

Legal Analysis of Criminal Sanctions as a Means of Achieving a Deterrent Effect for Perpetrators of Violent Theft (Case Study of Decision Number 40/Pid.B/2023/Pn Cbn)

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Abstract. *Violent theft is a serious crime, this is because the perpetrator makes threats or even attempts at physical violence to obtain the victim's property, this makes victims of violent theft not only experience property losses but also losses that threaten the victim's life and body, including for victims of violent theft in Cirebon City. The problem to be discussed in this thesis is how is the regulation on the crime of violent theft currently? What are the weaknesses of the regulation on the crime of violent theft contained in Case Decision Number 40 / Pid.B / 2023 / Pn Cbn? and what is the solution to the weaknesses in the regulation on the crime of violent theft in the future. The purpose of this study is to determine and analyze the current regulatory arrangements regarding the crime of theft with violence, to determine and analyze the weaknesses of the regulations regarding the crime of theft with violence contained in the Decision Case Number 40/Pid.B/2023/Pn Cbn, and to determine and analyze solutions to the weaknesses of the regulatory arrangements regarding the crime of theft with violence in the future. The type of research in this thesis is sociological juridical with an empirical approach. So that the imposition of criminal penalties for the perpetrators cannot be in accordance with the victim's losses.*

Keywords: *Crime; Criminal; Death; Violence*

1. Introduction

The future of a country is determined by the government's success in realizing social welfare for all levels of society. This in Indonesia has been expressly mandated in Paragraph 4 of the 1945 Constitution of the Republic of Indonesia which states that "The Government of the Republic of Indonesia is obliged to advance public welfare". This mandate was then translated explicitly in Article 34

paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "the poor and neglected children are cared for by the state". A country's failure to realize social welfare can result in poverty problems. The Central Statistics Agency (BPS) recorded the number of poor people in March 2024 at 25.22 million people. This figure is the lowest in the last decade. From 2014 to 2024, poverty had increased during the Covid-19 pandemic and then decreased until March 2024. In fact, the number of poor people decreased by around 3.06 million people or decreased by around 2.22 percentage points in the last ten years. If on average the number of poor people decreases by around 300,000 people per year, in March 2014, the number of poor people was 28.28 million people (11.25%).

After that, the poverty rate continued to decline until March 2019 by 25.14 million people (9.41%). However, during the Covid-19 pandemic, poverty increased, namely in March 2020 by 26.42 million people (9.78%) and March 2021 by 27.54 million people (10.14%).¹

As a crime that threatens the property rights of valuables and a person's life, the crime of theft with violence can be said to be a crime that also has serious consequences. The position of theft with violence as a crime that has serious consequences because it can claim property and a person's life, is not directly proportional to the type of punishment imposed on the perpetrator of theft with violence, this can be seen from the severity of the criminal sanctions as regulated in Article 365 of the Criminal Code, namely imprisonment for 9 years if carried out by the perpetrator alone and 12 years for theft with violence committed by more than one perpetrator. This is clearly seen in Case Number 40 / Pid.B / 2023 / PN Cbn. Where in the decision it is seen that on Friday, April 16, 2021 at around 02.00 WIB, the defendant together with Mr. MOH. RIZAL SAPUTRA Bin SUMARDI rode a red Honda Beat motorcycle with the defendant riding pillion towards Jalan KS Tubun Gg. Sudarma No. 182 RT 05 RW 03, Kejaksan Village, Kejaksan District, Cirebon City, then when the defendant together with Mr. MOH. RIZAL SAPUTRA Bin SUMARDI passed the road, Mr. MOH. RIZAL SAPUTRA Bin SUMARDI saw the witness's child Nabela Ramadiani, the witness's child Retno Ningsih and the witness's child Regina sitting in the Hall on the side of the road while playing with a cellphone. Seeing this situation, the defendant together with Mr. MOH. RIZAL SAPUTRA Bin SUMARDI turned around the motorcycle he was riding to approach the witness's child Nabela Ramadiani, the witness's child Retno Ningsih and the witness's child Regina with the intention of taking 1 (one) unit of black Samsung J6 Plus brand cellphone that was being held by the witness's child Nabela Ramadiani, then after arriving the defendant pretended to ask for the address to the witness's child Nabela Ramadiani, the witness's child Retno Ningsih and the

¹Central Statistics Agency, "Percentage of Poor Population in March 2024 Drops to 9.03 Percent", <https://www.bps.go.id/id/pressrelease/2024/07/01/2370/percentage-of-poor-population-in-march-2024-drops-to-9-03-percent.html>, January 3, 2025, 13.00 WIB.

