

Legal Analysis of Criminal Responsibility for Perpetrators of Theft Crimes Based on Victim Protection (Decision Study Number: 406/Pid.B/2021/PN SMG)

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Abstract. *Theft is one of the crimes that often occurs in society. The factors that can cause theft are diverse. This act of stealing is considered a criminal behavior because it involves taking someone else's property without permission, and often results in losses for the victim. This thesis aims to study and analyze: First, a legal analysis of criminal liability for perpetrators of theft based on victim protection. Second, the effectiveness of the implementation of criminal liability for perpetrators of theft in providing protection for victims. This assessment is carried out objectively and subjectively. The approach method used is normative juridical, namely a library legal research conducted by examining library materials or secondary data only using deductive thinking methods. The writing specifications use descriptive analysis, the sources and types of data used are secondary data. The data collection method is by collecting data using secondary data collection methods. The problem is analyzed with the theory of criminal responsibility and legal effectiveness. The responsibility of the perpetrator of the crime of theft under aggravating circumstances in the decision Number 406 / Pid.B / 2021 / PN Smg that the panel of judges decided his actions stated that the defendant ZH bin Alm Cik Saleh was legally proven and guilty of committing the crime of theft regulated and threatened in Article 362 of the Criminal Code with a prison sentence of 1 (one) year each. The effectiveness of the criminal sanctions given to the convict based on Decision Number 406 / Pid.B/ 2021 / PN Smg where the defendant was sentenced to 1 (one) year by the judge's decision. In seeing the effectiveness of criminal sanctions using the theory of effectiveness, the author conducted an analysis with three studies of the theory of effectiveness, namely success in implementing the law, failure in implementing it and the factors that influence it.*

Keywords: *Criminal; Liability; Theft*

1. Introduction

Nowadays in social life there are many types of crimes in social life. The crime that is rampant is theft. There are acts in a way that is contrary to the law using the influence of intelligence and trickery to do something for their own interests. The crime of theft in Indonesia has become a common thing that often occurs, with the increase in the crime of theft cannot be controlled in the midst of the community environment with the development of various actions such as the existence of modes so that the crime is carried out.¹

The objective elements of theft include the act of taking goods, the object taken is an object, and the existence of conditions attached to the object, either in whole or in part, which are owned by another person. Meanwhile, the subjective elements in the act of theft include the existence of an intention to possess the object unlawfully.²The development of technology and information has not only had a positive impact on society. But it also has a negative impact, namely the development of types and forms of crime, including theft patterns. Through the use of information technology, perpetrators of theft crimes no longer have to deal with violent robberies and with victims who are likely to be arrested by the police during the operation. The perpetrators only work from home or even the perpetrators are not in the country where the theft occurred.³

The crime of theft as regulated in Article 362 of the Criminal Code is theft in its basic form. The elements are, namely the "Objective" element, there is an act of taking, which is taken something, the item is wholly or partly owned by another person. There is an "Act" and the act is prohibited by law, if violated will be subject to criminal sanctions in the form of imprisonment. While the "Subjective" element is with the intention to own unlawfully.⁴

An example of a case in this thesis that will be the subject of research is the case of theft of a verdict in case Number 406/Pid.B/2021/PN Smg where the defendant with the initials ZH bin Alm CS on April 17, 2021 at around 21.00 WIB came to a cafe in Semarang City, the defendant also drank alcohol until 23.30 WIB, then the defendant ordered a grab to go home while waiting for the grab to arrive, the defendant saw that the cafe was quiet and there was 1 (one) black Honda Vario

¹Rian Prayudi Saputra, "The Development of Theft Crimes in Indonesia", Jurnal Pahlawan Vol. 2, Number 2 September 2019, p. 46.

²Laila Mamluchah, Nafi' Mubarak, Increase in the Number of Theft Crimes During the Pandemic in the Review of Criminology and Islamic Criminal Law, Journal of Law Students of UIN Sunan Ampel Surabaya Vol. 6, No. 1, June 2020, p. 38.

³Amalia Hani, Criminal Liability for Criminal Acts of Theft Using Electronic Systems (Study of Decision No. 132/Pid.B/2012/PN. PWK), Al-Hikmah Journal of Law and Society Vol 1 No.1, September 2020, p. 95.

⁴Ismu Gunadi W, Jonaedi Efendi, Yahman, 2011, Quick & easy to understand Criminal Law (Volume 2), PT.Prestasi Pustakaraya, Jakarta, p.39

125 motorbike from 2017 parked in the cafe yard, the key of which was left behind, so the defendant had the intention to take and own the motorbike. Looking at the systematic theft formulated in the Criminal Code which starts from ordinary theft to theft with violence, it can be said that such regulations are very complete so that there are no more types of theft in society that are not regulated in the types of theft above, so all types of theft that exist in society, therefore it is appropriate that this case is the main priority in arresting cases received as reports to the police.

