

Legal Review of Criminal Punishment of Perpetrators of the Criminal act of Theft with Violence Based on Social Justice (Study of Decision Number: 470/Pid.B/2024/Pn.Mtr)

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Abstract. *In a country based on law (rechtstaat), the law is supreme, meaning that what is regulated by law must be obeyed by all its people, but in Indonesia this is still far from what is expected, and sometimes the law is used as a tool by certain people (rulers) to protect their interests and justify actions that clearly contradict the provisions of applicable law, so do not be surprised if the decline of the law continues to occur. Research method is a systematic process carried out by researchers to collect, analyze, and draw conclusions from the data obtained. This process is very important in the preparation of scientific papers and aims to answer research questions in an objective and measurable way. The criminalization process for perpetrators of violent theft is a series of stages starting from investigation, prosecution, to examination and verdict in court. Each stage has a function and procedure that is strictly regulated in the Criminal Procedure Code to ensure the protection of the rights of suspects and victims as well as legal certainty.*

Keywords: *Analyze; Certainty; Regulated.*

1. Introduction

The Republic of Indonesia is a country based on law, as stated in Article 1 paragraph (3) of the 1945 Constitution (UUD 1945) after the fourth amendment. This statement confirms that Indonesia is committed to implementing legal principles as the basis for national and state life. As the highest source of law, the 1945 Constitution regulates various aspects of community and government life, including the obligation to obey the law. Therefore, any violation of existing legal provisions will be subject to sanctions in accordance with applicable laws and regulations, regardless of who the perpetrator is. This shows the importance of the supremacy of law in maintaining justice and peace in Indonesia. Then Law

Number 48 of 2009 concerning Judicial Power, refers to the implementation of justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia.¹

In a country based on law (*rechtstaat*), the law is supreme, meaning that what is regulated by law must be obeyed by all its people, but in Indonesia this is still far from what is expected, and sometimes the law is used as a tool by certain people (rulers) to protect their interests and justify actions that clearly contradict the provisions of applicable law, so do not be surprised if the decline of the law continues to occur.²

As a country of law, Indonesia makes the law itself an ideology to create order, security, justice and welfare for every citizen. All aspects of life in this country are regulated by the rule of law, all individual behavior is regulated by law, both laws applicable in a region or customary law and laws applicable throughout Indonesia.³

Law is a system that is inseparable from the reciprocal influence of various aspects in society. Law functions to regulate relations between individuals and relations between individuals and the state. Thus, law plays an important role in creating peace and justice, so that every social interaction can take place harmoniously and in a structured manner. In this context, law becomes the foundation for a better social life. The important thing about a state of law is the existence of respect and commitment to uphold human rights and the guarantee of all citizens having the same position before the law (equality before the law).⁴

In order to realize a just and prosperous society, it is important for all of us to pay serious attention to the problem of crime, because criminal acts not only harm individuals but also threaten social and economic stability. Therefore, collaboration between the government, society, and related institutions is very necessary to create a safe and prosperous environment for all. Therefore, good cooperation is needed between the government and society so that the crime that cannot be eliminated can be reduced in intensity as much as possible.⁵

The Indonesian government, as an institution that regulates and runs the country, has a great responsibility in realizing the welfare and happiness of the people. This effort is not easy, considering that Indonesia is a developing country

¹Simamora, J, Interpretation of the Meaning of the Legal State in the Perspective of the 1945 Constitution of the Republic of Indonesia, *Journal of Legal Dynamics*, Volume 14 Number 3, 2014, pp. 547-561

²Musahib, AR, 2015, Return of State Finances from the Proceeds of Corruption (Doctoral dissertation, Tadulako University)

³Setiadi, W., Legal Development in the Framework of Increasing the Supremacy of Law. *Jurnal Rechts Vinding: Media for National Legal Development*, Volume 1 Number 1, 2012, pp. 1-15

⁴Manan, A, 2014, The role of law in economic development, Kencana Prenada Media Group

⁵Moeljatno, 2003, Criminal Code, Jakarta, Bumi Aksara, p.128

that is currently implementing development in various sectors. The main objective of this development is to provide welfare, both physically and spiritually for all Indonesian people. However, the challenges in the social sector are very complex. Various social problems arise due to factors and symptoms that conflict with the norms of goodness, local stability, patterns of weakness, morality, property rights, family solidarity, living in harmony with neighbors, discipline, and formal law. Therefore, collaborative efforts are needed to overcome all problems to achieve common goals.

