

Legal Implications of Perpetrators of the Criminal Act of Livestock Theft from the Perspective of Restorative Justice (Case Study of the Decision of Criminal Case Number 165/Pid.B/2024/Pn Bjn).

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Abstract. *This thesis aims to examine and analyze the legal implications for perpetrators of livestock theft from a restorative justice perspective, focusing on a case study of Decision Number 165/Pid.B/2024/PN Bjn. In the context of Indonesian criminal law, livestock theft is a form of crime that has a direct impact on the social and economic life of the community, especially in rural areas. However, a purely repressive approach to punishment often fails to address the root of the problem and provides little room for recovery for both victims and perpetrators. This type of research is a normative legal research conducted through literature study, by reviewing relevant laws and regulations, legal doctrines, and court decisions. The analysis focuses on how the application of the concept of restorative justice in livestock theft cases and the extent to which the judge's considerations in the decision reflect the principles of justice that emphasize the restoration of social relations, the responsibility of the perpetrator, and the involvement of the victim. The results of the study show that in Decision Number 165/Pid.B/2024/PN Bjn, the application of the restorative justice approach has not been fully considered as the main consideration in sentencing the perpetrator.*

Keywords: *Implications; Justice; Legal; Restorative.*

1. Introduction

In the 1945 Constitution (UUD), it is emphasized that the Republic of Indonesia is based on law (Rechstaat), not just on power (Machsaat). This emphasizes that the Republic of Indonesia is a democratic state of law, rooted in Pancasila and the 1945 Constitution, and upholds human rights. Every citizen has the same position before the law and government, and is required to respect the law and

government without exception. Law functions as a norm or rule that contains binding rules and provisions.¹

Violations of the law will be subject to strict sanctions. The targets of the law do not only include individuals who commit actual unlawful acts, but also include legal actions that may occur, as well as providing direction to state institutions to act in accordance with applicable laws and regulations. Thus, law enforcement is expected to create justice and prevent violations, while maintaining order and the welfare of society as a whole.²

The development process can lead to progress in people's lives, in addition it can also result in changes in social conditions that have negative social impacts, especially concerning the problem of increasing criminal acts that disturb the community. One of the crimes that can be said to be quite phenomenal is the problem of theft. Most theft crimes are committed by people who are old enough or adults. Regardless of all that, theft crimes committed by both children and adults, according to the law cannot be justified. Deviations in behavior or unlawful acts committed by society are caused by various factors, including the negative impact of rapid development, the flow of globalization in the field of communication and information, advances in science and technology and changes in the style and way of life of some parents, have brought about fundamental social changes in the lives of people who have a great influence on values and behavior in society.³

The crime of theft is a crime against property regulated in Book II of the Criminal Code (KUHP) in Chapter XXII. The crime is a formal crime, meaning that the act is prohibited and punishable by law. The definition of the crime of theft is regulated in Article 362 of the Criminal Code (R. Soesilo) which is formulated as follows: "Anyone who takes something, which is wholly or partly owned by another person, with the intention of possessing the item against his/her rights, shall be punished for theft, with a maximum imprisonment of five years or a maximum fine of IDR 900,."

Of the several theft cases processed at the Rangkasbitung District Court, the one that is interesting to be studied by the author is the livestock theft that occurred in Lebak district, the theft was carried out by five people using a car to steal goats. Seeing this, the author is interested in studying the judge's decision in deciding the criminal case of livestock theft that has been decided at the Rangkasbitung District Court.⁴In this criminal act of livestock theft, the Judge who handed down a criminal sentence to the defendant will of course examine the facts at trial by examining the defendant's statement and the evidence

¹R. Soesilo. 2011. Criminal Code (KUHP). Bogor: politeia. p. 11.

²Ahmad Tanzeh and Suyitno. 2006. Basics of Research. Surabaya: Elkaf. p. 116.

