

The Judge's Consideration In Sentencing The Perpetrator Of Theft In Incriminating Circumstances Against Convenience Store Losses Based On The Perspective Of Justice

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Abstract

The purpose of writing is to contribute ideas to the public regarding the judge's considerations in deciding a case against the crime of theft in aggravating circumstances and the imposition of a decision against the defendant in the perspective of justice, a quality decision that contains procedural justice and substantive justice so that the judge can be said to have fulfilled the principle of proportionality. This study uses a normative research type, and the results of this study suggest that judges consider the law by paying attention to the juridical, sociological, and philosophical aspects so as to produce quality decisions and contain a sense of justice that can be felt by perpetrators, victims, and the community.

Keywords: *Theft, Judgment, Justice*

A. INTRODUCTION

Criminal law is part of the law that applies in a country, which has the legal and legal foundations to ensure acts that cannot be done, prohibited, including threats or criminal sanctions for perpetrators who violate the prohibition. This is one of the efforts to overcome a social problem contained in the study of law enforcement policy. **According to Mezger**, criminal law can be defined as a rule of law that associates with an act that meets certain condition.⁴ Any violation of existing legal regulations, will be subject to sanctions in the form of punishment in reaction to acts that violate the rule of law committed.

The act of theft is a social symptom that is faced at any time by the community, with various efforts made by the authorities and authorities to wipe, but these efforts are

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⁴ Sudarto, 2018. *Hukum Pidana I (edisi revisi)*. Semarang: Yayasan Sudarto. Hlm.10.

not easily realized as a whole but only reduced will not be eliminated easily.⁵ The development of crime, namely the crime of theft is increasing, this makes a negative impact in the progress of the Indonesian state, the factor of someone doing theft is the existence of a worsening economic structure caused by frequent increases in the price of goods and high inflation, high unemployment rates make it difficult for people to find jobs. Other things that can trigger theft are derived from weak economic factors, differences in social strata, opportunities, and a supportive environment.⁶

Chapter XXII of the Criminal Code describes acts that can be categorized as criminal acts against self-enrichment against the law which is referred to as theft, when viewed in terms of deeds and their consequences, it can be qualified, among others: Ordinary Theft (Article 362), Theft by force (Article 363), Light theft (Article 364), Theft by violence (Article 365), Theft in the family (Article 367). This act has its own elements, but to state that someone has committed theft must have the element of taking an item. As according to Article 362 of the Criminal Code by **Soesilo** issued by Poelita that where the opportunity of the perpetrator to take goods, the goods are not yet in his power and are considered to be finished when the goods have moved places.⁷ So that with the types of theft crimes, law enforcement needs to be careful in detail in applying the types of theft crimes.

In the last 3 (three) years, namely in 2019-2021 the type of criminal acts with the enactment there were 39 (thirty-nine) cases 8 (eight) of which are criminal acts of theft with the blessing of convenience store losses committed by Defendant Haryanto alias Turah Bin Sugito and Defendant Sawal Adwan Riyanto alias Sawal Bin (alm) Sarjuni.⁸

The judge's decision is juridical and non juridical, in determining a case with the judge's consideration of the article that is proven worthy based on the evidence revealed in the trial so that the verdict can be of a standard. In order for the accused not to be cut free by the judge, the indictment can play an important role in the trial process. So that

⁵ Riyan Prayudi Saputra, 2019. *Perkembangan Tindak Pidana Pencurian Di Indonesia*. Jurnal Pahlawan Fakultas Hukum Universitas Pahlawan Tuanku, Nomor 2 Volume 2. Hlm. 2.

⁶ *Ibid.* Hlm 2

⁷ Putusan Nomor 14/Pid.b/2021/PN.Pekalongan. Hlm.14.

⁸ Riset Sat Reskrim Polres Pekalongan

researchers want to review the consideration of judges in dropping criminal perpetrators of theft in incriminating circumstances against convenience store losses in the perspective of justice in verdict number 14 / Pid.B / 2021 / PN. Street vendors.