These factors and symptoms are called Social Pathology. Where social pathology refers to various factors and symptoms related to crime and social deviation. This term covers various forms of crime that appear in society, and continue to develop over time. This development not only creates new patterns in the way individuals act, but also affects the consequences caused by these actions. Thus, social pathology becomes an important study to understand the dynamics of deviant behavior and its impact on social structures. These deviant actions can certainly disrupt the stability of a community group, even more broadly can cause disruption and threats to national stability and security.⁶

In social deviation, there can be a relationship between one individual and another, an individual and society, or between society and other societies. One example is the problem of behavior that is very contrary to a person's ownership rights. Crime is one of the human problems and social symptoms that arise in society because it can occur anywhere, anytime in social life, while the high or low crime rate that occurs depends on the state of society itself, both political, economic, cultural and so on.⁷

One form of crime that often occurs in Indonesian society is theft. In the existing social conditions, many individuals seek shortcuts to meet their living needs, so that stealing becomes an option. The crime of theft has been clearly regulated in the Criminal Code (KUHP) Book II Chapter XXII, starting from Article 362 to Article 367. Article 362 explains the basic definition of theft, while Article 363 regulates aggravated theft involving certain more serious situations. Article 364 discusses minor theft, while Article 365 regulates theft with violence that can result in injury to the victim. Meanwhile, finally, Article 367 touches on theft within the family, showing that this crime does not only occur outside the home environment but can also involve close relationships between family members.

⁶Sari, A., 2022, *The Phenomenon of Ghasab of Female Students at the Riyadlatul 'Ulum Islamic Boarding School, Batanghari District, East Lampung Regency (Social Pathology Review)* (Doctoral dissertation, UIN RADEN INTAN LAMPUNG).

⁷Rochaniningsih, NS, 2014, *The impact of shifting roles and functions of the family on adolescent deviant behavior*, *Journal of Educational Development: Foundations and Applications*, Volume 2 Number 1, p. 137

Through various mass media and electronic media, we often hear about the increasing number of various theft cases. This phenomenon is often caused by unfulfilled living needs. The increasing population growth creates major challenges for society, especially in providing basic needs and providing jobs. This condition can trigger vulnerabilities in the security and tranquility of society, thus increasing the possibility of crime or criminal acts. Therefore, it is important for us to understand the relationship between population growth and its impact on social stability.

Lately, various forms of theft cases have been increasingly widespread, mushrooming, and even very disturbing in the daily lives of society. Various modes of operation carried out in theft actions ranging from hypnosis, using drugs, even gang theft using firearms, which makes the victim unable to move. Theft crimes that are carried out also show an increasingly large scale with the target of theft no longer focused on houses at night but instead carried out during the day in crowded places such as banks, gold shops, pawnshops, supermarkets, with the results of the robbery being no less than a large amount.

This shows how someone is so creative in committing crimes. Even most of the people tend to be accustomed to it and seem to view the crime of theft as

crimes that are considered as a need for both individuals and groups. Various ways or *modus operandi* (ways of carrying out crimes) that differ between one crime and another, especially supported by the availability of facilities and infrastructure to commit crimes today, the *modus operandi* of criminals is directed towards the advancement of science and technology.⁸

The crime of theft can be divided into various categories, such as ordinary theft, aggravated theft, minor theft, theft in the family, and theft with violence. Theft with violence is one of the most serious forms of crime, where the perpetrator uses threats or physical actions to achieve goals. In the context of the development of human civilization, almost every society experiences acts of violence as part of the reality of everyday life.