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⁴Andi Hamzah.1995. Principles of Criminal Law Revised Edition. Bandung: Rineka Cipta. p. 173

presented at trial and linking it to the elements charged by the Public Prosecutor.⁵

2. Research Methods

Method comes from the Greek word "Methodus" which means way or path.⁶So, the method can be interpreted as a path related to the way of working in achieving a target needed by its users, so that they can understand the target object or the purpose of solving the problem. Meanwhile, research means re-search. The search in question is the search for true (scientific) knowledge, because the results of this search will be used to answer certain problems. In other words, research is a search effort that is very educational; it trains us to always be aware that in this world there is much that we do not know, and what we are trying to find, find, and know is still not absolute truth. Therefore, it still needs to be re-tested.

3. Results and Discussion

3.1. Legal Analysis of the Criminal Act of Livestock Theft from the Perspective of Restorative Justice

1) Legal Analysis of the Criminal Act of Livestock Theft

The crime of livestock theft is a form of crime against property which in the context of an agrarian society, especially in rural areas, not only has an impact on economic aspects but also on social aspects. Article 363 paragraph (1) 1 of the Criminal Code qualifies livestock theft as an aggravated theft, considering the nature and objects stolen have high economic and social value. Livestock such as cows, goats, and buffalo are important assets for rural communities who depend on the livestock sector for their livelihood. Theft of these assets has the potential to cause significant losses that can disrupt the economic stability of families and the social harmony of the local community.

In Indonesian criminal law, theft is generally regulated in Article 362 of the Criminal Code, which states that:

"Anyone who takes something, which wholly or partly belongs to another person, with the intention of possessing it unlawfully, is threatened with theft, with a maximum prison sentence of five years or a fine."

However, there is no specific article in the Criminal Code that explicitly regulates livestock theft separately. However, livestock theft can be qualified as aggravated theft if it meets the requirements in Article 363 of the Criminal Code, such as being carried out at night, by two or more people, by dismantling, or

⁵R. Soesilo. 2011. Criminal Code (KUHP). Bogor: politeia. p. 253

⁶P. Joko Subagyo, 2004, Research Methodology in Theory and Practice, Rineka Cipta Jakarta, p. 1.

being carried out against livestock. In this context, livestock theft can be included in the aggravated category because the object (livestock) has special legal treatment. Article 363 paragraph (1) 1 of the Criminal Code states that theft is considered aggravated if it is carried out at night in a house or closed yard. This point is often relevant because livestock theft generally occurs at night when the owner is not alert. The addition of a heavier criminal threat reflects the level of loss and the seriousness of the action.

The crime of livestock theft also often involves elements of planning, group cooperation, and the use of certain tools. Therefore, law enforcement sees this crime not only as an ordinary violation, but as part of the potential for organized crime, especially in areas with high herding rates. From the victim's perspective, livestock theft is often an economic disaster because livestock is the only family asset. Therefore, in many cases, livestock theft is not only seen as a violation of the law but also as a major violation of social and humanitarian ethics.

In Jeremy Bentham's utilitarian perspective, crimes that eliminate the happiness or welfare of others, in this case the theft of productive property such as livestock, must be punished with the aim of reducing suffering and preventing similar crimes. Therefore, livestock theft can be seen as an act that is very detrimental to society, so serious control is needed. However, not all livestock theft is carried out by perpetrators with a purely criminal background. Many perpetrators act because of economic factors, such as poverty, unemployment, and family burdens. In this context, it is important to consider the perpetrator's social motives in imposing criminal penalties.

Livestock theft also often occurs in areas with weak environmental security surveillance, such as minimal patrols, no CCTV cameras, and long distances between residents' homes. These factors increase the opportunity for crime and complicate the law enforcement process. In some cases, livestock theft perpetrators were caught red-handed by residents and experienced mob violence (vigilantism). This indicates that the community views livestock theft as a serious crime, which creates public unrest and demands a firm legal response.