Based on the problems above, regarding the many phenomena of narcotics crimes so that people who do not know the rules for the community are careful and vigilant, such as the case registered at the Semarang District Court Number 463 / Pid.Sus / 2023 / PN Smg, it has become a special attraction for the author to study this in more depth by conducting research, for writing a thesis entitled "JUDICAL ANALYSIS OF CRIMINAL RESPONSIBILITY AGAINST PERPETRATORS OF THEFT BASED ON VICTIM PROTECTION (Study of Decision Number: 406 / Pid.B / 2021 / PN SMG)".

2. Research Methods

The approach method used in this study is the normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as basic materials for research by conducting a search for regulations and literature related to the problems being studied. Data collection is carried out through library studies by reviewing literature related to research problems. The data analysis technique is qualitative analysis in the form of exposure, description, and description of the research results.

3. Results And Discussion

3.1. Legal Analysis of Criminal Responsibility for Perpetrators of Theft Crimes Based on Victim Protection Based on Decision Number 406/Pid.B/2021/PN Smg

Criminal liability for someone who commits a violation or a criminal act requires the principles of criminal law. This basis is about someone being held accountable for the actions they have committed. This means that someone can only be held accountable if the person makes a mistake or commits an act that violates the laws and regulations.⁵

In criminal law legislation, the principle of legality is known, which is contained in Article 1 paragraph (1) of the Criminal Code, namely: "No act can be punished except under existing statutory provisions, before the act is committed". If someone has committed a criminal act, then he can only be tried based on the criminal law regulations in force at the time the act was committed. So that accountability if the act has indeed been regulated, a person cannot be punished

⁵Chairul Huda, 2006, From Criminal Acts Without Fault Towards No Criminal Responsibility Without Fault, 2nd Edition, Kencana, Jakarta, p. 68.

or held accountable if the regulation appears after the criminal act has occurred. To determine the existence of a criminal act, figurative language may not be used, and the criminal law regulations are not retroactive.⁶

The Public Prosecutor (JPU) in preparing the indictment stated that the actions of the defendant ZH bin Alm Cik Saleh on Sunday, April 18, 2021 at around 02.00 WIB or at least at some time in April 2021 at Cafe Hen's 99 located at Jl Arteri Sukarno–Hatta No.28, Semarang City, took an item in the form of 1 (one) unit of a black Honda Vario 125 motorcycle from 2017 with No Pol H-6217-YS Noka MH1JFU11OHK888826 Nosin JFU1E1893224, which all or part belonged to the witness Sunarto bin Sutiman, with the intention of possessing it unlawfully.

The Public Prosecutor's indictment with a single indictment stated that the actions of the defendant Achmad Santosa alias Santo Bin Sarbini as regulated and threatened with criminal penalties in Article 362 of the Criminal Code. The crime of theft is regulated in Article 362 of the Criminal Code which reads:

"Anyone who takes something that belongs in whole or in part to another person with the intention of possessing it unlawfully is threatened with theft with a maximum prison sentence of five years or a maximum fine of nine hundred rupiah."

The elements in Decision Number 406/Pid.B/2021/PN Smg carried out by the defendant have committed a criminal act of theft in violation of Article 362 of the Criminal Code as follows: the element of whoever, the element of having taken something, which is wholly or partly owned by another person, with the intention of being owned unlawfully. in theory and legal facts that the defendant can be declared to have committed the crime charged to him "Theft", which as regulated and threatened in Article 362 of the Criminal Code as in the single indictment of the Public Prosecutor, then the panel of judges sentenced the defendant ZH Bin Alm Cik Saleh to 1 (one) year in prison.

In the case that the author studied, the defendants' actions have fulfilled the provisions of Article 362 of the Criminal Code. The defendant was in good physical and mental health during the trial process, thus the defendant can be held accountable for his actions or is able to be responsible. Being able to be responsible can be interpreted as a psychological condition such that it justifies the determination of a criminalization effort, both from a general perspective and from the individual, that a person is able that the defendant is an adult and is able to be responsible because the defendant can make judgments with his thoughts and feelings.

Judging from several events and cases that have occurred, the Criminal Procedure Code is more biased towards the perpetrator than the victim, one of which is in the case of theft which often makes the victim a and must provide material losses.

⁶Hanafi Amrani and Mahrus Ali, 2015, Criminal Responsibility System: Development and Implementation, 1st edition, Rajawali Pers, Jakarta, p. 21.

So this shows that there is still a legal vacuum in the Criminal Procedure Code which has not clearly regulated the position of the victim, one of which is the victim of theft, whether or not they are required to be present during the trial process and the rights of the victim of theft.

A fair legal process is the ideal of the implementation of criminal procedural law. Such great concern for the suspect/defendant has resulted in the neglect of other parties involved in the criminal justice process, namely the victim (as the main witness who experienced or became the object of the crime). Efforts to protect victims through criminal justice have not been realized or implemented properly.

The perspective of victim protection as an element in the community protection policy states that victims of criminal acts have the right to be an integral part of the criminal justice system. Therefore, it is emphasized that attention to victim rights must be seen as an integral part of the overall criminal policy. The Criminal Procedure Code regulates several rights that can be used by victims of crime, especially rape, in a criminal justice process.

