

Legal Analysis of Criminal Responsibility for Perpetrators of the Criminal act of Extortion Committed Together (Case Study of the Decision at the Central Jakarta District Court Number 32/Pid. B/2024/Pn. Jkt Pst)

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Abstract. *Crime is a form of behavior that is contrary to human morals (immoral), detrimental to society, asocial in nature and violates the law and criminal laws. It is a social reality, the problem of crime cannot be avoided and is always there, so it is natural that it causes unrest. One form of crime is the crime of extortion. Extortion is an act of selfishness by using violence or threats against others to hand over or achieve something. The main element of the crime of extortion, namely whether an act is included as a crime of extortion, is determined by the existence of intent or the will of the perpetrator to force another person by force, violence or accompanied by threats, so that the other person should not do something if there is no coercion from the perpetrator of extortion. The approach method used is normative juridical, namely a library legal research conducted by examining library materials or secondary data only using deductive thinking methods. The writing specifications use descriptive analysis, the sources and types of data used are primary and secondary data. The data collection method is by collecting data using secondary data collection methods.*

Keywords: *Criminal; Extortion; Justice; Liability.*

1. Introduction

A state whose structure is regulated as well as possible in law so that all the powers of its governmental organs are based on law. People must not act independently according to everything that is contrary to the law. The rule of law is a state that is ruled not by people, but by laws (state that is not governed by men, but by laws). Therefore, in a rule of law, the people's rights are fully guaranteed by the state and the state, on the other hand, by submitting to and

obeying all government regulations and state laws.¹

One of the laws in force in Indonesia is public law or commonly known as criminal law. Criminal law is a law that regulates acts that are prohibited by law and results in the imposition of punishment for anyone who does it and meets the elements of the act stated in the Criminal Law. Such as acts prohibited in the Criminal Code, the Corruption Law, the Human Rights Law and so on. Criminal law is a law that regulates what acts are prohibited and provides punishment for those who violate them.²

Positive law in Indonesia requires its citizens that all actions must be guided by legal provisions, as is the case with Indonesian criminal law. The legal certainty in question requires instructions on all actions that are classified as criminal acts. Apart from the creation of order and legal certainty in community life, there are certainly other things that need to be considered to realize a sense of justice in enforcing the law in accordance with existing regulations. This is in line with the principle of legality (Principle Of Legality) or in Latin "nullum delictum nulla poena sine praevia lege poenali" which means that there is no act that is prohibited or threatened with criminal punishment if it is not first determined in the law.³

The urgent need in this era of globalization can result in increasing crime and criminality rates following the fairly developed economic and industrial growth. This can be seen in print and electronic media which report on the rampant crime that occurs in the country, ranging from acts of violence, fraud, extortion, threats, rape to murder, as a social reality.⁴

These factors are the basis for someone to commit a crime to be realized in real actions to violate the rules of law contained in the life of society. Crimes in criminal law will certainly give rise to responsibility, which must be demanded of the perpetrator of the crime. The concept of criminal responsibility is actually not only about legal issues, but also in relation to moral values or issues of general dignity and social groups, this happens so that the criminal responsibility can achieve justice.⁵

To meet urgent needs, it is usually often carried out without careful thought that can harm the environment or other humans. Such things cause negative consequences that are not balanced with the atmosphere and life that has good

¹Abdul Mukthie Fadjar, 2016, *History, Elements, and Types of Legal States*, Setara Pres, Malang, p. 6.

²R Soesilo, 2013, *Criminal Code (KUHP)*, Bogor: Politea Bogor, p. 47.

³Andi Hamzah, 1994, *Principles of Criminal Law*, Rineka Cipta, Jakarta, p. 25.

⁴Topo Santoso, Eva Achjhani Zulfa, 2013, *Criminology*, Raja Grafindo Persada, Jakarta, p.1

⁵Hanafi Amrani and Mahrus Ali, 2015, *Criminal Responsibility System*, Rajawali Pers, Jakarta, p. 16.

values. To return to the atmosphere and life that has good values, accountability is needed from the perpetrators who create the imbalance, this accountability is in the form of a punishment called "criminalization".⁶

Crime is a form of behavior that is contrary to human morals (immoral), detrimental to society, asocial in nature and violates the law and criminal laws. It is a social reality, the problem of crime cannot be avoided and is always there, so it is natural that it causes unrest. One form of crime is extortion.