B. Research Methods

The author in his research uses normative juridical methods in the form of judge's verdicts that are analyzed qualitatively using analytical descriptive then the data used is primary data in the form of results from research in the field with interviews and secondary data using literature studies in the form of literature, articles, journals.

C. Results and Discussions

In Law No. 48 of 2009 on The Power of Justice in Article 4 paragraph (1) which outlines against the law in court in trying not to discriminate people. The court in handling a case if the law is found incomplete or unclear so that there is a legal vacuum in the case then the judge is tasked with digging and obtaining the law to be used in resolving the case as a form of synchronization to the progress in society. ⁹Article 4 paragraph (1) of Law No. 48 of 2009 states that adjudicating based on "law" is not based on law because in the legal sense states that the definition of law is broader, namely written law and unwritten law.

In realizing justice (*ex aequo et bono*) and legal certainty to the value of a judge's ruling, that the judge's considerations other than based on juridical aspects, sociological aspects, and philosophical aspects are also required to be done carefully, thoroughly, and well. If done otherwise, the judge's decision can be overturned by the High Court and the Supreme Court, so the judge's consideration is very important in a decision. ¹⁰

So that the judge in giving a decision to a case must be based on the considerations of the judge first, the judgment of the judge based on aspects, namely juridical aspects, sociological aspects, and philosophical aspects. ¹¹

⁹ Pasal 4 ayat (1) dalam Undang-Undang Nomor 48 tahun 2009 terkait kekuasaan Kehakiman.

¹⁰ Mukti Aro, 2004. *Praktek Perkara Perdata Pada Pengadilan Agama*. Yogyakarta: Pustaka Pelajar). Hlm. 140

¹¹ Responden oleh Majelis Hakim Pengadilan Negeri Pekalongan

a. The judge's consideration based on juridical aspects

That the judge in deciding a case based on the provisions of the laws and regulations as a form of formil. The judge in taking a verdict is based on at least two pieces of evidence in the form of witness statements, defendants' statements, and evidence. Witness testimony is one of the main evidence because the witness is someone who can see for himself, hear for himself, and experience it for himself. Witnesses in giving evidence must be sworn in based on the religion of the witnesses and in the pronounciation of the oath as an absolute condition in the testimony for evidence if they do not want to be sworn in then the witness will be subject to detention for a maximum of 14 days this is stipulated in Article 161 paragraph (1) of the Kuhap. Witnesses in giving evidence at the trial to strengthen their testimony as evidence and give confidence to the judge to get validity that the act was true.

b. The judgment of the judge in the sociological aspect

That the basic thing that needs to be considered by the judge in the sociological aspect is with the social background of the accused perpetrator of a crime so that the conviction of a criminal committed by the judge can provide benefits for the surrounding community.¹²

c. The judge's consideration in the philosophical aspect

That the form of the decision given by the judge is an attempt to correct the behavior of the accused by conducting proceedings in the prosecution. The philosophical aspect of the prosecution is the enforcement of the perpetrator who has violated the criminal act so that after undergoing the process of prosecution in the penitentiary the perpetrator can fix himself and not repeat the crime.

The basis of the judge's consideration in proving the elements of the criminal act is where the indictment of the Public Prosecutor states that the wrongful act in the elements is fulfilled and in accordance with the criminal act. This makes the consideration of the judge significant or appropriate in the dictum of the final verdict or amar verdict.¹³

¹² Sudarto, 1986. *Kapita Selektta Hukum Pidana*. Bandung: Alumni. Hlm. 67.

¹³ Lilik Mulyadi, 2007. *Kompilasi Hukum Pidana Dalam Perspektif Teoritis dan Praktek Peradilan*. Bandung: Mandar Maju. Hlm. 193.

