

Formulation of Criminal Sanctions Against Perpetrators of The Criminal Acts of Theft with Violence in Indonesian Criminal Law

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Abstract. *Violent theft continues to be addressed through an approach that prioritizes punishing the offender, while the recovery of the victim's losses through restitution has not been effectively implemented. Regulatory improvements and judicial practices are needed so that criminal sanctions not only create a deterrent effect but also restore the victim's rights and reestablish social balance comprehensively. The purpose of this research is to identify and analyze the application of criminal sanctions against perpetrators of violent theft in Indonesia's current criminal law system, as well as to examine and analyze the ideal concept for implementing such sanctions within the Indonesian criminal justice framework. The approach used in preparing this thesis is normative juridical research. The specification of this study is descriptive-analytical. Theories employed include the legal system theory and the theory of justice. The findings of this research show that the application of criminal sanctions against perpetrators of violent theft in Indonesia is currently based on Article 365 of the Criminal Code (KUHP) and places strong emphasis on legal certainty through processes of investigation, prosecution, and sentencing that adhere to the principles of legality and the presumption of. Judges impose punishment based on evidentiary standards and prevailing theories of sentencing, whether retributive, utilitarian, or a combination of both. However, the current orientation of punishment remains focused more on penalizing the offender than on restoring the victim, resulting in the legal system falling short of achieving its goal of restoring social balance. The ideal concept of implementing criminal sanctions should prioritize victim recovery, ensuring that punishment is not limited to imprisonment but also includes the restoration of both material and immaterial losses suffered by victims. The mechanisms for restitution and compensation*

must be made simpler, faster, and better integrated through the harmonization of the Criminal Code, KUHP, and Law No. 31 of 2014 so that victims' rights are protected without procedural obstacles. By balancing legal certainty, justice, and utility, criminal sanctions function not only as retribution but also as a means of social restoration that reinstates the victim's sense of security and dignity.

Keywords: Criminal Sanctions; Restitution; Violent Thef.

1. Introduction

Indonesia is affirmed as a state based on law. This is stated in the 1945 Constitution, which states that Indonesia is a state based on law (*rechtsstaat*), not a state based solely on power (*machtsstaat*).¹The governance of Indonesia is based on a constitutional system, not an absolute system with unlimited powers. The urgency of this affirmation was further emphasized in the Third Amendment to the 1945 Constitution of 2001 through Article 1 Paragraph (3), which states, "The State of Indonesia is a state based on law."²

Indonesia's status as a nation based on the rule of law is the result of a consensus among the nation's founders, as outlined in the 1945 Constitution since its inception. This puts Indonesia on a par with other countries based on the rule of law worldwide. The state is obligated to have institutional mechanisms that serve as a means of social control, one of which is the judiciary. The principle of a state based on the rule of law demands that the law always be enforced. Therefore, all rules agreed upon and deemed appropriate by society must not be violated. If violations occur, the law must be restored, enforced, and adherence maintained.³

The law must be enforced, meaning that all established rules as guidelines for social life must not be violated. All citizens are obligated to obey the law, but if violations occur, the implementation and enforcement mechanisms are carried out through the judiciary.⁴The courts function as a means of implementing the

¹Setyo Langgeng, The Role of Advocates as Law Enforcers in Supporting the Realization of an Integrated Criminal Justice System in Criminal Law Enforcement in Indonesia, *Jurnal Daulat Hukum*, Vol. 1, No. 1, 2018, p. 139

²Janpatar Simamora, Interpretation of the Meaning of the Legal State in the Perspective of the 1945 Constitution of the Republic of Indonesia, *Journal of Legal Dynamics*, Vol. 14, No. 3, 2014, pp. 547-561.

³Ridwan Syaidi Tarigan, *Constitution and Power: A Case Study in Constitutional Law*, Ruang Karya Bersama, Banjar, 2024, p. 3

⁴Laurensius Arliman, "Achieving Good Law Enforcement to Make Indonesia a Legal State," *Doctrinal*, Vol. 2, No. 2, 2020, pp. 509-532.

law in handling real rights claims resulting from violations of the law, both in the realm of criminal law and civil law.⁵

Criminal law as part of public law functions to regulate various aspects of life to create order, peace and tranquility in society, while also being the main instrument in protecting public interests from all forms of disturbance in social, national and state life.⁶

In the Criminal Code (KUHP), each crime has certain classifications and limitations to distinguish it from other crimes. The basic principle is that the law must be enforced because the rules that apply as shared guidelines must not be violated. If a violation occurs, the law must be restored and enforced through the judicial system, considering that all members of society are fundamentally obliged to obey the law. All members of society are obliged to comply with legal regulations. If a violation occurs, the implementation and enforcement of the law are carried out through the judicial system as a concrete manifestation of the principle of a state based on the rule of law.⁷