There are many cases of violent extortion. This extortion crime is contained in Article 368 of the Criminal Code and is formulated as follows: "With the intention of benefiting himself or another person by violating the law, forcing a person with violence or threat of violence so that the person gives an item that is wholly or partly owned by the person or a third person, or so that the person owes or cancels a debt". This crime is called the qualification of "extortion (affersing)" and is threatened with a prison sentence of up to nine years.⁷

Book II Chapter XXIII of the Criminal Code actually consists of two types of crimes, namely what in Dutch is called "afpersing" or "extortion" and "afdreiging" or "threat". However, because both types of acts have the same characteristics, of course they have the aim of extorting others, then both crimes are usually called by the same name, namely "extortion".

The subject of the article is 'whoever'. According to Andi Hamzah, there are four core crimes or delicts *bestanddelen* in Article 368 of the Criminal Code. First, with the intention of benefiting oneself or others. Second, contrary to the law. Third, forcing someone with violence or threats. Fourth, giving something that is wholly or partly owned by that person or another person, or to create debt or write off receivables.⁸ The element of 'with intent' in this article indicates the perpetrator's desire to benefit himself or others. Therefore, the perpetrator is aware of his coercion. The prohibited coercion here is coercion with violence, if without the coercion the person being coerced would not give his property.

The crime of extortion is one of the most common methods used by some people to carry out their intentions and actions. The causes of factors that encourage people to commit extortion are economic factors, increasing community needs, dissatisfaction with low income, lack of legitimate income for each individual in society to meet their needs.⁹

⁶R. Abdoel Djamali, 2017, *Introduction to Indonesian Law*, RajaGrafindo Persada, Jakarta, p.171

⁷Awaluddin Putra Kesuma, et al., *Doctrinal Law Journal* Volume 7, Number 2, September 2022, p. 110.

⁸ <https://www.hukumonline.com/berita/baca/lt5056a2c308a48/bahasa-hukum--tindak-pidana-pemerasan?page=all>/accessed on Friday, November 22, 2024 at 11.06 WIB.

⁹Mohammad Kenny Alweni, *Study of the Criminal Act of Extortion Based on Article 368 of the Criminal Code*, *Lex Crimen Journal*, Vol 8, No. 3, March 2019, p. 47,

Extortion is a selfish act using violence or threats against another person to hand over or achieve something. The main element of the crime of extortion, namely whether an act is included as a crime of extortion, is determined by the intention or willingness of the perpetrator to force another person with force, violence or accompanied by threats, so that the other person should not do something if there is no coercion from the extortionist, such as someone will not hand over some of his money unless forced and there is a threat from the extortionist.

Regarding the case of extortion, Decision Number 32/Pid.B/2024/PN Jkt.Pst on Saturday, October 7, 2023 at around 21.00 WIB, witness ND together with witness JH, riding 1 (one) red and black Honda Beat motorbike F 6576 WAW (DPB) went to buy a helmet with a COD system in the Sarinah area, Menteng District, Central Jakarta and after buying the helmet, witness Nandang together with witness Juha went to the Tanah Abang area, Central Jakarta to buy Tramadol then went home, but when they arrived at Palmerah Market, West Jakarta, suddenly the witness' motorbike was pulled over by 1 (one) white Honda PCX motorbike driven by Defendant ARF together with Mr.X (DPO) then the motorbike driven by witness ND was stopped by Defendant ARF. Then the Defendant together with Mr.X got off the motorbike then introduced themselves by confessing. as a police officer and asked witness Nandang "have you just bought tramadol?", to which witness Nandang replied "yes sir". Then the Defendant asked witness Nandang to come with the Defendant using 1 (one) white PCX motorbike while witness Juha took Mr.X pillion using 1 (one) red and black Honda Beat motorbike F 6576 WAW. On the way the Defendant explained to witness Nandang that having tramadol could result in imprisonment for 7 (seven) years, so witness Nandang immediately threw away the tramadol he had just bought without the Defendant's knowledge and at around 21.00 WIB the Defendant stopped his motorbike around Jalan Citarum, Cideng Village, Gambir District, Central Jakarta and witness Juha also stopped his motorbike. Then the Defendant asked for witness Nandang's wallet and took the money in the wallet amounting to Rp.2,300,000, - (two million three hundred thousand rupiah) then the Defendant also took 1 (one) unit of Oppo cellphone in maroon color belonging to witness Nandang then Mr. X took away 1 (one) unit of Honda Beat motorcycle in red black F 6576 WAW belonging to witness Nandang but witness Nandang tried to keep 1 (one) unit of Honda Beat motorcycle in red black F 6576 WAW belonging to him but was kicked by the Defendant. As a result of the actions of the Defendant together with Mr. X (DPO), witness ND suffered a loss of Rp.22,000,000, - (twenty two million rupiah). Then the defendant ARF was sentenced to imprisonment for 1 (one) year and 6 (six) months.