witness's child Regina, then when the witness's child Nabela Ramadiani was off guard, Mr. MOH. RIZAL SAPUTRA Bin SUMARDI who at that time was being ridden by the defendant immediately took by force 1 (one) unit of black J6 Plus brand cellphone that was being held by the witness's child Nabela Ramadiani, then when the cellphone was taken by force by Mr. MOH. RIZAL SAPUTRA Bin SUMARDI, the witness's child Nabela Ramadiani spontaneously pulled the collar and the seat iron of Mr. MOH. RIZAL SAPUTRA Bin SUMARDI's motorcycle so that the defendant and Mr. MOH. RIZAL SAPUTRA Bin SUMARDI fell from the motorbike he was riding, when the defendant and Mr. MOH. RIZAL SAPUTRA Bin SUMARDI fell, Mr. MOH. RIZAL SAPUTRA Bin SUMARDI had time to run away but was chased and secured by the witness's son Faisal, the witness's son Regina while the defendant managed to escape and the defendant was successfully arrested by witness Rangga Putra Yondhika (a member of the Cirebon City Police Criminal Investigation Unit) on January 17, 2023 at around 13.30 WIB in front of the Cirebon City Police Office. For the actions of the defendant and his co-perpetrators, they were subject to criminal penalties as regulated in Article 365 paragraph (2) of the Criminal Code. When compared to the victim's losses reaching IDR 2,800,000 (two million eight hundred thousand rupiah) and experiencing psychological injuries and trauma. Even though the defendant has been tried and found guilty and has served his sentence, the victim's material and non-material losses cannot be recovered.²

2. Research Methods

In accordance with the title and problems that will be discussed in this study and in order to provide useful results, this study was conducted with sociological legal research, namely a type of research that studies the influence of society on law, to what extent the symptoms that exist in society can influence law and vice versa and is based on the paradigm of empirical science.³ The approach method used in compiling this thesis is an empirical approach, which is a method that uses various empirical facts by taking from human actions, both verbal and real actions, namely through interviews or direct observation. On the other hand, the observed actions are those that reflect the gap between theory and reality or vice versa that occurs in the field.⁴

3. Results and Discussion

² Cirebon District Court, Case Number 40/Pid.B/2023/PN Cbn, https://jdih.mahkamahagung.go.id/storage/uploads/produk_hukum/Putusan%20Pengadilan%20Negeri%20Cirebon%20Nomor%2040/Pid.B/2023/PN%20Cbn/1689061296_PN_Cbn_2023_Pid.B_40_putusan_akhir.pdf, January 3, 2025, 14.00 WIB.

³Johnny Ibrahim, Normative Legal Research Theory & Methodology, Bayumedia Publishing, Malang, 2013, p. 40.

⁴Ibid, p. 14.

3.1. Current Regulations on the Crime of Violent Theft

Theft in criminal law is a crime involving the taking or embezzlement of another person's property without permission or right. The act of theft is defined in various legal systems around the world and is generally considered a serious offense. The main elements of theft usually involve the intent to take the property of another person, the taking of the property without permission or right, and the transfer of ownership of the property from the original owner to the perpetrator. Different legal systems may have slightly different definitions and elements, but the essence is that theft involves the unlawful taking of another person's property. The penalties for theft vary depending on a number of factors, such as the value of the property stolen, the violence that may have been involved, or whether the perpetrator has committed similar acts before. Theft is often punished by imprisonment, a fine, or a combination of both, depending on the severity and the specific circumstances of the case.⁵ Legal systems typically seek to protect property rights and public safety by enforcing penalties against perpetrators of theft.

According to Adami Chazawi, aggravated theft is a form of theft as formulated in Article 362 of the Criminal Code (its basic form) plus other elements, both objective and subjective, which are aggravating to the theft, and therefore is subject to a heavier penalty than theft in its basic form.⁶

Some of the definitions above, although the wording is different, have the same substance. Article 365 paragraph 4 of the Criminal Code threatens with severe punishment, if the theft with violence causes death, namely if the theft is committed by two or more people together accompanied by circumstances as regulated in paragraphs 1 and 2 of the same article with the death penalty, life imprisonment or temporary imprisonment for a maximum of twenty years. It should be noted that where it is determined that there is a possibility that someone will be seriously injured or die, it does not matter who is seriously injured or dies, as long as the occurrence of the serious injury or death is a direct result of the crime of theft with violence in question. So the person who is seriously injured or dies does not need to be the person who is the victim of the theft, but it can also be a member of his family, a warehouse guard, a guest who happens to be meeting at that place, a person who catches the thieves or people who chase the thieves when they escape from arrest. Several Arrest Hoge Raad (Supreme Court decisions) regarding the crime of "theft with violence" are as follows:⁷

⁵PAF Lamintan and Jisman Samosir, *Special Offenses Criminal Acts Directed against Property Rights and Other Rights Arising from Property Rights*, Bandung: Nuansa Aulia, 2010, p. 67

⁶K. Wancik Saleh, *Criminal Acts of Corruption and Bribery*, Jakarta: Ghalia Indonesia, 2007, p. 15

⁷PAF Lamintan and Jisman Samosir, *Special Offenses Criminal Acts Directed against Property Rights and Other Rights Arising from Property Rights*, Bandung: Nuansa Aulia, 2010, pp. 95-98

1) *Arrest of the High Council* dated June 27, 1932 (NJ 1932 page 1407, W 12520) which states that: "If more than one person is involved in the crime, then each person is responsible for the crime as a whole, as well as for acts which he did not commit alone, but which were committed by other participants. This provision also applies to attempted theft with violence";

2) *Arrest of the High Council* dated 27 August 1937 (NJ. 1938 No. 29), which states that: "By tying up a person, there is an unlawful restriction of movement. This act is included in the definition of violence in Article 365 of the Criminal Code";