The increasingly advanced era has had a significant impact on changes in society's social systems, one of which was triggered by the global economic crisis that has affected nearly every country, including Indonesia. High economic pressures have forced people to work hard to meet their daily needs. Every individual is required to interact with others within the family, work, and social spheres. The facts show that humans have always lived side by side in groups and formed various forms of social relationships to meet their needs. However, not all individuals are able to meet their needs independently, resulting in deviant behavior that conflicts with social norms and applicable laws.⁸

One common form of abuse is the crime of theft with violence, as stipulated in Article 365 of the Criminal Code. Theft with violence is categorized as a serious crime because it has the potential to disrupt public order and cause harm to victims, both material and immaterial.⁹Based on the provisions of Article 365 of the Criminal Code, perpetrators can be sentenced to different levels of punishment according to the quality of their actions, including:¹⁰

⁵Siswanto Sunarso, *Victimology in the Criminal Justice System*, Sinar Grafika, Jakarta, 2022, p. 5

⁶Maulidya Winatasya and Citra Dwi Rahayuningsih, *Criminal Law: A Literature Review*, *Journal of Literature Review*, Vol. 1, No. 1, 2025, pp. 154-160.

⁷Rahmanuddin Tomalili, *Criminal Law*, Deepublish, Yogyakarta, 2019, p. 8

⁸Agus Suryono, *Theory and Strategy of Social Change*, Bumi Aksara, Jakarta, 2019, p. 9

⁹Thio Febrianto and Bambang Widarto, *Review of Law Enforcement Against the Crime of Theft with Violence (Case Study: Decision of the North Jakarta District Court Number 156/PID. B/2019/PN. JKT. UTR)*, *LEX PROGRESSIUM: Journal of Legal Studies and Legal Development*, Vol. 2, No. 1, 2025, pp. 36-44.

¹⁰Dwi Putra Pratiesya Wibisono, "Police Efforts to Combat Violent Theft Based on Article 365 of the Criminal Code (KUHP)", *Justitia Nusantara Media Law Journal*, Vol. 12, No. 1, 2022, p. 147."

(1)Threatened with a maximum prison sentence of nine years, theft which is preceded, accompanied or followed by violence or the threat of violence, against a person with the intention of preparing or facilitating the theft, or in the case of being caught in the act, to enable the escape of oneself or another participant, or to retain control of the stolen goods.

(2)Threatened with a maximum prison sentence of twelve years:

1. If the act is committed at night in a house or enclosed yard where there is a house, on foot.
2. If the act is carried out by two or more people in partnership.

If the act results in death, the penalty is a maximum of fifteen years' imprisonment.

(3)It is punishable by the death penalty or life imprisonment or a maximum period of twenty years, if the act results in serious injury or death and is committed by two or more people in partnership, accompanied by one of the things described in no. 1 and 3.

Violent theft can be found almost everywhere in Indonesia and is generally committed by individuals or organized groups. Perpetrators often use sharp weapons such as sickles, knives, or machetes, and develop increasingly complex methods of operation as technology advances. This crime not only causes significant material losses but also threatens human life. Violent theft is one of the most difficult forms of crime to eradicate completely.¹¹

The causes of violent theft are diverse, including low levels of education, economic factors, weak morals and religious values, and environmental influences that do not support positive behavior. Economic factors are often the primary trigger for someone to fall into crime. The lack of a steady income and the difficulty of meeting basic needs push individuals to seek shortcuts, including illegal acts such as theft, fraud, and extortion. This situation is further exacerbated by the limited employment opportunities available to the community, thus opening up opportunities for increased crime rates.¹²

Every crime inevitably results in losses for the victim, whether felt directly by the victim or indirectly by others. These losses are not only physical but also include costs incurred for healing wounds, lost income, or profits that could have been obtained. There are also non-physical losses that cannot be measured in monetary terms, such as disturbed psychological balance, loss of enthusiasm for

¹¹M. Rizki Nugraha Tjaya et al., Law Enforcement Against the Crime of Vehicle Theft with Violence, *Citizenship Journal*, Vol. 8, No. 1, 2024, pp. 324-330.

¹²Agung Hermawan et al., CRIMINOLOGICAL ANALYSIS OF CHILDREN IN CONFLICT WITH THE LAW IN VIOLENT THEFT CRIME, *Clavia*, Vol. 22, No. 1, 2024, pp. 69-83.

life, and reduced self-confidence due to trauma, anxiety, and fear that continue to haunt the victim. One of the inherent rights of victims is to receive compensation from the perpetrator as a form of redress for the suffering experienced. In cases of crimes against property that result in material losses, the compensation referred to generally takes the form of returning the victim's belongings or payment of an amount equivalent to the loss suffered. In cases of theft or confiscation of property, the victim's greatest hope is the return of their property, not merely the punishment of the perpetrator.¹³

