

## **CRIMINAL PUNISHMENT AS AN EFFORT TO OVERCOME THE CRIMINAL ACT OF RECEIVING GOODS FROM THE PROCEEDS OF THE CRIME OF THEFT OF MOTOR VEHICLES**

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### **Abstract**

The most common criminal law in society is criminal acts against property (material crimes), such as theft, extortion, embezzlement, fraud, vandalism, and receiving. The existence of a receiver as a receiver for theft crimes makes it easy for the perpetrator to gain profit, so that the perpetrator of theft does not have to sell the stolen goods to consumers himself but can channel them through a receiver who pretends to be a trader. The problems that arise are both violations of social norms and legal regulations to create a phenomenon that is contrary to moral and ethical rules and legal regulations. In Article 480 of the Criminal Code concerning receiving goods, if understood from its elements, namely "required to know or should suspect that the goods received are the proceeds of crime" it is very confusing and difficult to distinguish if the goods received from the proceeds of crime were obtained in good ways and did not arouse any suspicion, such as buying and selling at a price that is generally appropriate, carried out in crowded and bright places and other ways that should not be suspected as crimes. (2) Recipients of goods resulting from crime who truly do not know and do not suspect that the goods they receive are the proceeds of crime for acceptable reasons as stated above can be considered consumers who must receive legal protection as regulated in Article 4 of Law Number 8 of 1999 concerning Consumer Protection.

**Keywords :** Criminal Act, Receiving, Motor Vehicles

**INTRODUCTION**

The Republic of Indonesia is a state based on law (*rechtstaat*) not on power (*machtstaat*), therefore, to realize the principle of a state based on law, the law itself must be used in everyday life. One of the functions of law is as a tool of *social control* which is equipped with various sanctions as a means of coercion so that its rules are obeyed, because in this way the existence of the State can only be realized when the law is applied consistently.

The consistent application of law does not only include obedience and compliance with regulations (positive law) but also includes all norms and customs that live and develop in society. Consistency in law enforcement is a very important discourse to be implemented, this is due to the condition of state life that is experiencing a decline in every aspect, both in the political, economic, or socio-cultural fields and the enforcement of the supremacy of law is one of the most appropriate solutions to improve the state of the country.

In enforcing the supremacy of law, it begins with making improvements, both in terms of material (substance) and formal aspects of legislation, as well as improvements and improvements in the quality of human resources of law enforcement officers. From the legislative side, the quality of a statutory regulation must be considered more carefully, where the material substance of a statute must be synchronous and relevant both in relation to other statutory regulations and the values that exist in society. The Republic of Indonesia is a state of law, which means that every citizen must obey the law and every action of the state apparatus must be in accordance with and based on the law. On that basis, law becomes a very fundamental thing and is the basis that directs Indonesia's future views. One of the laws that plays an important role in regulating interactions between humans is criminal law, namely: "Criminal law is all the commands and prohibitions made by the State and which are threatened with a penalty for anyone who does not obey it, all the rules for holding (imposing) and carrying out the said penalty."

Criminal law as public law aims to regulate social interaction in accordance with the legal regulations themselves. In relation to public regulations, especially regarding prohibition norms that have negative sanctions, criminal law takes a position as an effective solution to overcome the above problems. With the existence of criminal law, it is hoped that it can provide a sense of security in society, both to individuals and groups in carrying out their daily activities.

Recently, there have been many complaints from the public about the light sentences imposed on perpetrators of crimes, or the very striking difference between the charges and the sentences imposed. Such dissatisfaction is understandable, considering the level of crime has increased from year to year. One of them is motor vehicle theft. Crime is a human problem that is a social reality that cannot be separated from space and time, sometimes the causes and effects are not well understood. Crime can occur anywhere and anytime in community life, be it in a village or even in a big city like Makassar. Society is increasingly disturbed by increasingly widespread crime, this adds to the homework that must be completed by the government. The crimes that are currently rampant are robbery, receiving, rape, and fights between residents.

Among the forms of crime that often occur today, receiving, especially against motor vehicles, is one of the forms of crime that often occurs, in addition to other problems. For that reason, the author tries to examine more deeply the problem of receiving motor vehicles.