The imposition of severe punishment or sanctions on the perpetrators does not create a deterrent effect, even many perpetrators who have been released from their prison sentences still repeat the same actions again. This may occur because of the perpetrator's low economic and educational factors or even

because the punishment or sanctions given by the judge are too light so that the perpetrators do not hesitate to do the same action again. An important thing that also needs to be considered is what if the crime or crime of extortion and threats is carried out in the phase that is said to be a trial, of course in determining how the perpetrators are held accountable is very interesting.

The case of extortion of vehicles on the road in the community is an extraordinary problem regarding the existence of something that disturbs public order and security and causes material losses. This is what we need to avoid in order to move towards a safe, peaceful and peaceful society. We cannot deny that in today's life, the case of extortion of vehicles on the road is something that is easy for everyone to do, which we can find out through the mass media.

2. Research Methods

The research method is essentially an effort made to find, develop or test the truth with the scientific method used in the research and preparation of this thesis. The scientific method is a combination of rational and empirical approaches. The approach method used in this study is the normative legal approach. The normative legal approach is legal research conducted by examining library materials or secondary data as basic materials for research by conducting a search for regulations and literature related to the problems being studied..¹⁰ Normative legal research is legal research that places law as a normative system. The normative system in question is about the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings).¹¹

3. Results and Discussion

3.1. Criminal Liability Legal Analysis of Criminal Responsibility for Perpetrators of Joint Extortion Crimes (Study of Decision Number 32/Pid.B/2024/PN. Jkt Pst)

Criminal liability is a very important principle of Article 1 Paragraph 1 of the Criminal Code which states "an act is only a criminal act, if it is determined in advance in a statutory provision". Criminal liability is a form that determines whether a person is acquitted or convicted. According to Roeslan Saleh, criminal liability is interpreted as the continuation of objective blame that exists in a criminal act and subjectively.¹²

The purpose of the article can be interpreted that an act can be punished if there has been a regulation that previously regulates whether or not an act can be

¹⁰Soerjono Soekanto & Sri Mamudji, Normative Legal Research (A Brief Review), Rajawali Press, Jakarta, pp. 13-14.

¹¹Ibid, pp. 12-13

¹²Roeslan Saleh, 2004, Thoughts on Criminal Responsibility, First Edition, Ghalia Indonesia, Jakarta, p. 3

punished. If someone has committed a crime, then he can only be tried based on the criminal law regulations in force at the time the act was committed. So that accountability if the act has indeed been regulated, someone cannot be punished or held accountable if the regulation appears after the crime has occurred. To determine the existence of a crime, figurative language may not be used, and the criminal law regulations are not retroactive.¹³

The problem of criminal responsibility has a principle related to the mistake, namely "geen straf zonder sculd" this principle is a principle that exists in the field of criminal law and is related to the problem of responsibility in criminal law. The meaning of this principle is that even though someone has committed a criminal act and has fulfilled the elements formulated in the crime, it is also necessary to prove whether he can be held responsible or not for his actions. This means whether the person has made a mistake or not.¹⁴

Accountability is a form of determining whether or not a criminal act has been committed, in this case that a person has an aspect of criminal responsibility that has elements that must be met to state that a person can be held accountable. The elements of criminal responsibility according to Sudarto. Among them are as follows:

1) The existence of a criminal act committed by the perpetrator; The element of the act is one of the main elements of criminal responsibility, because a person cannot be punished if he does not commit an act where the act committed is an act prohibited by law, this is in accordance with the principle of legality that we adhere to.

In the study of the verdict which is the object of research, the defendant ARF Als Jawa has committed a criminal act, namely the crime of extortion with the legal provisions of Article 368 of the Criminal Code which has been proven and valid according to witness statements, statements by the defendant ARF Als Jawa and evidence in the trial.

2) The existence of an element of error in the form of intent or negligence; The formulation of the articles in the Criminal Code, especially the second book of the Criminal Code, clearly states the term intent or negligence. The following will quote the formulation of the Criminal Code article.

3) The existence of a maker who is able to take responsibility; The ability to take responsibility can be interpreted as a normal or healthy mental condition and the ability of a person's mind to distinguish between good and bad things or in other

¹³Hanafi Amrani and Mahrus Ali, 2015, *Criminal Responsibility System: Development and Implementation*, 1st edition, Rajawali Pers, Jakarta, p. 21.

¹⁴Edi Setiadi and Dian Andriasari, 2013, *Development of Criminal Law in Indonesia*, Graha Ilmu, Yogyakarta, p. 61

words, being able to realize the unlawful nature of an act and in accordance with that awareness being able to determine his will.

That the defendant ARF Als Jawa, the identity as mentioned above and has been confirmed and acknowledged in court, it turns out that the Defendant is a man who is an adult according to the law and is in a healthy physical and mental state, while subjectively the defendant ARF Als Jawa as a legal subject is not in a state of being prevented from being responsible as referred to in Article 44 of the Criminal Code, therefore in accordance with the identity above and the existence (existence) of the Defendant.