3) *Arrest of the High Council* dated August 25, 1931 (NJ. 1932 page 1255, W. 12358) which stated that: "The fact that there is no money in the drawer of the sales counter, does not preclude an attempt to commit theft with violence";

4) *Arrest of the High Council* dated 22 October 1923 (NJ. 1923 page 1368, W. 11122) which states: "Article 90 of the Criminal Code does not explain what is meant by "zwaar lichamelijk letsel" or "serious injury". This article only mentions incidents, which the Judge must consider as such without considering what term is used in everyday speech. The Judge has the freedom to consider every wound on the body or lichamelijk letsel as a serious injury or "zwaar lichamelijk letsel", outside the above incidents, which according to everyday speech indicate such a thing";

5) *Arrest of the High Council* dated 22 October 1902 (W. 7505) which states that: "Article 90 of the Criminal Code only mentions several incidents which are considered as "zwaar lichamelijk letsel". This definition is not limited to these incidents alone. What is important is that the injury must be so serious and not an injury which causes continuing harm to the injured person";

6) *Arrest of the High Council* dated 31 October 1904 (W. 8136) which states: "It is an injury with serious permanent consequences, the loss of most of the earlobe is a "zwaar lichamelijk letsel" or serious injury";

7) *Arrest of the High Council* dated January 18, 1949 No. 423, which states: "In the indictment it may be stated that the person who was shot has received "zwaar lichamelijk letsel" or serious injuries. This statement is not only a qualification, but also a true understanding or a "feitelijk begrip".

Theft with violence as explained above, has similarities and differences with the crime formulated in Article 339 of the Criminal Code, which is known as murder preceded or accompanied by another crime. The differences are:⁸

⁸Location, cit.

1) Theft with violence (Article 365), the main crime is theft, while the crime in Article 339 the main crime is murder.

2) The death of another person according to article 365 is not intended, the perpetrator's intention is to possess an object. While death according to article 339 is intended or desired.

3) The efforts used in committing the main crime, in Article 365, are in the form of violence or threats of violence, whereas in Article 339 murder can be considered an effort to commit another crime.

4) That in theft with violence there is a threat of death penalty, while murder in article 339 is not. While the similarities are:

a. The subjective element that is the same is that the efforts used in each of these criminal acts are aimed at the same intention:

1) prepare and or

2) facilitate the implementation of the crime.

3) if caught red-handed, then:

a) allows for escape (365), or release from punishment (339).

b) can retain the objects obtained from the crime.

b. The time of use of these efforts is before, during and after the main crime takes place.

Violent theft in Law Number 1 of 2023 concerning the New Criminal Code also regulates violent theft. This can be seen in Article 479 which states that "Any person who commits theft preceded, accompanied, or followed by violence or threats of violence against people, shall be punished with a maximum imprisonment of 9 years".

The elements in Article 479 of Law Number 1 of 2023 concerning the New Criminal Code consist of:

a. Violence or threats of violence may be committed before, during, or after the theft is committed.

b. The purpose is to prepare or facilitate theft.

c. In case of being caught red-handed, to allow escape by yourself or other participants.

d. To retain control of stolen goods.

Based on the provisions of Article 479 of Law Number 1 of 2023 concerning the New Criminal Code, it can be seen that theft with violence in the new Criminal Code is also a serious crime in Indonesia. This act includes the use of violence or the threat of violence to steal someone else's property.

3.2. Weaknesses of Regulations on the Crime of Theft with Violence Contained in Case Decision Number 40/Pid.B/2023/Pn Cbn

The basic form of the crime of theft is regulated in Article 362 of the Criminal Code (KUHP) with its elements: taking, something, all or part of which belongs to another person, intent to own and against the law. While the crime of theft with violence is regulated in Article 365 of the Criminal Code. Often read in the newspaper, hear on the radio and watch on television broadcasts the rampant crime of theft with violence carried out by a group of robbers. For example, at the end of August 2010, precisely on August 20, 2010, we witnessed the robbery of CIMB Niaga Bank in Medan, North Sumatra, carried out by a group of robbers who used masks and firearms, both short and long barrels, known as assault weapons, the AK 47 type made in Russia and the M 16 made in the United States, where one police officer died due to violence and all bank employees were held captive in a place. The incident was recorded on CCTV. The robbers managed to run away with around one and a half billion in cash.

The crime of theft with violence is punishable by death, or life imprisonment or a certain period of up to twenty years, in the case of:

- 1) If the act results in serious injury or death and is committed by two or more people in association,
- 2) One of the reasons explained in Article 365 paragraph (2) number 1.