Article 365 of the Criminal Code has regulated various criminal threats based on the level of seriousness of the act, ranging from nine years in prison to the death penalty, however, it does not directly require perpetrators of theft with violence to pay compensation to the victim, because this article only regulates criminal sanctions (imprisonment) against the perpetrator, not civil sanctions for compensation. This is due to the characteristics that adhere more to the retributive paradigm that emphasizes the punishment of the perpetrator, rather than the restorative paradigm that prioritizes the restoration of the victim's losses.¹⁴

The compensation mechanism has actually been accommodated, but not in the Criminal Code, but rather through Articles 98 to 101 of the Criminal Procedure Code (KUHP) concerning the Consolidation of Compensation Lawsuits.¹⁵ Through this mechanism, victims or injured parties have the right to file a claim for compensation during the criminal trial against the defendant. This claim covers both material and immaterial losses arising from the crime. The judge will then consider the evidence presented and decide whether the claim for compensation can be granted. However, in practice, this mechanism is often ineffective because it prolongs the trial process, law enforcement tends to be reluctant to consolidate cases, and victims are ultimately directed to file separate civil lawsuits.¹⁶

In addition to the mechanism for consolidating lawsuits, victims also have the opportunity to obtain compensation through the restitution scheme as stipulated in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Restitution is compensation charged directly to the perpetrator of a crime, which includes medical treatment costs, losses due to loss of property, and immaterial losses such as psychological suffering. The victim submits a request for restitution

¹³Irawan Adi Wijaya and Hari Purwadi, "Provision of Restitution as Legal Protection for Victims of Crime," *Journal of Law and Economic Development*, Vol. 6, No. 2, 2018, p. 139

¹⁴Dwi Putra Pratiesya Wibisono, *Op. Cit.*, p. 150.

¹⁵Mahrus Ali and Ari Wibowo, *Victim-Oriented Compensation and Restitution of Criminal Acts*, *Yuridika*, Vol. 33, No. 2, 2018, p. 260.

¹⁶Fauzy Marasabessy, *Restitution for Crime Victims: A New Mechanism Offered*, *Journal of Law & Development*, Vol. 45, No. 1, 2016, pp. 53-75.

through the Witness and Victim Protection Agency (LPSK), which will then forward it to the public prosecutor to be included in the criminal charges at trial. If the judge grants the request, the restitution becomes part of the verdict, which is binding and must be implemented by the perpetrator.¹⁷

Although restitution through the LPSK (Lembaga Masyarakat Pemberantasan Korupsi) is a more progressive legal step in protecting victims' rights, it still faces numerous obstacles. One is a lack of public understanding and the role of law enforcement officials in disseminating information about the restitution mechanism. Many victims of violent theft are unaware of their right to apply for restitution, and therefore do not exercise it. Furthermore, the procedure for applying for restitution through the LPSK is considered complicated and bureaucratic, as victims must complete administrative documents, provide proof of loss, and undergo lengthy verification processes. This often makes it difficult for victims who are still experiencing trauma or are economically disadvantaged to complete the process.¹⁸

Another weakness lies in the perpetrator's financial capacity. A court decision granting restitution does not automatically guarantee that the victim will receive compensation, as many perpetrators of violent theft come from economically disadvantaged groups and lack sufficient assets to pay restitution. Even when a restitution decision is made, its implementation often stalls, leaving victims without real redress. Law enforcement officials tend to focus more on punishing perpetrators through imprisonment than ensuring that victims' rights are met, so restitution is often seen as merely a formality without effective implementation.¹⁹

A case study in Makassar City noted that 286 cases of violent theft or mugging were tried in 2019-2020, yet not a single victim filed a restitution request with the court. This is despite the fact that the right to restitution is stipulated in Law Number 31 of 2014 concerning the Protection of Witnesses and Victims. This fact demonstrates a gap between legal norms and practice, as law enforcement officials such as investigators, prosecutors, and judges do not fully understand the restitution mechanism or provide outreach to victims. Victims' rights to recover for the material and immaterial losses they experienced are neglected,

¹⁷Dian Herdiansah, Opportunities to Realize Victim Trust Fund Governance in the Witness and Victim Protection Agency (LPSK) for the Recovery of Victims of Criminal Acts, *Jurnal Restorative Justice*, Vol. 9, No. 1, 2025, pp. 1-18.

¹⁸Devi Vanessa Armi Putri et al., Analysis of Restitution Obstacles in the Implementation of Legal Protection for Victims of Crime (Case Study: Magelang District Prosecutor's Office, Writing: Nusantara Research Journal, Vol. 1, No. 4, 2025, pp. 10-14.

¹⁹Bambang Waluyo, *Viticulture: Protection of Victims and Witnesses*, Sinar Grafika, Jakarta, 2022, p. 11

and restitution remains a normative concept without any concrete implementation in the criminal justice process.²⁰

A more ideal formulation of criminal sanctions for perpetrators of theft with violence under Indonesian criminal law is needed. This formulation should not only focus on imposing severe penalties in the form of imprisonment, life imprisonment, or the death penalty as stipulated in Article 365 of the Criminal Code, but should also consider the dimensions of justice, including legal certainty, public protection, deterrence, and victim rehabilitation. Therefore, criminal sanctions should ideally be designed proportionally, accommodating both principal and additional penalties, including restitution obligations to victims, and post-conviction supervision.