4) There is no excuse.

That in the trial, the Panel of Judges did not find anything that could eliminate criminal responsibility, either as a justification or excuse, so the Defendant must be held responsible for his actions.

The Public Prosecutor (JPU) in compiling the indictment stated that the actions of the defendant ARF Als Jawa on Saturday, October 7, 2023 at around 20.00 WIB, witness Nandang together with witness Juha riding 1 (one) unit of a red and black Honda Beat motorbike F 6576 WAW (DPB) went to buy a helmet with a COD system in the Sarinah area, Menteng District, Central Jakarta and after buying the helmet, then witness Nandang together with witness Juha went to the Tanah Abang area, Central Jakarta to buy Tramadol then went home but when they arrived at Palmerah Market, West Jakarta, suddenly the witness' motorbike was pulled over by 1 (one) unit of a white Honda PCX motorbike driven by the Defendant together with Mr. X (DPO) then the motorbike driven by witness Nandang was stopped by the Defendant, with the intention of being owned illegally.

The Public Prosecutor's indictment with an alternative charge stated that the actions of the defendant ARF Als Jawa as regulated and threatened with criminal penalties in Article 368 of the Criminal Code. The crime of extortion is regulated in Article 368 of the Criminal Code which reads:

"who does, who orders to do and who participates in doing, with the intention of unlawfully benefiting himself or another person, forces someone by violence or threat of violence to give something, all or part of which belongs to that person or another person or to create a debt or write off a receivable."

The elements in Decision Number 32/Pid.B/2024/PN Central Jakarta that the defendant committed were the crime of theft which violated Article 368 of the Criminal Code as follows:

1) Element of whoever

The element of whoever is the element of the perpetrator. The perpetrator in

criminal law, according to Article 55 and Article 46 of the Criminal Code is a person who does, together does, participates in doing, encourages, orders to do, or helps to do. That from the examination in the trial, it was not obtained that the Defendant was a person who was included in the group in Article 44 of the Criminal Code. Therefore, the Defendant is included as a person who is capable of being criminally responsible.

That the defendant ARF alias Jawa, whose identity is as stated above, is a person who is a legal subject, thus fulfilling what is meant by the element of "Whoever".

2) The element of intent to benefit oneself or others unlawfully.

It was obtained legal facts that it was true, at around 21.00 WIB, the Defendant who was riding pillion with Witness NND stopped his motorbike around Jalan Citarum, Cideng Village, Gambir District, Central Jakarta and Witness Juha also stopped his motorbike, then the Defendant asked for Witness NND's wallet and took the money in Witness NND's wallet amounting to Rp. 2,300,000,- (two million three hundred thousand rupiah) then the Defendant also took 1 (one) unit of maroon Oppo cellphone belonging to Witness Nandang, then the Defendant's friend took away 1 (one) unit of red and black Honda Beat motorbike F 6576 WAW that the Witness was using, but Witness Juha and Witness Nandang tried to defend it, but were kicked by the Defendant, then the Defendant together with Mr. THMS left the Witness by running away with Witness NND's belongings. That the Defendant obtained a profit of Rp. 300,000 (three hundred thousand rupiah) and obtained it in an unlawful manner.

3) Forcing someone with violence or the threat of violence. Forcing with violence can be in the physical or psychological sense, which makes the person being forced to do something beyond his free will.

It was obtained legal facts that it was true, then the Defendant together with Mr. Thomas who was a police officer stopped witnesses Nandang and Witness Juha by pressing their vehicles and succeeded in stopping them and they got off their vehicles. That it was true, then the Defendant together with Mr. Thomas also got off the motorbike then introduced themselves by claiming to be police officers and asked the witnesses.

4) Giving something, which is wholly or partly owned by that person or another person, or in order to create a debt or write off a receivable

It was obtained legal facts that it was true that the Defendant asked for Witness NND's wallet and took money from Witness Nandang's wallet amounting to Rp. 2,300,000,- (two million three hundred thousand rupiah) then the Defendant also took 1 (one) unit of maroon Oppo cellphone belonging to Witness Nandang, then the Defendant's friend took away 1 (one) unit of red and black Honda Beat motorbike F 6576 WAW that the Witness was using, but Witness JH and Witness

NND tried to defend it, but were kicked by the Defendant, then the Defendant together with Mr. THMS left the Witness by running away with Witness NND's belongings.

