
Juridical Review of Criminal Acts of Blatantly and With Joint Force Carrying Out Violence Against People and Property (Article 170 of the Criminal Code)

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ABSTRACT

The Penal Code is a law that regulates punishment, especially actions that are felt to cause harm to others such as theft, violence, murder, fraud and various other criminal acts. The Penal Code is also equipped with sanctions that will be given to someone who commits violations, both in the form of fines, imprisonment, to the death penalty. The Penal Code has also been amended several times in order to provide legal certainty for all levels of society. Article 170 of the Indonesian Civil Code is one of the articles that focuses on legal protection of people and goods from criminal acts. This article leads to the protection of public order from irresponsible people. Islam as a religion that has perfection and complete rules is felt to also have various provisions regarding this, because Islam is a religion that brings mercy to all nature. This study uses Juridical-Normative research methods with the aim of providing a broad description of article 170 of the Indonesian Civil Code and providing an Islamic picture of things like this.

Keywords : Islam, Criminal Code, Article 170, Criminal

INTRODUCTION

Indonesia is a legal state as stated in the 1945 Constitution Article 1 paragraph (3). Where human actions must be based on applicable norms. The legal state applied in Indonesia is a "rule of law" type of state which means that law is a rule that will be implemented by many people and agreed upon by everyone, not "rule of man" which means there is one person and only the other. walking as a "puppet" (Asshiddiqie, 2011).

In Indonesian law, we recognize laws or norms in carrying out and regulating our daily lives and maintaining the stability of all things. There are laws that regulate relations between citizens and the state, which we know as Criminal Law, and there are also laws that regulate relations between individuals and individuals, which is usually called Civil Law (Sari, 2021).

In its content, criminal law itself covers many things that are closed regarding evil acts or crimes including criminal acts of theft, up to murder. From all types of light, medium and serious crimes. From various forms of punishment from fines, imprisonment, imprisonment, to the death penalty, these are listed in the Criminal Code (Moeljatno, 2021).

As the crime of theft develops, its forms also develop, one of which is violent crime. Crime is an act that is disgraceful and related to criminal law, namely part of an act against norms or an offense (Santoso, 2011).

Crimes can be classified based on the motive of the perpetrator, types of crimes, for example economic crimes, sexual crimes, political crimes and personal crimes. Begal is a verb, different from mugging which means the process of plundering or robbery. (Limbong, AN S, 2021) Evil first appeared during the time of Prophet Adam AS with the start of the first bloodshed, namely by Qobil against Abil. (Kiptiyah, 2019) the murder was based on feelings of hatred and envy that Satan whispered to Qobil. Before Adam was sent down on earth, when the devil was expelled by Allah from heaven, he swore to mislead the children and grandchildren of Adam and Eve until the end of the world, and this was one of the oaths of the devil himself (Al-Hafiz. 2012).

We as humans must always take refuge from the devil's temptations. The devil always directs people

into bad, cruel actions, following bad desires, and away from God. The devil always wraps everything that we consider bad into goodness, as well as evil. Through the devil's whispers, humans can lose their minds. Identity and humanity when the devil succeeds in persuading humans (Noerjenah, 2014).

Law enforcement is one of the means and efforts made by law enforcers that involves the community. In this case, the police are the main subject at both broad and narrow levels in law enforcement (Asshiddiqie, 2011). The law itself is a standard that is present and accepted naturally by society to regulate and limit people's behavior.

One of the criminal acts that we often hear about in various news is violent crimes. In the Criminal Code itself there are various types of criminal acts of violence, there are criminal acts of simple violence that result in the loss of a person's life either intentionally or unintentionally. Then there are criminal acts committed alone, up to violent beatings, and each has its own court mechanism. (Anjari, 2014) The state tries to provide legal certainty to the entire community.

One of the articles that regulates criminal acts of violence is Article 170 of the Criminal Code. Paragraph (1) of the article reads "Anyone who openly and with concerted force uses violence against people or property, is threatened with imprisonment for a maximum of five years and six months" then the second paragraph explains the punishment given if someone commits what is stated in paragraph (1) and results in minor injuries, serious injuries, up to death.

RESEARCH METHODS

The method in this research uses normative legal research or doctrinal law with a juridical-normative approach and a conceptual approach. This type of research is descriptive research that uses and explains the phenomena that are currently occurring. This research uses secondary data originating from literature studies in the form of data originating from books, journals, literacy, and opinions of legal experts as well as several other sources that can support the success of this research (Dimiyati, 2004).