The crime of receiving stolen goods that often occurs today is the crime of receiving stolen motor vehicles obtained from theft. In the crime of receiving stolen goods, the perpetrator already knows or should suspect that the goods or objects are the result of a crime, for example, a motorbike that is sold is not equipped with valid documents such as a Motor Vehicle Registration Certificate (STNK) and Motor Vehicle Ownership Certificate (BPKB) so that the buyer should suspect that the motorbike comes from a crime. The buyer of a motorbike that is the result of receiving stolen goods is called a receiver because the buyer knows that the goods purchased are the result of receiving stolen goods. The crime of

receiving stolen goods is regulated in the Criminal Code (KHUP), contained in Article 480 of the Criminal Code, namely:

Threatened with a maximum prison sentence of four years or a maximum fine of nine hundred rupiah:

- a. Anyone who buys, rents, exchanges, accepts a pawn, accepts a gift, or to make a profit, sells, rents, exchanges, pawns, transports, keeps or hides an object, which is known or appropriate. It must be presumed that it was obtained from a crime of appropriation.
- b. Anyone who makes a profit from the proceeds of something, which he knows or should suspect is obtained from a crime.

With such legal arrangements, it can be known what actions are against the law and it can also be known why someone commits an unlawful act, so that it can cause a social reaction in society. Social reaction can also be said as an effort to achieve social order, this form of social reaction will be increasingly apparent when problems and threats of crime increase legally and the quality of social control through this law will confront individuals or members of society with alternative choices, namely adjustment or deviation, while in the form of deviation or the most serious violation is a violation of criminal law called a crime.

The low sentences imposed are one of the factors that give rise to public distrust in law enforcement, public distrust that arises from a sense of injustice and because of the lack of firmness of the authorities or the legal system so that perpetrators of criminal acts of receiving, especially motorized vehicles, still frequently occur.

In connection with the description above, the author conducted a case study of the West Jakarta District Court Decision Number 197/Pid.B/2024/PN Jkt.Brt., with the Defendant Hermansyah alias Herman bin Ujajang Permana. The Panel of Judges therefore sentenced the Defendant Hermansyah alias Herman bin Ujajang Permana to 2 (two) years and 6 (six) months in prison. The Defendant Hermansyah alias Herman bin Ujajang Permana has violated Article 480 paragraph (1) Jo. Article 64 paragraph (1) of the Criminal Code, Law Number 8 of 1981 concerning Criminal Procedure Law, and other provisions related to this case.

Meanwhile, the comparison is the case of the West Jakarta District Court Decision Number 285/Pid.B/2024/PN Jkt.Brt., with the Defendant Sandi Akbar alias Adul bin Alm. Fahru, who has been proven legally and convincingly guilty of committing the crime of "Facing". The Panel of Judges sentenced the Defendant Sandi Akbar alias Adul bin Alm. Fahru to 1 (one) year and 6 (six) months in prison. Based on the description above, the author conducted a deeper study on how the application of criminal law to the crime of receiving goods and what form of legal protection is provided for victims of receiving goods.

## **RESEARCH METHODS**

Namely empirical data obtained directly in the field or research location through data and information collection techniques from the West Jakarta District Court, which handled the case. This is the data that we search for through library sources, whether from books, magazines, journals, or electronic media and mass media that we consider relevant to the problem being discussed.

## **RESULTS AND DISCUSSION**

### **Process of Handling Criminal Acts of Receiving Goods Proceeds of Crime**

The existence of a receiver as a container for the crime of theft makes it easy for the perpetrator to gain profit, so that the perpetrator of theft does not have to sell the stolen goods to consumers himself but can distribute them through a receiver who pretends to be a trader. The crime of receiving goods is regulated in Article 480 of the Criminal Code (hereinafter abbreviated as the Criminal Code), Articles 481 and 482 of the Criminal Code. The crime of receiving money is an act that is prohibited by law, because receiving money is obtained from a crime, it can be said to help or facilitate the crime and the perpetrator can make it difficult to investigate the crime committed.

In trying a defendant who commits a crime of receiving stolen goods, it must first be proven whether the defendant actually committed the crime because the goods of the crime were obtained from the proceeds of the crime, and the receiver here becomes the second perpetrator in terms of its implementation, so it must first be proven whether the person is capable of being held responsible in other words, there is an element of error and intent.