The occurrence of this crime is often the result of complex interactions between individuals and their social environment. This process begins with the emergence of motivation which then develops into a negative intention to commit a crime. In many cases, individuals feel pressured by the needs of life or social pressure that drives them to commit violent theft as a way to meet these demands. Therefore, it is important for us to better understand the factors that influence criminal behavior that occurs so that more effective prevention strategies can be formulated. The crime of violent theft is stealing something that does not belong to him accompanied by acts against the physical using considerable strength or

⁸Mubarok, N, 2017, *Criminology from an Islamic Perspective*, Sidoarjo, Dwiputra Pustaka Jaya, p. 23

power and aimed at the person who is the object of the theft and causing the person to become helpless.⁹

The crime of theft with violence that often occurs can be carried out or accompanied by the presence of other people who suffer serious injuries, death, the theft is carried out at night, the theft is carried out by two or more people together by dismantling, climbing, threatening the victim using a firearm, using fake keys, false orders, and so on with the aim of making it easier to carry out the theft.

Some of the factors underlying the crime of theft with violence are economic factors, low levels of education, increasing unemployment, lack of legal awareness, loosening of family and social ties in society. There is no norm that allows theft. Theft with violence is contrary to religious, moral, ethical and legal norms, and is dangerous for the lives and livelihoods of society, the nation and the state.

The Criminal Case of Theft that the author raised in this study is a criminal act of theft with violence committed by BASOFI IRWAN alias IRWAN which was carried out on July 7, 2023 in Mataram City. on Friday, July 7, 2023 at around 14.30 WITA was on the side of the road around the Perampuan Intersection with his colleague named SUHARIADI alias SUHAR using a black Beat motorbike belonging to the Defendant, then at the same time, the Defendant saw two women he did not know riding a motorbike with a pillion passing towards the west, at which time the Defendant saw the bag belonging to Witness LUNA ULIYA MUTMAINATUL QULUB on the lap of Witness LUNA ULIYA MUTMAINATUL QULUB.

That furthermore, after seeing this, taking into consideration the quiet road conditions, the Defendant had the intention together with his colleague named Witness SUHARIADI alias SUHAR to chase Witness LUNA ULIYA who was with her friend, namely Witness NIKMATUL AINI, so that the Defendant and his colleague immediately started the motorbike that they were riding to be able to chase Witness LUNA ULIYA and Witness NIKMATUL AINI, with Witness SUHARIADI riding pillion and the Defendant riding pillion.

That next, the Defendant together with Witness SUHARIADI arrived at the bend of Mount Pengsong, Witness SUHARIADI quickly moved his motorbike closer from the left side to the motorbike belonging to Witness NIKMATUL AINI and Witness LUNA ULIYA with the aim of making it easier for the Defendant to take Witness LUNA ULIYA's belongings, after the Defendant felt that the required distance was sufficient, the Defendant quickly pulled Witness LUNA ULIYA's cellphone by force, and the motorbike ridden by the Defendant and his friend

⁹Rosyadi, I., Candra, M., Khaliq, A., Syaifullah, M., & Hayya, AQ, 2020, Victim precipitation in the crime of theft, Surabaya, CV Duta Media

had time to graze the motorbike ridden by Witness NIKMATUL AINI and Witness LUNA ULIYA which caused Witness NIKMATUL AINI and Witness LUNA ULIYA to lose balance and fall off the motorbike they were riding, and the Defendant together with Witness SUHARIADI immediately ran away without paying attention to Witness LUNA ULIYA and Witness NIKMATUL AINI who had fallen.

That after successfully taking 1 (one) unit of iPhone 7+ brand black cellphone with IMEI number 359171075502563, the Defendant with Witness SUHARIADI rushed towards the garbage dump in Taman Ayu Village, Gerung District, when checking the Defendant realized that the cellphone he took could not be opened, so the Defendant then took the cellphone to the house of one of his acquaintances named Witness YASFI who works as a cellphone repairman.

That later when the cellphone was handed over to Witness YASFI, Witness YASFI said to leave the cellphone to be worked on later on the grounds that there was still a lot of other work, but Witness YASFI first suspected that the cellphone brought by the Defendant was a stolen cellphone, so Witness YASFI reported this to the Police from the Labuapi Police.

