

## A Juridical Review on the Regulation of Criminal Offenses in Cases of Violent Theft from the Perspective of the Criminal Code

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ARTICLE INFO	ABSTRACT
<b>Keywords:</b> Criminal Regulation, Crime, Theft with Violence.	<i>This study aims to analyze and understand the criminal arrangements in the crime of theft with violence according to the Criminal Code (KUHP) and its application in verdict number 728 K/Pid/2019. The approach used in this research is a normative legal approach, which involves the study of legislation, theories, and related concepts to obtain relevant data from the community. This research uses primary and secondary legal data as sources of legal materials. The results show that the crime of theft with violence is regulated in Article 365 of the Criminal Code with various levels of punishment based on the conditions that accompany the act, ranging from a nine-year prison sentence to the death penalty or life imprisonment. For example, the punishment will be more severe if the act is committed at night, by more than one person, by dismantling, or if it results in severe injury or death. In the case study of decision number 728 K/Pid/2019, the judge issued a verdict indicating that the defendant was found guilty of committing the crime of theft with violence. The verdict is considered to have fulfilled the applicable provisions formally and materially in the legislation. The implications of this research show the importance of a deep understanding of the regulation and application of the law on the crime of theft with violence to ensure justice and consistency in law enforcement. This research also emphasizes the need to increase legal awareness among the public regarding the severe sanctions faced by perpetrators of violent theft.</i>

### INTRODUCTION

Law has a fundamental role in regulating every human action and behavior in Indonesia. In the 1945 Constitution Article 1 paragraph (3) states that the state of Indonesia is a state of law, which means that all arrangements in the life of the nation and state are based on applicable laws (Usman, 2015). Regulations in laws function as legal rules that aim to regulate humans to create security and order in human interactions (Rosana, 2014). In other words, law is a system created by humans to limit behavior so that human behavior can be controlled; Law is the most critical aspect in the implementation of the entire series of institutional authority that ensures legal certainty in society (Sakir et al., 2023).

Along with the development of technology in the modern era that is increasingly advanced, human needs are also felt to be increasing, followed by the development of society. Technology has brought significant changes in various aspects of life, but it has also led to an increase in complexity in social issues, including crime. Crime or criminality occurs in various forms and patterns, both in terms of quantity and quality, which are detrimental to the implementation of existing development (Rusli et al., 2023).

One form of crime or criminal act that often occurs in Indonesia is theft with violence. Violent theft is a crime committed by using force in the act of theft, which aims to prepare or facilitate the theft, or if caught, provide an opportunity for the perpetrator to escape so that the stolen goods remain in the hands of the perpetrator (Purnomo & Samuji, 2023).

According to Harianto et al. (2022), "Theft is an act committed by a person or group of people that causes harm to others, and the act is an unlawful act." Theft often occurs almost throughout Indonesia, and the crime of

theft is increasing from time to time. This shows that law enforcement against theft crimes has not provided a significant deterrent effect for theft perpetrators, especially theft with violence (Rahmadani & Indawati, 2023).

This condition is the background for the author to conduct a research entitled "Juridical Review of Criminal Regulations in the Crime of Theft with Violence in the Perspective of the Criminal Code." This study aims to analyze the effectiveness of existing criminal regulations and find solutions to improve law enforcement that can provide a deterrent effect for perpetrators of violent theft.

## **METHOD**

This research uses a normative legal approach. This approach focuses on the study of applicable legal norms, such as laws and regulations, legal theories, and legal concepts that are relevant to the problem being studied. This approach aims to understand how laws should apply and be applied in society. In the context of this study, a normative legal approach is used to analyze criminal regulations related to the crime of theft with violence in the perspective of the Criminal Code (Criminal Code).

### **This study uses primary and secondary legal data**

1. Primary Legal Data: It is the main source of law consisting of applicable laws and regulations, such as the Criminal Code, Laws, and other regulations related to the crime of theft with violence. This primary legal data is the main basis for analyzing the problems being researched.
2. Secondary Legal Data: Includes legal literature, articles, journals, books, and other documents that support and provide additional information regarding relevant legal theories and concepts. This data is used to enrich the analysis and provide a more comprehensive perspective in understanding the legal issues being researched.