R. Soesilo in his book entitled "Criminal Code (KUHP) and its Comments" completely article by article (referring to the Explanation of Article 480 of the Criminal Code) explains that what is called "conspiracy" or commonly called "tadah" in the foreign language "heling" is actually only an act mentioned in Article 480 paragraph (1) of the Criminal Code. The important element of this article is: "the defendant must know or should be able to suspect" that the goods are from what crime (theft, embezzlement, fraud, extortion or others), but it is sufficient if he should be able to suspect (guess, suspect) that the goods are "dark" and not "clear" goods. To prove this element is indeed difficult, but in practice it can usually be seen from the condition or way the goods were purchased, for example bought at a price below the price, bought at night in hiding which according to the standards in that place is indeed suspicious or other methods that are generally not usually done. The explanation regarding appropriation expressed by R. Soesilo in the Criminal Code (KUHP) is that what is called "abetting" or also commonly called "allocation" is actually just an act mentioned in Article 480 paragraph (1) of the Criminal Code because as an abettor, anyone who buys, rents, accepts exchange, accepts a pawn, accepts it as a gift, or because he wants to make a profit, sells, exchanges, pawns, carries, keeps or hides an item, which he knows or deserves. allegedly obtained by crime.

From the Explanation of Article 480 of the Criminal Code, it can be seen that the crime of receiving stolen goods regulated in Article 480 of the Criminal Code is a formal crime, so whether or not another party is harmed is not a determining factor. This is reaffirmed in the Supreme Court Jurisprudence No.: 79 K/Kr/1958 dated July 9, 1958 and the Supreme Court Jurisprudence No.: 126 K/Kr/1969 dated November 29, 1972 which states that "There is no regulation that requires first to prosecute and punish the person who stole before prosecuting and punishing the person who received" and "Examination of the crime of receiving stolen goods does not need to wait for a decision regarding the crime that resulted in the goods received in question".

To implement the Supreme Court Jurisprudence No.: 79 K/Kr/1958 dated July 9, 1958 and the Supreme Court Jurisprudence No.: 126 K/Kr/1969 dated November 29, 1972, it is still mandatory to refer to the existing elements of the crime of receiving goods, namely that it must be assumed to know and reasonably suspect the goods are the proceeds of the crime. However, even though the elements of the article require knowledge that the goods obtained are the proceeds of crime, it is still difficult to distinguish. One example is if the goods are the proceeds of the crime and are sold in a public place, at the appropriate price (market price), and in other ways that do not arouse suspicion at all. In fact, the goods are the result of a crime.

The crime of receiving money in its principal form by the legislator has been regulated in Article 480 number 1 of the Criminal Code, consisting of:

- a. Subjective elements, consisting of:
  1. What he knows or waarvan hij weet
  2. Which he must be able to reasonably foresee or warn hij redelijkerwijs moet vermoeden
- b. Objective elements, which consist of:
  1. Kopen or buy
  2. Buren or rent
  3. Inruilen or exchange
  4. In pand nemen or pawn
  5. As a gift or as a gift received
  6. Uit winstbejag or driven by the intention to gain profit

7. Verkopen or sell
8. Rent or lease
9. In pand even or pawn
10. Carrying or transporting
11. Bewaren or deviate and
12. Verbergen or hiding

From the explanation of the crime of receiving money as regulated in Article 480 number 1 of the Criminal Code, it can be seen that the first subjective element of the crime of receiving money is the element of *waarvan hij weet* or what he knows. Because the crime of receiving money as regulated in Article 480 number 1 of the Criminal Code has two kinds of subjective elements, namely the element of intent or *dolus* element and the element of unintentional or *culpa* element or in other words because the crime of receiving money as regulated in Article 480 number 1 of the Criminal Code has subjective elements that are *pro parte dolus* and *pro parte culpa*, then in the indictment the public prosecutor can charge both subjective elements together against a defendant who is accused of having committed the crime of receiving money as referred to in Article 480 number 1 of the Criminal Code.

**Criminal penalties for the crime of receiving goods from the proceeds of crime in Decision Number 97/Pid.B/2024/PN Jkt.Brt., and Decision Number 285/Pid.B/2024/PN Jkt.Brt**

**a. Legal Analysis of Decision Number 97/Pid.B/2024/PN Jkt.Brt**

That in order to prove the Defendant's guilt, the Defendant's actions must fulfill the elements of the article charged against him.