From the description of the basic form of theft in Article 362 of the Criminal Code and theft with violence in Article 365 of the Criminal Code, the most severe punishment that is threatened and can be imposed is the death penalty (Article 365 paragraph (4) of the Criminal Code). It turns out that our Criminal Code still threatens the death penalty for several types of crimes, for example treason (Article 104 of the Criminal Code), premeditated murder (Article 340 of the Criminal Code), theft with violence (Article 365 of the Criminal Code and so on. Likewise, in criminal provisions outside the Criminal Code, the death penalty is still threatened, for example in corruption. It must be admitted that the death penalty is still recognized in the criminal system in Indonesia as regulated in Article 10 of the Criminal Code as the most severe punishment. On the other hand, those who agree with the death penalty reject the arguments put forward by those who reject the death penalty. According to the utilitarian view, the view that wants the death penalty to be abolished based on the reason that the criminal justice system is imperfect so that errors can occur, namely the imposition of the death penalty on innocent people, cannot be fully accepted for

two reasons: First, by continuing to acknowledge the imperfection of the criminal justice system, abolishing the death penalty on the one hand does not necessarily make the criminal justice system perfect, on the other hand the abolition of the death penalty is certain injuring the sense of justice of the community because of the unrestored social harmony caused by the occurrence of criminal acts that are threatened with the death penalty. Second, the occurrence of errors in imposing the death penalty on innocent people, or errors have occurred in several cases without showing the percentage of errors that occurred, will raise suspicions of deliberate attempts to create realities that are too utopian, so that people will be fixated on the error and forget the substance of the real debate.

The debate on the death penalty is also related to the right to life which in international law and in the 1945 Constitution of the Republic of Indonesia is included in the category of rights that cannot be reduced under any circumstances (non-derogable rights). However, international legal instruments do not prohibit the death penalty at all but rather limit its application. The Constitutional Court has filed a judicial review of the death penalty and concluded that the death penalty does not conflict with the provisions of the 1945 Constitution. In Constitutional Court Decision No. 2-3/PUU-V/2007 it was stated that in the future the formulation, application, and implementation of the death penalty should pay attention to four important things, namely: First, the death penalty is no longer a principal punishment, but rather a special and alternative punishment. Second, the death penalty can be imposed with a probationary period of ten years which if the convict behaves well can be changed to life imprisonment or 20 years. Third, the death penalty cannot be imposed on minors. Fourth, the execution of the death penalty against pregnant women and someone who is mentally ill is postponed until the pregnant woman gives birth and the mentally ill convict recovers. In addition to the two groups that accept and reject the death penalty, there is also a group that stands in the middle. Neither accepting, nor rejecting. Or rejecting the death penalty with exceptions, accepting the death penalty with exceptions.

These various weaknesses result in the death penalty as a means of punishment that is able to create a deterrent effect and suppress the crime of theft with violence as a crime that is dangerous to life and property, resulting in many cases of theft with violence not imposing the death penalty for the perpetrators. Including in Decision Number 40/Pid.B/2023/Pn Cbn.⁹In the verdict, YH as the perpetrator who was truly proven to have committed theft with violence together was only sentenced to 2 (two) years and 6 (six) months in prison or rounded up to 3 years in prison, minus the time the defendant was in detention,

⁹ https://jdih.mahkamahagung.go.id/storage/uploads/produk_hukum/Putusan%20Pengadilan%20Negeri%20Cirebon%20Nomor%2040/Pid.B/2023/PN%20Cbn/1689061296_PN_Cbn_2023_Pid.B_40_putusan_akhir.pdf, May 12, 2024.

with the order that the defendant remain detained. YH together with RS (not yet caught) on Friday, April 16, 2021 at around 02.00 WIB or at least at another time in 2021, at Jalan KS Tubun Gg. Sudarma No. 182 RT 05 RW 03, Kejaksan Village, Kejaksan District, Cirebon City, at around 02.00 WIB, rode a red Honda Beat motorcycle towards Jalan KS Tubun Gg. Sudarma No. 182 RT 05 RW 03, Kejaksan Village, Kejaksan District, Cirebon City, then when the defendant passed the road he saw the witness's child Nabela Ramadiani, the witness's child Retno Ningsih and the witness's child Regina sitting in the hall on the side of the road while playing with their cellphones. Seeing this situation, the defendant turned around the motorbike he was riding to approach the witness's child Nabela Ramadiani, the witness's child Retno Ningsih and the witness's child Regina with the intention of taking 1 (one) unit of a black Samsung J6 Plus brand cellphone that was being held by the witness's child Nabela Ramadiani, then after arriving the defendant pretended to ask for the address to the witness's child Nabela Ramadiani, the witness's child Retno Ningsih and the witness's child Regina, then when the witness's child Nabela Ramadiani was off guard, RS who at that time was being carried by the defendant immediately took by force 1 (one) unit of a black J6 Plus brand cellphone that was being held by the witness's child Nabela Ramadiani, then when the cellphone was taken by force by RS, the witness's child Nabela Ramadiani spontaneously forcibly pulling the collar and the seat iron of RS's motorbike so that the defendant and RS fell off the motorbike they were riding, when the defendant and RS fell they managed to run away but were chased and secured by the witness's son Faisal, the witness's son Regina while the defendant managed to escape and the defendant was successfully arrested by witness Rangga Putra Yondhika (a member of the Cirebon City Police Criminal Investigation Unit) on January 17, 2023 at around 13.30 WIB in front of the Cirebon City Police Office. The defendant's actions as regulated and threatened with criminal penalties in Article 365 paragraph (2) 2 of the Criminal Code.

