

IMPLEMENTATION OF THE VIOLENCE ELEMENT WITHIN THE CRIME OF ROBBERY*

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Abstract

Judges are people who are believed to be representatives of God. Their decisions must always reflect justice for all the litigants, not only by the judge's beliefs but also by the astronomical knowledge of applicable theories and norms. Often, judges make mistakes when they observe almost similar cases, such as case 827/Pid.B/2021/PN.Jmr. The judge could not differentiate between the defendant's actions as theft and violence or an ordinary theft. This study analyzes the extent of the judge's assessment of the degree of violence in the crime of robbery. The research aims to find out how judges assess and determine the degree of violence in criminal acts of theft that involves violence. The research method used is a normative juridical method, referring to the statutory, conceptual, and case approaches, which takes samples of criminal case verdicts in the jurisdiction of the Jember District Court. The research results concluded that the judge was negligent and mistaken in applying the appropriate criminal code article based on legal facts. The defendant's actions were more appropriately said to have committed an ordinary theft as in the subsidiary indictment of the Public Prosecutor because normatively and theoretically, the defendant's actions referred more to the crime of common theft, not theft with violence.

Keywords: *Theft; Theft With Violence; Judge's Verdict.*

INTRODUCTION

Theft is a frequently occurring criminal act that disturbs society (Permana & Wirasila, 2019). Theft is a crime which often causes the most significant disruption within society. Everyone tries as much as possible to prevent someone from stealing their goods (or property).

Theft is regulated in the Criminal Code (Resti Fauzi & Dona, 2022). Several types of theft are included in the Criminal Code. The first is ordinary theft, which is regulated in Article 362; serious theft is regulated in Article 363; light theft is regulated in Article 364; theft with violence is regulated in Article 365; and robbery against the family is regulated in Article 367 (Wicaksono, 2020).

Another perspective points out theft as an unlawful act committed by a person or group of people that harms others (M. Thahir Ashari's dissertation in Harianto et al., 2022). The Criminal Code defines theft as any criminal act committed with the intent or purpose of stealing, which is by Articles 362 to 367.

However, none of these articles defines or limits the interpretation of theft as a criminal act. Theft is defined as the seizure of goods (or property) that all or part of them belong to another person to obtain them illegally. According to Cleiren et al., theft is a deliberate act of taking something to get ownership without the legal owner's consent (Hamzah, 2015).

Elements that make up the theft crime are grouped based on the narrow and



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broad definition. The narrow definition of criminal acts contained in Article 362 of the Criminal Code states that A maximum imprisonment of five years or a maximum fine of nine hundred rupiahs punishes any person who takes property, wholly or partially belonging to another, with intent to appropriate it unlawfully, shall be guilty of theft.

On the other hand, the broad definition of a criminal act includes several aggravating circumstances, such as theft with violence. It is by the Criminal Code's first paragraph of Article 365 which states that by a maximum imprisonment of nine years shall be punished theft preceded, accompanied or followed by force or threat of force against persons, committed with intent to prepare or facilitate the theft, or when taken in the act, either to enable for himself or for other accomplices to the crime to escape, or to ensure possession of the thing stolen (Chazawi, 2011). Theft with aggravating qualifications circumstances is considered theft with violence (Purnomo & Samuji, 2023).

According to R. Soesilo, theft violence is mainly carried out to control objects, either before, during or after the theft. One way to eliminate evidence of theft is to tie, injure, or even kill the victim (R. Soesilo in Hartono et al., 2021)

Article 365, paragraph (1) of the Criminal Code regulates using force or force to steal. According to this definition, theft with violence is a theft that occurs before, during, or after an act of violence or threats against a person to facilitate or assist the theft or, in other circumstances, defending oneself or another person to escape or retain stolen goods. The same thing also happens with theft, which

results in losses. In other words, theft with violence is defined as primary or conventional theft with added elements of either violence or threat.

