

## **Criminal Responsibility of Recidivists in Violent Theft Crimes (Decision of Temanggung District Court Number 149/Pid.B/2019/PN Tmg)**

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**Abstract.** This study aims to analyze the criminal liability of recidivist offenders in violent theft crimes under Indonesian positive law, examine the judicial considerations in sentencing recidivists based on Temanggung District Court Decision No. 149/Pid.B/2019/PN Tmg, and assess the concept of criminal responsibility for recidivists from the perspective of Islamic law. This research arises from the fact that recidivism remains a serious issue within Indonesia's criminal justice system, reflecting the weakness of deterrence and the ineffectiveness of inmate rehabilitation. Therefore, it is crucial to re-evaluate how both the national legal system and Islamic legal principles conceptualize and enforce criminal responsibility for offenders who repeatedly commit violent crimes. This research employs a normative juridical legal method using both case and statute approaches. The sources of legal data consist of primary materials (the Indonesian Criminal Code and court decisions), secondary materials (legal literature and scholarly opinions in criminal law), and tertiary materials (legal dictionaries and encyclopedias). The analytical technique used is descriptive analytical, supported by systematic and teleological interpretation to align positive legal norms with the values of substantive justice. The findings indicate that, first, the criminal liability of recidivist offenders in violent theft under Indonesian positive law is based on the principle of *geen straf zonder schuld* (no punishment without fault). Recidivism constitutes an aggravating circumstance, demonstrating the failure of prior punishment to determine and the offender's defiance of the law. Second, judicial reasoning in Temanggung District Court Decision No. 149/Pid.B/2019/PN Tmg reflects a balance between legal certainty, justice, and utility, even though the sentence imposed was relatively lenient compared to the maximum penalty under Article 365 of the Criminal Code. Third, from the perspective of Islamic law, recidivists are fully accountable (*mas'uliyyah al jināyah*) because their acts fulfill the elements of intent ('*amdan*), capacity for responsibility (*al qudrat 'alā al tamyīz*), and voluntariness (*ikhtiyār*). Repetition of criminal acts aggravates moral culpability and warrants punishments that are educational (*ta'dīb*), preventive (*zajr*), and retributive (*jazā'*) in nature.

**Keywords:** Criminal; Liability; Recidivist; Violent.

## 1. Introduction

Since its independence, Indonesia has been built on a foundation of collectivity and mutual cooperation. These values have become the hallmarks of a society that upholds social solidarity and a sense of justice. However, the nation's long journey has been marked by complex political, economic, and social dynamics. During the post-independence transition period and the reform era, societal conditions underwent significant changes that influenced patterns of legal behavior. Changes in the government system, economic development, and the penetration of global culture presented unique challenges in shaping Indonesia's legal culture.<sup>1</sup>

Indonesia's legal history reflects legal pluralism. Before colonialism, customary law was the primary system governing social life. However, during the Dutch colonial period, Western legal systems were introduced through the *Wetboek van Strafrecht voor Nederlandsch Indië* (The Code of Laws of the Netherlands Indies), which later became the forerunner of the Criminal Code (KUHP) in force today. This legacy of colonial law remains evident today, despite various legal reform efforts. According to Prof. Jawade Hafidz, Indonesia's legal transition cannot simply adopt colonial law but must also be adapted to the nation's values of social justice.<sup>2</sup>

In the context of national history, criminal law holds a strategic position as a tool of social control. Criminal law encompasses not only prohibitions and sanctions but also reflects the values held dear by society. Prof. Sri Endah Wahyuningsih emphasized that Indonesian criminal law must be grounded in substantive justice, not simply rigidly enforcing the text of the law.<sup>3</sup> Thus, regulations regarding criminal acts, including theft with violence, must be understood as an instrument to maintain a balance between protecting society and individual rights.

The phenomenon of theft in Indonesia has long roots. Crime records show that theft is the most frequently reported crime in police reports each year. Theft ranges from simple theft to violent theft, which is a serious public concern. Research in the Journal of Legal Sovereignty confirms that violent theft is often linked to poverty, alcohol abuse, and weak social control.<sup>4</sup> This condition is

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<sup>1</sup>Hafidz, J. (2020). Law enforcement in a state based on the rule of law: A theoretical and practical study. Semarang: UNISSULA Press.