2. Research Methods

The approach used in this research is a normative juridical approach, namely legal research conducted through library materials or secondary data, as this research always relies on written legal sources. The primary focus of this research is to identify legal rules, principles, and legal doctrines that can serve as a basis for addressing the issues being studied.²¹

3. Results and Discussion

3.1. Application of Criminal Sanctions Against Perpetrators of The Criminal Acts of Theft with Violence in Current Criminal Law in Indonesia

The legal certainty contained in Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, third amendment, states that every person has the right to recognition, guaranteed protection and fair legal certainty as well as equal treatment before the law.²² According to Apeldoorn, legal certainty has two aspects: first, the question of the legality of concrete matters (*bepaalbaarheid*). This means that parties seeking justice want to know the law in specific cases before initiating a case.

Legal certainty means legal security, which means protection for the parties against the arbitrariness of judges.²³ Because legal certainty is one of the goals of law and can be considered an effort to realize justice. The concrete form of legal certainty is the implementation and enforcement of the law against an action regardless of who committed it. The theory of legal certainty is a matter (state) of certainty. Law must be fundamentally certain and just, and legal certainty is a

²⁰Musawir et al., IMPLEMENTATION OF LEGAL PROTECTION FOR FEMALE VICTIMS OF VIOLENT THEFT, *Indonesian Journal of Education and Humanity*, Vol. 3, No. 3, 2023, p. 23

²¹Dyah Ochtorina Susanti et al., *Legal Research*, Sinar Grafika, Jakarta, 2022, p. 11

²²Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia

²³LJ Van Aveloorn in Shidarta. 2006. *The Morality of the Legal Profession: An Offering of a Framework for Thinking*. Bandung: PT Revika Aditama, p. 82

question that can only be answered normatively, not sociologically. Normative legal certainty occurs when a regulation is created and enacted with certainty because it regulates precisely and logically.²⁴

The positivist paradigm of legal definition prohibits all rules that resemble law but are not commands from a sovereign authority. Legal certainty is always upheld, regardless of the consequences, and there is no reason not to uphold it. Because, in its paradigm, positive law is the only law.²⁵ True legal certainty has a more juridical dimension, according to Jan Michiel Otto. This opinion provides a further definition of legal certainty, defining it as the possibility that, in certain situations, legal certainty will be achieved.²⁶

The definition of law is a collection of regulations or rules in a communal life, the entire regulation of behavior that applies in a communal life that can be enforced with a sanction. Legal certainty is a characteristic that cannot be separated from law, especially for written legal norms. While the crime of theft with violence or aggravation (*gequalificeerde diefstal*) is regulated in Article 363 and 365 of the Criminal Code, what is meant by theft with violence or aggravation is the act of theft that has elements of the act of theft in its basic form, and because it is added with other elements, so that the threat of punishment becomes heavier.²⁷ In Adami Chazawi's opinion, aggravated theft is a form of theft as formulated in Article 362 of the Criminal Code (its basic form) plus other elements, both objective and subjective, which are aggravating to the theft, and therefore is subject to a heavier penalty than theft in its basic form.²⁸ The explanation of the crime of theft accompanied by violence is regulated in Article 365 of the Criminal Code as follows:

Threatened with a maximum prison sentence of nine years, theft that is preceded, accompanied or followed by violence or threats of violence against a person, with the intention of preparing or facilitating the theft, or in the case of being caught in the act, to enable the escape of oneself or other participants, or to retain control of the goods under one's control.

It is punishable by the death penalty or life imprisonment or a maximum period of twenty years, if the act results in serious injury or death and is carried out by

²⁴Cst Kansil. 2009. Dictionary of Legal Terms. Jakarta: Gramedia Pustaka Utama, p. 85.

²⁵Rohman, Afrida Adzfar Taufiqur. 2016. Legal Review of the Crime of Theft with Violence (Case Study of Criminal Case Number 68/ Pid.B/2015/Pn. Smg). Semarang: Unissula Faculty of Law Thesis.

²⁶Jan Michiel Otto. 2006. The Morality of the Legal Profession: An Offering of a Framework for Thinking. Bandung: PT. Revika Aditama, p. 85

²⁷PAF Lamintan and Jisman Samosir. 2010. Special Offenses: Crimes Against Property Rights and Other Rights Arising from Property Rights. Bandung: Nuansa Aulia, p. 67

²⁸Adami Chazawi. 2004. Crimes Against Property. Malang: Bayumedia, p. 19

two or more people in partnership, and is accompanied by one of the things described in no. 1 and 3.