That in order to shorten the description of this decision, everything that has happened in the trial as contained in the Minutes of the Trial is considered as one entity that cannot be separated from this decision. The defendant has been charged by the Public Prosecutor with a Single Charge, namely: Article 480 paragraph (1) Jo Article 64 paragraph (1) of the Criminal Code, the elements of which are as follows:

1. Elements of Whomever;
2. Elements of buying, renting, exchanging, accepting a pawn, receiving a gift, or to make a profit, selling, renting, exchanging, pawning, transporting, storing or hiding goods because you want to make a profit;
3. Elements: Something which is known or should be suspected to have been obtained from the crime of receiving stolen goods;

Next, the Panel of Judges will consider each element as follows;

**Ad.1. Elements Whoever:**

That what is meant by "Whoever" in criminal law is the subject of the perpetrator of a criminal act, in the sense of a person or anyone as the perpetrator of the criminal act and the person is a person who is able to be responsible and can be held accountable for his actions legally. In this case, the one who is submitted as "whoever" is the Defendant Hermansyah alias Herman Bin Ujajang Permana who based on the facts revealed in court from the statements of witnesses which in essence show that the Defendant is the perpetrator of the criminal act charged. When the defendant gave his own statement, it turned out that he could not avoid placing himself as "everyone", even the Defendant had admitted all his identities in the indictment and as the perpetrator of this criminal act, which if the defendant's self-assessment during the examination process at trial that the Defendant is physically and mentally healthy, which can be seen from his ability to respond to witness statements and is able to provide his statement in detail, so that with that condition it can be said that the Defendant is a legal subject who is able to be responsible and can be held accountable for his actions legally. Thus, the element of whoever has been proven and fulfilled legally and convincingly according to law.

**Ad.2. Elements of buying, renting, exchanging, receiving a pawn, receiving a gift, or to make a profit, selling, renting, exchanging, pawning, transporting, storing or hiding goods**

because you want to make a profit:

The elements in this article are alternative, which means that it is sufficient to prove just one sub-element without having to prove all the sub-elements, this is sufficient to fulfill the intent of the elements of the article. What is meant by Buying is obtaining something through exchange (payment) with money. Renting means using (borrowing, accommodating, etc.) by paying rent. Exchanging means replacing with another. Accepting Pawn means receiving a form of goods and giving money in return for a certain period of time. Receiving a Gift means receiving a gift (as a souvenir, award, respect). Making a Profit means taking advantage of an action. Selling means giving something to someone else to get payment or receiving money. Renting means lending something by charging rent. Exchanging means replacing it with something else. Pawning means giving an item, and then receiving money from the gift and it will be returned within a certain time. Carrying means lifting, carrying something. Storing means putting something in a safe place so that it is not damaged. Hiding means storing it so that it is not seen;

Initially, the Defendant was visited at his house by witnesses Ferizal alias Nying Nying Bin Sakim and witness Aripin Hutabarat alias Aripin who offered the Defendant a stolen motorbike at a cheap price, then the Defendant was willing to buy it at a cheap price. Considering, that the Defendant has purchased 14 (fourteen) motorbikes from witness Ferizal alias Nying Nying Bin Sakim and witness Aripin Hutabarat alias Aripin and paid for them in cash;

That the 14 (fourteen) motorbikes that the Defendant bought from witness Ferizal alias Nying Nying Bin Sakim and witness Aripin Hutabarat alias Aripin are as follows:

1. 1 (One) Honda Blade motorbike, 2009 year, blue-orange color, the defendant does not remember the number plate, on September 30, 2023.
2. 1 (One) Honda Scoopy motorbike, blue in color, the defendant does not remember the number plate, on September 2, 2023.
3. 1 (One) Yamaha Mio motorbike, blue, the defendant does not remember the number plate, on October 18, 2023.
4. 1 (One) Yamaha Mio motorbike, blue, the defendant does not remember the registration number, on December 5, 2023.
5. 1 (One) unit Honda Beat motorbike, pink, I don't remember the number plate, on October 15, 2023.
6. 1 (One) Honda Beat motorbike, black, I don't remember the number plate, on November 2, 2023.
7. 1 (One) Yamaha Mio motorbike, red, I don't remember the registration number, on October 18, 2023.
8. 1 (One) Honda Beat motorbike, white and blue, I don't remember the number plate, on October 15, 2023.
9. 1 (One) unit Honda Beat motorbike, white, I don't remember the number plate, on October 14, 2023.
10. 1 (One) Yamaha Mio motorbike, red, I don't remember the number plate, on November 10, 2023.
11. 1 (One) Honda Beat motorbike, black and red, I don't remember the number plate, on October 25, 2023.
12. 1 (One) unit Honda Beat motorbike, red, I don't remember the number plate, on December 23, 2023.
13. 1 (One) Honda Beat motorbike, blue and white, I don't remember the number plate, on November 10, 2023.
14. 1 (One) unit Honda Beat motorbike, black, I don't remember the number plate, on October 20, 2023.