An act of violence is any criminal act that endangers a person's life, body, or independence, whether it involves the use of physical or psychological pressure on the victim or not (Musak, 2015).). Article 89 of the Criminal Code states that using violence to render another person helpless or unconscious is the same as using violence itself. According to Adami Chazawi, "any act that uses bodily strength that is neither light nor heavy" is considered violence (Chazawi, 2011).

In the context of the legal system, although Article 89 of the Criminal Code limits the definition of violence, Judges are allowed to use their decision-making authority in interpreting the meaning. This can be seen in case Number: PN 2021/827/Pid.B. Mr.

Fitrianingsih Jaya Rahayu, the victim and witness, started this case by leaving the house on a motorbike to Panti District, Jember Regency. The victim stopped for a moment in front of the Sunan Ampel Madrasah School on Jalan Mujahir in Sukorambi District, Jember Regency, using a black rope around her neck to check the prepaid credit balance on her device. When the victim was about to unzip his jacket, the defendant, Zainal Abidin, suddenly appeared behind the victim on a motorbike and grabbed her cell phone, which was hanging around her neck until the rope broke. Following the defendant's success in capturing the victim's phone, the defendant ran away, leaving the victim behind.

The victim reported the incident to the police station. The defendant was transferred to the Jember District Court

and faces further charges after completing the investigation and prosecution by the Public Prosecutor. The primary charge is theft with violence. Based on the first indictment presented by the Public Prosecutor, the Defendant was declared guilty by the court of committing robbery with violence, violating Article 365 paragraph (1) of the Criminal Code as stipulated in Article 362 of the Criminal Code. The judge further stated that there was sufficient evidence to prove the defendant's guilt beyond a reasonable doubt.

RESEARCH METHOD

The methodology of this research is normative juridical. The research was conducted using library legal sources known as normative juridical research (Marzuki, 2022).

This research uses the following approach method:

1. Take a statutory approach, which includes a review of all statutory regulations that apply to the subject being discussed.
2. Conceptual approach by looking at the theories and points of view that emerge in legal science. Researchers use these theories and points of view as a basis or reference when developing legal arguments to overcome arising legal problems.
3. Case approach by looking at various cases to guide a legal issue (Marzuki, 2022).

Referring to the normative approach, the topic can be explained and analyzed based on approaches related to legal issues so that this research can obtain a clear and accurate picture of the object.

Data analysis will be carried out after the secondary data has been successfully collected based on normative research or

literature. The data analysis technique used in this research is qualitative, meaning it is in the form of sentences arranged systematically based on applicable legal principles and principles, which is closely related to the problem under study. This method is used to describe or analyse the judge's assessment and determination of the degree of violence in criminal acts of theft that involves violence.

RESULTS AND DISCUSSION

The Judge's Assessment And Determination Of The Degree Of Violence In The Crime Of Theft Involving Violence In Case Number 827/Pid.B/2021/PN.Jmr

A criminal act that targets goods or property is considered theft. Theft is regulated in the Criminal Code, from Articles 362 to 367. However, in these provisions, none of the clauses above define or limit the crime of theft. The definition stated by Cleiren is "theft (*wegnemen*) is defined as a deliberate act of taking something to obtain ownership without the consent of the legal owner" (Cleiren dkk d in Hamzah, 2015).

Considered theft: If an act meets the main objective and subjective requirements, a person is taking something, whether in whole or in part, that belongs to another person to obtain it unlawfully, as previously mentioned and explained. According to Wirjono Prodjodikoro, the act of taking something, in whole or in part, to keep it illegal is theft. (Prodjodikoro, 2008)

Meanwhile, referring to the case number: 827/Pid.B/2021/PN.Jmr, the longest prison sentence (up to nine years) is imposed for theft which involves the

threat or use of violence against someone before, during, or after the theft to help plan or facilitate the robbery or in other circumstances that make it possible for the perpetrator or another person to commit the robbery.