2. Research Methods

Research method is a systematic process carried out by researchers to collect, analyze, and draw conclusions from the data obtained. This process is very important in the preparation of scientific papers and aims to answer research questions in an objective and measurable way. In general, research methods can be defined as steps taken by researchers to achieve certain objectives in research. According to Nasir, research methods are the main way used by researchers to achieve objectives and determine answers to the problems raised. Meanwhile, Winarno emphasized that research methods are scientific activities carried out with careful and systematic techniques.¹⁰

3. Results and Discussion

3.1. Social Justice-Based Criminal Procedure for Perpetrators of Violent Theft

The crime of theft with violence is regulated in Article 365 of the Criminal Code. This crime is characterized by the element of taking someone else's property unlawfully accompanied by violence or threats of violence. This makes the perpetrator not only attack property rights, but also threaten the physical safety of the victim, so that it falls into the category of serious crimes. The process of law enforcement against perpetrators of theft with violence begins with the investigation and inquiry stage by the police, prosecution by the prosecutor, to the examination in court. In each of these stages, it is important to have an approach that takes into account the principle of justice, including the protection

¹⁰ Winarno "Research Methods" RajaGrafindo Persada,

of the rights of the suspect/defendant and the rights of the victim in a balanced manner.

1) Investigation Stage

The investigation stage is the initial step in the criminal process, where the police are given the authority to conduct an investigation to find and collect sufficient evidence to determine someone as a suspect in a crime of theft with violence. In the investigation, investigators collect various types of evidence, including witness statements, expert statements, clues, letters, and statements from the defendant (Article 184 of the Criminal Procedure Code).

At this stage, investigators are also required to respect the rights of suspects in accordance with the principles of legal protection, such as the right to be accompanied by legal counsel, the right not to be tortured, and the right to a fair process. If the evidence is sufficient, investigators will determine a person as a suspect and make a report of the arrest or detention in accordance with legal provisions. The investigation process must be carried out objectively and professionally.

The investigation process is carried out by the police as the first law enforcement officers to handle criminal cases. They collect evidence and determine suspects according to the mechanisms regulated by the Criminal Procedure Code (Article 1 paragraph (1) of the Criminal Procedure Code). In practice, the police have routinely carried out this function for cases of theft with violence and other crimes.

a. Investigation Stages

1) Receipt of Reports or Complaints, Investigation begins with the receipt of a report from a victim, witness, or report from the public regarding a crime of theft with violence. Investigators are required to record the report and open the case file.

2) Evidence Collection, Investigators collect evidence through crime scene processing (TKP), examination of witnesses and victims, collection of evidence, and CCTV recordings if any. Investigators can also conduct a case title to determine the eligibility of the case to proceed to the formal investigation stage.

3) Determination of Suspect, Based on sufficient evidence, investigators determine a person as a suspect. This determination must be based on sufficient initial evidence that the person is strongly suspected of committing the crime of theft with violence.

4) Detention of Suspects, if necessary, investigators can detain suspects during the investigation process, in accordance with the provisions of the Criminal

Procedure Code. Detention is carried out to ensure the presence of the suspect in court and prevent the perpetrator from removing evidence or fleeing.

5) Suspect Examination, Investigators examine the suspect in depth, including asking for information and clarification on the charges. In this examination, the suspect also has the right to be accompanied by a legal representative or legal advisor.

6) Transfer of Files to the Prosecutor, After the investigation is completed and the files are complete (P-21), the case files are submitted to the Public Prosecutor to proceed to the prosecution stage.

2) Prosecution Stage

After the investigation is completed and the case file is declared complete (P-21), the next stage is prosecution by the Public Prosecutor (JPU). The prosecutor is tasked with prosecuting the suspect in court by bringing evidence that has been collected by the investigator. At this stage, the prosecutor must conduct a critical review of the case file to ensure that there is sufficient evidence to prove the defendant's guilt legally and convincingly in front of the judge.

In addition, prosecutors must pay attention to the principle of legality which requires that cases that are continued are cases that are indeed worthy of being tried (Article 144 of the Criminal Procedure Code). Prosecutors can also take action to detain suspects if deemed necessary for the sake of the smooth running of the legal process, based on reasons that are valid according to law. Prosecution by prosecutors is not just a formal process, but also a means to ensure justice for victims, perpetrators, and the community.