After purchasing the 14 (fourteen) motorbikes, the Defendant removed and threw away the number plates of the stolen motorbikes and replaced them with other number plates.

Then the Defendant resold 14 (fourteen) stolen motorbikes on the Marketplace on the Defendant's Facebook account with the name @Tasya Rosmala, from which the Defendant then made a profit of around Rp. 300,000-, up to Rp. 500,000-, per unit .

Thus, the elements of buying, renting, exchanging, receiving a pawn, receiving a gift, or to make a profit, selling, renting, exchanging, pawning, transporting, storing or hiding goods because they want to make a profit have been proven and have been legally and convincingly fulfilled according to the law.

Ad.3. Elements Something that is known or should be suspected to have been obtained from the crime of receiving:

Considering, that according to Prof. Dr. Wirjono Prodjodikoro, SH, in his book entitled Principles of Criminal Law in Indonesia (p.123), citing the opinion of Hazewinkel Suringa, Hoge Raad Belanda who put forward two conditions for the existence of participation in committing a crime, namely: First, conscious cooperation between the co-perpetrators, which is a common will between them; Second, they must jointly carry out that will. Those who participate in committing a criminal act are those who jointly commit the criminal act; so they are those who intentionally participate in doing it. Memorie Van Toelichting provides information that there are people who participate in committing a criminal act if they directly participate in carrying out the act. However, it should not be interpreted that in terms of participating in doing it, each participant must carry out the acts of implementation. the main thing is that in carrying out the criminal act there is close cooperation between them, this is the essence of participating in the act. So to determine the existence of participation in the act, we must look at the actions of each participant in relation to and as a whole with the actions of the other participants.

The definition of *Dader* is those who make and they all have physical contributions. That for Doenpleger/person who orders to do/orderer/intellectual actor is a person who has the intention but uses the hands of others to commit a crime. However, the person who is ordered/physical perpetrator cannot be held accountable because he is a person who has a basis for forgiveness such as overmacht, namely a person who does not know that he is being tricked/lie to bring narcotics. That Mededader (participating) is a crime committed by several perpetrators with 3 conditions, namely first there is a unity of the same intention from the participants in the crime (Meeting Of Mind), second there is a physical contribution or cooperation. However, several decisions determine that people who do not meet the elements of the crime but have the same intention are also considered participants in the crime. Third there is a direct interest in the results of the crime;

The defendant had purchased 14 (fourteen) motorbikes from witness Ferizal alias Nying Nying Bin Sakim and witness Aripin Hutabarat alias Aripin and paid for them in cash.

That the 14 (fourteen) motorbikes that the Defendant bought from witness Ferizal alias Nying Nying Bin Sakim and witness Aripin Hutabarat alias Aripin are as follows:

1. 1 (One) Honda Blade motorbike, 2009 year, blue-orange color, the defendant does not remember the number plate, on September 30, 2023.
2. 1 (One) Honda Scoopy motorbike, blue in color, the defendant does not remember the number plate, on September 2, 2023.
3. 1 (One) Yamaha Mio motorbike, blue, the defendant does not remember the number plate, on October 18, 2023.
4. 1 (One) Yamaha Mio motorbike, blue, the defendant does not remember the registration number, on December 5, 2023.
5. 1 (One) unit Honda Beat motorbike, pink, I don't remember the number plate, on October 15, 2023.
6. 1 (One) Honda Beat motorbike, black, I don't remember the number plate, on November 2, 2023.
7. 1 (One) Yamaha Mio motorbike, red, I don't remember the registration number, on October 18, 2023.