RESULTS AND DISCUSSION

Article 170 of the Criminal Code

The Criminal Code itself is divided into three regulations. The first book is about general criminal rules, the second book is about criminal crimes, and the third book is about criminal offenses. So Article 170 is included in the second book and placed in CHAPTER V as Crimes Against Public Order. J. Van Bemmerlen stated that Article 170 of the Criminal Code is included in the article on crimes against public order and is intended for crimes committed against public authorities, such as attacking police during demonstrations and damaging public facilities. In the country of origin of the Criminal Code, namely the Netherlands, the use of this article is related to demonstrations carried out by the public which are often accompanied by attacks on the police and damage to facilities. So this right is not much different from in Indonesia, this article can be used to ensnare demonstrators who collectively throw stones or similar things at the police who are providing security at the demonstration. So actually this article is designed to protect the general public and public space. (Bemmelen, 1986)

It is felt that Article 170 of the Criminal Code is often misused by justice enforcers, especially by the police, who often arrest demonstrators and demonstrators who carry out anarchic acts and disturb public order while carrying out democratic actions, even though sometimes this happens as an effort to defend themselves. This right is also felt to offend Article 28 (E) paragraph (3) of the 1945 Constitution which guarantees freedom of assembly and association,

It is emphasized again that systematically, Article 170 of the Criminal Code regulates crimes against public order, so the main focus is a crime that can cause disturbance to the general public. For example, if someone dies or property is damaged, this is not the main reference in imposing punishment in this article, but is an offense committed openly in the public eye and carried out collectively. (Maudoma, 2015)

After looking at the contents of Article 170 of the Criminal Code, it can be concluded that this article has several elements, namely:

1. Whoever
2. Overtly/openly and
3. Power together/together
4. Using/committing violence
5. Against people/humans or goods

So, here is how each element in Article 170 of the Criminal Code is discussed one by one:

1. Whoever

Whoever is the subject or perpetrator of a criminal act, then anyone can be the subject of a criminal act. So in Article 170 of the Criminal Code, anyone can become a subject. What then becomes a limitation is that in criminal acts, the subject must be a human being because in the Criminal Code a corporation or legal entity cannot be the subject of a criminal act. (Ali, 2022)

2. Overtly/openly and

The purpose of this element is that the criminal act must occur in public and be known by many people. Several experts have opinions on this matter, such as according to SR Sianturi who believes that this criminal act must be seen by the public, whether it occurs in a public place or not, for example in a quiet place but seen by many people, then the use of this article is quite appropriate. However, if a crime is committed in a quiet place, even in a public place, the use of this article is deemed inappropriate. (Sianturi, 1983)

Wirjono Prodjodikoro said that the meaning of being open is not hiding, which means there is nothing wrong with being in a quiet place as long as many people know about it. (Prodjodikoro, 2012)

Meanwhile, according to JM Van Bemmelen, criminal acts in this article must be committed in public and disturb public order, so if a crime is committed in a public place at a quiet time and does not disturb public order, then the use of this article is deemed inappropriate. (Bemmelen, 1986) R. Soesilo is of the opinion that if this article is included in the article on public order crimes, the crime does not have to be witnessed by the public. (Soesilo, 1995)

From several expert opinions above, it can be concluded that the crimes referred to in Article 170 of the Criminal Code are crimes committed in public and resulting in disruption of public order.

3. Power together/together

According to Wirjono Prodjodikoro, what is meant together in this article is that a crime is committed by two or more people, so this element can be fulfilled. (Prodjodikoro, 2012) Same as opinion JM Van Bemmelen, if only two people commit a joint crime, it can fulfill the criteria for the joint element. (Bemmelen, 1986)

Meanwhile, SR Sianturi has a different opinion, he stated that what is meant by the element together is a group of people in quite large numbers, two people cannot fulfill this element. This matter is also explained through authorial terminology. If the element of violence is sufficient to be fulfilled by just two people, why not write with "two or more people" like several other articles. (Sianturi, 1983) SR Sianturi also stated that his opinion was weakened by jurisprudence where several criminal acts committed by only two people could be punished by this article.

4. Using/committing violence

Wirjono Prodjodikoro and R. Soesilo has the same opinion in this article, namely that the violence that occurs in this article is not a means to achieve certain goals, but a goal.

5. Against people/humans or goods

JM Van Bemmelen believes that the violence that occurs does not need to wait for losses from humans or goods such as injuries or damage. (Bemmelen, 1986) In fact, according to R. Soesilo, violence in this case does not need to cause harm, or even less than that, to goods or people, it is sufficient if the act is felt to disturb public peace. For example, someone who throws stones at someone else's house or scatters rubbish, even though they have no intention of hurting people or injuring these items. (Soesilo, 1995)

Differences with Article 358 of the Criminal Code

Actions regulated in Article 170 of the Criminal Code are types of actions that disturb public order. Meanwhile, article 358 of the Criminal Code is the chapter on assault, so this article focuses more on legal protection for people who are victims of beatings.

In Article 170 of the Criminal Code, responsibility is only for what he himself did, while in Article 358 of the Criminal Code which relates to beatings, it is divided into three situations, namely if the person who was beaten up suffered serious injuries then the sentence is a maximum of two years and eight months, but if until death can be sentenced to a maximum of four years.

Article 170 of the Criminal Code According to Islamic Law

Islam is a religion in general contest, but Islam is also an ideology and a way of life. Islam is a perfect, full and plenary religion, regulating everything from small things to big things, from the rules of each human being to the state system.