### **Data Collection Techniques**

#### **Study book**

Data collection is carried out through literature studies, namely by examining various primary and secondary legal sources that are relevant to the research problem. A literature study involves the following steps:

1. Collection of Laws and Regulations: Identify and collect laws and regulations related to the crime of theft with violence, including the Criminal Code and other regulations.
2. Legal Literature Collection: Searching and gathering legal literature, such as books, journals, articles, and other documents that support theoretical and conceptual analysis of research topics.
3. Legal Document Analysis: Review relevant legal documents to understand how they are interpreted and applied in practice.

### **Data Analysis Techniques**

#### **Qualitative Analysis**

The data that has been collected is analyzed using qualitative analysis techniques. The analysis steps include:

1. Data Categorization: Grouping data based on themes or categories relevant to the research problem, such as legal regulations, legal theories, and legal concepts related to the crime of theft with violence.
2. Data Interpretation: Analyzing data by interpreting the content of laws and regulations and legal literature that has been collected. This interpretation is carried out to understand the meaning and legal implications of these regulations in the context of the crime of theft with violence.
3. Evaluation of Legal Theories and Concepts: Evaluating relevant legal theories and concepts to understand how they can be applied in the analysis of the problem being studied. This involves a critical assessment of existing theories and concepts and looking for conformities between theories, concepts, and legal practice.

This conclusion includes an assessment of the effectiveness of existing criminal regulations in dealing with the crime of theft with violence as well as recommendations for improving law enforcement. By using normative legal research methods, data collection techniques through literature studies, and qualitative data analysis techniques, this research is expected to provide a comprehensive understanding of criminal regulations in the crime of theft with violence and contribute to the improvement of law enforcement in Indonesia.

## RESULTS AND DISCUSSION

### Criminal Regulation in the Crime of Theft with Violence in the Perspective of the Criminal Code

#### Definition of Crime

A criminal offence in the Criminal Code (KUHP) is defined as *Strafbaarfeit*. The literature on criminal law often uses the term offence, while the legislator formulates a law using the terms criminal event, criminal act, or criminal offence (Bagaskara, 2023).

Crime is a term that contains a basic understanding in legal science, as a term formed with awareness of giving specific characteristics to criminal law events (DM et al., 2022). Criminal acts have an abstract understanding of concrete events in the field of criminal law, so they must be given a scientific meaning and clearly determined to be able to separate them from the terms used daily in the community's life.

- a. Foreign experts in criminal law use the terms criminal offence, criminal act, or criminal event;
- b. *Strafbaar feit* is a criminal event, while *Strafbare handling* is translated as a Criminal Act by German Criminal Law scholars, and the term Criminal act is translated as a Criminal Act.

As expressed by (Prodjodikoro, 2011) in his book *Principles of Criminal Law in Indonesia* provides a definition of "criminal offence" or in Dutch *strafbaar feit*, which is an official term in the *Strafwetboek* or the Criminal Code, which is now in force in Indonesia. There is a term in a foreign language, namely *delict*. A crime means an act whose perpetrator is subject to criminal law. And this perpetrator can be said to be the "subject" of the criminal offence.

According to (Chazawi, 2005) According to Chazawi, the term criminal offence comes from the term known in Dutch criminal law, namely "*strafbaar feit*", but there is no explanation of what is meant by the *strafbaarfeit*. Therefore, legal experts have tried to provide the meaning and content of the term. Unfortunately, until now, there has been no diversity of opinion.

Criminal offence according to Opinion (Ilyas, 2012), "A crime is an act that is not by the rule of law or violates a rule of law or an act prohibited by the rule of law accompanied by sanctions where the rule is directed at the act."

The conclusion is that a criminal offence is an act that violates the rule of law accompanied by sanctions for the perpetrator of the criminal act.

#### Definition of violence

Violence is any act or action that uses bodily force that is not light (Hartono et al., 2021). Body power is one of physical strength. The use of physical force as violence is manifested in hitting with hands only, hitting with weapons, smothering, binding, Manahan and so on. Article 89 of the Criminal Code explains that acts that cause people to faint or become unconscious from acts that cause people to no longer be helpless are included in acts of violence (Sandiyantanti, 2015).