2) Restorative Justice in the Crime of Livestock Theft

Restorative justice is present as an alternative approach in resolving criminal cases that is more oriented towards healing, not just punishment. According to Tony Marshall (1996), restorative justice is "a process whereby parties with a stake in a specific offense collectively resolve how to deal with the aftermath of the offense and its implications for the future." This means that this approach prioritizes active participation between the perpetrator, victim, and community in resolving cases through deliberation to achieve fair recovery for all parties.

This approach is increasingly gaining legitimacy in Indonesian positive law, especially since the issuance of the Regulation of the Republic of Indonesia

National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. In addition, the Supreme Court through the Circular of the Supreme Court (SEMA) Number 4 of 2014 also encourages the application of restorative justice in minor cases, including crimes against property with limited loss value. Although livestock theft is often of high value, the socio-economic context and the relationship between the perpetrator and the victim are important factors that must be considered in implementing this approach.

According to Satjipto Rahardjo (2006), the law must side with humanity and social reality. Punishment should not stop at normative formulation in legal texts, but must be responsive to community conditions. In this case, a restorative approach is considered more suitable for handling minor and moderate legal violations that concern social relations at the grassroots level, including livestock theft in rural areas. From a criminological perspective, livestock theft is usually not carried out by professional perpetrators, but by people who experience economic pressure or have low educational backgrounds and access to resources. According to Edwin Sutherland (1949) in the theory of association differentiation, crime is learned through social interaction, and individuals from poor communities are more vulnerable to environmental pressure to commit violations of the law. Therefore, punishment alone will not stop the cycle of crime without comprehensive socio-economic recovery efforts.

Meanwhile, John Braithwaite's (1989) reintegrative shaming theory provides an important foundation for the implementation of restorative justice. In this theory, the perpetrator must be faced with shame as a social consequence, but within the framework of reintegration, not exclusion. This means that the perpetrator is given the opportunity to correct the mistake and be accepted back into his community. In the context of rural communities that have high collectivity values, this approach is very effective in preventing similar criminal acts in the future.

However, the implementation of restorative justice must be accompanied by the principle of caution so as not to obscure the principle of legal certainty and not create the impression of impunity for perpetrators of crimes. Restoration should not be used as a shortcut to free perpetrators from responsibility, but rather as a means to achieve a just and sustainable settlement. Therefore, the state must provide clear legal instruments and monitoring mechanisms to ensure that restorative justice is implemented in an accountable and transparent manner.

In strengthening restorative justice practices, the role of prosecutors and judges is very strategic. Prosecutors as *dominus litis* can take diversion or termination of prosecution based on restorative justice, as permitted in Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice. On the other hand, judges can consider the restorative

process in mitigating criminal penalties or in legal considerations that are recommendatory in nature for the social rehabilitation of the perpetrator.

Normatively, the Criminal Code has not explicitly accommodated restorative justice in its criminal provisions. However, in the RKUHP (Draft Criminal Code), this approach has begun to be accommodated in the form of diversion, conditional sentences, and restitution. This shows a new direction for punishment in Indonesia that is more humanistic and based on community values.

3) Application of Article 363 of the Criminal Code in the Crime of Livestock Theft

The difference between Article 362 and Article 363 of the Criminal Code lies in the presence or absence of aggravating circumstances in the crime of theft. Article 362 of the Criminal Code regulates ordinary theft, namely the act of taking goods that are wholly or partly owned by another person, with the intention of possessing the goods unlawfully. The main elements of this article include the act of taking, the object of another person's property, and the evil intention to possess it unlawfully. An example of ordinary theft is someone who steals a wallet from a table in a public place without the owner's permission. There is no element of violence, conspiracy, or other special circumstances that aggravate the crime. Therefore, the criminal threat is relatively light, namely a maximum imprisonment of five years or a maximum fine of sixty rupiah.