Theft that meets the criteria as intended in Article 365 of the Criminal Code, in addition to the main elements of theft, is defined as theft with one or more aggravating elements, such as violence or threat of violence (Pawennei & Tomalili, 2015). Theft with one or more aggravating factors, including threats or acts of violence, in addition to the main elements of theft, is defined as theft with a criminal act that meets the requirements as intended in Article 365 of the Criminal Code plus the main component and by Article 362 (Prodjodikoro, 2008).

In line with the opinion above, R. Soesilo stated that theft can involve violence if the owner of the goods receives threats or acts of violence from the perpetrator. Even though they are threatened or forced, the owner does not want to hand over the item, and the perpetrator moves it himself, which is considered theft by force or violence (Soesilo, 1984).

The main objective of theft is the act of stealing an item and an element belonging to another person, either wholly or partially. Although it can be debated, the main subjective component of theft is the intention to obtain and break the law. If an act meets the objective and personal requirements for violent theft, then it can be considered theft with violence and, therefore, illegal.

Judges are often mistaken in similar cases, such as 827/Pid.B/2021/PN.Jmr. Within that case, the judge fails to distinguish whether the defendant falls

under the criteria for theft with violence or ordinary theft chronologically. Article 89 of the Criminal Code states that the use of violence that causes someone to faint or become helpless is an act against the law and is equated with violence. There is no mention of violence or threats in the first paragraph of Article 365 of the Criminal Code, and there is no justification for this provision.

Article 89 of the Criminal Code defines "violence" as the incapacity or unconsciousness of another person. The actual manifestation of causing someone to faint or be helpless can take various forms, but the most important thing is that the action causes someone to experience that condition. Choking or fainting can refer to losing consciousness or not remembering anything. An example is administering poison in the form of illegal drugs to cause unconsciousness or make someone appear to fall asleep. A person who is considered unconscious is unable to understand what is happening. Helplessness is the absence of all strength or power so that one cannot restrain oneself from actions such as being shot until paralyzed, having one's hands and feet tied with rope, or being locked in a room. A person who needs help can still understand what happened to him (Chazawi, 2011).

Adami Chazawi defines violence as any action involving physical force that is neither light nor heavy. One thing that differentiates violence from threats of violence is the use of physical force. Using physical force or violence against a person is more important than against the stolen item. In this case, the person can be the owner, another person, or a third party (Chazawi, 2011). So, the definition of violence is a physical action or behavior

shown to a non-object that involves great force and results in the victim being unconscious or helpless.

In line with the definition of violence above, none of the violence in case number 827/Pid.B/2021/PN.Jmr meets the limits or elements of violence committed against the victim, but the actions carried out by the defendant refer more to force that is aimed at the object. It is important to note that the definition of violence itself is the force directed at the body. However, the judge concluded in his decision that the chronology of events experienced by the victim and those committed by the defendant constituted the elements of violence.

Simon in Alin (2017) defines crime law (*straf*) as a form of misery or regret given to people. Criminal norms link this suffering or regret to an incident of violation of legal norms. It is stated in a judge's decision handed down to someone. The guilty one.

Law functions as a means of implementing the law, and to realize the function of law in norms, a judicial or executor role in law enforcement is needed, for example, police, prosecutors, judges, and advocates (H. Hartono, 2019).

Gustav Radbruch developed the theory of legal objectives, which essentially states that the objectives of law must be beneficial and sure. This theory is applied to law enforcement. In judicial institutions, judges decide how these three components are implemented (Rosadi, 2016).

Law enforcement can begin in its environment by paying attention to its function. Understanding the basics of effective law enforcement (Kusnu in Wantu, 2012). Judges are always associated with three things: justice,

certainty and expediency. Therefore, they must enforce the law fairly and impartially. Judges are expected to strive for and prioritise justice for parties in dispute because they are seen as God's representatives. The judge bears a great responsibility in maintaining the supremacy of the law because he is the one who will always decide how severe the sentence is to be handed down to the defendant. Considering that court decisions have legal consequences, judges must maintain public order by returning it to its original state (*restitutio in integrum*) (Djanggih & Hipan, 2018).