Threat of violence is any act of conduct that is such as to cause fear or anxiety to the victim or the person threatened. Theft preceded by violence or threats of violence is a criminal act preceded by an act of violence or threats of violence before the theft is committed. Meanwhile, theft accompanied by violence or threats of violence is carried out simultaneously with theft (Prakoso, 2020). Usually, violence or threats of violence in the case of theft are used to make it easier to carry out the criminal act of theft.

The rule of law relating to the crime of theft with violence is regulated in Article 365 of the Criminal Code (Kitab et al.), while Article 365 of the Criminal Code states as follows:

Paragraph (1): By a maximum imprisonment of nine years shall be punished theft preceded, accompanied or followed by violence or threat of violence against persons, with intent to prepare or facilitate the theft or, if caught red-handed, to allow himself or a co-conspirator to escape or to keep the stolen property in his possession, Articles 89 and 335 of the Penal Code shall apply.

Paragraph (2): Imprisonment for a term not exceeding twelve years shall be imposed:

1. If the offence is committed at night in an enclosed house or yard where there is a house, on a public road, or in a moving train or tram, Articles 98 and 363 of the Penal Code apply.
2. If the act is committed by two or more persons together, Article 363, paragraph 4 of the Criminal Code applies.
3. If the offender entered the place of the crime by breaking or climbing in or by using false keys or a false costume, Articles 99, 100, and 364 of the Penal Code apply.
4. If the act causes serious injury to a person, Article 90 of the Criminal Code applies,

Paragraph (3) A maximum imprisonment of fifteen years shall be imposed if someone dies on account of said act. Articles 35, 89 and 366 of the Penal Code shall apply. Paragraph (4) The death penalty or life imprisonment or a

maximum imprisonment of twenty years shall be imposed if the act results in the severe injury or death of any person, is committed by two or more persons jointly and is accompanied by one of the circumstances mentioned in Points No. 1 and 3. Articles 339, 366 and 486 of the Penal Code shall apply.

**Legal Application of the Crime of Theft with Violence (Study of Decision Number 728 K/Pid/2019)**

Reading the Decision of the Lubuk Basung District Court Number 9/Pid.B/2019/PN Lbb dated March 28, 2019, which reads in full as follows:

1. Stating that the Defendants, namely Defendant I LAMHOT SITUMORANG Pgl. LAMHOT, and Defendant II LIBER JADIMAN SIBARANI Pgl. LIBER mentioned above, have each been legally and convincingly proven guilty of the crime of Intentionally Providing Opportunities and Facilities for Theft Accompanied by Violence, as in the Primair Indictment;
2. Sentenced the Defendants above to 9 (nine) years imprisonment each;
3. Determining that the period of arrest and detention served by the Defendants shall be deducted in full from the imprisonment imposed;
4. Determine that the Defendants remain in custody;
5. Establishing evidence:
  - a. 1 (one) file of certificate of compensation for oil palm plantation on behalf of Rosida Br. Hutajulu;
  - b. 1 (one) black Ford Everest car, police number BK 1782 YI engine number WLAT856236, frame number MNBLS4D107W206348, along with ignition key;
  - c. 1 (one) BPKB of a black Ford Everest car, police number BK-1782-YI, engine number WLAT856236, frame number MNBLS4D107W206348 in the name of Oskar Sitorus, Confiscated for the benefit of the State;
  - d. 1 (one) letter of request for compensation/claim for Cash in Transit insurance dated June 4, 2018;
  - e. 1 (one) sheet of road letter declaration of money transfer realization;
  - f. 1 (one) sheet of chronological report;
  - g. 6 (six) large cash mutation sheets;
  - h. 2 (two) sheets of cash request list;
  - i. 1 (one) letter of appointment;
  - j. 1 (one) CIT (Cash in Transit) master policy bundle;

Returned to Bank Syariah Mandiri Aur Kuning Bukittinggi Branch, through witness Edwin Munandar Pgl. Edwin;

