 on aggravated theft, Article 364 on minor theft, Article 365 on theft with violence, Article 367 on theft in the family.

Lately, various forms of theft have become increasingly widespread, mushrooming, and even very disturbing in people's daily lives. Various modes of operation are carried out in theft. This shows how someone is so creative in committing crimes. Even most people tend to be accustomed to it and seem to view the crime of theft as a crime that is considered a necessity for both individuals and groups.³

The occurrence of violent theft is the result of interaction between humans and their environment. The result of this interaction begins with the emergence of motivation which then develops into a negative intention to commit a crime or violent theft in fulfilling the needs and demands of life. Violent theft that often occurs, for example, is carried out or accompanied by the presence of other people seriously injured, dead, the theft is carried out at night, the theft is carried out by two or more people together by dismantling, climbing, threatening the victim using a firearm, using fake keys, fake orders, and others with the aim of facilitating the theft.

¹R. Abdoel Djamali, 1993, *Introduction to Indonesian Law (Revised Edition)*, PT. Raja Grafindo Persada, p. 69.

²Moeljatno, 2003, *Criminal Code*, Jakarta, Bumi Aksara, p. 128

³Mubarok, N, 2017, *Criminology from an Islamic Perspective*, Sidoarjo, Dwiputra Pustaka Jaya, p. 23

The case that the author raised in this study is a crime of theft with violence committed by FR and VM which was carried out on April 10, 2021 in Semarang City. That the victim was resting and was then approached by the defendants FR and VM in the ATM booth with the intention of the defendant FR to pay the debt to the victim. After finishing, the defendants FR and VM left the ATM booth to the motorbike to leave. Then the victim felt that he had lost his black Infinix brand cellphone and chased FR and VM to ask where the victim's cellphone was and FR answered that he did not know. Then the victim searched the defendant FR and found the cellphone tucked into his pants. Furthermore, the defendant FR pushed the victim and took out a weapon in the form of a motorcycle disc with a sharp tip to threaten the victim. then the victim fended off the weapon and the defendant FR was hugged and stepped on by both hands, then the defendant FR had time to throw a weapon in the form of a motorcycle disc at the defendant VM but was secured by the witness. As a result of the defendants' actions, the victim suffered a loss of Rp. 1,250,000.00 (one million two hundred and fifty thousand).

Based on the description, the author is interested in studying it in the form of a thesis entitled "Legal Analysis of Criminalization of Perpetrators of Violent Theft Based on Social Justice (Case Study of Decision Number: 382/Pid.B/2021/Pn.Smg)"

2. Research Methods

The approach method used by the author in compiling the journal uses the normative legal method. The research specification used in this study is the descriptive analysis type. In this study, the author emphasizes library research and primary materials in the form of applicable laws and secondary materials in the form of expert opinions, law books, journals and magazines.

The data collection technique used in this study uses literature study, by collecting data from the results of reviewing library materials and secondary data including primary legal materials, secondary legal materials and tertiary legal materials. The data analysis technique in this study is carried out with qualitative data analysis, namely data collection using laws, theories and legal principles.

3. Results And Discussion

3.1. Criminalization of Perpetrators of Violent Theft Based on Social Justice in Decision Number: 382/Pid.B/2021/Pn.Smg

The crime of theft is an act that is classified as a general crime regulated in Book II of the Criminal Code (KUHP). This crime of theft is an act that is very detrimental to others. The crime of theft is one of the crimes against property and objects or can be called offenses against property and procession.⁴

The type of crime of theft with violence is one of the most common crimes in society, which occurs in almost every region in Indonesia. Therefore, it is very logical if the type of theft with violence ranks first among other types of crimes.

⁴Danil, E., 2021, Corruption: Concept, Criminal Acts and Eradication, Jakarta, Rajawali Pers. PT. Raja Grafindo Persada, p. 79

This can be seen from the number of suspects in the crime of theft who are reported to the court. So it needs to be suppressed in such a way as to reduce the statistical figures that are always increasing every year.

In Case Decision Number: 382/Pid.B/2021/Pn Smg, the Panel of Judges decided that the defendants FR and VM were legally and convincingly guilty of committing the crime of theft with violence as stated in Article 365 Paragraph 2 point 2 of the Criminal Code.

Article 365 Paragraph (2) 2 of the Criminal Code states:

Threatened with a maximum prison sentence of 12 years for theft preceded, accompanied or followed by violence or threats of violence, against a person with the intention of preparing or facilitating the theft, or in the case of being caught in the act, to enable escape for oneself or another participant, to enable escape for oneself or another participant, or to retain control of the stolen goods if the act is carried out by two or more people in league.