The above description explains that criminal law is an important tool in crime prevention, eradicating crimes that disturb and harm society in general and victims in particular. Crime prevention can be carried out through preventive and repressive means. However, preventive efforts are ineffective if the true reasons for someone committing a crime are not known.²⁹ That the crime of theft is a formally formulated offense where what is prohibited and threatened with punishment, in this case is the act defined as "taking". The crime of theft as regulated in Article 365 of the Criminal Code is actually only one crime, and not two crimes consisting of the crime of theft and the crime of using violence against people.³⁰ According to the opinion of the Arrest Hoge Raad, the meaning of the word aggravating is because in the theft, the person used violence or the threat of violence.³¹ So that theft with violence is required to go through several processes which are useful to strengthen the existence of elements in Article 365 of the Criminal Code against the defendant, namely by looking at the types of evidence available, including: witness statements, clues, and the defendant's statement.

The judge in giving his decision must include all elements of evidence as stated above, namely based on articles 183 and 184 of the Criminal Procedure Code and Law No. 48 of 2009 concerning Judicial Power. For the collection of evidence carried out by investigators who in this case have special authority and have been regulated in Law No. 2 of 2002 concerning the Republic of Indonesia National Police and Article 1 Paragraph (1), Articles 4-6 of the Criminal Procedure Code, while the prosecutor's task is to make an indictment against the defendant in accordance with the crime and the evidence obtained by the investigator, the prosecutor's authority in this case is based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia and Article 1 Paragraph (1) and (2), Articles 13-15 of the Criminal Procedure Code to carry out prosecution and implement the judge's decision.

Law Number 48 of 2009 concerning Judicial Power, Article 8 Paragraph (1) states: "every person who is suspected, arrested, detained, charged, and or brought before a court, must be considered innocent until there is a court decision and declares his guilt and obtains permanent legal force." Article 1 point 11 of the Criminal Procedure Code states that a court decision is a judge's statement made in an open court session, which can be in the form of a criminal sentence or

²⁹Hendratmoko. 2020. Investigative Mechanism for Children Perpetrating Violent Theft Causing Death. Thesis, Faculty of Law, Unissula Semarang.

³⁰PAF Lumintang, Theo Lumintang. 2009. Special Crimes Against Property. Jakarta: Grafika, p. 56

³¹Ibid,

acquittal or release from all legal charges, and according to the method regulated in the Law. All court decisions are only valid and have legal force if they are made in a court session that is open to the public.³²

Article 2 paragraph (2) states that the state courts implement and enforce law and justice based on Pancasila. This means that the application and enforcement of the law must be just based on the principles of Pancasila, namely, among others, the principle of Belief in One Almighty God, meaning that judges in making decisions must also be based on the norms of the religion they adhere to, and the principle of social justice for all Indonesian people, social justice means, among others, not only deciding because of the accused himself who is being charged, but also considering the principle of justice for the Indonesian people who are harmed by the criminal acts committed by the accused. So that one of the valid requirements for a judge's decision includes two things, namely containing the mandatory things and being pronounced in a trial that is open to the public, which must be fulfilled by the judge in every decision-making process.

The criminal sentence is regulated in Article 193 paragraph 1 of the Criminal Procedure Code which states "if the court is of the opinion that the defendant is guilty of committing the crime charged against him, then the court shall impose a sentence." So a judge must be independent, not taking sides with anyone in the trial, everyone is treated equally. In Law Number 48 of 2009 concerning Judicial Power, the Judge's duty to try cases has the dimension of upholding justice and upholding the law. Judges in carrying out their duties must be free and may not be influenced or take sides with anyone. The guarantee of this freedom is also regulated in various regulations, namely in Article 24 of the 1945 Constitution of the Republic of Indonesia, which is independent to organize trials to uphold law and justice.

Aristotle's opinion in his book "Nicholas Ethics," as quoted by Shidarta, wrote extensively about justice. Justice is a virtue related to human relationships. The word "just" has more than one meaning. Just can mean according to law, or what is proportionate, that is, what is due.³³ The existence of sentencing guidelines will facilitate judges in determining punishment after proving that the defendant has committed the act charged. The list includes subjective factors that relate to factors external to the perpetrator. By considering these points, it is hoped that sentencing will be more proportional and the rationale for the punishment imposed will be better understood.³⁴

A judge's decision is the culmination of a case being examined and tried by a judge or panel of judges. The judge issues a decision on the following matters:

³²Laksana, AW (2019). Cybercrime Criminalization from a Positive Criminal Law Perspective. Unissula Law Journal <http://repository.unissula.ac.id/7317/>

³³Salim. 2006. Fundamentals of Forestry Law. Jakarta: Sinar Grafika, p. 3

³⁴Muladi and Barda Nawawi Arif. 1998. Criminal Theories and Policies, Alumni, Bandung, p. 67

1. The decision regarding the incident, whether the defendant has committed the act he is accused of.
2. The decision regarding the law, whether the actions committed by the defendant constitute a crime and whether the defendant is guilty and can be punished.