8. 1 (One) Honda Beat motorbike, white and blue, I don't remember the number plate, on October 15, 2023.
9. 1 (One) unit Honda Beat motorbike, white, I don't remember the number plate, on October 14, 2023.
10. 1 (One) Yamaha Mio motorbike, red, I don't remember the number plate, on November 10, 2023.
11. 1 (One) Honda Beat motorbike, black and red, I don't remember the number plate, on October 25, 2023.
12. 1 (One) unit Honda Beat motorbike, red, I don't remember the number plate, on December 23, 2023.
13. 1 (One) Honda Beat motorbike, blue and white, I don't remember the number plate, on November 10, 2023.
14. 1 (One) unit Honda Beat motorbike, black, I don't remember the number plate, on October 20, 2023.

After purchasing the 14 (fourteen) motorbikes, the Defendant removed and threw away the number plates of the stolen motorbikes and replaced them with other number plates.

Thus, the element of something known or should be suspected to have been obtained from the crime of receiving stolen goods has been proven and has been fulfilled legally and convincingly according to the law.

Because all elements of the criminal act charged against the Defendant in the Single Indictment have been proven, the Panel of Judges is of the opinion and believes that the Defendant has been proven legally and convincingly guilty of committing the crime of "Continuous Receiving of Goods" as stated in the Single Indictment of the Public Prosecutor, namely violating Article 480 paragraph (1) in conjunction with Article 64 paragraph (1) of the Criminal Code;

Because the Defendant was proven to have committed a crime as charged by the Public Prosecutor and during the trial no excuse or justification was found as a reason to eliminate the Defendant's guilt, they can be held accountable for their actions and declared guilty so that based on Article 193 of Law Number 8 of 1981 concerning the Criminal Procedure Code, they must be sentenced to a criminal penalty.

That regarding the Defendant's oral defense, which in essence asked for a lighter sentence on the grounds that he felt guilty, regretted his actions and had never been convicted, according to the Panel of Judges this constituted a mitigating circumstance;

The doctrine of criminal law teaches that criminal law is the ultimum remedium, namely if other efforts fail, then criminal law in casu imprisonment is the last sanction if it is seen as the most ideal effort to reform the Defendant. That because the Defendant was arrested and/or detained, then according to the provisions of Article 22 paragraph (4) of Law Number 8 of 1981 concerning the Criminal Procedure Code, the period of arrest and/or detention that has been served by the Defendant will be deducted in full from the sentence imposed.

Before the Panel of Judges issues a verdict, based on the provisions of Article 197 paragraph (1) letter f of Law Number 8 of 1981 concerning the Criminal Procedure Code, the circumstances that can be used to determine the severity of the sentence to be imposed on the Defendant will be taken into consideration;  
circumstances :

- The defendant's actions disturbed other people , especially the community around the scene of the incident;
- The Defendant's actions have resulted in the victim witness suffering losses;

factors :

- The defendant was polite and openly admitted his actions in court, thus facilitating the smooth running of the trial;
- The defendant regretted and promised not to repeat his actions;



- The defendant has never been convicted;

After considering the aggravating and mitigating factors that are present in the Defendant and by paying attention to the intent and purpose of the punishment which is not merely a fine from the state, but is more aimed at preventive, repressive and educational efforts, which at the same time can be used as a concern for the Defendant and/or anyone else so that they do not commit the same act, then the verdict that is handed down later is expected to fulfill a sense of justice.

By considering the matters as the Panel of Judges has considered above, the Panel of Judges finally came to the conclusion that the punishment to be imposed on the Defendant as stated in this verdict is a criminal act that is appropriate, just and wise in accordance with a sense of justice.