The principle of legality in the Indonesian Penal Code as stipulated in Article 1 paragraph (1) of the Criminal Code, which states: "a criminal cannot be punished, except on the basis of existing criminal laws and powers". The provisions in Article 1 paragraph (1) of the Criminal Code, explain among others: ¹⁴

- 1) .An act can be punished if it is a criminal provision under the law. So that the prosecution according to the law is not written, it is not possible.
- 2) Criminal provisions are required to exist earlier than the act, this criminal provision has applied retroactive law, both regarding the provisions can be punished or the sanctions.

This judge can threaten the criminal defendant if the defendant can be proven to have committed an error based on the charges given by the Public Prosecutor. In obtaining a criminal must be based on a valid evidence that is contained in Articles 183 and 184 paragraph (1) of the KuhaP which reads: ¹⁵

Article 183 kuhaP:

"The judge shall not convict a person unless there is a lack of two valid means of evidence that he or she has confidence that a criminal offence actually took place and that the defendant is guilty of doing so."

Article 184 KUHAP paragraph (1)

"The valid evidence is: a. Witness testimony; b. Expert information; c. Letter; d. Instructions; e. The defendant's testimony.

The judge in taking a verdict is based on at least two pieces of evidence in the form of witness statements, defendants' statements, and evidence. Witness testimony is one of the main evidence because the witness is someone who can see for himself, hear for himself, and experience it for himself. Witnesses in giving evidence must be sworn in based on the religion of the witnesses and in the pronouncement of the oath as an absolute condition in the testimony for evidence if they do not want to be sworn in then the witness will be subject to detention for a maximum of 14 days this is stipulated in Article 161 paragraph (1) of the KuhaP. Witnesses in giving evidence at the trial to

¹⁴ Lukman Hakim, op.cit. Hlm. 18.

¹⁵ Chairunisa, Alfiitra, Mara Sutan Rambe, *Tindak Pidana Pencurian Dengan Pemberatan Yang Dilakukan Secara Bersama-Sama*. Journal Of Legal Reserch Vol. 03 Issue. 02 2021. Hlm.328-330

strengthen their testimony as evidence and give confidence to the judge to get validity that the act was true.

Furthermore, the Judge gave a statement to the defendant for the defendant to state his truth to the testimony given by the witnesses, that in giving his testimony the defendants did not submit witnesses to alleviate (*a de charge*). Then the accused gave a statement that turned out to be in accordance with the information given by the witnesses as there was a link between the evidence and the evidence that the Public Prosecutor submitted.

This act has been recognized by the defendant and the defendant did not file a *pledoi* or commonly called a defense related to the testimony submitted by the witness. The actions of the defendants are each indicted based on a single charge by the Public Prosecutor as threatened by Article 363 paragraph (1) of the 4th and 5th Criminal Code. In providing charges against the accused that the defendants Haryanto and Sawal were proven to have legitimately committed mistakes and were convincingly guilty of committing a Criminal Act of Simultaneous Theft in Aggravating Circumstances and threatened with criminal Article 363 paragraph (1) 4th and 5th Criminal Code in a single indictment by imposing sanctions in the form of confinement for 2 (two) years and reduced during the defendant's detention.

In Decision No. 14/Pid.B/2021/PN. The decision-making process carried out by the panel of judges is based on at least two valid evidence. That in the case that the author is thorough as the evidence used by the judge is a witness statement, the testimony of the accused. The verdict handed down by the Pekalongan District Court Judges' Assembly has been in accordance with the conditions of the birth of the verdict as stated in Article 197 paragraph (1) letter a, b, c, d, e, f, g, h, i, j, k and l KUHAP.

The realization of a quality verdict that starts from the stage of examination of a case that is carried out based on the applicable event law and the substitute clerk is an apparatus that plays a role in assisting the judge in recording all the results of the trial, the substitute panitra is required to make a case resume, analyze the case that is used as material in a news conference (BAS). News of the hearing event (BAS) is the focus of

the judge to consider and make a decision or determination. A substitute clerk is needed by the judge in the trial to make an extensive or complete and good consideration of the court's decision.