- a. 3 (three) sheets of cooperative debt payment letter; and
  - b. 1 (one) letter of the statement of land surrender signed on stamp duty remains attached to the case file;
6. Charged the Defendants each to pay court costs in the amount of Rp3,000.00 (three thousand rupiah);  
Reading the Decision of the Padang High Court, Number 60/PID/2019/PT PDG, dated May 16, 2019, which reads in full as follows:

1. Receive the request for appeal from the Public Prosecutor;
2. Affirm the Decision of the Lubuk Basung District Court Number 9/Pid.B/ 2019/PN Lbb, dated March 28, 2019, appealed against;
3. Determine that the Defendants remain in custody;
4. Charged the Defendants to pay court costs in both levels of court, which in the appeal level is set at Rp5,000.00 (five thousand rupiah) each;

Deed of Cassation Application Number 9/Akta Pid.B/2019/ PN Lbb made by the Registrar at the Lubuk Basung District Court, which explains that on May 27, 2019, the Public Prosecutor at the Agam District Attorney's Office filed a cassation application against the Decision of the Padang High Court. Cassation Memorandum dated May 29, 2019, from the Public Prosecutor at the Agam State Attorney's Office as the Cassation Petitioner, which was received at the Lubuk Basung District Court Registrar on May 29, 2019;

Considering that the Decision of the Padang High Court was notified to the Public Prosecutor at the Agam District Attorney's Office on May 23, 2019, the Public Prosecutor filed a cassation request on May 27, 2019, and the cassation memory was received at the Lubuk Basung District Court Registrar on May 29, 2019. Thus, the cassation petition, along with its reasons, have been filed within the period and in a manner according to the law. Therefore, the cassation petition of the Public Prosecutor is formally acceptable. The reasons for the cassation submitted by the Cassation Petitioner/Public Prosecutor, the Supreme Court is of the following opinion:

- a. The reason for the Public Prosecutor's cassation cannot be justified because the Decision of the Judex fact / High Court, which upheld the Decision of the Judex fact / District Court, which stated that the Defendant was

legally and convincingly proven guilty of committing the crime, of "Deliberately providing opportunities and means of theft accompanied by violence", was not wrong and had applied the rule of law properly and the provisions of the law had carried out the method of trial;

- b. That the Decision of the *judex fact* has also considered the juridically relevant legal facts correctly and correctly according to the legal facts revealed before the court so that the material actions of the Defendant have fulfilled all the elements of the criminal offence of Article 365 Paragraph (2) 2nd of the Criminal Code in conjunction with Article 56 2nd of the Criminal Code in the Primair indictment;
- c. That the Decision of the *judex fact*, which sentenced the Defendant to imprisonment for 9 (nine) years, did not exceed its authority and had adequately considered all the circumstances surrounding the Defendant's actions, both aggravating and mitigating circumstances and the nature of the actions committed by the Defendant;
- d. In addition, the reason for the Public Prosecutor's cassation relates to the assessment of the results of evidence, which is an appreciation of a fact. This cannot be considered in the examination at the cassation level because the examination at the cassation level only concerns whether a rule of law has not been applied whether a rule of law has been misapplied, or whether the manner of trial has not been carried out by the provisions of the law, and whether the Court has exceeded the limits of its authority, as referred to in Article 253 Paragraph (1) of Law Number 8 of 1981 KUHAP;
- e. However, the *Judex facts* decision is incorrect regarding the status of the evidence as stated in the verdict because the evidence in the crime should have been returned to the victim, namely Bank Syariah Mandiri Bukittinggi Branch. Considering that based on these considerations and the fact that the *judex facts* decision, in this case, is not contrary to the law and the law, the cassation petition from the Cassation Petitioner/Public Prosecutor is declared rejected with corrections,

Considering that therefore, the Decision of the Padang High Court Number 60/PID/2019/PT PDG dated May 16, 2019, which upheld the Decision of the Lubuk Basung District Court Number 9/Pid.B/2019/PN Lbb dated March 28, 2019, must be corrected regarding the status of evidence;

Considering that because the Defendant is convicted, the Defendant is burdened to pay the court costs at the cassation level, Considering Article 365 Paragraph (2) 2nd of the Criminal Code in conjunction with Article 56 2nd of the Criminal Code, Law Number 8 of 1981 concerning Criminal Procedure, Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the Second Amendment by Law Number 3 of 2009 and other relevant laws and regulations;