That the intention of imposing a criminal penalty on the Defendant is basically not aimed at making the Defendant repeat the mistake he has made, but the essence of a punishment is more towards an effort to provide guidance so that the Defendant can correct his mistake and will not repeat his actions, so that it is hoped that the person concerned can become a better person in the future by paying attention to the Articles in the Criminal Procedure Code, and other relevant Laws and Regulations, especially Article 480 paragraph (1) in conjunction with Article 64 paragraph (1) of the Criminal Code, Law Number 8 of 1981, and other provisions related to this case, then the Decision of the Panel of Judges Number 197 / Pid.B / 2024 / PN.Jkt.Brt is appropriate and fair as in its ruling as follows:

1. Declare that the Defendant Hermansyah alias Herman Bin Ujajang Permana with the above identity has been proven legally and convincingly guilty of committing the crime of "Continuous Receiving of Goods";
2. Therefore, to sentence the Defendant to 2 (two) years and 6 (six) months in prison;
3. Determine that the period of arrest and/or detention that the Defendant has served is deducted in full from the sentence imposed;
4. Determine that the Defendant remains in detention;
5. Determine evidence in the form of:
  1. 1 (one) original BPKB and STNK for a Honda Blade motorcycle, Year 2009, Blue Orange Color, Police Number B-3571-NCX, Frame Number MH1JBB1119K136831, Engine Number JBB1E1136578, in the name of: THE TJIN LING/HALIM CANDRA.
  2. 1 (one) original BPKB and STNK for a Honda Scoopy motorcycle, Black, Year 2019, No. Pol. B 6020 VTA, Frame Number: MH1JM3129KK669007, Engine Number: JM31E2664071, In the name of: LUCIA PANGESTU.
  3. 1 (one) original BPKB for a Honda Beat motorbike, Red, Year 2015, Frame Number: MH1JFP218FK132559, Engine Number: JFP2E1132552, in the name of: WULANSARI.
  4. 1 (one) original BPKB and STNK for a Honda Beat motorcycle, Black (Pink), Year 2018, Frame Number: MH1JM116JJK788319, Engine Number: JM11E1772489, in the name of: KHOIRUNISA.
  5. 1 (one) original STNK and a Certificate from the savings and loan cooperative "KOSIPPRAL" that the BPKB is being used as collateral for a Yamaha 28D Mio motorbike, Black, Year 2011, Police Number: B 3971 BIB, Frame Number: MH328D40CBJ035115, Engine Number: 28D3035033, in the name of: DWI RIYANI.
  6. 1 (one) original BPKB and STNK for a Yamaha 28D Mio motorbike, Red, Year 2009, Police Number: B 6296 BXL, Frame Number: MH328D00B9J748076, Engine Number: 28D748755, in the name of: PUTRI JAYANTI.
6. Charge the Defendant with paying court costs of Rp. 5,000 ( five thousand rupiah).

**b. Decision Number 285 / Pid.B / 2024 / PN.Jkt.Brt**

The defendant was charged by the Public Prosecutor with the First Charge: Article 363 paragraph (1) 4th and 5th of the Criminal Code or Second Article 480 paragraph (1) of the Criminal Code;

The defendant was brought to trial by the Public Prosecutor with an alternative indictment, so the Panel of Judges was given the freedom to choose which alternative indictment was in accordance with the facts revealed at trial and was closest to the act allegedly committed by the defendant, and in this case the Panel of Judges was more inclined to choose the second alternative indictment, violating Article 480 paragraph (1) of the Criminal Code, the elements of which are as follows:

1. Elements of Whomever;
2. Elements: Intentionally accepting as pawn an object or goods which are known or should be suspected to have been obtained through crime;
3. Elements Because of wanting to gain profit;

Ad.1. Elements Whoever:

That what is meant by "every person" in criminal law is the subject of the perpetrator of a criminal act, in the sense of a person or anyone who is the perpetrator of a criminal act and that person is a person who is able to be responsible and can be held legally accountable for his actions. In this case, the person who is proposed as "every person" is the Defendant Sandi Akbar alias Adul Bin Alm. Fahru based on the facts revealed in the trial from the statements of witnesses which basically show that the Defendant is the perpetrator of the criminal act charged. When the defendant gave his own statement, it turned out that he could not avoid placing himself as "everyone", even the Defendant had admitted all his identities in the indictment and as the perpetrator of this criminal act, which if the defendant himself was assessed during the examination process in the trial that the Defendant was physically and mentally healthy, which was seen from his ability to respond to witness statements and was able to provide his statement in detail, so that with that condition it can be said that the Defendant is a legal subject who is able to be responsible and can be held accountable for his actions legally.