<sup>2</sup>Hafidz, J. (2020). Legal politics in the Indonesian criminal justice system. Law Development Journal, 2(1), 1–15. <http://jurnal.unissula.ac.id/index.php/lcj>

<sup>3</sup>Wahyuningsih, SE (2017). Development of criminal law based on the values of justice. Khaira Ummah Law Journal, 12(2), 211–222.

<sup>4</sup>Wahyuningsih, SE, & Permata, A. (2019). Criminal law policy in dealing with the crime of theft with violence. Jurnal Daulat Hukum, 2(3), 467–476. <http://jurnal.unissula.ac.id/index.php/RH>

exacerbated by increasing unemployment rates and economic disparities in various regions.

Recidivism in theft also poses a serious problem. Many perpetrators re-offend after being released from prison. This demonstrates the weak deterrent effect of the criminal justice system. According to Prof. Jawade Hafidz, criminal law enforcement should not focus solely on punishment but also on rehabilitation so that perpetrators can reintegrate into society without repeating their actions.<sup>5</sup> However, in practice, we often find decisions that do not fully take into account the perpetrator's recidivist status.

The study of criminal liability for repeat offenders in violent theft cases is relevant. The main question is the extent to which judges consider recidivism when sentencing, and how Indonesian criminal law should regulate and address this phenomenon. By examining Temanggung District Court Decision No. 149/Pid.B/2019/PN Tmg, this study is expected to provide a clearer picture of judicial practices in Indonesia regarding repeat offenders.

Indonesia, as a state based on law (rechtstaat), places law as the primary instrument in maintaining order, justice, and the welfare of society. This principle is affirmed in Article 1 paragraph (3) of the 1945 Constitution, which states that "Indonesia is a state based on law." In reality, law enforcement in Indonesia is not free from serious challenges in the form of rampant criminal acts, especially crimes against property. Violent theft is one form of crime that most often causes public unrest because it not only causes material losses but also threatens the physical and psychological security of the community.<sup>6</sup>

The phenomenon of crime in Indonesia is often closely linked to the social, cultural, and economic conditions of society. Socioeconomic inequality, a consumerist lifestyle, and weak social oversight can drive individuals to commit crimes. Furthermore, alcohol consumption, promiscuity, and unemployment are also criminogenic factors. In this context, violent theft is often driven by the intention of quickly gaining profit through illegal means, despite the high risk.

From an Islamic perspective, the crime of theft receives special attention. The Qur'an, Surah Al-Maidah (5:38), states:

"لَوْلَمْ يَرَأَنَّ مِنَ الْكَوَافِرِ عَزِيزًا حَكِيمًا جَرَاءً بِمَا كَسَبَا نَكَلًا وَآتَهُ اللَّهُ عَزِيزٌ حَكِيمٌ" (Was sāriqu was sāriqatu faqta'ū aydiyahumā jazā'an bimā kasabā nakālan minallāh, wallāhu 'azīzun ḥakīm).

<sup>5</sup>Hafidz, J. (2019). Law enforcement from a substantive justice perspective. Law Development Journal, 1(2), 45–56. <http://jurnal.unissula.ac.id/index.php/ldj>

<sup>6</sup>Wahyuningsih, SE (2017). Criminal politics in crime prevention in Indonesia. Jurnal Daulat Hukum, 1(1), 1–12. <http://jurnal.unissula.ac.id/index.php/RH>

Meaning: "The man who steals and the woman who steals, cut off the hands of both of them as recompense for the actions they have committed and as a sanction from Allah. And Allah is All-Mighty, All-Wise."