Based on the description of the elements above, both in theory and in legal fact, because all elements of the crime of Article 368 in conjunction with Article 55 of the Criminal Code have been fulfilled and the Panel of Judges has no excuse or justification that according to law can erase the guilt or erase the criminal penalty for the Defendant, then the Defendant must be declared legally and convincingly proven guilty of committing a crime as charged in the first alternative charge, namely Article 368 in conjunction with Article 55 of the Criminal Code and must be sentenced according to the provisions of Article 193, Paragraph (1) of the Criminal Procedure Code, then the Panel of Judges sentenced the defendant ARF alias Jawa to 1 (one) year and 6 (six) months in prison.

Responsible can be interpreted as a psychological condition such that justifies the determination of a criminal attempt, both seen from the general and individual perspectives, that a person is able that the defendant is an adult and is able to take responsibility because the defendant can make judgments with his thoughts and feelings. Then the defendant admits that all the witness's statements are true and regrets all his actions. He is responsible if his soul is healthy, namely if he is able to know or realize that his actions are against the law, and he can determine his will according to that awareness. The panel of judges considered that the defendant was an adult and was able to take responsibility because the defendant could make judgments with his thoughts and feelings. Then the defendant admits that all the witness's statements are true and regrets all his actions.

Based on the theory of criminal responsibility according to Hans Kelsen in his theory of legal responsibility, he states that:¹⁵ "a person is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of a contrary act. Furthermore, Hans Kelsen stated that: "Failure to exercise the care required by law is called negligence; and negligence is usually considered as another kind of fault (*culpa*), although not as severe as the fault that is fulfilled by anticipating and intending, with or without malice, harmful consequences."

Therefore, the Judge in sentencing the defendant to imprisonment should have been given to the Defendant by considering the relevant Law. So, in line with the provisions above, the Judge's decision regarding imposing a prison sentence on the Defendant is in accordance with the current applicable Law. The author

¹⁵Asshiddiqie, J & Safa'at, A, 2006, *Hans Kelsen's Theory of Law*, Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, Jakarta, p. 114.

agrees with the judge's decision to sentence the defendant to imprisonment, because the Defendant committed the crime of extortion where the Defendant did so in accordance with Article 368 of the Criminal Code.

The Criminal Procedure Code (KUHP) as the legal basis for the Indonesian Criminal Justice System has failed to carry out the primary function of law and the function of legal education and awareness. Indicators of this failure include an imbalance in the regulation of the rights of suspects/defendants and the rights of victims, because most of the articles are more in favor of the rights of suspects/defendants. As a result, as legal subjects, suspects/defendants are given an equal position with law enforcers. The criminal justice system is a crime control system consisting of police institutions, prosecutors, courts and convict correctional institutions.¹⁶

3.2. Legal Analysis of Judges' Considerations in Sentencing Perpetrators of Joint Extortion Crimes (Study of Decision Number 32/Pid.B/2024/PN. Jkt Pst)

In the decision-making process, the judge has the authority or power known as Judicial Power as regulated in Law Number 48 of 2009 concerning Judicial Power. Judicial power can be interpreted as the authority to, in certain concrete situations, determine the legal value of the actions of citizens or certain circumstances based on positive legal principles and link certain legal consequences to those actions or circumstances.¹⁷

Judges in deciding a case have independence from interference or intervention from any party known as the phrase "Independent Judicial Power", or can be interpreted as judicial power that is free from interference from any party. This independent judicial power is an independence or freedom possessed by the judge in order to create an objective and impartial decision. The meaning of the objective nature of the decision is that in the process of giving a decision the judge must have an honest stance, have a view in accordance with the actual situation by referring to generally applicable objective measures or criteria, while the meaning of impartiality is that the decision produced by a judge does not side with one party which causes a sense of injustice from the parties to the case or dispute.

A court decision that is not based on sufficient legal considerations will be the same as a decision without soul and essence. This is as stated by M. Yahya Harahap who said that legal considerations are the soul and essence of a

¹⁶Mardjono Reksodiputro. 1993, Indonesian Criminal Justice System (Looking at Crime and Law Enforcement Within the Boundaries of Tolerance), Faculty of Law, University of Indonesia, Jakarta, p.1

¹⁷Rachmani Puspitadewi, A Brief Note on the Development of Judicial Power in Indonesia, Pro Justitia Journal, Vol 24 No 1, January 2006, p. 1.

decision which must contain clear and detailed reasons. A decision that does not contain these provisions will result in a decision that does not have sufficient considerations. The legal reasons that can be used by judges to form the basis for consideration are certain articles in statutory regulations, customary law, jurisprudence and doctrine.¹⁸

Committing a crime or criminal act, usually done alone but it does not rule out the possibility that in committing the crime it is done together with other people or assisted by other people. Committing a crime together with other people or assisted by other people is called participating in committing a crime or involvement in a crime, this also applies to the crime of fraud. In committing a crime of fraud, there is a possibility that it is done with the help of other people or with other people.