#### M E N G A D I L I

1. Reject the cassation petition from the Cassation Petitioner/Public Prosecutor at the Agam District Attorney's Office;
2. Correct the Decision of the Padang High Court Number 60/PID/2019/PT PDG dated May 16, 2019, which upheld the Decision of the Lubuk Basung District Court Number 9/Pid.B/2019/PN Lbb dated March 28, 2019, regarding the status of evidence, as follows:
  - a. 1 (one) file of certificate of compensation for oil palm plantation on behalf of ROSIDA Br. HUTAJULU;
  - b. 1 (one) black Ford Everest car with police number BK-1782-YI with engine number WLAT856236 and frame number MNBLS4D107W206348 along with ignition key;
  - c. 1 (one) BPKB of a black Ford Everest car with police number BK-1782-YI with engine number WLAT856236 and frame number MNBLS4D107W206348 in the name of OSKAR SITORUS;
  - d. 1 (one) letter of request for compensation/claim for Cash in Transit insurance dated June 4, 2018;
  - e. 1 (one) sheet of road letter declaration of money transfer realization;
  - f. 1 (one) sheet of chronological report;
  - g. 6 (six) large cash mutation sheets;
  - h. 2 (two) sheets of cash request list;
  - i. 1 (one) letter of appointment;
  - j. 1 (one) CIT (Cash in Transit) master policy bundle;
  - k. Returned to Bank Syariah Mandiri Bukittinggi Branch through witness Edwin Munandar;
  - l. 3 (three) sheets of cooperative debt payment letter;
  - m. 1 (one) statement letter of land surrender signed on stamp duty; remains attached to the case file;
3. Charges the Defendants to pay court costs at the cassation level in the amount of Rp2,500.00 (two thousand five hundred rupiahs) each;

So the conclusion is that the defendant was found guilty, namely, "Intentionally providing opportunities and means of theft accompanied by violence", so that the judge's decision was correct, namely that he had applied the rule of law correctly. The provisions of the applicable legislation carried out the trial method. Thus, the material acts of the defendant have been declared to have fulfilled all the elements of the criminal offence in Article 365 Paragraph (2) of the Criminal Code in conjunction with Article 56-2 of the Criminal Code.

## CONCLUSION

Regulation in the Crime of Theft with Violence in the Perspective of the Criminal Code, regulated in Article 365 of the Criminal Code, Article 365 of the Criminal Code Paragraph (1): By a maximum imprisonment of nine years, shall be punished theft preceded, accompanied or followed by violence or threat of violence against persons, with intent to prepare or facilitate the theft or, if caught red-handed, to give himself or a co-conspirator an opportunity to escape or to keep the stolen property in his possession, to which Articles 89 and 335 of the Penal Code shall apply. Paragraph (2): A maximum imprisonment of twelve years shall be imposed: 1. If the offence is committed at night in an enclosed house or yard where there is a house or on a public road or in a train or tram in motion, Articles 98 and 363 of the Penal Code shall apply. 2. If the act is committed by two or more persons together, Article 363 paragraph 4 of the Penal Code shall apply. 3. If the offender enters the place of the crime using breaking or climbing in, or using false keys or a false costume, Articles 99, 100 and 364 of the Penal Code shall apply. 4. If the act results in a severe injury to a person, Article 90 of the Penal Code shall apply. (3) A maximum imprisonment of fifteen years shall be imposed if as a result of the act a person dies, Articles 35, 89 and 366 of the Penal Code shall apply. Paragraph (4) The death penalty or life imprisonment or maximum imprisonment of twenty years shall be imposed if the act results in the severe injury or death of any person, is committed by two or more persons jointly and is accompanied by one of the circumstances mentioned in paragraphs 1 and 3. Articles 339, 366 and 486 of the Penal Code shall apply. The application of the law on the crime of theft with violence (Study of Decision Number 728 K / Pid / 20aa19). The decision given by the judge shows the defendant's guilty position of committing the crime of theft with violence. The Decision made by the judge from a formal and material perspective has been fulfilled. It is by the applicable provisions in the Legislation.

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