This verse emphasizes the importance of the preventive aspect (*preventive*) and deterrent effect (*deterrent effect*) to prevent criminals from repeating their actions, while also providing a sense of security for the community. When linked to the concept of recidivism, repeating criminal acts can be seen as a form of defiance of the law and norms. From an Islamic criminal law perspective, this indicates the weak effectiveness of *ta'ziras* as an instrument of punishment that should function as a means of moral development and behavioral improvement.<sup>7</sup>

The phenomenon of recidivism cannot be understood solely through a normative approach but must also be analyzed within the context of social and criminological realities in Indonesia. Crime, particularly violent theft, is often correlated with social, cultural, and economic conditions. Criminogenic factors such as socioeconomic inequality, rapid urbanization, weak social oversight, and the influence of a consumerist lifestyle are triggers for crime.<sup>8</sup> Furthermore, alcohol abuse, promiscuity, and unemployment increase the potential for crime. In this context, violent theft is not merely an individual act but also a reflection of structural societal problems.<sup>9</sup>

Studies on the criminal responsibility of repeat offenders need to be viewed from two dimensions. First, the normative dimension, which emphasizes the deterrent effect and legal certainty. Second, the empirical dimension, which highlights the criminogenic factors that cause reoffending. This comprehensive approach is crucial to ensure that law enforcement is not merely repressive but also achieves substantive justice and community protection.<sup>10</sup>

Criminal law issues in Indonesia are inextricably linked to the issue of recidivism, which is the tendency of a perpetrator to repeat a crime after being previously convicted by a court. Recidivism poses a serious challenge to judicial practice because it demonstrates the failure of the criminal justice system to fulfill its primary function of providing a deterrent effect and preventing re-offending.<sup>11</sup>

From a criminal justice theory perspective, punishment should not be solely oriented toward repressive aspects that emphasize retribution, but should also have preventive and educational dimensions. The goal is to enable perpetrators

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<sup>7</sup>Wahyuningsih, SE (2017). Development of criminal law based on the values of justice. *Khaira Ummah Law Journal*, 12(2), 211–222.

<sup>8</sup>Ibid

<sup>9</sup>Hafidz, J. (2020). Law enforcement in a state based on the rule of law: A theoretical and practical study. Semarang: UNISSULA Press.

<sup>10</sup>Rahardjo, S. (2009). Progressive law: A synthesis of Indonesian law. Yogyakarta: Genta Publishing.

<sup>11</sup>Wahyuningsih, SE (2017). Development of criminal law based on the values of justice. *Khaira Ummah Law Journal*, 12(2), 211–222.

to recognize their mistakes, improve themselves, and prevent repeating similar crimes in the future. Sri Endah Wahyuningsih emphasized that punishment that only emphasizes retribution has the potential to exacerbate crime, while punishment that serves a rehabilitative function can encourage social reintegration of perpetrators into society.<sup>12</sup>

It frequently occurs in courts that recidivists are often given relatively light sentences, despite having extensive criminal records. This phenomenon raises fundamental questions about the extent to which judges consider recidivism status when handing down sentences. The criminal liability of recidivists should be placed more heavily, as repeat offenses are not only a violation of the law but also reflect a defiance of state authority and public unrest.<sup>13</sup>

Law enforcement against repeat offenders is thus not only concerned with individual punishment, but also closely related to legal certainty, community protection, and substantive justice. Legal certainty demands that every offender with a repeat criminal record receive consistent and proportionate criminal treatment. Community protection emphasizes preventing new victims from becoming victims of recidivism. Substantive justice, meanwhile, requires judges to balance the rights of victims, the interests of society, and the rights of the accused as an individual.<sup>14</sup>

In the context of Indonesian legal culture, society still places a strong emphasis on morality and substantive justice. Society generally demands that repeat offenders be punished more severely, as they are considered dangerous and difficult to reform. However, on the other hand, society also recognizes the need for a legal system that allows for rehabilitation and development. This view reflects the classic dilemma in criminal law between the need to protect society from the threat of crime and the goal of rehabilitating offenders so they can return to being useful members of society.<sup>15</sup>

The study of criminal liability for repeat offenders in violent theft is highly relevant and significant. This issue concerns not only the consistency of law enforcement within the criminal justice framework but also closely relates to the direction of Indonesian criminal law policy, which balances legal certainty, justice, and the benefits of law for all levels of society.<sup>16</sup> This kind of research has practical urgency because it is related to the function of criminal law as a means of social control as

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<sup>12</sup>Wahyuningsih, SE, & Arief, BN (2019). Criminal law policy in realizing substantive justice. *Jurnal Daulat Hukum*, 2(1), 1–12. <http://jurnal.unissula.ac.id/index.php/RH>

<sup>13</sup>Hafidz, J. (2020). Law enforcement in a state based on the rule of law: A theoretical and practical study. Semarang: UNISSULA Press.