Decision Number 32/Pid,B/2024/PN JKT PST which basically tried the defendant ARF alias Jawa who committed the crime of extortion. On Saturday, October 7, 2023 at around 20.00 WIB, witness Nandang together with witness Juha riding 1 (one) unit of red and black Honda Beat motorbike F 6576 WAW (DPB) went to buy a helmet with a COD system in the Sarinah area, Menteng District, Central Jakarta and after buying the helmet, then witness Nandang together with witness Juha went to the Tanah Abang area, Central Jakarta to buy Tramadol then went home but when they arrived at Palmerah Market, West Jakarta, suddenly the witness' motorbike was pulled over by 1 (one) unit of white Honda PCX motorbike driven by the Defendant together with Mr. X (DPO) then the motorbike driven by witness Nandang was stopped by the Defendant. Then the Defendant together with Mr. X got off the motorbike and introduced themselves by claiming to be police officers and asked witness Nandang "have you just bought tramadol?", to which witness Nandang answered "yes sir". Then the Defendant asked witness Nandang to come with the Defendant using 1 (one) white PCX motorbike while witness Juha took Mr. X pillion using 1 (one) red and black Honda Beat motorbike F 6576 WAW. On the way the Defendant explained to witness Nandang that having tramadol could result in imprisonment for 7 (seven) years, so witness Nandang immediately threw away the tramadol that had just been purchased without the Defendant's knowledge and at around 21.00 WIB the Defendant stopped his motorbike around Jalan Citarum, Cideng Village, Gambir District, Central Jakarta and witness Juha also stopped his motorbike. Then the Defendant asked for witness Nandang's wallet and took the money in the wallet amounting to Rp. 2,300,000, - (two million three hundred thousand rupiah) then the Defendant also took 1 (one) unit of Oppo cellphone in maroon color belonging to witness Nandang then Mr. X took away 1 (one) unit of Honda Beat motorcycle in red and black color F 6576 WAW belonging to witness

¹⁸Soraya Parahdina, et, all, 2022, Optimization of Inheritance Case Mediation: In-depth Study of an Interlocutory Decision and the Decision of the High Religious Court, Pekalongan, Nasya Expanding Management, p. 59

Nandang but witness Nandang tried to defend 1 (one) unit of Honda Beat motorcycle in red and black color F 6576 WAW belonging to him but was kicked by the Defendant then the Defendant together with Mr. X left witness Nandang by taking away 1 (one) unit of Honda Beat motorcycle in red and black color F 6576 WAW belonging to witness Nandang then witness Nandang reported the incident to the Gambir Metro Police.

Judges in carrying out their duties are not like mouthpieces of the law that can only be regulated in the law, but must also be able to implement the law in full. The judge's consideration can be said to be an important aspect in determining the realization of a value from a judge's decision that contains justice (*ex aequo et bono*) and also needs to contain legal certainty. The judge's consideration is the judge's argument/reason used by the judge as a legal consideration that is the basis before deciding a case. The judge's ratio decidendi can be enriched as a judge's thought that will determine a judge in making a verdict. In every judge's decision there are reasons that determine the core that determines in making a decision. In the judge's consideration, the basic philosophical basis is also considered, which is related to the basis of laws and regulations that are still relevant to the subject matter.¹⁹In imposing a sentence, each judge has his/her own freedom in considering the severity of the criminal sanctions for the case he/she is handling. The judge's considerations in imposing a sentence must reflect a sense of justice for the defendant and society.

The Panel of Judges in its decision tried the Defendant based on legal considerations and philosophical or non-legal considerations. Legal considerations are considerations based on legal facts revealed in the trial and are stipulated by law as things that must be included in the decision. While non-legal or philosophical considerations are considerations that are based on the detrimental and damaging impacts on the order of life in society, nation and state.²⁰

In the trial of the case of Decision Number: 32/Pid.B/2024/PN JKT PST, the following legal facts were obtained:

- 1) That it is true, on Saturday, October 7, 2023, at around 21:00 WIB, at Palmerah Market, West Jakarta, the Defendant was invited by Mr. Thomas, a police officer, to ride a white Honda PCX motorcycle. The Defendant who was riding pillion followed Witness Nandang and Witness Juha who the Defendant knew had just bought tramadol;
- 2) That the Defendant together with Mr Thomas, a police officer, stopped

¹⁹Lembah Nurani Anjar Kinanti, 2022, et.all, Chemical Castration for Child Rapists, Pekalongan, Nasya Expanding Management, p. 42.

