
**STUDY OF THE JUDGE'S CONSIDERATIONSTOTHE CRIME OF THEFT UNDER AVERY CIRCUMSTANCES
(STUDY DECISION NUMBER 236/PID.B/2021/PN KLN)**

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ABSTRACT

The author of writing this journal aims to analyze and find out the problems in cases of theft committed by perpetrators. The Panel of Judges in implementing an element of the crime of theft in line with Article 363 paragraph (1) 3rd, 4 and 5 of the Criminal Codes. In the defendant's action it was proven valid and able to meet the elements, namely: Whoever, took something that is wholly or partly owned by another persons, the elements with the intention to own it by means of violating an applicable law, the action was carried out at night in the house, which then it was done by someone who was there who the owner did not know or wanted. Furthermore, the panel of judges stipulated a decision, namely, declared the defendant valid and could indicate that he was proven guilty when he committed the crime of theft under aggravating circumstances, because of this matter the defendant was valid and firmly guilty of the crimes of theft under aggravating circumstances; Sentenced the defendant 2 (two) years in prison.

Keywords: Criminal Acts; theft; Aggravating Circumstances

INTRODUCTION

Indonesia is a country of law, but in practice, there are still many criminal acts, theft being one of them. Theft by force or threat of violence, theft by aggravation, and simple theft are all defined by the Criminal Code. Compared to other types of crimes including extortion and threats, embezzlement, fraud, and fraudulent acts, theft offenses whether classified as petty theft, aggravated theft, or aggravated theft are the most common in society.¹

Quoted from the book Criminal Law 1 Revised Edition, Prof. Sudarto explained that "criminal law can also be divided into general criminal law and special criminal law. The General Criminal Law contains Criminal Law rules that apply to everyone." These rules are as stated in the Criminal Code, Traffic Law and so on. Special Criminal Law contains criminal law rules that deviate from general criminal law, namely regarding certain classifications or relating to certain types of incidents. Relating to crime issues and specifically the crime of theft. Article 363 and Article 365 of the Criminal Code regulate the crime of theft, which is called theft with qualifications. Wirjono Prodjodikoro is translated as "special theft", theft because it occurs using a certain mechanism. In terms of terminology, what is considered appropriate is the one proposed by R. Soesilo, namely "theft with aggravation" because in terms of terminology we can see that because of its nature, theft is punishable by a heavier crime.

Looking at the background of the theft phenomenon, this is what makes the author want to discuss it in a journal study under the title "Study of Judges' Considerations of the Crime of Theft in Aggravating Circumstances (Study of Decision Number 236 /PID.B/2021/PN KLN)". Then the author wrote with the aim of analyzing and finding out the problems in cases of theft committed by the perpetrator. Therefore, the formulation of the problem in this journal is how to apply the elements of the crime of theft in aggravating circumstances in the Klaten District Court decision number 236/PID.B/2021/PN KLN and the

¹ Richard F. Musak, Ancaman Pidana Mati Terhadap Pencurian dengan Kekerasan, Jurnal Lex Crimen Vol.IV/No.3/Mei/2015, hlm. 98

basis for a judge's legal considerations in imposing a crime against the defendant in the Klaten District Court decision number 236/PID.B/2021/PN KLN.

The aims and benefits of this journal include, among other things, to understand the elements of the crime of theft in aggravating circumstances and to understand the basic considerations of the judge in determining the crime against the defendant in this case.

RESEARCH METHODS

What the author uses is normative and based on Article 363 of the Criminal Code. Qualitative descriptive, namely the nature of this research, then uses data analysis techniques in the form of literature studies by reviewing books and literature related to the problems in this journal.²

RESULTS AND DISCUSSION

Application of the Elements of the Crime of Theft in Aggravating Circumstances in the Klaten District Court Decision Number 236/PID.B/2021/PN KLN

After the defendant committed the crime of "theft under aggravating circumstances", the defendant's actions can be punished with a crime under Article 363 of the Criminal Code. Formulation of Article 363 paragraph (1) of the Criminal Code. Article 363 paragraph (1) 3, 4 and 5 of the Criminal Code which the Public Prosecutor charged against the defendant, the description of the elements of the article in question is as follows:

1) The "Whoever" Element

Delivered by Simons as quoted by Lamintang, an explanation of who must be reviewed as a perpetrator of a crime, namely:

"Committing the relevant criminal act, in the sense of a person who, according to the law, has deliberately caused consequences that are not desired by law or has committed an act that is prohibited or neglected an act that is required by law or in other words he is a person".³

During the trial, the Panel of Judges said that the word "whoever" refers to the legal subject as the perpetrator of a criminal act as is referred to in the Public Prosecutor's Indictment Letter, in this case the Public Prosecutor has presented the Defendant, namely: Sentot Haryanto Bin Sutino.