Concerning the explanation above, justice should be considered for both the victim and the defendant because both are obliged and entitled to it. However, in case number 827/Pid.B/2021/PN.Jmr, the implementation of justice did not go well, so the defendant should receive a lighter sanction by being subject to Article 362 of the Criminal Code because, theoretically and chronologically, the defendant's actions refer more to the crime of ordinary theft but due to the judge's negligence in deciding a case without understanding the theory and chronology of the incident and being unable to differentiate almost the same act. Therefore, the defendant received a heavier sanction by being subject to Article 365, paragraph 1 of the Criminal Code.

When deciding, a judge must carefully consider the case being handled, not necessarily looking at legal incidents or happenings to choose based on someone being guilty. Still, this consideration is necessary to create just legal conditions. Therefore, it is essential to consider and understand a case in legal events.

The Constitution of the Republic of Indonesia mandates that judges must have the courage to enforce the law. On the other hand, according to Law Number 48 of 2009 concerning Judicial Power, judges are expected to be able to investigate the principles of justice in society, interpret legal articles as an exclusive source of law, and be the trumpet of law. Then, these factors are articulated in the form of decisions that can be used as precedents in court decisions or jurisprudence. According to the Judicial Power Law, judicial power is the ability of an independent state to form a legal system that respects the Pancasila teachings about justice and law to implement the legal framework of the Unitary State of the Republic of Indonesia (Haryono & Djojarahardjo, 2019).

In addition, each judge who decides a case at trial must consider his personal beliefs, the legal facts presented during the trial, and relevant theories and standards. By focusing on these problems, a fair decision will be reached for both the defendant and the victim.

It is tough to measure the fairness of a decision. In addition, the parties to the dispute are intended to take advantage of the judge's decision. There is no guarantee that what is fair to one party will also be appropriate to another. This is because a person's assessment of other people, often seen from the injured party's perspective, is a central component of justice (Monteiro, 2007). The judge must, therefore, carefully consider and decide what articles will be imposed on the defendant. The right to justice does not exonerate defendants or those who commit crimes; However, this means that the court must ensure that everyone's needs are met by upholding human rights,

both for suspects and defendants (Manuaba et al., 2020)

For the verdict to be accepted rationally by the parties in the case, legal scientific forums, the general public, and judicial institutions, the judge must take a lot of factors into account because they are expected to receive information about the law (*ius curia novit*) (Taqiuddin, 2019). Judges must consider the possibility that their colleagues at the next judiciary level will change or overturn their decisions. He must also pay attention that his choice remains in line with the doctrine of legal science.

Muhaiman, in his article entitled "Restorative Justice in Resolving Minor Crimes" in the journal *De Jure*, No. 10 of 2019, is quite excellent in explaining the background concept of his research. It is seen that achieving the value of justice is relatively fast and sharper when dealing with problems of poor or underprivileged people (Sitompul & Maysarah, 2021). However, when the issue involves essential or influential people, it seems as if the essence of law becomes dull and one-sided

Although terminologically, the provisions of Article 89 of the Criminal Code have set limits on violence, implementing the element of violence in judicial practice still provides freedom for judges to interpret by looking at and considering case by case. As seen in case number 827/Pid.B/2021/PN, a judge cannot always treat one party fairly in deciding. Jmr.

Before discussing the criteria taken into consideration by the court in examining and determining the element of violence in a theft charge, it is more efficient to first discuss the factors taken into legal consideration in case number

827/Pid.B/2021/PN.Jmr, namely, first explained.