The panel of judges considered that what is meant by whoever is all people as legal subjects who commit a crime, regarding the element of whoever the Panel of Judges will consider as follows: Considering that according to the facts revealed in the trial, the Defendant who has been submitted by the Public Prosecutor as the perpetrator of a crime, as described in the Public Prosecutor's indictment; Considering that the Defendant Yusuf Handika alias Benjol bin Rusmiyanto during the trial has been able to explain clearly and transparently both regarding his identity and everything related to the Public Prosecutor's indictment that has been submitted to the Defendant; Considering that based on the legal considerations above, the Panel of Judges is of the opinion that the element of "whoever" has been fulfilled; Considering that what is meant by taking is taking with the intention of being controlled or owned and at the time of doing so the goods taken are not yet in his control and the goods have moved; Considering that what is meant by something is anything that has economic value; Considering that what is meant by wholly or partly belonging to another

person is that the goods taken are wholly or partly owned by someone; Considering, that based on the facts revealed in the trial That on Friday, April 16, 2021 at around 02.00 WIB the Defendant together with Mr. Moh. Rizal Saputra bin Sumardi rode a red Honda Beat motorcycle with the Defendant carrying Mr. Moh. Rizal Saputra bin Sumardi towards Jalan KS Tubun Gg. Sudarma No. 182 RT 05 RW 03, Kejaksan Village, Kejaksan District, Cirebon City, at that time the Defendant and Mr. Moh. Rizal Saputra bin Sumardi saw the Witness's Child Nabela Ramadiani, Witness's Child Retno Ningsih and Witness's Child Regina sitting on a pavilion on the side of the road while playing with their cellphones, then the Defendant together with Mr. Moh. Rizal Saputra bin Sumardi turned around the motorbike he was riding, the Defendant then pretended to ask the Child Witnesses for the address of someone named Panjul, then Mr. Moh. Rizal Saputra immediately took 1 (one) unit of a Samsung Type J6 dark blue cellphone that was being held by the child of the witness Nabela Ramadiani which belonged to the witness Nabela Ramadiani; Considering, that based on the legal considerations above, the Panel of Judges is of the opinion that the element of "taking something that is wholly or partly owned by another person" has been fulfilled.

Considering, that what is meant by unlawful means is that the act is contrary to applicable regulations or to values and norms in society; Considering, that based on the facts revealed in court on Friday, April 16, 2021 at around 02.00 WIB, the Defendant together with Mr. Moh. Rizal Saputra bin Sumardi rode a red Honda Beat motorcycle with the Defendant carrying Mr. Moh. Rizal Saputra bin Sumardi towards Jalan KS Tubun Gg. Sudarma No. 182 RT 05 RW 03, Kejaksan Village, Kejaksan District, Cirebon City, at that time the Defendant and Mr. Moh. Rizal Saputra bin Sumardi saw the Witness's Child Nabela Ramadiani, Witness's Child Retno Ningsih and Witness's Child Regina sitting on a pavilion on the side of the road while playing with their cellphones, then the Defendant together with Mr. Moh. Rizal Saputra bin Sumardi turned around the motorcycle he was riding, the Defendant then pretended to ask the Child Witnesses for the address of someone named Panjul, then Mr. Moh. Rizal Saputra immediately took 1 (one) unit of Samsung Type J6 dark blue cellphone that was being held by the child witness Nabela Ramadhiani which belonged to the witness Nabela Ramadiani; Considering, that at the same time the Child Witness Nabela Ramadhiani immediately pulled the jacket and pulled the iron handle of the back seat of the motorcycle that the Defendant was riding, so that the Defendant together with Mr. Moh Rizal Saputra fell; Considering, that the Defendant and Mr. Moh. Rizal Saputra took the item in the form of 1 (one) unit of Samsung Type J6 dark blue cellphone without permission from its owner, namely the Child Witness Nabela

Ramadiani; Considering, that thus the element with the intention to be owned unlawfully has been fulfilled according to the law.¹⁰