<sup>14</sup>Rahardjo, S. (2009). Progressive law: A synthesis of Indonesian law. Yogyakarta: Genta Publishing.

<sup>15</sup>Muladi. (1995). Selected chapters on the criminal justice system. Semarang: UNDIP Publishing Agency.

<sup>16</sup>Rahardjo, S. (2009). Progressive law: A synthesis of Indonesian law. Yogyakarta: Genta Publishing.

well as an instrument of social defense.<sup>17</sup>

One example of a case that can be used as a study is the Temanggung District Court Decision Number 149/Pid.B/2019/PN Tmg. This case involved the defendant Yudha Kukuh Kharisma, a recidivist who had previously been convicted of narcotics, motor vehicle theft, and possession of sharp weapons. In the most recent case, on March 29, 2019, the defendant and his partner, Dwi Joko Hermanto, after consuming alcohol, agreed to find a crime target. In the Kranggan area, Temanggung, they found the victim Tri Minanto sitting on a motorcycle while using a cell phone. The defendant's partner then threatened the victim with a machete, snatched his VIVO Y55S cellphone, and forced the victim off his Yamaha Mio Soul GT motorcycle, which he then fled with. The proceeds of the crime were sold, and the defendant received a share of Rp500,000, while the victim suffered a loss of around Rp15,000,000.<sup>18</sup>

The case was then reported to the police, until finally the defendant was arrested in October 2019. During the trial, the Public Prosecutor charged the defendant with Article 365 paragraph (2) 1 and 2 of the Criminal Code concerning theft with violence, with a prison sentence of 1 year and 8 months. The defendant admitted his actions, regretted it, and asked for leniency. After examining witnesses and evidence, the Panel of Judges considered that all elements of the article had been legally and convincingly proven, including the act being carried out together, on a public road, at night, with violence, and with the aim of taking possession of the victim's property.<sup>19</sup>

The defendant has a criminal record as a repeat offender, and the panel of judges sentenced him to only one year and three months in prison. This sentence is lighter than the prosecutor's demand and significantly lower than the maximum penalty under Article 365 of the Criminal Code, which is 12 years in prison.<sup>20</sup> The decision raises important questions: to what extent is recidivist status taken into serious consideration when sentencing, and how do judges balance the interests of protecting society with the principle of humanity towards the perpetrator?

From a normative perspective, judges should emphasize deterrence to prevent similar acts from recurring. Recidivism should be viewed as an aggravating circumstance, as it indicates a failure of guidance and defiance of the law.<sup>21</sup> However, in the context of social reality, judges also cannot ignore criminogenic factors that encourage someone to commit a crime, such as

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<sup>17</sup>Muladi. (1995). Selected chapters on the criminal justice system. Semarang: UNDIP Publishing Agency.

<sup>18</sup>Temanggung District Court Decision Number 149/Pid.B/2019/PN Tmg.

<sup>19</sup>Ibid

<sup>20</sup>Ibid

<sup>21</sup>Wahyuningsih, SE (2017). Development of criminal law based on the values of justice. Khaira Ummah Law Journal, 12(2), 211–222.

unemployment, alcohol abuse, and weak social control.<sup>22</sup> Herein lies the complexity of sentencing recidivists: is the main goal to be achieved a deterrent effect, resocialization, or simply repressive punishment?

## 2. Research Methods

The type of research used is normative legal research. Normative legal research focuses on literature review by examining legal norms applicable in legislation, doctrine, and court decisions. According to Soerjono Soekanto, normative legal research is research that emphasizes law as a norm applicable in society (law in books), rather than on practice in the field (law in action).<sup>23</sup> In this study, a normative juridical approach is used to analyze the criminal responsibility of recidivists in the crime of theft with violence.