In Article 365 of the Criminal Code The imposition of criminal punishment is basically justified because the criminal has caused suffering to others.³⁵ Every crime must be punished without any compromise. A person is punished for committing a crime. Regardless of the consequences of the punishment, or whether society might be harmed, retribution is the rationale for punishing a crime.³⁶

The Utilitarian view states that the aim of punishment must produce beneficial consequences that can be proven and the retributivist view states that justice can be achieved if the theological goal is carried out using the principles of justice.³⁷ Regarding the theory of punishment, in general it can be grouped into three large groups, namely absolute theory or retribution theory (*vergeldings theorien*), relative theory or goal theory (*doel theorien*), and combining theory (*verenigings theorien*).³⁸

Absolute theory (retributive theory) views punishment as retribution for a wrong that has been committed, thus being action-oriented and rooted in the crime itself. Punishment is imposed because the perpetrator must accept the sanction for their wrongdoing. Therefore, the basis for punishment must be sought from the crime itself, because the crime has caused suffering to others, and in return (*vergelding*) the perpetrator must suffer.³⁹ Sentencing someone for committing a crime. Punishment is an absolute consequence that must be meted out as retribution to the person who committed the crime. Therefore, the justification lies in the existence of the crime itself, the act committed.

3.2. The Ideal Concept of Applying Criminal Sanctions Towards Perpetrators of The Criminal Acts of Theft with Violence in Criminal Law in Indonesia

Theft accompanied by violence (*curas*) is an act that violates the law and is one of the crimes for which the penalties are listed in Article 365 of the Indonesian Criminal Code. This act is often known as mugging, robbery, or other similar

³⁵Teguh Prasetyo and Abdul Halim Barkatullah. 2005. *Criminal Law Politics (A Study of Criminalization and Decriminalization Policies)*. Jakarta: Pustaka Pelajar, p. 90

³⁶Dwidja Priyanto. 2009. *The Imprisonment System in Indonesia*. Bandung: PT. Rafika Aditama, p. 22

³⁷Muladi. 2000. *Conditional Sentence Institution*. Bandung: Alumni, p. 28

³⁸Muladi and Barda Nawawi. 1992. *Criminal Theory and Policy*. Bandung: Alumni, p. 12

³⁹Leden Marpaung. 2009. *Principles-Theory-Practice of Criminal Law*. Jakarta: Sinar Grafika, p. 105.

terms. Its impacts include damage to or loss of the victim's belongings, along with physical suffering due to the perpetrator's forceful actions, which use violent methods, resulting in injuries and conditions that are very life-threatening. This situation deserves serious attention from law enforcement officials so that legal protection for victims can be optimally sought..⁴⁰

The crime of theft accompanied by violence clearly results in losses for the victim, both directly and indirectly. These losses are not only related to physical injury but also include recovery costs and the potential loss of income or profit opportunities that could have been earned. There are also non-physical losses that are very personal and cannot even be measured in monetary terms.

The loss of inner peace, zest for life, and reduced self-confidence due to anxiety and fear that persist as memories of the crime are among the various non-physical losses victims can experience. One of the victims' rights is to receive compensation from the perpetrator to alleviate their suffering. If the crime is a crime against property with material losses, then compensation can take the form of returning the victim's belongings or paying the full value of the losses incurred. In cases like this, the victim's greatest hope is the recovery of their property, not the severity of the perpetrator's punishment.

Crime victims in the criminal justice system are individuals who experience suffering due to injustice. There are two primary characteristics inherent in victims: suffering, which involves pain or burden, and injustice, which reflects unfair treatment.⁴¹ The existence of victims cannot always be understood simply as the result of unlawful acts, as legal rules and procedures can also create injustices that lead to victims, such as those who arise as a result of the legal process itself. Victims are most affected by a crime, with losses that can include physical injury, mental distress, or material loss. The purpose of the law is to create a sense of security, maintain order, and provide justice for all citizens.

Legal protection is a form of service that must be provided by the government to create a sense of security for the community. Based on the constitution, the state has the responsibility to protect the human rights of every citizen as stated in Article 27 Paragraph (1) which emphasizes that all citizens have equal standing before the law and government and are obliged to obey both without exception. The state adheres to the principle that everyone must be treated fairly and justly, with an equal position according to the principle of equality before the law. This principle is the basis for providing guaranteed protection for citizens, including

⁴⁰Sherly Tricia Ningsih, Provision of Compensation by Perpetrators to Victims of Property Crimes According to the Criminal Code, *Indonesian Journal of Criminology*, Vol. 10 No. 2, 2014, pp. 49-58

⁴¹Siswanto Sunarso, *Victimology in the Criminal Justice System*, Sinar Grafika, Jakarta, 2022, p. 36

victims of theft crimes accompanied by violence who require protection from a legal, physical, and psychological perspective.⁴²

The concept of a state that upholds the protection of human rights demands that the law play a role in safeguarding the interests of its citizens, and to achieve this goal, the law must be properly enforced. Ideally, law enforcement should proceed in an orderly and peaceful manner. Violations occur when someone fails to fulfill their obligations or violates the rights of others. Those whose rights have been violated are entitled to legal protection to prevent further harm.