In the case that the author raised, the actions carried out by the defendants were intentionally committing the crime of theft with violence, where the actions were carried out by two people, namely Defendants FR and VM. The actions of the defendants violated Article 365 Paragraph (2) 2 of the Criminal Code, which fulfilled the following elements:

1) The element of "Whoever"

Anyone is anyone who can be a legal subject, namely a person who is the perpetrator of a crime.

During the trial process, the defendants were known to be physically and mentally healthy and no matters were found that eliminated the unlawful nature of the actions they had committed as a reason for forgiveness and matters that eliminated the error.

2) Elements of "Theft 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 escape for oneself or other participants, or to retain control of the stolen goods, if the act is committed by two or more persons in league."

Based on statements from witnesses and defendants, as well as evidence presented at the trial, on April 10, 2021 in Semarang City, a criminal act of theft with violence was committed by Defendants FR and VM while they were asleep and when caught, Defendant FR pointed a sharp weapon in the form of an iron disc and Defendant VM ran away, but from this incident the Defendants were caught by the victim and the community.

Based on the case, the defendant was proven legally and convincingly in court through the existing evidence that the defendant committed the act intentionally and not due to his negligence, in addition the defendant is a legally competent person so that he can be held accountable. Therefore the defendant must be held

accountable for his actions before the law. Accountability is reflected in a punishment, punishment is expected to provide an educational effect for the perpetrator of the crime. Therefore the author agrees with the decision of the Panel of Judges who imposed a sentence of 1 (one) year and 6 (six) months. According to the author, the decision of the Panel of Judges has been able to provide an educational effect for the perpetrator so that he does not repeat his actions and is in accordance with the theory of justice.

3.2. Judge's Considerations in Handing Down a Verdict Against a Perpetrator of the Crime of Theft with Violence in Verdict Number: 382/Pid.B/2021/Pn.Smg

The Judicial Power Law in Article 3 Paragraph (2) regulates the freedom of judges in determining the imposition of criminal penalties, where the judge's decision cannot be disturbed by any party and is free from intervention by any institution. With this freedom of the judiciary, it is hoped that justice can be created in accordance with the spirit of humanity and social justice in society. Disparity in sentencing is closely related to the freedom of judges in deciding cases of several defendants who have committed the same crime. In relation to the freedom of judges in imposing the same sentence, Sudarto said that the freedom of judges in determining sentences should not be such that it allows for striking disparities, and will create a feeling of inappropriateness (*onbehagelijk*) for the community, so guidelines for imposing sentences in the Criminal Code are very necessary, because this will reduce these disparities even though they cannot eliminate them completely.⁵

The judge's considerations are the things that are the basis or considered by the judge in deciding a criminal case. Before deciding a case, the judge must pay attention to every important thing in a trial. The judge pays attention to the conditions for a person to be punished, namely subjective conditions and objective conditions. The objective conditions are those that come from a person's mistake, while the subjective conditions are those that are the mistake, the person's ability to be responsible, and there is no reason for him to forgive. In addition, the judge also pays attention to the objective conditions, namely that the act committed has matched the formulation of the crime, is against the law, and there is no justification.⁶

The Panel of Judges in its decision tried the Defendants in Decision Number 382/Pid.B/2021/Pn Smg based on legal considerations and philosophical or non-legal considerations. Legal considerations are considerations based on legal facts revealed in the trial and are stipulated by law as something that must be included

⁵Rachmani Puspitadewi, A Brief Note on the Development of Judicial Power in Indonesia, Pro Justitia Journal, Vol 24 No 1, January 2006, p. 1.

⁶Andri Rico Manurung, et al., Legal Analysis of Judges' Decisions Against Narcotics Crime Perpetrators in the Jurisdiction of the Rantau Prapat District Court (Study of Decisions Number 599/Pid.Sus/2018/PN.Rap; 1234/Pid.Sus/2018/PTMDN; 2332/K/Pid.Sus/2019 and Number 943/Pid.Sus/2019/PN.Rap; Number 841/Pid.Sus/2020/PN.Rap), Locus: Journal of Legal Science Concepts Vol.2, No.3, September 2022, pp. 106

in the decision. While non-legal or philosophical considerations are considerations that are based on the detrimental and damaging impacts on the order of life in society, nation and state.⁷

Decision Number 382/Pid.B/2021/PN Smg basically tried Defendants FR and VM who committed the crime of theft with violence. On April 10, 2021 in Semarang City, when the victim was resting, Defendant VM came to him and said "wanted Mas Fajar" after that Defendant FR together with Defendant VM entered the ATM booth and sat next to the victim, then the victim asked Defendant FR "nopo mas" answered by Defendant FR "paying debt" then Defendant FR handed over Rp. 200,000.00 (two hundred thousand rupiah) to the victim.