## 3. Results and Discussion

### 3.1. Criminal liability of repeat offenders in the crime of theft with violence according to Indonesian positive law

Criminal responsibility is the core of the criminal law system, determining whether a person who commits a crime can be punished. In the context of the crime of theft with violence, the issue of criminal responsibility becomes increasingly complex if the perpetrator is a recidivist, that is, someone who repeats a crime after previously being sentenced to a final and binding sentence. This recidivism phenomenon indicates a tendency for repeated deviant behavior, thus creating serious problems for the criminal justice system and the effectiveness of criminal law in Indonesia.

Indonesian positive criminal law, as stipulated in the Criminal Code (KUHP), provides a clear normative basis for the conditions under which an individual can be held criminally responsible. The following is a discussion of the criminal liability of repeat offenders in the crime of theft with violence under Indonesian positive law:

#### 1) Case Description

Temanggung District Court Decision Number 149/Pid.B/2019/PN Tmg, this criminal case began with the actions of the defendant Yudha Kukuh Kharisma and his partner Dwi Joko Hermanto who on the evening of March 29, 2019 committed a crime of theft with violence in the Kranggan area, Temanggung Regency, Central Java. The act was carried out after both of them had previously consumed alcohol, then agreed to look for a target to commit the crime. At around 23.00 WIB, they

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<sup>22</sup>Hafidz, J. (2020). Law enforcement in a state based on the rule of law: A theoretical and practical study. Semarang: UNISSULA Press.

<sup>23</sup>Soekanto, S. (1986). Introduction to legal research. Jakarta: UI Press.

found a victim named Tri Minanto who was sitting on his motorbike while playing with his cellphone on the side of the road.

The defendant's co-defendant, Dwi Joko Hermanto, then threatened the victim with a machete, while the defendant snatched the VIVO Y55S cellphone from the victim's hand and also took the victim's Yamaha Mio Soul GT motorcycle. After successfully scaring the victim, the two fled with the loot. The goods from the crime were then sold, and the defendant received a share of Rp. 500,000 from the proceeds. Based on the victim's statement and other evidence presented at the trial, the victim's loss was estimated at Rp. 15,000,000.

After the incident was reported to the police, the defendant was arrested in October 2019, while evidence in the form of a cellphone, vehicle registration certificate, and cellphone packaging box was found and confiscated for evidentiary purposes in court. The public prosecutor then charged the defendant with Article 365 paragraph (2) 1 and 2 of the Criminal Code (KUHP), which regulates theft accompanied by violence and carried out by two or more people together at night in a public place. This charge is included in the category of aggravated offenses (gekwalificeerde diefstal), because in addition to taking someone else's property, the act was also carried out with violence and together.

During the trial, the defendant admitted his actions, behaved politely, and expressed remorse. However, the facts revealed that the defendant had previously been convicted of several crimes, making him a repeat offender. This was an aggravating factor in the judge's assessment, as it indicated that his previous convictions had not served as a deterrent.

The Panel of Judges assessed that the elements of the crime in Article 365 paragraph (2) 1 and 2 of the Criminal Code had been legally and convincingly fulfilled, because the defendant's actions were carried out:

- 1) By violence against another person to facilitate theft;
- 2) Performed by two or more people together;
- 3) Carried out in a public place at night; and
- 4) With the intention of taking possession of another person's property unlawfully.

Evidence in the form of witness statements, the defendant's confession, and evidence of the proceeds of crime strengthened the judge's belief that the defendant had indeed committed the crime as charged by the public prosecutor. The panel of judges emphasized that the elements of "jointly" (medeplegen) and "with violence" (met geweld) had been clearly proven because the defendant and his partner had the same intention to take the victim's belongings, and in carrying it out used violence by threatening the victim with a sharp weapon.

Furthermore, the judge also considered the defendant's social and personal circumstances, indicating that he was of productive age and should have been able to legally work to earn an income. However, his choice to commit theft with violence demonstrated malicious intent (*mens rea*) and full awareness of his actions. Therefore, the panel of judges found the defendant legally responsible (*toerekeningsvatbaar*).

Based on these considerations, the Temanggung District Court in its verdict dated February 5, 2020 stated that the defendant Yudha Kukuh Kharisma was legally and convincingly proven guilty of committing the crime of "theft with violence" as referred to in Article 365 paragraph (2) 1 and 2 of the Criminal Code. The judge then sentenced him to 1 (one) year and 3 (three) months in prison, with an order that the period of detention already served by the defendant be deducted entirely from the sentence.