Legal protection for victims of violent crimes within the national legal system is still considered inadequate. This is evident in the limited number of victims' rights stipulated in various applicable regulations. While victims are the ones most affected by a crime, the protection provided by law is primarily directed at the perpetrators. When perpetrators are convicted by the courts, the victims' well-being is often overlooked. In the practice of handling criminal cases, regulations often focus more on the rights of the suspect or defendant, while the rights of the victims are neglected. Victims of violent crimes often lack adequate protection, both material and non-material. Victims are often positioned as mere informants or witnesses, leaving them with limited opportunity to advocate for their rights.

According to Muladi, in formulating regulations regarding protection for victims of crime, the primary aspect that needs to be considered is the core harm experienced by the victim. This harm encompasses not only material aspects and physical suffering, but also psychological impacts. These impacts can include trauma resulting from a loss of trust in the social environment and societal order. Symptoms of this condition can be seen in anxiety, depression, cynicism, emotional distress, loneliness, and various forms of avoidance behavior.⁴³

Efforts to implement legal protection for victims require adherence to a number of relevant legal principles. In criminal law, these principles must encompass aspects of formal and material criminal law, as well as implementation mechanisms. Some of the principles used as references are as follows:⁴⁴

1. Principle of Benefit

Protection of victims is not only aimed at achieving benefits (both material and spiritual) for victims of crime, but also benefits society at large, particularly in efforts to reduce the number of criminal acts and create public order.

⁴²JH Sinaulan, Legal Protection for Citizens, Ideas: Journal of Education, Social Affairs, and Culture, Vol. 4, No. 1, 2018, p. 78

⁴³Muladi, Human Rights, Politics and the Criminal Justice System, Diponegoro University Publishing Agency, Semarang, 2002, p. 177

⁴⁴Nabila Chandra Ayuningtyas, The Urgency of Legal Protection for Victims of Revenge Porn, Recidive: Journal of Criminal Law and Crime Prevention, Vol. 10, No. 3, 2020, pp. 164-173.

2. Principle of Justice

The application of the principle of justice in efforts to protect victims of crime is not absolute because this is also limited by the sense of justice that must also be given to the perpetrator of the crime.

Legal protection for crime victims is part of community protection, which can be realized in various forms, for example through providing restitution and compensation to victims, medical services, and also in the form of legal assistance. Regarding the definition of a victim based on Article 1 Number (3) in Law Number 31 of 2014 concerning Protection of Witnesses and Victims, it states that, "A victim is a person who experiences physical, mental, and/or economic suffering resulting from a criminal act."

As regulated in Law Number 31 of 2014, restitution and compensation are also explained. Restitution is "compensation provided to the victim or their family by the perpetrator or a third party." Compensation, on the other hand, is "compensation provided by the State because the perpetrator is unable to fully compensate the victim or their family for the losses they are responsible for." Restitution emphasizes that compensation is borne by the perpetrator, while compensation is borne by the State.⁴⁵

Restitution, as a claim for compensation, is granted through a criminal court decision and is imposed on the perpetrator of the crime. Restitution, based on the principle of restoration to the original state (*restitutio in integrum*), is intended as an effort to return the victim to the state before the crime occurred, even though in reality this condition cannot be fully restored. Based on Article 1365 of the Civil Code, "Every unlawful act that causes harm to another person requires the perpetrator to compensate for that loss." If someone suffers a loss due to a crime, the state provides a simpler mechanism for victims to obtain compensation without having to resort to a regular civil lawsuit, namely through the consolidation of compensation claims in criminal cases as stipulated in Articles 98–101 of the Criminal Procedure Code. Through this mechanism, victims can combine an ongoing criminal case with a civil lawsuit to ensure the victim's rights, including the return of lost property. However, this provision still has several obstacles, namely the limited type and amount of losses that can be requested by victims of criminal acts when using the mechanism for consolidating compensation claims regulated in the Criminal Procedure Code. Furthermore, the submission procedure is not simple and requires an active role from the victim themselves in the process.⁴⁶

⁴⁵Hutpa Ade Pangesti, Legal Protection for Crime Victims in Criminal Law Enforcement in Indonesia, *Lex Crimen*, Vol. 8, No. 10, 2019, p. 298

⁴⁶Fauzy Marasabessy, Restitution for Crime Victims: A New Mechanism Offered, *Journal of Law & Development*, Vol. 45, No. 1, 2016, pp. 53-75.