The correlation is with the "whose person" element in Decision Number: 236/PID.B/2021/PN KLN, then the "whose person" element is Sentot Haryanto Bin Sutino whose identity has been examined and checked by the Prosecutor's Office. The Panel of Judges complied with what was stated in the indictment submitted by the Public Prosecutor. However, there is no fault of the legal subject as the perpetrator of the criminal act who was presented as a defendant at the trial. Based on the considerations above, the element of "whoever" in this case has been fulfilled in the Defendant.

2) The element "Taking something"

Carrying means bringing an item under one's control or bringing the item absolutely under one's actual control, in other words, when the perpetrator commits the act, the item may not yet be under his or her control.⁴

Legal facts were obtained in the trial on Tuesday 04 May 2021 at approximately 19.30 WIB at witness Ali Mujono's house in Dk. Hamlet Rt.09/05 Ngemplakseneng Village, Manisrenggo District, Klaten Regency, the Defendant and witness Eko Purnomo entered the house of witness Ali Mujono, and when they arrived at the house of the Defendant and witness Sentot Haryanto confiscated witness

² Ardana, N. A. D. I., & Purwoko, B. (2018). *Studi kepustakaan penerapan konseling naratif dalam lingkup pendidikan* (Doctoral dissertation, State University of Surabaya).

³ Haryo Wicaksono, dkk, *Penerapan Pasal 363 KUHP Tindak Pidana Pencurian Dalam Keadaan Memberatkan*, Vol. 3, Hal. 153-154.

⁴ Ibid. hal.. 154.

Ali Mujono's belongings in the form of cash totaling Rp. 4,000,000 and The Samsung J1ace brand cellphone is black, so that the goods belonging to Ali Mujono have changed hands and become the property of the defendant and witness Eko Purnomo, legally this element has been fulfilled.

3) The element "With the intent to be controlled unlawfully"

In general, acts against the law or against someone's rights are considered illegal. What is meant by "with the intention of unlawfully possessing goods" is the perpetrator's intention, wish or desire to confiscate goods unlawfully. Illegality is here characterized as a demonstration of having what one wants without the right or coercion of the perpetrator himself. The perpetrator must realize that the item he stole belongs to someone else.⁵

Defendant Sentot Haryanto Bin Sutino and witness Eko Punomo Santoso admitted to the legal facts presented at the trial, that when they stole money worth IDR 4,000,000.00 and a black Samsung J1ace cellphone which in fact did not belong to them and this fact shows that they took the items. above without the knowledge and consent of the owner and the proceeds are divided in half, they each get a share of Rp. Two million one hundred thousand rupiah, or Rp., can be used to determine the value of the money. 4,000,000.00 and a dark colored Samsung J1ace cellphone. This element has been fulfilled because it was intended to take property belonging to witness Ali Mujono.

4) The element "is carried out at night in a house or in a closed yard where the house is located, which is carried out by people who are there who are not known or are not wanted by those entitled to it"

The time between sunset and sunrise is called afternoon. The place where people live or where people live is called a house. A place built so it can be lived in. An enclosed yard is a plot of land with distinct boundary markings, indicating that it is distinct from neighboring property plots. Closed usually does not have walls or fences to mark boundaries. Drains, rock piles, fences, and bamboo fences can all be used as boundary markers.⁶

The meaning of night according to Article 98 of the Criminal Code is the time between sunset and sunrise. What is meant by house is a house that has occupants, while a closed yard is a yard that is clearly demarcated, such as an iron fence or a living fence.

5) The element "Performed by two or more people in alliance"

Article 55 paragraph (1) 1st of the Criminal Code fulfills the requirement of "cooperating". So Article 363 paragraph (1) 4th of the Criminal Code does not apply if there is only the perpetrator and there are helpers, Article 55 paragraph (1) 2nd of the Criminal Code. Fulfilling the requirement of "cooperating", for example, if they have planned their intention to cooperate when carrying out an act of theft, then only one person enters the house and takes the goods, and the friend just stays in court, the legal fact is revealed if the perpetrator took money worth Rp. . 4,000,000.00 and a black Samsung J1ace cellphone, carried out by two people, namely the defendant Eko Purnomo Santoso Bin Kusmin together with the witness Sentot Haryanto, so that this element is fulfilled.

6) The element of getting to the items taken is by breaking, cutting or climbing or by using fake keys, fake orders or fake official clothes;

The criminal act as intended in Article 363 paragraph (1) 5th of the Criminal Code is a crime of aggravated theft, meaning that the elements of the offense contained in Article 363 paragraph (1) 5th of the Criminal Code include and consist of the elements of the article contained in Article 362 Criminal Code. Meanwhile, the aggravating elements contained in Article 363 paragraph (1) 5 of the Criminal Code "will only occur if the perpetrator of the theft takes the goods or enters the place where the goods are carried out in various ways, for example breaking, cutting or climbing. or use children. fake keys, fake orders or fake official clothes", so that the perpetrator when carrying out his actions can use one of the methods described above.

So continued, witness Eko Purnomo Santoso Bin Kusmin pried open the front window of the north side of the house using a screwdriver that had been prepared previously, after successfully

⁵ Ibid, hal. 154-155.