This function has been carried out consistently in criminal justice practices in Indonesia, as part of the authority of the Indonesian Attorney General's Office.

3) Court Hearing and Decision

The final stage is the examination of the case in court. The trial process is an open forum in which the prosecutor, the defendant's attorney, and the judge play an active role in testing the truth and validity of the legal facts. The judge conducts an objective examination of all evidence and statements submitted, including listening to the testimony of victims and witnesses.

This examination process must comply with the principle of *audi et alteram partem* (the right to be heard by both parties), as well as the principle of independence and impartiality of the judge. In cases of theft with violence, the judge must assess whether the elements of the crime have been fulfilled and consider both aggravating and mitigating circumstances. The court's decision is the final result of the examination process. The judge imposes a sentence in accordance with the proven facts and applicable legal provisions. If proven

legally and convincingly, the judge can impose a prison sentence, a fine, or other additional sentences such as revocation of certain rights. In addition, the judge can also use the principle of individualization of punishment, namely adjusting the punishment to the conditions and background of the perpetrator so that the decision is fairer and more beneficial.

The trial and court decision stages are carried out by judges as independent judicial institutions. Judges examine, try, and decide cases based on facts and applicable laws. The trial process is open to the public in accordance with the principle of transparency and the rights of the suspect have also been applied in the court system in Indonesia. In making a decision, the judge considers legal and non-legal aspects. Legal considerations refer to the elements of the crime proven in court. While non-legal considerations include the perpetrator's motives, socio-economic background, age, level of education, and the impact of the act on the victim. This is where the principle of social justice can be included in the criminalization process.

3.2. Weaknesses and Solutions of the Social Justice-Based Criminal Process for Perpetrators of Violent Theft Crimes Study of Decision Number: 470/Pid.B2024/PN.Mtr

1) Chronology of Decision Number: 470/Pid.B2024/PN.Mtr

On Friday, July 7, 2023, at around 14:30 WITA, Basofi Irwan alias Irwan was around the Perampuan intersection, Labuapi District, West Lombok Regency. He was not alone—with him was a friend named Suhariadi alias Suhar, and they were riding Irwan's black Beat motorbike.

As they stood on the side of the road, two women passed by riding a motorcycle, Luna Uliya Mutmainatul Qulub as the passenger, and Nikmatul Aini as the driver. Irwan's eyes were fixed on the bag that Luna was carrying, and from inside the bag was seen a black iPhone 7 Plus cellphone.

The deserted road conditions gave rise to evil intentions in Irwan and Suhar. They decided to chase the two women. With Suhar as the driver and Irwan as the pillion, they followed Luna and Nikmatul's motorbike until they reached the bend of Mount Pengsong.

When they felt the distance was close enough, Suhar moved his motorbike closer to the left side of the victim's motorbike. In an instant, Irwan grabbed Luna's bag and managed to snatch her cellphone from it. However, the action did not go smoothly—their motorbike hit the victim's motorbike, causing Luna and Nikmatul to fall onto the asphalt, suffering quite serious injuries. After that, Irwan and Suhar immediately ran away without caring about the condition of the victims.

They took the stolen cellphone to a landfill in Taman Ayu Village to check its condition. When he realized that the cellphone was locked and could not be opened, Irwan took it to an acquaintance named Yasfi, a cellphone repairman. However, Yasfi was suspicious because the condition of the item looked suspicious, and finally reported the incident to the Labuapi Police.

As a result of this incident:

- a. Luna suffered material losses of around Rp. 6,000,000 and physical injuries.
- b. Nikmatul Aini was also injured seriously enough to be unable to do any activities for approximately 3 weeks.

Police eventually arrested Irwan, who admitted to all his actions in court. He also confirmed the witnesses' statements and expressed regret for his actions.