²⁰Elrick Christovel Sanger, Law Enforcement Against Drug Trafficking Among the Young Generation, Lex Crimen, Vol II No 4, August 2013, p. 8.

witnesses Nandang and Witness Juha by pulling up next to their vehicle and succeeded in stopping them and they got out of their vehicle;

3) That the Defendant together with Mr. THMS also got off the motorbike then introduced themselves by claiming to be police officers and asked the witnesses: "Have you just bought tramadol?", to which the witness answered: "Yes, sir";

4) That at around 21.00 WIB, the Defendant who was riding pillion with Witness Nandang stopped his motorbike around Jalan Citarum, Kelurahan Cideng, Kecamatan Gambir, Central Jakarta and Witness Juha also stopped his motorbike, then the Defendant asked for Witness Nandang's wallet and took the money in Witness Nandang's wallet amounting to Rp. 2,300,000,- (two million three hundred thousand rupiah) then the Defendant also took 1 (one) unit of Oppo cellphone in maroon color belonging to Witness Nandang, then the Defendant's friend took away 1 (one) unit of Honda Beat motorbike in red and black color F 6576 WAW that the Witness was using, but Witness Juha and Witness Nandang tried to hold on to it, but were kicked by the Defendant, then the Defendant together with Mr. Thomas left the Witness by running away with Witness Nandang's belongings;

5) That's right, the Defendant then handed over the goods to Mr. Thomas and the Defendant was given a share of Rp. 300,000.00 (three hundred thousand rupiah); That's right, the Defendant admitted his mistake, regretted it and promised not to do it again.

Then the Public Prosecutor submitted the Charges which in essence were as follows:

1) Declaring that the defendant ARF alias Jawa was proven legally and convincingly guilty of committing a crime ""who does, who orders to do and who participates in doing, with the intention of unlawfully benefiting himself or another person, forces someone with violence or the threat of violence to give something, all or part of which belongs to that person or another person or to create a debt or write off a receivable", in accordance with Article 368 of the Criminal Code in conjunction with Article 55 (1) point 1 of the Criminal Code.

2) Sentencing the defendant ARF alias Jawa to a prison sentence of Sentencing the Defendant to 2 (two) years in prison, 6 (six) months minus the time the Defendant has been in detention with an order to remain in detention in the detention center.

3) Stating evidence in the form of:

- a. 1 (one) motorcycle ignition key, photocopy of BPKB, FIF Group leasing certificate
- b. 1 (one) black jacket with the words "Athar Fighter" on the left chest and the

words "IR, INT Squad" on the right chest. Returned to witness NND.

The elements in Decision Number 32/Pid.B/2024/PN Central Jakarta that the defendant committed the crime of theft in violation of Article 368 of the Criminal Code are as follows:

1) Element of whoever

The element of whoever is the element of the perpetrator. The perpetrator in criminal law, according to Article 55 and Article 46 of the Criminal Code is a person who does, together does, participates in doing, encourages, orders to do, or helps to do. That from the examination in the trial, it was not obtained that the Defendant was a person who was included in the group in Article 44 of the Criminal Code. Therefore, the Defendant is included as a person who is capable of being criminally responsible.

That the defendant ARF alias Jawa, whose identity is as stated above, is a person who is a legal subject, thus fulfilling what is meant by the element of "Whoever".

2) The element of intent to benefit oneself or others unlawfully.

It was obtained legal facts that it was true, at around 21.00 WIB, the Defendant who was riding pillion with Witness NND stopped his motorbike around Jalan Citarum, Cideng Village, Gambir District, Central Jakarta and Witness Juha also stopped his motorbike, then the Defendant asked for Witness NND's wallet and took the money in Witness NND's wallet amounting to Rp. 2,300,000,- (two million three hundred thousand rupiah) then the Defendant also took 1 (one) unit of maroon Oppo cellphone belonging to Witness Nandang, then the Defendant's friend took away 1 (one) unit of red and black Honda Beat motorbike F 6576 WAW that the Witness was using, but Witness Juha and Witness Nandang tried to defend it, but were kicked by the Defendant, then the Defendant together with Mr. THMS left the Witness by running away with Witness NND's belongings. That the Defendant obtained a profit of Rp. 300,000 (three hundred thousand rupiah) and obtained it in an unlawful manner.

3) Forcing someone with violence or the threat of violence. Forcing with violence can be in the physical or psychological sense, which makes the person being forced to do something beyond his free will.

It was obtained legal facts that it was true, then the Defendant together with Mr. Thomas who was a police officer stopped witnesses Nandang and Witness Juha by pressing their vehicles and succeeded in stopping them and they got off their vehicles. That it was true, then the Defendant together with Mr. Thomas also got off the motorbike then introduced themselves by claiming to be police officers and asked the witnesses.