Meanwhile, Article 363 of the Criminal Code regulates aggravated theft, namely theft committed under certain conditions or methods that are considered more dangerous or detrimental, thus requiring a heavier criminal threat. Article 363 paragraph (1) states that theft can be punished with a maximum imprisonment of seven years if committed under certain circumstances, such as at night in a house or closed yard, committed by two or more people together, committed by damaging or forcing entry, using fake keys or fake identities, and if the object of the theft is livestock such as cows, goats, or chickens. With the presence of this aggravating element, theft, which was originally classified as ordinary, changes into a more serious form of crime with heavier legal consequences.

Theft of livestock is explicitly qualified as aggravated theft based on Article 363 paragraph (1) 5 of the Criminal Code. This provision provides a clear legal basis for charging perpetrators of livestock theft with an article that carries a higher penalty than Article 362. For example, if someone takes a cow belonging to a resident from a field or pasture without permission, then even though the act is similar to ordinary theft, because the object taken is livestock, the act is classified as aggravated theft. The legal formulation in cases like this usually states that the defendant has taken the victim's cow without rights and without permission, and because the object is an animal, it fulfills the elements of Article 363 paragraph (1) 5 of the Criminal Code.

The main difference between Articles 362 and 363 of the Criminal Code lies in the existence of aggravating elements that explicitly increase the criminal responsibility of the perpetrator. In the context of livestock theft, the law explicitly considers the act to be a more serious form of crime, because it harms the livestock community whose livelihoods largely depend on these animals, and because of its more disturbing nature and wider impact on the rural environment.

3.2. Substantive Justice in the Case of Criminal Case Decision Number 165/Pid.B/2024/Pn Bjn

1) Chronology of Criminal Case Decision Number 165/Pid.B/2024/Pn Bjn

On June 13, 2024, the defendant Suparman bin (the late) Dasiran, a 48-year-old farmer domiciled in Klumpit Village, Soko District, Tuban Regency, left his house riding a Yamaha Vega ZR motorbike that had been fitted with a bamboo sling. With the intention of stealing livestock, the defendant headed to the rice field area located in Kedung Village, Padangan District, Bojonegoro Regency. At that location, the defendant found five goats belonging to the victim named Endon Ginantoko which were being tied up and left by their owner. Seeing the quiet situation around him, the defendant then took the five goats by untying the ropes and putting them on the bamboo sling on his motorbike. The next day, on June 14, 2024, the defendant took the stolen goats to the animal market in Prambon Village, Soko District, and managed to sell them for IDR 5,000,000.

Several days later, the defendant was arrested by the police and secured along with a number of pieces of evidence, including the motorbike used in the theft, a jacket, a hat, a red face covering, and the money from the sale of the goat that was still intact. Due to this incident, the victim suffered a loss of approximately IDR 7,000,000. The defendant's actions were then charged with Article 363 paragraph (1) 1 of the Criminal Code concerning aggravated theft, because the theft was committed against livestock which is a special object in the provision. The legal process continued until finally on October 15, 2024, the Panel of Judges at the Bojonegoro District Court declared the defendant legally and convincingly proven to have committed the crime of livestock theft. The defendant was sentenced to 10 months in prison, with the provision that the period of detention that had been served was deducted entirely from the sentence imposed, and the defendant remained in detention.

Regarding the evidence, the panel of judges decided to confiscate and destroy the bamboo rengkek, red jacket, red hat, and red face covering. Cash of Rp5,000,000 was returned to the victim, while the motorbike and its STNK were returned to the defendant. The entire trial process was carried out in an orderly manner and according to procedure, including the submission and storage of evidence officially recorded at the Bojonegoro District Court.

2) Substantive Justice in Criminal Case Decision Number 165/Pid.B/2024/Pn Bjn

Substantive justice is a concept of justice that is oriented towards values, not merely the fulfillment of legal formalities. In the context of criminal law, substantive justice emphasizes the protection of human rights, humanity, and the restoration of social relations between perpetrators and victims. This approach is especially important in cases of minor crimes, such as aggravated theft that is not committed out of greed, but because of social and economic pressures.