The case began on Wednesday, 29 September 2021, when the victim (and witness at the same time), Fitriarningsih Jaya Rahayu, rode a motorbike out of the house towards the Panti District, Jember Regency. Using a black rope around his neck, the victim stopped for a moment in front of the Sunan Ampel Madrasah School on Jln. Mujahir District. Sukorambi, Jember, to see the prepaid credit balance on the device. After checking the prepaid credit balance, the victim let go of the grip holding her cell phone, but it remained tied to the rope around her neck. Zainal Abidin, the defendant, suddenly appeared behind the victim on a motorbike and snatched the victim's cell phone, which was hanging around her neck. When the victim was about to unzip his jacket, the defendant used his right hand to pull the cell phone, which he then tied around the victim's neck with a rope until it broke. Following the defendant's success in capturing the victim's phone, the defendant ran away, leaving the victim behind. Due to this incident, the victim suffered a loss of around IDR 2,500,000 (two million five hundred thousand rupiahs). Zainal Abidin, the defendant, was detained at the police station in connection with this crime. After an investigation was carried out and the Prosecutor's Office stated that the case files were complete, the Defendant, Zainal Abidin, was charged with committing the crime of Subsidiarity as follows and was brought to trial:

a. Primary Charge

Based on the indictment, the defendant was charged with committing theft with violence, explicitly robbing

someone of all or part of their property to keep it for a long time, as stipulated in Article 365 paragraph (1) of the Criminal Code. These robberies were reportedly planned and were intended to allow the perpetrator or other participants to escape or to retain the possession of the stolen goods. In other words, the defendant was caught red-handed.

b. Subsidiary indictment

Ordinary theft is obtaining all or part of something belonging to another person to get it unlawfully, a charge brought against the defendant. As regulated in Article 362 of the Criminal Code, the maximum criminal threat for theft is a fine of sixty rupiah or five years in prison, whichever comes first. In the evidentiary stage, the Public Prosecutor provides evidence that supports his indictment: the defendant's statement, witness statements, and the following evidence:

1. Witness Statement

A witness statement is one of the pieces of evidence often used in trials, especially when the judge is considering a case, as long as the evidence is reliable and supported by additional or pre-existing evidence. In this case, the defendant argued that the statements of witnesses one and two were confirmed, while the Public Prosecutor called two witnesses whose statements were related.

2. Defendant Statement

The Public Prosecutor's accusations regarding the defendant's actions, Zainal Abidin, have essentially been admitted and supported by his statement.

3. Evidence

During the trial, any items directly related to the act of a crime are called evidence and are used as a support or reinforcement of other evidence. The

judge must present this evidence before the defendant and witnesses at trial if this is mentioned in the indictment and presented at trial. The evidence offered by the Public Prosecutor in this case is:

- a) A red OPPO A1K cellphone, with IMEI: 869318040395598. And the second IMEI number is 69318040395580.
- b) A black Honda Beat motorbike, number plate W-2410-VZ, chassis number MH1JFD233EK077064, and engine number JFD2E3074170;

The Public Prosecutor concluded that by fulfilling all the requirements of Article 365 paragraph (1), the Defendant was proven guilty of committing the crime of theft with violence based on the evidence presented at trial and the legal facts that have recently been clarified.

After the Public Prosecutor read the indictment (Requisitoir), the defendant was sentenced to one year and six months in prison (Verordeling). Furthermore, the criminal prosecution period reduces the length of the defendant's detention period.

Because the Public Prosecutor's indictment in this case is subsidiary, the main indictment of Article 365 paragraph (1), which consists of the following paragraphs, is the first indictment that must be submitted and supported.

1. Anyone;
2. Preceded, accompanied by, or continued with acts of violence against someone or threats of violent behavior to plan or facilitate theft, or in cases of proven theft, thereby enabling the perpetrator or other participants to escape with the stolen object.

3. seizure of goods that wholly or partly belongs to another person to obtain it in an unlawful manner

To differentiate between theft with violence and ordinary robbery, which is based on whether or not the crime of theft involves elements of violence and threats of violence, the components in Article 365 paragraph (1) must be understood. Article 362 of the Criminal Code concerns ordinary theft and provisions of the Criminal Code regarding robbery. As stated previously, the Public Prosecutor argued that the Defendant's actions constituted theft with violence. In other words, the prosecutor thinks that the theft committed by the defendant contained an element of violence. The judge examining the case concluded that the robbery had been achieved with violence. The judge who tried this case was convinced and concluded that the crime of theft committed by the defendant contained evidence of violence.