Considering, that based on the facts revealed in court on Friday, April 16, 2021 at around 02.00 WIB, the Defendant together with Mr. Moh. Rizal Saputra bin Sumardi rode a red Honda Beat motorcycle with the Defendant carrying Mr. Moh. Rizal Saputra bin Sumardi towards Jalan KS Tubun Gg. Sudarma No. 182 RT 05 RW 03, Kejaksan Village, Kejaksan District, Cirebon City, at that time the Defendant and Mr. Moh. Rizal Saputra bin Sumardi saw the Witness's Child Nabela Ramadiani, Witness's Child Retno Ningsih and Witness's Child Regina sitting on a pavilion on the side of the road while playing with their cellphones, then the Defendant together with Mr. Moh. Rizal Saputra bin Sumardi turned around the motorbike he was riding, the Defendant then pretended to ask the Children of the Witnesses for the address of someone named Panjul, then Mr. Moh. Rizal Saputra immediately took 1 (one) unit of a dark blue Samsung Type J6 cellphone that was being held by the child of the witness Nabela Ramadhiani which belonged to the witness Nabela Ramadiani; Considering, that thus the elements that are preceded, accompanied or followed by violence or threats of violence, against people with the intention of preparing or facilitating theft or in the case of being caught red-handed, to allow escape by themselves, or other participants or to maintain control of the stolen goods, have been legally and convincingly proven according to the law; Considering, that based on the facts revealed in court that the actions committed by Yusuf Handika alias Benjol bin Rusmiyanto and Mr. Moh. Rizal Saputra bin Sumardi on Friday, April 16, 2021 at around 02.00 WIB, the Defendant was in a position of riding pillion with Mr. Moh. Rizal Saputra bin Sumardi riding 1 (one) unit of red Honda Beat motorcycle towards Jalan KS Tubun Gg. Sudarma No. 182 RT 05 RW 03, Kejaksan Village, Kejaksan District, Cirebon City, at that time the Defendant and Mr. Moh. Rizal Saputra bin Sumardi saw Child Witness Nabela Ramadiani, Child Witness Retno Ningsih and Child Witness Regina sitting on a pavilion on the side of the road while playing with their cellphones, then the Defendant together with Mr. Moh. Rizal Saputra bin Sumardi turned the motorcycle they were riding around, the Defendant then pretended to ask the Child Witnesses for the address of someone named Panjul, then Mr. Moh. Rizal Saputra immediately took 1 (one) unit of Samsung Type J6 dark blue cellphone that was being held by the child of witness Nabela Ramadhiani which belonged to the child of witness Nabela Ramadiani; Considering, that the Defendant Yusuf Handika alias Benjol bin Rusmiyanto and Mr. Moh. Rizal Saputra bin Sumardi took an item in the form of 1 (one) unit of Samsung Type J6 dark blue cellphone without permission from its owner, namely the child of witness Nabela Ramadiani; Considering, that based on the description of the facts above, The method of the Defendant Yusuf Handika alias Benjol bin Rusmiyanto and Mr. Moh. Rizal Saputra bin Sumardi is included in the

¹⁰Location, cit.

elements of this article, thus the element carried out by two or more people in collusion has been fulfilled according to the law; Considering, that because all the elements of Article 365 Paragraph (2) 2 of the Criminal Code have been fulfilled, the Defendant must be declared legally and convincingly proven to have committed the crime of "Theft with Violence Under Aggravating Circumstances" as charged by the Public Prosecutor; Considering, that regarding the Defendant's defense (plea) submitted in writing by the Defendant's Legal Counsel, because its nature only concerns a request for a reduced sentence, the Panel of Judges will consider mitigating factors; Considering, that in the trial, the Panel of Judges did not find anything that could eliminate criminal responsibility, either as a justification and/or excuse, the Defendant must be held responsible for his actions; Considering, that because the Defendant is capable of being responsible, he must be declared guilty and sentenced to a criminal penalty; Considering, that in this case the Defendant has been subject to legal arrest and detention, then the period of arrest and detention must be deducted entirely from the sentence imposed; Considering, that because the Defendant was detained and the detention of the Defendant was based on sufficient reasons, it is necessary to determine that the Defendant remains detained; Considering, that in order to impose a sentence on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances for the Defendant; The aggravating circumstances are that the Defendant's actions have disturbed the community; The Defendant has been sentenced 2 (two) times in 2017 and 2019 in different cases. The Defendant was sentenced to 3 years in prison. The judge's consideration in imposing a 3-year sentence on the perpetrator is that the perpetrator regrets his actions. then the Defendant must be held accountable for his actions; Considering, that because the Defendant is capable of being responsible, he must be declared guilty and sentenced; Considering, that in this case the Defendant has been subject to legal arrest and detention, then the period of arrest and detention must be deducted entirely from the sentence imposed; Considering, that because the Defendant was detained and the detention of the Defendant was based on sufficient reasons, it is necessary to determine that the Defendant remains detained; Considering, that in order to impose a sentence on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances for the Defendant; The aggravating circumstances are that the Defendant's actions disturb the community; The Defendant has been sentenced 2 (two) times in 2017 and 2019 in different cases. The Defendant was sentenced to 3 years in prison. The judge's consideration in imposing a 3-year sentence on the perpetrator is that the perpetrator regrets his actions. then the Defendant must be held accountable for his actions; Considering, that because the Defendant is capable of being responsible, he must be declared guilty and sentenced; Considering, that in this case the Defendant has been subject to legal arrest and detention, then the period of arrest and detention must be deducted entirely from the sentence imposed; Considering,

that because the Defendant was detained and the detention of the Defendant was based on sufficient reasons, it is necessary to determine that the Defendant remains detained; Considering, that in order to impose a sentence on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances for the Defendant; The aggravating circumstances are that the Defendant's actions disturb the community; The Defendant has been sentenced 2 (two) times in 2017 and 2019 in different cases. The Defendant was sentenced to 3 years in prison. The judge's consideration in imposing a 3-year sentence on the perpetrator is that the perpetrator regrets his actions.¹¹

In contrast to the opinion of CG Howard & RS Mumnres who argue that what should be studied is not obedience to the law in general, but rather obedience to certain legal rules. Achmad Ali himself is of the opinion that studies can still be conducted on both:

- a. How is compliance with the law in general and what weaknesses affect it;
- b. How is compliance with a particular legal rule and what weaknesses influence it.