The evidence, including the cellphone and vehicle registration certificate, was returned to the victim, while the defendant remained in custody to serve his sentence and was charged Rp2,000.00 in court costs. This decision reflects the application of positive criminal law based on the principles of legal certainty and justice, where the court upholds legal norms by considering the elements of the act, the error, and the personal circumstances of the perpetrator.

The defendant's legal standing in this case is as the primary perpetrator of the crime of theft with violence, fully responsible for his actions. Although the perpetrator conspired with other accomplices, each perpetrator remains personally responsible under the principle of individual responsibility, as they both had the same intent and active role in carrying out the crime.

## 2) Criminal Responsibility of the Perpetrator According to Positive Law

Criminal liability in the Indonesian criminal law system is based on the fundamental principle of "no punishment without fault" (geen straf zonder schuld). This principle implies that a person can only be punished if they are truly guilty, both factually (violating the law) and morally (personally blameworthy). Therefore, punishment cannot be imposed solely because someone has committed a prohibited act; it must be proven that the perpetrator is guilty and capable of being legally responsible for their actions.

In the context of the case of Decision Number 149/Pid.B/2019/PN Tmg, the defendant Yudha Kukuh Kharisma was legally and convincingly proven to have committed the crime of theft with violence as regulated in Article 365 paragraph (2) 1 and 2 of the Criminal Code. The judge is of the opinion that the defendant can be held criminally responsible, because all the elements that form the basis of responsibility according to positive Indonesian law are fulfilled, namely:

- a. The Existence of a Criminal Act (*Strafbaar Feit*)

A criminal act is a concrete action that violates the provisions of criminal law and fulfills the definition of a crime. In this case, the defendant's act of taking another person's property by force fulfills the objective elements of the crime as referred to in Article 365 of the Criminal Code, namely:

- 1) Taking something;
- 2) The goods are wholly or partly owned by another person;
- 3) With the intent to possess unlawfully;
- 4) Carried out with violence or threat of violence against another person;
- 5) Done by two or more people together.

The trial evidence shows that the defendant and his accomplices unlawfully seized property, accompanied by violence in the form of threats using a machete against the victim, Tri Minanto. The element of "taking property" was fulfilled because the defendant and his accomplices knowingly took the victim's cellphone and motorcycle without permission, while the element of "with violence" was proven because there was intimidation against the victim, which caused the victim to lose their freedom and sense of security.

Objectively, the defendant's actions constitute a criminal act which is regulated and punishable by law in the Criminal Code, and because it was done consciously and intentionally, his actions can be used as a basis for criminal responsibility.

b. There is an error

The second element of criminal responsibility is fault, which encompasses two main aspects: intent (dolus) and negligence (culpa). In this case, the defendant's fault was intent, as he consciously intended to seek out a target to commit the crime after previously agreeing with his accomplice.

Intention (dolus), as explained by Simons and cited by Moeljatno, is the perpetrator's will and knowledge to carry out an act with the desired consequences. The defendant in this case and his partner planned a violent theft after consuming alcohol, then sought out the victim at night, held him at risk with a sharp weapon, and took the victim's valuables. These actions clearly demonstrate malicious intent (mens rea), not a spontaneous, unconscious act.

### **3.2. Weaknesses in Criminal Liability for Repeat Offenders in Violent Theft Crimes According to Indonesian Positive Law**

Criminal liability for repeat offenders in the crime of theft with violence is basically regulated in the Criminal Code (KUHP), specifically Articles 486 to 488 of the KUHP which provide the basis for increasing the sentence for perpetrators who repeat the crime within a certain period of time after being previously sentenced.

However, in its application, the legal system in Indonesia still has a number of fundamental weaknesses, both in terms of legal structure, legal substance, and legal culture, as explained in the legal system theory by Lawrence M. Friedman.