4) Giving something, which is wholly or partly owned by that person or another

person, or in order to create a debt or write off a receivable

It was obtained legal facts that it was true that the Defendant asked for Witness NND's wallet and took money from Witness Nandang's wallet amounting to Rp. 2,300,000,- (two million three hundred thousand rupiah) then the Defendant also took 1 (one) unit of maroon Oppo cellphone belonging to Witness Nandang, then the Defendant's friend took away 1 (one) unit of red and black Honda Beat motorbike F 6576 WAW that the Witness was using, but Witness JH and Witness NND tried to defend it, but were kicked by the Defendant, then the Defendant together with Mr. THMS left the Witness by running away with Witness NND's belongings.

Before imposing a sentence, the Panel of Judges first considers the aggravating and mitigating circumstances, namely as follows:

1) Aggravating circumstances:

c. The Defendant's actions were carried out with the cooperation of members of the Indonesian National Police;

2) Mitigating circumstances:

d. The defendant admitted his actions and behaved politely during the trial;

e. The defendant regretted his actions;

f. The defendant is still young and has family responsibilities, a wife and children.

According to the author's analysis, based on the Decision of the Central Jakarta District Court Number: 32/Pid.B/2024/PN JKT PST in this case the judge in his considerations has been appropriate because he has fulfilled the elements as contained in Article 368 of the Criminal Code in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code, namely anyone with the intention of benefiting himself or another person unlawfully, forces someone with violence or threats of violence, to give something, all or part of which belongs to that person or another person, or to create debt or write off receivables. The judge's considerations in applying criminal provisions to the perpetrators in this case have been appropriate where the judge has considered both legal considerations, facts in the trial, witness statements, existing evidence, the judge's beliefs and supporting matters and the criminal sanctions imposed.

As his/her responsibility after the trial verdict against the defendant is issued, the Judge will inform or is obliged to inform the defendant about the defendant's rights after the verdict is determined, this is also an effort to provide legal protection to the defendant such as:

- 1) The right to reject or accept the judge's decision; or he will study the decision because there is still a seven-day grace period after the decision is determined/after being notified to the defendant who is not present to reject or accept;
- 2) Inform the defendant that based on the provisions of the law the defendant has the right to apply for clemency and also has the right to have his detention suspended;
- 3) Have the right to appeal, if the decision made by the judge is deemed too heavy or inappropriate, the deadline for filing an appeal is forever seven days after the decision is made/after being notified to the defendant who is not present;
- 4) The right to immediately revoke the statement that as long as the appeal case has not been determined by the high court, then the appeal request can be made at any time and if it has been revoked, then the defendant's appeal request may not be submitted again.

Justice is generally defined as fair actions or treatment. Meanwhile, fairness is impartial, impartial and on the side of what is right. Justice according to philosophical studies is when two principles are fulfilled, namely, firstly, not harming anyone and secondly, treating each human being with what is their right. Justice has a general meaning and has a specific meaning, including justice in muamalah, justice in law, justice in finances, and justice in human rights. Justice is treating people in a way that, if you were the people and the other person was the sultan, you would think that is how you should be treated. Burhanuddin Salam said that justice is not an understanding, but rather a quality of the results of an action that is considered fair after a separation is made, selecting what is right and what is wrong.

This theory considers all aspects related to the disputed subject matter and then seeks relevant laws and regulations to the disputed subject matter as a legal basis in making a decision and the judge's considerations must be based on clear motivation to uphold the law and provide justice. Based on this theory, the Panel of Judges' considerations in issuing a Decision on the crime of extortion in Decision Number 32/Pid.B/2024/PN JKT PST are to consider the element of anyone with the intention of benefiting themselves or others unlawfully, forcing someone with violence or threats of violence, to give something, all or part of which belongs to that person or another person, or to create debt or write off receivables, as stated in Article 368 of the Criminal Code in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code. Based on legal and non-legal considerations, facts in the trial, witness statements, available evidence, the judge's conviction and supporting matters, all elements of Article 368 of the Criminal Code in conjunction with Article 55 Paragraph (1) point 1 of the Criminal

Code have been fulfilled and the Panel of Judges has handed down a criminal verdict against the Defendant ARF alias Jawa.

4. Conclusion

Criminal liability for the perpetrators of the crime of extortion in Decision Number: 32/Pid.B/2024/PN JKT PST has fulfilled the value of criminal liability in accordance with the provisions of the actus because the defendant, namely ARF alias Jawa, has committed a prohibited act in accordance with that contained in Article 368 of the Criminal Code in conjunction with Article 55 Paragraph (1) Ke-1 of the Criminal Code. That the panel of judges decided his actions stating that the defendant ARF alias Jawa was legally proven and guilty of committing the crime of theft regulated and threatened with imprisonment of 1 (one) year and 6 (six) months each.

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