If what is being studied is the effectiveness of legislation, then it can be said that the effectiveness of legislation depends a lot on several weaknesses, including:

- a. Knowledge of the substance (content) of legislation.
- b. Ways to acquire this knowledge.
- c. Institutions related to the scope of legislation in society.
- d. How is the process of birth of legislation, which should not be born in a hurry for instant (momentary) interests, which Gunnar Myrdall terms sweep legislation, which has poor quality and does not suit the needs of society.

So, Achmad Ali is of the opinion that in general the weakness that greatly influences the effectiveness of legislation is the professionalism and optimal implementation of the roles, authorities and functions of law enforcers, both in explaining the tasks assigned to them and in enforcing the legislation.

Meanwhile, Soerjono Soekanto uses the benchmark for effectiveness in law enforcement in five areas, namely:¹²

- a. Weaknesses of the Law

¹¹*Location, cit.*

¹²Soerjono Soekanto, *Weaknesses Affecting Law Enforcement*, PT. Raja Grafindo Persada, Jakarta, 2007, p. 5.

Law functions for justice, certainty and benefit. In the practice of implementing law in the field, there are times when there is a conflict between legal certainty and justice. Legal certainty is concrete in nature, while justice is abstract so that when a judge decides a case by applying the law alone, there are times when the value of justice is not achieved. So when looking at a problem regarding the law, at least justice is the main priority. Because the law is not merely seen from the perspective of written law.

b. Weaknesses of Law Enforcement

In the functioning of the law, the mentality or personality of law enforcement officers plays an important role, if the regulations are good, but the quality of officers is poor, there is a problem. So far there has been a strong tendency among the public to interpret the law as officers or law enforcers, meaning that the law is identified with the real behavior of officers or law enforcers. Unfortunately, in carrying out their authority, problems often arise because of attitudes or treatments that are seen as exceeding authority or other actions that are considered to tarnish the image and authority of law enforcers. This is caused by the low quality of these law enforcement officers.

c. Weaknesses of Supporting Facilities or Infrastructure

The weakness of supporting facilities or infrastructure includes software and hardware, According to Soerjono Soekanto, law enforcers cannot work well if they are not equipped with proportional vehicles and communication tools. Therefore, facilities or infrastructure have a very important role in law enforcement. Without these facilities or infrastructure, it will be impossible for law enforcers to harmonize their proper roles with their actual roles.

d. Weaknesses of Society

Law enforcers come from the community and aim to achieve peace in the community. Every citizen or group has more or less legal awareness. The problem that arises is the level of legal compliance, namely high, moderate or low legal compliance. The degree of legal compliance of the community to the law is one indicator of the functioning of the law in question.

e. Weaknesses of Culture

Culture basically includes the values that underlie applicable laws, which values are abstract concepts about what is considered good (so that it is followed) and what is considered bad (so that it is avoided). Therefore, Indonesian culture is the basis or foundation of applicable customary law. In addition, there is also written law (legislation), which is formed by certain groups in society who have the power and authority to do so. These laws and regulations must be able to reflect

the values that are the basis of customary law, so that these laws and regulations can be actively applied.

3.3. Solutions to Weaknesses in Regulatory Arrangements Regarding Violent Theft Crimes in the Future

Criminal acts are one of the deviant behaviors that exist in every level of society. This behavior is a real threat that can have an impact on the emergence of tension both individually and socially. Criminal acts are a national social problem faced by a society in the country. This can be overcome by criminal law in the form of sanctions. The rules related to criminal law are contained in the Criminal Code (KUHP). Robbery is defined as theft using violence or the threat of violence. Theft is a property crime and a violent crime. The definition of Theft describes the relationship between these two dimensions: theft or attempted theft with violence or the threat of violence. The victim's losses from robbery-related theft are usually quite small; but the violent element of robbery makes it a serious crime. Overall, about 30% of non-commercial theft victims are injured, and about a third of these injuries require hospitalization. More importantly, about 2,000 robbery victims are murdered each year. Violent theft is very fearful, because it usually involves a sudden, unprovoked attack by a stranger on an innocent victim. This fear has serious consequences. It is largely the fear of robbery that drives many citizens to stay home at night and avoid the streets, thereby reducing the sense of community and increasing the freedom to commit crimes on the streets.

Meanwhile, the police are authorized to enforce the law according to Article 13 of the Police Law which states that the Indonesian Republic Police have the goal of creating definite laws. The steps for enforcing the law against perpetrators of theft are: receiving public complaints, leading examinations, and submitting documents to the examiner's office. The police are always ready to receive complaints from the general public about robbery directly or by telephone. Any protests deemed appropriate will be immediately followed up to the area or scene of the crime. The police immediately read the report, complete the location of the crime, collect evidence, and pursue the suspect who fled. Assuming there is convincing evidence pointing to the suspect, the specialist will make an arrest. The case file is then submitted to the general investigator with the suspect if it has been announced as complete or has met the requirements of the general investigator.