3.2 Effectiveness of the Implementation of Criminal Accountability for Perpetrators of Theft Crimes in Providing Protection for Victims

The crime of theft can occur anywhere at any time and can be done by anyone, both adults and children who are the perpetrators of theft. Against them regardless of who the person who committed the theft will be processed according to applicable law. The effectiveness of the law is the conformity between what is regulated in the law and its implementation. It can also be due to public compliance with the law because of the coercive element of the law. Laws made by authorized authorities are sometimes not abstractions of values in society. If so, then the law is ineffective, cannot be implemented, or even civil disobedience arises for certain things. In the reality of people's lives, often the application of the law is ineffective, so this discourse becomes an interesting discussion to discuss in the perspective of legal effectiveness.⁷

The theory of legal effectiveness is a "theory that studies and analyzes the success and failure and factors that influence the implementation and application of law. There are three studies of the theory of legal effectiveness which include the following:

- a. Success in law enforcement
- b. Failure in implementation
- c. Factors that influence it.

It is important to remember that the punishment or crime including theft in aggravating circumstances can vary depending on several factors such as the severity of the crime, the condition of the perpetrator, the losses incurred and

⁷Barda Nawawi Arief, 2003, Selected Chapters on Criminal Law, Citra Aditya Bakti, Bandung, p. 85.

other legal considerations. The judge has the authority to consider the elements of the influencing factors in determining a fair and proportionate sentence.

The regulation of legal responsibility in Indonesia, especially for the crime of theft, still has several weaknesses that affect the effectiveness in handling the crime of theft. Some weaknesses that need to be considered are:

- a. Lack of attention to handling theft cases at higher levels such as the police and prosecutors.
- b. There have been no concrete efforts to improve the social and economic conditions of perpetrators of theft.
- c. Not taking into account the interests of victims in the provision of criminal sanctions such as remissions given to perpetrators of criminal acts without considering the impact on the victim.
- d. Law enforcement against perpetrators of theft who are from weak economic groups or do not have strong connections.
- e. The lack of strict criminal sanctions against perpetrators of theft crimes using violence or firearms is also a weakness of regulations in providing legal accountability in Indonesia.
- f. Lack of cooperation between institutions in handling the problem of theft crimes is also a factor that influences the effectiveness of criminal liability regulations.
- g. There are different views and perspectives among legal experts, practitioners and the general public regarding regulations in providing legal accountability to perpetrators of theft crimes, which can influence the process of changing regulations.

However, in practice there are still weaknesses in community involvement in preventing criminal cases of theft. Therefore, efforts are needed to increase public awareness through socialization and education regarding the importance of community participation in preventing criminal acts of theft.⁸The relatively small attention to victims of criminal acts can be seen in the Criminal Code which only formulates the rights of victims of criminal acts in one article, namely article 14 c paragraph (1) which regulates compensation for victims of criminal acts of a civil nature. The Criminal Procedure Code also regulates the rights of victims of criminal acts in articles 98-101, which regulate the consolidation of claims for compensation in criminal cases.

In the practice of criminal justice, many developing countries, especially Indonesia, still forget the position and role of victims of criminal acts. There is concern that victims of criminal acts will interfere more deeply with the independent criminal justice bureaucracy. Therefore, reevaluation, reform, and restructuring are

⁸Havidz A, Criminal Law Politics from the Perspective of Justice and Benefit, *Journal of Law and Development* 47 (2), 2017, pp. 318-332.

needed in the criminal justice system, both in terms of the legislation process and the criminal justice process. Legal protection for victims of victimization (hereinafter referred to as victims) in criminal law currently does not fulfill the sense of justice, especially for victims.

The second external factor is the lack of deterrent effect of imposing sanctions, the lack of deterrent effect on the convict so that the convict repeats the crime of theft. We know that criminal sanctions are given with the aim of providing a deterrent effect on the convict, and not expecting to commit the crime again. But in this case the convict repeated the crime of theft again. So seeing this, the lack of deterrent effect from the imposition of criminal sanctions given by law enforcement to the convict lacks a deterrent effect on the convict.

4. Conclusion

The responsibility of the perpetrator of the crime of theft under aggravating circumstances in the decision Number 406 / Pid.B / 2021 / PN Smg that the panel of judges decided his actions stated that the defendant ZH bin Alm Cik Saleh was legally proven and guilty of committing the crime of theft regulated and threatened in Article 362 of the Criminal Code with a prison sentence of 1 (one) year each. The effectiveness of the criminal sanctions given to the convict based on Decision Number 406 / Pid.B / 2021 / PN Smg where the defendant was sentenced to 1 (one) year by the judge's decision. In seeing the effectiveness of criminal sanctions using the theory of effectiveness, the author conducted an analysis with three studies of the theory of effectiveness, namely success in implementing the law, failure in implementing it and the factors that influence it. The effectiveness of criminal sanctions in the form of imprisonment against the perpetrators of this crime of theft has not been effective and has not succeeded and the objectives of the criminal sanctions given to the convict have not been achieved.

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