In the case of Suparman bin (the late) Dasiran, the defendant was charged with stealing a cow belonging to the victim Muliadi. Based on the trial facts, the defendant sold the cow for Rp5,000,000 and returned all the proceeds to the victim directly before the case entered the trial stage. This action shows that there is concrete recovery of the victim's losses. This act of returning losses is in line with the spirit of substantive and restorative justice. The concept of restorative justice, according to Tony Marshall (1999), is a process in which all parties involved in a particular violation meet together to collectively resolve how to deal with the consequences of the violation and its implications for the future.

However, because this case continues to the trial stage, the opportunity to apply substantive justice is limited by the formal legal structure. In this case, the judge's decision becomes a balance between legal certainty and substantive social justice. A 3-month prison sentence is indeed relatively light, but it still leaves open the question of whether the punishment truly reflects the justice that lives in society. This verdict has the potential to cause further effects for the defendant, such as social stigma, loss of livelihood, and psychological burden.

The defendant's admission of guilt and open apology are also important indicators that the perpetrator is cooperative and responsible for his actions. This admission and sense of regret are important in the framework of substantive justice because they reflect the dimensions of morality and humanity in the criminal justice system. The absence of objections from the victim to the defendant indicates that a social understanding has been reached between the perpetrator and the victim. In many local communities in Indonesia, peaceful resolution based on deliberation is a common pattern. The absence of objections confirms that the victim no longer feels substantively disadvantaged, and even their social relationship is maintained.

The defendant's poor economic background is also an important consideration. Based on the testimony in the trial, the defendant did not commit the act because of evil motives, but because of economic pressure to meet daily living needs. From a substantive justice perspective, this social factor should be considered more broadly. Punishment of perpetrators of criminal acts such as

Suparman who are marginal, if carried out rigidly with a retributive approach, has the potential to perpetuate structural injustice. This has been criticized by Satjipto Rahardjo through the concept of progressive law which states that "the law must be able to protect humans and not become a mere tool of power"

In the verdict, the panel of judges did consider mitigating circumstances, such as restitution of losses, cooperative attitude, and the defendant's apology. However, the verdict was still imposed in the form of a 3-month prison sentence. This verdict shows the dilemma between formal justice and substantive justice. From the perspective of formal justice, the judge did carry out his function according to the provisions of Article 362 of the Criminal Code concerning theft. The criminal elements are fulfilled and normatively, punishment can be imposed. However, from the perspective of substantive justice, this verdict can be debated because it does not fully accommodate the restorative spirit that had formed before the trial. Lawrence M. Friedman's (2001) perspective on the legal system states that law cannot be separated from three elements: structure, substance, and legal culture. In this case, the local legal culture that tends to forgive and seek peaceful resolutions has been running first, but the formal legal structure still imposes criminal sanctions.

This shows that substantive justice often clashes with positive legal formalities, especially when the restorative approach is not a priority for law enforcement. In fact, the Regulation of the Republic of Indonesia Police Number 8 of 2021 has provided space for the resolution of minor criminal cases through the restorative justice mechanism. Based on the provisions of Perpol No. 8 of 2021, minor theft cases accompanied by restitution of losses and no demands from the victim can be stopped through the restorative justice mechanism. If this provision is maximized by law enforcement officers, Suparman's case should have been stopped at the investigation stage.

In a social context, justice is not just about punishing, but about reorganizing the damaged social relations. This is expressed by John Rawls in his book *A Theory of Justice* that justice is a state in which social institutions work to provide the greatest benefits to the least fortunate. With that background, the prison sentence against the poor who have shown good faith can be questioned in the context of distributive justice. Especially if the perpetrator is not a recidivist and his actions were not carried out for excessive profit.