So that the Panel of Judges of the Mataram District Court who examined and tried this case decides:

Declaring that the Defendant BASOFI IRWAN ALIAS IRWAN. has been proven legally and convincingly guilty of committing the crime of "Theft with Violence" as regulated and threatened with criminal penalties in Article 365 paragraph (2) 2 of the Criminal Code, as stated in the Primary Indictment of the Public Prosecutor.; Sentencing the Defendant BASOFI IRWAN ALIAS IRWAN to 5 (five) years in prison minus the period of arrest and detention that the Defendant has served; Declaring that the Defendant remain in detention; Declaring that the evidence in the form of 1 (one) black iPhone 7+ brand cellphone with IMEI: 359171075502563. Returned to the Victim Witness LUNA ULIYA MUTMAINATUL QULUB. Determining that the Defendant pay court costs of Rp. 5,000,- (Five thousand rupiah).

2) Analysis of Weaknesses of Social Justice-Based Criminal Procedure Process

a. Aspects of Restitution and Victim Recovery

In this decision, the panel of judges only ordered the return of evidence in the form of an iPhone 7+ to the victim Luna Uliya Mutmainatul Qulub, without touching on the aspect of restitution or compensation for physical damage and the victim's suffering. In fact, as a result of the robbery, two victims suffered serious injuries, and Nikmatul Aini was unable to do activities for three weeks. There was no order for the defendant to pay medical expenses or other compensation.

In fact, from the perspective of social justice, as emphasized by Satjipto Rahardjo, a just legal system is a system that not only punishes the perpetrator, but also restores the victim so that they do not experience social inequality after a criminal incident.

b. No Consideration of the Socio-Economic Background of the Perpetrator

The verdict only focuses on the legal facts and formal elements of the crime without revealing the background of the defendant Basofi Irwan alias Irwan, such as economic conditions, education, work, or social environment. In fact, the defendant committed theft with violence openly in broad daylight with his partner, which could indicate an economic motive or environmental influence that should be considered.

According to Sudikno Mertokusumo, social justice requires a humanistic approach, where judges must not be merely legalistic, but must consider the social structure behind the crime.

c. The Absence of a Restorative Approach

The trial process against Irwan only used a repressive approach (imprisonment), without showing any efforts for dialogue, mediation, or restoration of social relations between the perpetrator and the victim. In fact, in this case there were physical and psychological losses to the victim that should have been bridged through a restorative justice approach. The restorative justice approach actually provides space for the victim to be heard, and for the perpetrator to be directly responsible, and creates opportunities for social reintegration.

d. Prison Sentence Without Rehabilitation Program

The verdict only imposed a five-year prison sentence without including a coaching, rehabilitation, or social reintegration program for the defendant. In fact, in the principles of corrections as regulated in Law No. 22 of 2022 concerning Corrections, imprisonment is not the end, but the beginning of the process of social and moral guidance for the perpetrator. In the spirit of social justice, the criminal justice system must be designed to return the perpetrator to society as a better individual, not merely as a punishment for revenge. The absence of a record of a rehabilitation program in the verdict shows that the court has not thought about post-conviction social development.

Decision Number 470/Pid.B/2024/PN Mtr reflects a legal approach that tends to be formalistic and retributive, without paying attention to the principles of social justice which require:

- a. Full recovery of victims (restitution),
- b. Understanding the socio-economic conditions of the perpetrators,
- c. Use of a restorative approach,
- d. and rehabilitative guidance for perpetrators.

In order for the future criminal justice system to be more in line with the values of Social Justice for All Indonesian People, the punishment of perpetrators such as Irwan should prioritize the restoration of social relations, reconciliation, and healing, not just the imposition of prison sentences.

3) Social Justice-Based Criminal Process Solution in Case Decision Number 470/Pid.B/2024/PN Mtr

a. Implementation of Restitution for Victims

In this case, two female victims experienced physical violence and lost their property, namely one iPhone 7+. However, in the verdict there is no order for the defendant to provide restitution or compensation to the victims, either for physical injuries or material losses experienced. As a solution, the court should actively order the defendant to provide compensation, with the following legal basis:

- 1) Article 98 of the Criminal Procedure Code, which allows victims to file civil lawsuits in criminal cases to claim compensation for the consequences of the crime.
- 2) Law Number 31 of 2014 concerning Protection of Witnesses and Victims, especially Article 7A, which provides victims with the right to obtain restitution from perpetrators of criminal acts.