When analyzed based on Lawrence M. Friedman's legal system theory, the weaknesses in criminal accountability for repeat offenders in violent theft crimes in Indonesia are systemic. Weaknesses in the legal structure lead to indecisive implementation; weaknesses in substance cause regulations to become rigid and non-contextual; while weaknesses in legal culture cause the legal process to lose its humanitarian value. The weaknesses outlined below demonstrate that the criminal accountability system for repeat offenders in Indonesia is still oriented toward retributive justice, not reintegrative justice. In fact, according to Sudarto, the primary goal of criminal law is not merely to inflict suffering, but rather to uphold social balance and prevent future crime.

#### a. Weaknesses in Legal Structure Aspects

The legal structure encompasses law enforcement agencies and officials responsible for enforcing the law, such as police, prosecutors, judges, and correctional institutions. In practice, criminal liability for repeat offenders of violent theft is often inconsistently implemented.

First, there is disparity in the application of harsher sentences for recidivists across courts. Judges often impose sentences without proportionally considering prior criminal history. Some decisions impose light sentences even though the perpetrator has repeatedly committed similar crimes. This creates legal uncertainty and potentially reduces the deterrent effect on perpetrators.

Second, the criminal justice administration system lacks a national database of recidivism that integrates the police, prosecutors, courts, and correctional institutions. As a result, recidivism is often not properly detected during prosecution and sentencing, resulting in criminal accountability that does not reflect the actual situation.

Third, the structure of correctional institutions, which should be rehabilitative, is still retributive rather than rehabilitative. Rehabilitation for repeat offenders is limited to discipline and physical labor without an effective psychosocial approach. This results in offenders not experiencing significant behavioral changes after leaving prison.

#### b. Weaknesses in the Legal Substantive Aspect

Legal substance encompasses positive legal norms governing criminal liability for repeat offenders. In this context, legal substance in Indonesia remains weak and inoperative.

First, the provisions regarding recidivism in Articles 486–488 of the Criminal Code do not provide a comprehensive definition of repeat offenses. These definitions are purely formal and administrative, without considering the type of crime, motive, or degree of culpability of the perpetrator. Consequently, there is no clear distinction between serious and minor recidivists.

Second, the upcoming 2023 National Criminal Code (KUHP) still doesn't address the essential aspects of recidivism accountability, as it maintains a retributive justice model. There are no provisions addressing corrective or restorative justice. Such approaches are crucial for reducing the potential for recurrence.

Third, the lack of national sentencing guidelines for recidivism leaves judges without a standard benchmark for sentencing. This system differs from countries that have implemented sentencing guidelines, such as the United States and the United Kingdom, which provide different sentencing ranges based on the level of recidivism and the severity of the crime.

Fourth, in practice, there are no specific regulations regarding post-conviction guidance for recidivists. After serving their sentences, offenders are allowed to return to the same environment without supervision or social reintegration programs. This reinforces the cycle of crime because recidivists do not experience significant behavioral changes.

#### c. Weaknesses in the Legal Culture Aspect

Legal culture encompasses the values, attitudes, and perceptions of the law among the public and authorities. In the context of recidivism, Indonesia's legal culture remains punitive, rather than developmental.

First, in society, recidivists are often stigmatized as habitual criminals who don't deserve a chance to reform. This stigma hinders the process of social reintegration, making it difficult for recidivists to find employment and ultimately relapse into crime.

Second, law enforcement officials still maintain a repressive legal mindset, where the primary goal of criminal law is to punish, not to correct behavior. This contradicts the fundamental values of modern criminal law, which emphasize social protection and individual development.

Third, the application of Pancasila's values of justice, particularly the second and fifth principles ("Just and civilized humanity" and "Social justice for all Indonesians"), has not been fully internalized in the legal culture of law enforcement officials. Criminal law should not only uphold formal justice but also consider the humanitarian and social aspects of the perpetrator.

Fourth, low levels of public legal awareness mean that rehabilitative approaches to recidivism lack social support. Yet, the success of rehabilitating offenders is largely determined by the social environment that welcomes them back.

### **3.3. Criminal Liability of Repeat Offenders in Future Violent Theft Crimes**

The future development of criminal law in Indonesia requires a new paradigm that emphasizes not only retributive aspects but also moral improvement, community protection, and social welfare. In the context of recidivism, particularly in violent theft, the future legal system must be able to integrate substantive justice values rooted in the values of Pancasila and Islamic legal principles. This approach is crucial because recidivism is not only a legal issue but also a moral, social, and psychological issue that requires comprehensive treatment.