⁶ Eris Rudipta,dkk, *Tindak Pidana Pencurian Dalam Keadaan Memberatkan*, Vol. 3, Hal. 403-404.

opening it, he then entered the living room to enter the bedroom, but because the living room door was locked, witness Eko Purnomo Santoso Bin Kusmin then entered through The living room window was then pried open with a screwdriver so that the victim's bedroom window was successfully opened, thus fulfilling this element.

The basis for a judge's legal considerations when imposing a crime on a defendant in the Klaten District Court Decision Number 236/PID.B/2021/PN KLN.

The basis for a judge's legal considerations in imposing a crime on a defendant is as follows:

- 1) Considering the legal facts which fulfill the elements of the article charged, the Defendant is charged with a single indictment, the defendant's actions are regulated and punishable by crime in Article 363 Paragraph (1) parts 3, 4 and 5 of the Criminal Code. It has been correctly established and can be believed based on the elements that the defendant was declared guilty of committing a criminal act as charged by the Public Prosecutor and is also capable of being responsible for his criminal act.

- 2) Consideration of evidence as per Article 184 of the Criminal Procedure Code

The evidence outlined in the trial was reviewed again by the panel of judges before convicting the defendant, namely:

- a) Witness statements

The Public Prosecutor at the trial presented witnesses to hear their statements, namely:

1. Witness Ali Mujono;
2. Witness Sumirah;
3. Witness Surya Hari Hidayat, SH;
4. Witness Eko Purnomo Santoso.

- b) Defendant's statement

The defendant's statement in this case is: Sentot Haryanto Bin Sutino, the defendant regretted it and promised not to repeat it.

The judge's legal considerations were correct regarding the provisions as formulated in Article 184 paragraph (1) of the Criminal Procedure Code.

Based on aggravating and mitigating matters for the defendant, as regulated in Article 197 paragraph (1) letter f of the Criminal Procedure Code: "Articles of statutory regulations that underlie the punishment or act and articles of statutory regulations that form the legal basis for the decision accompanied by aggravating matters and provide relief for the Defendant." The panel of judges before making a decision needs to consider the aggravating and mitigating factors of the defendant's actions:

1. Aggravating matters:
 - a) The Defendant's actions had an impact on witness Ali Mujono.
 - b) The defendant's actions disturbed the community
2. Mitigating circumstances:
 - a) The defendant admitted his actions.

It is clear from the evidence presented at trial that the defendant's actions met all the requirements outlined in the Public Prosecutor's indictment under Article 363 paragraph (1) 3 of the Criminal Code. Regarding admissible evidence presented at trial in the example above, which includes explanations of witnesses and defendants as well as evidence, there is evidence in terms of evidence that is related to other evidence and considering the importance of each piece of evidence. Each piece of evidence has an inseparable relationship with the mitigating or aggravating factors involved in the perpetrator.

CONCLUSION AND SUGGESTION

Conclusion

application of the elements of the crime of theft in aggravating circumstances in the Klaten District Court decision number 236/PID.B/2021/PN KLN

The defendant's actions included taking other people's objects and claiming them as his own. As a result, the object may have been acquired or be the product of theft. The defendant committed this act illegally because he did not obtain permission from the owner to take the items at his own expense, and the items had economic value. The defendant carried out the act of removing objects when it was still dark, so that it was night, according to Article 98 of the Criminal Code, when it was still dark and without the victim's knowledge or consent.

The judge's consideration, in this case, was stated to be in accordance with existing regulations, that the defendant's actions had fulfilled the requirements indicated in Article 363 paragraph (1) 3 of the Criminal Code which involved theft. aggravating circumstances, as alleged by the Public Prosecutor:

The basis of the judge's legal considerations in imposing a crime on the defendant in Purwokerto District Court Decision Number 236/PID.B/2021/PN KLN., namely:

- (1) legal facts, after fulfilling the elements of the article for which he was charged, the Defendant was charged using a single indictment, namely: the Defendant's actions violated the formulation of Article 363 Paragraph (1) 3, 4 and 5 of the Criminal Code;
- (2) the underlying evidence as stated in Article 184 of the Criminal Procedure Code, the evidence in question is in the form of: explanations of witnesses and explanations of the Defendant;
- (3) Based on matters that aggravate and mitigate the defendant, as in Article 197 paragraph (1) letter of the Criminal Procedure Code.

The panel of judges after determining the decision, namely:

Revealing the defendant, Sentot Haryanto Bin Sutino, is valid and unequivocally guilty of the crime of theft under aggravating circumstances; Sentenced the defendant to 2 (two) years in prison; Determining that the defendant remains in custody.

Suggestion

Punishment is not only for the perpetrator, but it is also hoped that it will have an impact on the public, so that after completing the sentence they will repent and be able to gain meaning and receive name rehabilitation. So as a direction for the perpetrator, when the judge imposes a sentence, they are expected to be careful about the norms of punishment. The public is expected to support the main duties and functions of the National Police.

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