The criminal justice system in Indonesia should be more open to the principles of substantive justice so as not to get caught up in the routine of punishment. As Muladi said, "the criminal justice system should ideally not only find the guilty perpetrator and punish him, but also provide space for the recovery of the victim and the reintegration of the perpetrator". It should also be emphasized that the principle of substantive justice does not mean ignoring the law, but placing the

law as a means to achieve real social justice. This means that the law must be flexible in responding to concrete contexts and circumstances.

In Suparman's case, the substantive justice approach should be the mainstay. The victim has received compensation for the loss, the perpetrator has regretted his actions, and there is no significant further loss. Therefore, conditional sentences or termination of the case should be a fairer option. If the substantive approach is not applied, the justice system has the potential to create new injustices, namely punishing the little people who have actually shown moral responsibility.

Therefore, in the future, there needs to be a reform of law enforcement policies so that the implementation of substantive justice does not become mere discourse. Synergy between the police, prosecutors, and judges is very important in aligning perceptions about the importance of recovery rather than punishment. In addition, the community also needs to be given legal education that peaceful resolution and social recovery are better than simply punishing. Substantive justice can only exist if all elements of the legal community support it.

The Supreme Court is also expected to issue technical guidelines for judges in implementing substantive and restorative justice more broadly, especially in minor and non-violent criminal cases. Thus, Decision Number 165/Pid.B/2024/PN Bjn becomes an important reflection on the limitations of the formal legal system in accommodating the values of substantive justice that exist in society. Finally, it can be concluded that the application of substantive justice in the Suparman case has been seen from the social process that took place before the trial, but has not been fully accommodated in the court's verdict. This shows the need for a shift in the legal paradigm from retributive to restorative to realize true justice.

3) Application of Article 363 of the Criminal Code in Criminal Case Decision Number 165/Pid.B/2024/Pn Bjn

Article 363 paragraph (1) 1 of the Criminal Code (KUHP) regulates aggravated theft, especially theft committed against livestock. In this case, the defendant Suparman was charged with stealing five goats belonging to the victim, which legally fulfills the elements of the crime as referred to in the article. There is no doubt that the objective and subjective elements of the crime committed have been fulfilled. However, the main concern in this case lies in how the panel of judges applies the article proportionally and substantively in handing down the verdict.

4) Judge's Considerations in Criminal Case Decision Number 165/Pid.B/2024/Pn Bjn

The public prosecutor's demand in this case was a prison sentence of 1 year and 3 months. However, the panel of judges in their verdict imposed a lighter sentence, namely a prison sentence of 10 months. This difference shows that the judge did not merely use the prosecutor's demands as the main reference, but made an independent assessment that considered a number of legal and social aspects. In this context, substantive justice appears as the main principle in sentencing, where the substance of justice is prioritized over its formal form.

One important consideration that influences this leniency is the defendant's cooperative attitude during the trial process. In criminal procedure law, the defendant's cooperative attitude is often considered a mitigating factor, because it shows remorse and a willingness to take responsibility. A defendant who admits his actions and does not evade in providing information shows good intentions that can be the basis for the judge to give a more humane verdict, without ignoring other purposes of sentencing.

The proportional application of criminal articles in this case shows a balance between protection of public interests, protection of victims' rights, and humane treatment of the accused. This approach brings the criminal justice process closer to the values of social justice as contained in Pancasila, especially the second and fifth principles, namely "Just and civilized humanity" and "Social justice for all Indonesian people."

4. Conclusion

The crime of livestock theft is a crime that has significant economic and social impacts, especially in rural agrarian communities. Article 363 paragraph (1) 5 of the Criminal Code clearly regulates livestock theft as aggravated theft because the object has high economic and social value and the potential for great loss for the victim and the community. Therefore, perpetrators of livestock theft are subject to a heavier criminal threat than ordinary theft.

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