This element of violence and threats of violence needs to be discussed because the various aspects of Article 365 paragraph (1) and Article 362 of the Criminal Code only regulate whether there is violence or threats of violence or not. In contrast, the other elements remain the same. Therefore, these elements need to be discussed.

The defendant used his right hand to pull the cell phone, which he then tied around the victim's neck with a rope until it broke, the judge noted in his consideration, so the defendant ran away.

Based on this, the judge determined that the defendant used force to take the cell phone to prove that there was an element of violence in the crime of theft, which at that time tied the victim's neck with a rope until the rope broke. In this

case, the defendant took his cell phone forcefully and rode his motorbike quickly.

Based on the judge's considerations above, the author disagrees with the Public Prosecutor's demands and the judge's concerns, which stated that the element of violence in the crime of theft committed by the Defendant was proven guilty. Committed the crime of ordinary theft as stipulated in the subsidiary indictment or additional indictment of the Public Prosecutor, because the primary indictment of the Public Prosecutor is very inappropriate if it is related to the Defendant's actions because the It's action does not constitute theft with violence.

Based on the statement of the victim, who stated that at the same time, the Defendant took the victim's cell phone, it was not with threats of violence or other means of violence, but when the cell phone was pulled, the rope around his neck broke, the victim witness did not fall but was still in his original position on the motorbike belonged to the victim. Referring to the facts in the trial of the Defendant's actions, no acts of violence or threats of violence were found, and the rope around his neck did not come into direct contact with the skin of the victim's neck because the rope was outside the jacket. In this way, the Defendant's taking the cell phone did not cause the victim to be injured or in pain.

Meanwhile, violence itself is based on the provisions in Article 89 of the Criminal Code, which makes a person unconscious or helpless. At the same time, violence must be shown to a person or body, not to an inanimate object, meaning that by carrying out violence or threats of violence against the victim to commit theft, this is so that victims who are exposed to violence or threats of violence

can easily hand over their items to the perpetrator or defendant. The act carried out by the defendant against the victim is the body strength shown on the object or object of the theft so that the rope is cut, and at that time, there is no body contact or tug of war between them. The judge assessed and concluded that the violence in the Defendant's actions was that when pulling out the cell phone was equated with pulling with force, force itself means that there was a threat or mutual action of a tug-of-war between the victim and the Defendant with the object of defending and taking, as well as the result of violence, or Physical force can cause mental stress and severe injury, or even death.

So, based on these legal facts, the judge was declared negligent and mistaken in applying which article was appropriate based on the defendant's actions. Therefore, the defendant's actions were more appropriately said to have committed the crime of ordinary theft as referred to in the subsidiary indictment of the Public Prosecutor as regulated in Article 362 of the Criminal Code, because normatively and theoretically, the act The defendant was referring to the crime of ordinary theft rather than robbery.

CONCLUSION

Based on existing problems related to the results of research and discussions, it can be concluded that the judge's consideration in applying the element of violence in the crime of theft in case Number: 827/Pid.B/2021/PN.Jmr is incorrect and was not in line with the meaning of violence or threat of violence as in Article 89 of the Criminal Code. It was revealed at the trial that it was proven that based on legal facts and statements

from the victim's witness, when the Defendant took the victim's cell phone, he was not under threat of violence, and at that time, the victim did not fall but was still on her motorbike. On the other hand, the defendant's act against the victim is a bodily force directed at the object or object of the theft so that the rope is cut. In contrast, the meaning of theft with violence must be that the violence is directed at the body or person. So, based on these legal facts, the judge was declared negligent and mistaken in applying which article was appropriate based on the defendant's actions. Therefore, the defendant's actions were more appropriately said to have committed the crime of ordinary theft as stated in the subsidiary indictment of the Public Prosecutor as regulated in Article 362 of the Criminal Code.

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