Defendant FR told Defendant VM to get out of the ATM booth and start 1 (one) Yamaha Mio motorbike then Defendant FR got out of the ATM booth towards the motorbike ridden by Defendant VM which was in the parking lot in front of the ATM, when the victim looked for 1 (one) black Infinix brand cellphone, it turned out that it was not there so the victim chased and hugged Defendant FR from behind so that he could not leave and asked "Where's my cellphone?" and Defendant FR answered "I don't know", then the victim searched Defendant FR and found the victim's cellphone tucked into his pants then Defendant FR pushed the victim and took out a weapon in the form of a motorcycle disc with a sharp tip to threaten the victim which was then blocked by the victim and Defendant FR was hugged and stepped on with both hands then Defendant FR had time to throw 1 (one) weapon in the form of a motorcycle disc towards Defendant VM but it had been secured by Witness Joko. As a result of the defendants' actions, the victim suffered a loss of IDR 1,250,000.00 (one million two hundred and fifty thousand).

The judge's consideration in deciding the case is through legal considerations such as the public prosecutor's indictment, the public prosecutor's demands, evidence, and evidence, as well as aggravating and mitigating circumstances for the accused. The judge's non-legal consideration is seen from a non-legal perspective by considering several factors in the accused which are formulated in the elements that aggravate the accused and the elements that mitigate the accused (according to the judge's observations and beliefs towards the accused). This is done to create a sense of justice for the accused in particular and the community in general. The judge is obliged to pay attention to the good and evil nature of the accused. The judge is obliged to pay attention to the good and evil nature of the accused, in considering the punishment to be imposed and the personal circumstances of the accused need to be taken into account in order to give the punishment to be imposed and the personal circumstances of the accused need to be considered and taken into account in order to give the appropriate and fairest punishment. These personal circumstances are obtained from statements from people from the environment and so on.

⁷Elrick Christovel Sanger, *Law Enforcement Against Drug Trafficking Among the Young Generation*, *Lex Crimen*, Vol II No 4, August 2013, p. 8.

The circumstances that aggravate the defendant are: The defendants' actions have caused losses to Eko Haryanto in the form of 1 (one) Infinix brand cellphone in forest color worth Rp.1,250,000.00 (one million two hundred and fifty thousand rupiah). While the mitigating circumstances are that the defendants admitted that they had never been convicted and the defendants openly admitted their actions and did not complicate the trial.

Decision Number; 382/Pid.B/2021/PN Smg based on legal and non-legal considerations, the Panel of Judges in its decision decided that Defendant I FR and Defendant II VM were proven legally and convincingly guilty of committing the crime of "Theft with Violence". Sentencing Defendant I FR and Defendant II VM to imprisonment of 1 (one) year and 6 (six) months respectively.

Based on the description above, the author is of the opinion that the decision of the Panel of Judges in passing a verdict against the defendant is in accordance with the provisions of the Criminal Code in the second book (crimes) in Article 365, in passing the verdict, the judge imposed an action on the Defendant FR and the Defendant VM to be detained in prison for 1 (one) 6 (six) months. Then according to the author, the criminal sanctions given by the judge have given a deterrent effect to the defendant in accordance with the theory of punishment, which is a way or process to impose sanctions or punishments for someone who has committed a crime or violation. Because the purpose of the punishment itself is to educate and improve people who have committed crimes, so that they become better people, so that criminal sanctions are very appropriate to be imposed on the defendant in accordance with the criminal acts committed by the defendant.

4. Conclusion

The crime of theft with violence is regulated in Article 365 of the Criminal Code, where this theft has aggravating elements. In the case of Case Decision Number 382/Pid.B/2021/PN Smg, the defendant was found guilty of committing theft with violence and was sentenced to 1 year and 6 months in prison. This decision is expected to have an educational effect on the perpetrator so that he does not repeat his actions.

The judge's considerations in sentencing the defendants in Criminal Case Decision Number 382/Pid.B/2021/PN Smg by the Panel of Judges, each defendant was sentenced to 1 (one) year and 6 (six) months in prison because they were proven guilty of committing the crime of theft with violence as stated in Article 365 Paragraph (2) 2 of the Criminal Code. The judge's considerations in applying criminal provisions to the perpetrators were appropriate where the judge had considered both legal considerations, namely the indictment, the demand letter, evidence and evidence, as well as statements from witnesses and the defendant, as well as non-legal considerations, namely aggravating circumstances and mitigating circumstances of the defendants.

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