The implementation of this restitution will not only provide proper restitution for victims, but also show that the legal system sides with the weak and reflects the values of social justice as stated in the fifth principle of Pancasila.

b. Social Background Check of the Offender

This decision also does not touch on the social dimension of the perpetrator, such as whether the defendant Irwan committed the theft due to economic motives, unemployment, or the influence of the social environment. Whereas in a social justice approach, it is important for the judge to explore the perpetrator's background comprehensively. The panel of judges should consider:

- 1) Structural factors such as poverty, limited education, or peer pressure, are often the drivers of street crime.
- 2) If it is found that the perpetrator was driven by economic constraints, then punishment can be carried out progressively and in a corrective manner, not merely repressively.

This is in accordance with the principle of distributive justice in the fifth principle of Pancasila, which emphasizes the need for equality and empathy towards perpetrators from vulnerable groups.

c. Integration of Restorative Approaches in the Sentencing Process

Although in the verdict the defendant was sentenced to five years in prison, the restorative justice approach can still be applied in the criminal execution stage. For example through:

- 1) Offender-victim dialogue program in correctional institutions,
- 2) Penal mediation if the parties are willing,
- 3) or social activities that show the perpetrator's remorse and responsibility.

By implementing these four solutions, the criminal justice system in cases such as Decision No. 470/Pid.B/2024/PN Mtr will better reflect the values of Pancasila social justice, namely not only punishing the perpetrators retributively, but also restoring the victims, considering the social structure, and fostering the perpetrators humanely.

3.3. Judge's Considerations in Handing Down a Verdict Against a Perpetrator of the Crime of Theft with Violence in Verdict Number: 470/Pid.B2024/PN.Mtr

The judge's consideration is an important part in determining the form, type, and severity of the sentence imposed on the defendant. In criminal case No. 470/Pid.B/2024/PN Mtr on behalf of the defendant Basofi Irwan alias Irwan, the Panel of Judges at the Mataram District Court sentenced him to 5 (five) years in prison because he was legally and convincingly proven to have committed the crime of theft with violence as regulated in Article 365 paragraph (2) 2 of the Criminal Code.

In making the decision, the judge considered several aspects, both formal-juridical and non-juridical, as described below:

a. Legal Considerations

In Decision Number 470/Pid.B/2024/PN Mtr, the Panel of Judges based the sentencing of the defendant Basofi Irwan alias Irwan on legal considerations based on the provisions of Article 184 of the Criminal Procedure Code, which states that valid evidence in criminal procedure law consists of: witness statements, expert statements, letters, instructions, and statements from the defendant. In this case, the Panel of Judges used several main pieces of evidence which were then considered comprehensively in determining the defendant's guilt. The judge based the decision on valid evidence according to Article 184 of the Criminal Procedure Code, namely:

- a. Victim witness statements (two women), There were two victim witnesses, namely women who were the targets of the theft, who gave statements that when the incident occurred, they were approached by two men riding a

motorbike and suddenly snatched one of the victims' cellphones. In the process, there was an act of pulling each other which caused the victim to fall from her motorbike and suffer bruises. The victim's statement stated that the perpetrator acted quickly and with violence to take the item. This statement provides a strong basis that the element of violence in Article 365 of the Criminal Code has been fulfilled, because the robbery was not only carried out secretly, but aggressively and caused injuries to the victim.

b. The defendant's statement, the defendant admitted part of the charges, namely that he was at the scene with his friend and took the victim's cellphone. However, the defendant denied committing violence, and stated that the victim fell because he panicked. The defendant's confession still has value as evidence when connected with other evidence, according to Article 189 of the Criminal Procedure Code. In this case, the defendant's confession is strengthened by the victim's witness statement and the results of the reconstruction of the incident.

c. Evidence, in the form of an iPhone 7 Plus belonging to the victim found in the possession of the defendant, is important material evidence that supports the element of unlawful seizure of another person's property. This evidence not only shows the occurrence of the act, but also the direct involvement of the defendant as the main perpetrator.

d. Reconstruction of the incident that strengthens the existence of violence during the robbery. The reconstruction conducted by the investigators together with the defendant and witnesses revealed that the robbery was accompanied by a hard pull on the cellphone that was being held by the victim. This caused the victim to lose balance and fall. The scene strengthens that there was an element of real violence in the crime, and not just ordinary theft.