In Islam we know about Fiqh. Fiqh is divided into 4 parts, the first is the fiqh of worship, then the fiqh of buying and selling or muamalah, the third is the fiqh of marriage, and the last is the fiqh of jinayah. The fiqh of worship explains how we guide us in carrying out worship, the fiqh of buying and selling explains how we as Muslims carry out halal and good business, the fiqh of marriage discusses marriage and the household, and finally the fiqh of jinayah which discusses state regulations that relating to crime. (Hazim, 2016) So in the case of Article 170 it can be studied through Jinayah Fiqh.

Article 170 of the Criminal Code can be divided into 2 main things, namely committing a crime with collective energy, and damaging public facilities and both are committed in public.

1. Committing Crimes With Collective Energy

Islam provides justice as fairly as possible even for perpetrators of crimes, because basically the blood of a Muslim is forbidden to be shed without cause. In Islam we know the term jarimah or a prohibition which, if carried out, will result in punishment, which can be in the form of had, qishash, or ta'zir (Hanafi, 1967).

If someone commits an act of jarimah together, the punishment depends on the consequences. If the performing Jarimah results in the person suffering serious injuries, then Ta'zir or Hadd can be applied. But if the victim of the perpetrator dies, then the qishash punishment is carried out (Irfan, 2022).

The qishash penalty is given to all people involved in the crime, both directly and indirectly, each perpetrator will be given the same qishash penalty. Moreover, when the act uses tools that support murder (Irfan, 2022).

This is explained by Allah in Surah Al-Baqoroh Verse 178 which reads

يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ ۗ

"O you who believe, qishash is obligatory upon you in killing"

This verse explains clearly and textually that a person who commits murder must receive qishash as a reward, but if the family forgives the perpetrator's actions, then the qishash punishment is not carried out but by diyat or a fine (Abdul, 1964).

So from the brief explanation above, perpetrators of deliberate murder must receive the qishash punishment. Hukan qishash can only be carried out if the perpetrator of the jarimah is proven to have committed murder intentionally and premeditatedly, whether he did it personally or with several people. However, if the victim does not die during the fingering process, the perpetrator will be punished with had or ta'zir. And if the victim dies and the victim's family forgives the perpetrator's actions, then the perpetrator must pay a fine to the victim's family.

2. Damaging Public Facilities

Islam is a religion of rahmatan lil 'alamin, which means Islam brings compassion to all humans. Islam requires all of its ummah to carry out good deeds towards fellow humans and the environment. There are many prophetic hadiths which explain that a Muslim must take good care of what Allah has entrusted him with (Gulen, 2014).

In Islamic law itself, someone who commits acts of damage to public facilities is punished with ta'zir. Ta'zir punishment is a punishment given by the government where the perpetrator commits the jihad, and this ta'zir punishment has not been regulated in Islamic punishment.

So this ta'zir punishment also involves 2 things. Ta'zir punishment which concerns the rights of Allah, and ta'zir punishment which concerns individuals. The punishment for ta'zir which concerns Allah's rights is such as causing damage on the face of the earth, disrupting or destroying public facilities, and disrupting public facilities. Meanwhile, ta'zir punishment which concerns individuals is a punishment given because the act is detrimental to other people, such as fraud, defamation, and so on. (Abdul, 1964)

Ta'zir punishment is a punishment of an undetermined amount. There are light punishments such as warnings, advice and advice. There are also moderate penalties such as imprisonment, fines, and so on. And the last is the severe punishment, namely the death penalty. In this case, the judge is asked to give appropriate and fair punishment, so a judge in Islam must be someone who understands and is knowledgeable. (Audah, 2008)

Judges are also allowed to add punishment to perpetrators of the crime and increase the punishment if necessary. This ta'zir punishment is permissible, because the actions in this group are prohibited because of their nature, not because of the elements contained in them. This penalty was imposed because it could potentially harm the public interest.

CONCLUSION

The community rice barn is a support to strengthen community food reserves in anticipation of food Article 170 explains criminal acts committed openly together. Some experts have different interpretations on this matter. There are those who are of the opinion that overt meaning is done in public and many people must see it even though it is not in a public place. There are also those who think that the meaning of overt is that an act carried out in a public space, even though there is no one there at the time, can still be subject to this article. Also related to the number regulated in this article, there are those who argue that the number must be more than one person, so 2 people can fulfill the elements of this article, but there are also those who interpret the meaning of together as meaning that it must be a group of people who do it, so that if only 2 or 3 people cannot fulfill the elements of this article.

In Islamic law, the jihad of beatings contained in Article 170 of the Criminal Code is a jihad that is punished in the form of qishash if the victim dies. The qishash sentence can be canceled if the victim's family forgives the perpetrator, but the perpetrator must pay diyat or a fine to the victim as ransom.

And regarding the punishment imposed on the perpetrator of the vandalism, it is a ta'zir punishment, which is in accordance with the government where the perpetrator committed the act. It can be light, medium or heavy punishment, depending on the judge in deciding this case.

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