Until now, Indonesian positive law has been oriented towards imposing criminal penalties as a form of retribution for past wrongdoing. Although Article 365 of the Criminal Code stipulates severe penalties for perpetrators of theft with violence, in practice, the sentences imposed often do not reflect an adequate deterrent effect for repeat offenders. In the future, conceptual reform is needed to position criminal liability for repeat offenders not solely as a means of retribution, but also as a means of moral development and social reintegration of perpetrators to prevent repeat crimes.

A more humane and just approach can be taken from the principle of *mas'uliyyah al jināyah* in Islamic law. This principle emphasizes that a person can only be held criminally responsible if the act is committed intentionally ('amdan), by a rational person ('āqil), and is done consciously without coercion (*ikhtiyār*). These three elements are in line with the principle of *geen straf zonder schuld* (no punishment without fault) adopted in the Indonesian criminal law system. Thus, Islamic law and positive law share the same philosophical foundation in determining criminal responsibility.

The application of this principle can be seen through the Temanggung District Court Decision Number 149/Pid.B/2019/PN Tmg, where the defendant Yudha Kukuh Kharisma committed the crime of theft with violence consciously and with evil intentions (*niyyah al sayyi'ah*) after consuming alcohol. Based on the trial facts, the defendant's actions were carried out with full planning and intention to take the victim's property with violence. In Islamic law, this act is included in the category of *jarimah hirābah*, namely crimes committed with violence and threats in public places, as explained in QS. Al Mā'idah [5]: 33 which emphasizes that perpetrators who cause damage and spread fear on earth deserve strict punishment. This principle shows that acts such as theft with violence are not only violations against individuals, but also against public security (*hifz al māl* and *hifz al nafs*).

The sentencing of perpetrators like Yudha Kukuh Kharisma remains based on Article 365 of the Criminal Code. However, in future reforms to criminal law, the integration of Islamic legal values should be considered so that court decisions not only satisfy a sense of formal justice but also uphold substantive justice. In Islamic law, recidivist status (al 'ā'id fi al jarimah), or the repetition of sin, is considered a factor that aggravates moral and legal responsibility. The Prophet Muhammad (peace be upon him) said:

*"It is not true that a believer falls into the same hole twice."*

(Narrated by Bukhari and Muslim). This hadith demonstrates that repeating a crime is a form of disobedience to God's law and weakens the perpetrator's moral conscience. Therefore, from an Islamic legal perspective, recidivism is the basis for imposing harsher punishments with the goal of educating (ta'dīb) and preventing recurrence (zajr).

Malaysia serves as a model for an integrated Islamic legal system with the common law system, known as a dual legal system. General criminal law is regulated by the Penal Code, while Islamic criminal law is applied in certain state sharia courts. Section 75 of the Penal Code states that if a person commits a crime after being previously convicted, the judge may increase the sentence. Meanwhile, Articles 3 to 8 of the 1993 Enakmen Jenayah Syariah (Kelantan) classifies the act of theft with violence as hirābah and carries a severe penalty according to Islamic principles. This approach demonstrates Malaysia's efforts to integrate the principles of ta'dīb (moral education) and zājr (prevention) in enforcing the law against recidivism.<sup>24</sup>

#### **4. Conclusion**

Criminal liability for repeat offenders in violent theft crimes is entirely based on the principle of geen straf zonder schuld. The perpetrator can only be punished if it is legally and convincingly proven that he has committed an act that fulfills the elements of a crime, has a mistake in the form of evil intent, and there is no justification or excuse. In the case of Decision Number 149/Pid.B/2019/PN Tmg, the panel of judges considered that the defendant Yudha Kukuh Kharisma was fully responsible for his actions because he committed the act consciously, planned, and together with his partner. The fact that the defendant is a repeat offender indicates a pattern of repeated criminal behavior that justifies the imposition of a sentence as a form of retaliation and general deterrence.

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<sup>24</sup>Yusof, N. (2020). Islamic Criminal Law and Recidivism in Malaysia. Kuala Lumpur: International Islamic University Malaysia Press. P. 101.

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