Violent crime is a violation of criminal law involving the intentional use of violence by one person against another. The use of the law against the crime of robbery with violence must be in accordance with the regulation of the material rogue force and the circumstances for the litigant to be punished considering the facts revealed in the preliminary examination, there are two valid pieces of evidence, the observer is confirmed by his religion and beliefs. The appointed authority in concluding the respondent, considers the annoying and moderate

elements; In order to realize order and tranquility and the quality of the regulations that are incomparable and honorable justice, the judge should also think about finding things that can free the plaintiff from criminal liability, either as an explanation or motivation to forgive, the existence of errors, is illegal and lack of reasons as an explanation. criminal erasure, with the aim that the judge can find a rational plaintiff who is considered reliable. Different reflections are the non-legal perspective and the legal perspective, the sentiment or purpose behind the involvement that is decided as a legitimate reflection that composes the premise of the criminal case resolved on violent robbery with discipline that is equivalent to their actions, to achieve magnificent justice. Criminal law should be able to provide legal protection for society from the threat of criminal acts that threaten property and life.

legal protection is a protection given to legal subjects in the form of legal instruments, both preventive and repressive, both written and unwritten. In other words, legal protection as a description of the function of law, namely the concept where law can provide justice, order, certainty, benefit and peace.¹³

The opinions quoted from several experts regarding legal protection are as follows:

- a. According to Satjipto Rahardjo, legal protection is an effort to protect a person's interests by allocating a Human Rights authority to him to act in the interests of that person.¹⁴
- b. According to Setiono, legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and peace so that humans can enjoy their dignity as human beings.¹⁵
- c. According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship between values or rules that are manifested in attitudes and actions in creating order in social interactions between fellow human beings.¹⁶

¹³ Rahayu, Transportation of People, etd.eprints.ums.ac.id. Government Regulation of the Republic of Indonesia, Number 2 of 2002 Concerning Procedures for Protection of Victims and Witnesses in Serious Human Rights Violations Law of the Republic of Indonesia, Number 23 of 2004 Concerning the Elimination of Domestic Violence.

¹⁴ Satjipto Rahardjo, Other Sides of Law in Indonesia, Kompas, 2003, Jakarta, p. 121.

¹⁵ Setiono, "Rule of Law", (Surakarta: Master's Dissertation, Faculty of Law, Sebelas Maret University, 2004), p.3

¹⁶ Muchsin, Protection and Legal Certainty for Investors in Indonesia, (Surakarta: Master's Dissertation, Faculty of Law, Sebelas Maret University, 2003), p. 14

d. According to Hetty Hasanah, legal protection is any effort that can guarantee legal certainty, so that it can provide legal protection to the parties concerned or those taking legal action.¹⁷

According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that are embodied in attitudes and actions in creating order in social interactions between fellow human beings. In line with that, Muchsin also stated that legal protection is something that protects legal subjects through applicable laws and regulations and enforces its implementation with sanctions. Legal protection can be divided into two, namely:¹⁸

a. Preventive Legal Protection

Protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the aim of preventing violations and providing guidelines or limitations in carrying out an obligation.

b. Repressive Legal Protection

Repressive legal protection is final protection in the form of sanctions such as fines, imprisonment and additional penalties given if a dispute has occurred or a violation has been committed.

According to Philipus M. Hadjon, there are two types of legal protection facilities, namely:¹⁹

a. Preventive Legal Protection Facilities

In this preventive legal protection, legal subjects are given the opportunity to file objections or opinions before a government decision gets a definitive form. The goal is to prevent disputes from occurring. Preventive legal protection is very important for government actions that are based on freedom of action because with preventive legal protection the government is encouraged to be careful in making decisions based on discretion. In Indonesia there are no specific regulations regarding preventive legal protection.

b. Repressive Legal Protection Facilities

Then realize justice, justice according to Islam in this case is equating something with another thing both in value and in size so that it is not biased or partial

¹⁷Hetty Hasanah, "Consumer Protection in Consumer Financing Agreements for Motor Vehicles with Fiduciary", article accessed on June 1, 2015 from <http://jurnal.unikom.ac.id/vol3/perlindungan.html>.

¹⁸Satjipto Rahardjo, op., cit.

¹⁹Location, cit.

between one and the other. Furthermore, fair also has the meaning of siding with the truth.²⁰

Basically, Allah SWT is called "The Most Just and Wise towards His servants, meaning that all human actions will not affect the justice of Allah SWT, good and bad human actions will actually receive their own rewards. This can be seen in the Quran, Chapter 41 Verse 46 which states that "whoever does good deeds, the reward is for himself and whoever does evil deeds, the sin is for himself, and your Lord never wrongs His servants".²¹ Meanwhile, the majority of Ulama agree that all of the Prophet's companions were just and there is no need to discuss the justice of the Prophet's companions, which can be seen in the narration of the Hadith.²²

4. Conclusion

The current regulatory arrangements on the crime of violent theft have not explicitly seen that violent theft, which is as dangerous as violent theft, is a more serious crime than non-violent theft, because violent theft can result in the loss of life and property of the victim. So that the imposition of criminal penalties for the perpetrators cannot be in accordance with the victim's losses. The weakness of the regulation on the crime of theft with violence contained in Case Decision Number 40/Pid.B/2023/Pn Cbn is that the judge views that theft with violence is not a serious and dangerous crime that can result in serious injury and threaten the victim's life, the judge does not see the aspect of the deterrent effect that can be realized through severe criminal sanctions, and the judge only considers the attitude of the perpetrator who regrets his actions as a leniency rather than looking at the victim's losses.

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²⁰Ibid, p. 51.

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