Legislation other than the Criminal Procedure Code which regulates restitution for victims is explained in Article 7A of Law Number 31 of 2014 concerning Protection of Witnesses and Victims, which reads:

(1) Victims of criminal acts have the right to receive restitution in the form of:

- a. compensation for loss of wealth or income;
- b. compensation for losses incurred as a result of suffering directly related to the criminal act; and/or
- c. reimbursement of medical and/or psychological care costs.

(2) The criminal acts as referred to in paragraph (1) are determined by the LPSK Decision.

(3) Submission of a restitution application can be made before or after a court decision has obtained permanent legal force through LPSK.

In the event that the victim of a crime dies, restitution will be given to the victim's family who are the victim's heirs.

The law is actually considered to limit the granting of restitution rights for victims of criminal acts. Article 7A Paragraph (2) states that criminal acts as referred to in Paragraph (1) are determined by a LPSK Decision. This means that the right to obtain restitution cannot apply to all victims of criminal acts. This right only applies to victims of certain criminal acts whose determination is not clear because it is only stated "determined by LPSK Decision". The involvement of LPSK can actually make victims have to go through a longer period of time to obtain their right to restitution because they must go through various procedures through LPSK first and then through the Public Prosecutor if the application for restitution is submitted before the court decision has obtained permanent legal force.⁴⁷

Article 7A of Law No. 31 of 2014 stipulates that victims may submit a request for restitution to the court through the LPSK (Lembaga Masyarakat Pemberantasan Korupsi). This provision indicates that restitution requests must involve the LPSK, and raises two possible interpretations. First, that requests for compensation can only be submitted through the LPSK. Second, victims can still submit their claims through the LPSK or through other mechanisms, such as those provided in the Criminal Procedure Code. The lack of a standard procedure indicates the need for adjustments and alignment with other relevant regulations.

⁴⁷Mahrus Ali and Ari Wibowo, *Victim-Oriented Compensation and Restitution of Criminal Acts*, *Yuridika*, Vol. 33, No. 2, 2018, p. 260.

In the Criminal Procedure Code, the concept of the mechanism for submitting a restitution application should include the following:

1. The restitution application process begins when the victim reports the crime that happened to him to the Indonesian National Police, and is then handled by investigators along with the investigation process for the criminal case.
2. Investigators are required to inform victims of their right to request restitution, and then investigators must include details of the losses actually experienced by the victim in the case file.

The ideal concept of implementing criminal sanctions against perpetrators of the crime of theft with violence must place victim protection as the main orientation through a criminalization approach that does not only focus on imprisonment, but also ensures the real recovery of material and non-material losses through a simple, clear, and easily accessible restitution mechanism without complicated procedures, with harmonization between the Criminal Code, the Criminal Procedure Code, and Law 31 of 2014 so that victims' rights are not hampered by overlapping regulations. The application of criminal sanctions still needs to maintain a balance between legal certainty, justice, and benefit by ensuring that perpetrators receive proportionate punishment for the violence committed, followed by the obligation to restore victims through *restitutio in integrum* as a form of juridical and moral responsibility, so that criminal law not only upholds order and provides a deterrent effect, but also truly restores the dignity, security, and peace of mind of victims as an essential goal of legal protection in a state based on the rule of law.

4. Conclusion

1. The application of criminal sanctions against perpetrators of theft with violence in current Indonesian criminal law essentially emphasizes legal certainty, where the Criminal Code expressly regulates the aggravation of criminal penalties in Article 365 as a form of protection for victims and society from crimes that cause physical and psychological suffering. The criminal justice system operates through a series of formal mechanisms, from investigation and prosecution to sentencing by judges, who must uphold the principles of legality, the presumption of innocence, and the principles of justice based on Pancasila. The imposition of criminal penalties on perpetrators of theft with violence is based on the fulfillment of the elements of the crime and the evidence according to the Criminal Procedure Code, with independent judges assessing the actions and culpability of the defendant based on the theory of punishment, whether retributive, utilitarian, or a combination. However, the orientation of punishment for this crime still places too much emphasis on punishing the perpetrator rather than rehabilitating the victim, even though philosophically and juridically, criminal law ideally protects society and restores the balance disturbed by crime.

2. The ideal concept for applying criminal sanctions to perpetrators of violent theft must be based on maximum protection for victims, where punishment is not only focused on imprisonment of the perpetrator, but also on comprehensive recovery of the victim's losses, both material and non-material. The legal system must provide a simple, fast, and accessible restitution and compensation mechanism without confusing procedures, with clear harmonization between the Criminal Code, the Criminal Procedure Code, and Law 31 of 2014 so that victims' rights are not marginalized by overlapping regulations. Criminal sanctions must be designed to balance legal certainty, justice, and benefit by making *restitutio in integrum* an inherent obligation of the perpetrator, while the state guarantees legal, physical, and psychological protection for victims. With this approach, punishment functions not only as retribution and deterrence, but also as a means of social recovery that can restore a sense of security, dignity, and peace to victims within the framework of a just state based on the rule of law.

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