According to Hans Kelsen as a positivism adherent that the law is an order of its nature forcing on human behavior, the law is also the main rule or core rule in the application of sanctions.¹⁶ In the application of legal and legal principles in accordance with the law so as to realize legal certainty. A person's actions can be called violating or not violating can be formulated in the rules contained in the Law.

Justice itself is concerned with conscience this is not a form of the definition of justice or something that is considered official. Because it is closely related to efficient in society. Not as implemented by the Supreme Court of Justice on the case of Akbar Tanjung. Based on the theory of legal science the verdict has been appropriate based on a scientific point of view. But it does not contain the same sense of justice as living in society. Gustav Radbruch's opinion states "*Summum ius summa iniuria*" which means conscience is the highest justice. People who are too focused on the law straightforwardly often occur happiness in harming justice.¹⁷

Another case carried out by the defendants is Defendant I Haryanto Alias Turah Bin Sugito Bersamaan and Defendant II Sawal Adwan Riyanto Alias Sawal Bin (Alm) Sarjuni who has been threatened criminally by the public prosecutor based on Article 363 paragraph (1) 4th and 5th Criminal Code which is a criminal act of theft with a blessing that causes losses in one of the convenience stores, namely Indomart outlets located in Bojongminggir Kec. Bojong Kab. Pekalongan Village. That the defendants testified in the trial that the act was done for sprees and the perpetrator is an ex-convict so that the verdict that has been born by the judge has been appropriate based on juridical, philosophical, sociological aspects that the judge imposes a prison sentence of 2 (two) years each in accordance with the demands of the Public Prosecutor. That criminal convictions committed by judges have contained procedural justice and

¹⁶ Sunarto, 2016. *Asas Legalitas Dalam Penegakan Hukum Menuju Terwujudnya Keadilan Substansif*. Fakultas Ilmu Sosial Universitas Negeri Semarang. Hlm. 255.

¹⁷ Jeremies Lemek, 2007. *Mencari Keadilan Pandangan Kritis Terhadap Penegakan Hukum Di Indonesia*. Yogyakarta: Galang Press. Hlm. 25.

substantive justice so that the verdict has a sense of justice that can be felt by the perpetrator, victim, community. It can be seen that the judges of the pekalongan district court have fulfilled the principle of proportionality where the principle that prioritizes the balance between the rights and obligations of state organizers and the principle that prioritizes expertise based on the code of ethics and provisions of the laws and regulations of this matter is regulated in Article 3 Number 5 and Number 6 of the Law of the Republic of Indonesia Number 28 of 1999 concerning State Organizers Who Are Clean and Free From Corruption, Collusion, and Nepotism.

Therefore, the defendants can be found guilty. Because it meets the elements above. In the evidentiary system to determine the defendants found guilty the Pekalongan District Court Judge Panel decided against the defendants 2 (two) years imprisonment. This is based on the judge's belief (*Conviction In Time*) that the judge decides a case has been considered fair so that justice can be felt by the perpetrators, the victims, and the community.

D. Conclusion

The actions committed by the defendants proved to be true to have fulfilled the elements of Article 363 paragraph (1) of the 4th and 5th criminal code that the deeds were detrimental to PT. Indomarco Pratama Semarang branch materially. That based on the consideration of judges who have paid attention to juridical, philosophical, and sociological aspects have been appropriate and stated that the perpetrators were sentenced to prison for 2 (two) years. That the verdict born by the Pekalongan District Court Judge is appropriate and has a sense of dislaught in procedural justice and substantive justice. So that the actions carried out by the judge have been appropriate and fulfill the principle of proportionality where the principle that prioritizes the balance between the rights and obligations of state organizers and the principle that prioritizes expertise based on the code of ethics and the provisions of laws and regulations this matter is regulated in Article 3 Number 5 and Number 6 of the Law of the Republic of Indonesia Number 28 of 1999 concerning State Organizers Who Are Clean and Free From Corruption, Collusion, and Nepotism.

E. THANK YOU

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