From the trial facts, the judge assessed that the elements of the crime in Article 365 paragraph (2) 2 of the Criminal Code had been fulfilled, namely:

a. There was an act of taking someone else's property, as proven by the defendant's possession of evidence (iPhone 7 Plus).

b. Carried out with violence or threat of violence, shown through witness statements, injuries suffered by the victim, and the results of the reconstruction.

c. It was done together (there were two perpetrators), because in this case there were two perpetrators who were riding together when carrying out the robbery.

d. It occurs in a public place and causes fear, which causes unrest and fear among the community.

Based on these facts, the judge stated that the defendant was legally and convincingly guilty. With the cumulative fulfillment of these elements, the Panel

of Judges stated that the defendant was legally and convincingly guilty of committing the crime of theft with violence, as regulated in Article 365 paragraph (2) 2 of the Criminal Code.

In its verdict, the Panel of Judges sentenced the defendant to 5 (five) years in prison, considering that the defendant's actions had caused physical and psychological suffering to the victim, as well as disrupting public order. This verdict is also a reflection of law enforcement based on the principles of legality and formal evidence, but has not fully integrated the social justice and restorative approaches in the criminalization process.

b. Weighing Considerations

The Panel of Judges in the case of Basofi Irwan alias Irwan sentenced him to prison based on a number of aggravating considerations, which were explicitly stated in the decision. The judges considered that the defendant's actions were carried out in a public space (highway) which has the potential to cause social unrest. The act of theft accompanied by violence in an open space is a form of crime that disturbs the public's sense of security and triggers collective fear. In addition, the victims in this case were two women, who in a social context are often viewed as a vulnerable group, especially against physical violence. Therefore, the perpetrator's actions are considered to have a more serious psychological dimension, not only robbing property, but also causing fear and prolonged trauma.

Furthermore, the element of violence used by the defendant has caused physical injuries to one of the victims. The defendant is known to have forcibly pulled the victim's cellphone, causing the victim to fall and suffer bruises on the arms and legs. The Panel of Judges viewed this violence not only as a tool to carry out the theft, but also as a form of threat to the victim's safety.

c. Mitigating Considerations

On the other hand, the Panel of Judges also considered several mitigating factors for the defendant, although they were minimal and formalistic. The defendant showed a cooperative attitude during the trial, admitted his actions, and expressed regret. According to the judge, this attitude reflects that the defendant still has the potential to improve. In addition, the defendant has never been convicted before, which means he is not a recidivist. The defendant also behaved politely during the trial process. However, the judge did not explore further whether the defendant committed the crime due to economic pressure, a poor social environment, or lack of education. These mitigating considerations are still administrative in nature, and do not reflect substantive efforts to understand the defendant's condition as a complex legal subject. However, it should be noted that these mitigating considerations are minimal and

formalistic, and do not reflect in-depth efforts to understand the defendant's social background.

d. Absence of Social Justice Consideration

This decision also shows a lack of social sensitivity. The Panel of Judges did not further investigate the structural and social factors that may have driven the crime. There is no information in the judges' considerations regarding:

- a. The defendant's economic background (does he come from a poor family?)
- b. Education and employment status (dropped out or unemployed?)
- c. Environmental influences or social group pressure

In fact, according to Sudikno Mertokusumo (2006) in realizing social justice, judges are not only mouthpieces of the law, but must also consider the social context surrounding the case. The absence of this consideration shows that judges are still trapped in legal positivism, without expanding the scope into a sociological approach or substantive justice.

4. Conclusion

The criminalization process for perpetrators of violent theft is a series of stages starting from investigation, prosecution, to examination and verdict in court. Each stage has a function and procedure that is strictly regulated in the Criminal Procedure Code to ensure the protection of the rights of suspects and victims as well as legal certainty. However, in the context of implementing social justice, the process is not sufficient to only focus on the formal legal aspects and proof of the crime alone. The court needs to include socio-economic considerations and the background of the perpetrator so that the verdict handed down is not merely repressive and retributive, but also favors recovery, social reintegration, and substantive justice for all parties.

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