Thus, the element of whoever has been proven and fulfilled legally and convincingly according to the law

Ad.2. Elements Intentionally accepting pawn of objects or goods which are known or should be suspected to have been obtained from a crime:

The elements in this article are alternative, which means that it is sufficient to prove just one sub-element without having to prove all the sub-elements, this is sufficient to fulfill the intent of the elements of the article. What is meant by Buying is obtaining something through exchange (payment) with money. Renting means using (borrowing, accommodating, etc.) by paying rent. Exchanging means replacing with another. Accepting Pawn means receiving a form of goods and giving money in return for a certain period of time. Receiving a Gift means receiving a gift (as a souvenir, award, respect). Making a Profit means taking advantage of an action. Selling means giving something to someone else to get payment or receiving money. Renting means lending something by charging rent. Exchanging means replacing it with something else. Pawning means giving an item, and then receiving money from the gift and it will be returned within a certain time. Carrying means lifting, carrying something. Storing means putting something in a safe place so that it doesn't get damaged. Hiding means keeping it out of sight.

That sdr. DEDE together with Mr. AHMAD ATARAYANZA planned to take someone else's motorbike by inviting the defendant but the defendant just waited at the boarding house and then Mr. DEDE and Mr. AHMAD ATARAYANZA went riding a Honda Scoopy motorbike leaving the defendant to look for the motorbike to be taken.

After arriving at Jalan Inpres No. 36 RT. 004/ Rw. 005 Kelapa Dua Village, Kebon Jeruk District, West Jakarta at around 21.00 WIB, Mr. DEDE together with Mr. AHMAD ATARAYANZA saw a Honda Vario motorcycle with No. Pol. B-5489-KBS parked by witness SYAIPUL ANWAR in front of his neighbor's house with the handlebars locked

and the keyhole closed.

Next, Mr. DEDE and Mr. AHMAD ATARAYANZA took the Honda Vario motorcycle with No. Pol. B-5489-KBS using a fake key that they brought, after Mr. DEDE and Mr. AHMAD ATARAYANZA managed to take the Honda Vario motorcycle with No. Pol. B-5489-KBS and immediately contacted the defendant who was in the boarding house.

Furthermore, the Honda Vario motorcycle No. Pol. B-5489- KBS was handed over to the defendant who had replaced it using a fake key and the Honda Vario motorcycle No. The police B-5489-KBS was kept in the defendant's boarding house, after that Mr. DEDE and Mr. AHMAD ATARAYANZA immediately went again riding a Scoopy motorbike;

Then on Wednesday, February 14, 2024 at around 06.30 WIB, the defendant took the Honda Vario motorcycle with the police number B-5489-KBS alone to Cikalong, Cianjur Regency, West Java with the intent and purpose of selling it to someone the defendant knew named Mr. AJAT (DPO) located in the Cikalong area, Cianjur Regency, West Java.

On the way to the place of Mr. AJAT (DPO) as the buyer of the motorcycle that the defendant brought and the defendant planned to sell for Rp. 5,000,000,- (five million rupiah) and on the way the defendant's actions were discovered by a party from PT. Mandiri Cipta Sejahtera named ENCA MULYANA who monitored the motorcycle because it was equipped with GPS, it was seen that the motorcycle was on the border between Bogor and Cianjur;

That the defendant's intent and purpose together with Mr. DEDE and Mr. AHMAD ATARAYANZA (DPO) took the motorbike to sell it, and the proceeds from the sale would later be divided between three people, but the defendant was caught with the stolen motorbike.

Thus, the element of intentionally accepting a pledge of an object or goods which is known or should be suspected to have been obtained through crime has been proven and has been fulfilled legally and convincingly according to the law;

Ad.3. Elements of wanting to gain profit:

According to Prof. Dr. Wirjono Prodjodikoro, SH, in his book entitled Principles of Criminal Law in Indonesia (p.123), citing the opinion of Hazewinkel Suringa, Hoge Raad Belanda who put forward two conditions for the existence of participation in committing a crime, namely: First, conscious cooperation between the co-perpetrators, which is a common will between them; Second, they must jointly carry out that will. Those who participate in committing a crime are those who jointly commit the crime; so they are those who intentionally participate in doing it. Memorie Van Toelichting provides information that there are people who participate in committing a crime if they directly participate in carrying out the act. However, it should not be interpreted that in terms of participating in doing it, each participant must carry out the acts of implementation. the main thing is that in carrying out the criminal act there is close cooperation between them, this is the essence of participating in the act. So to determine the existence of participation in the act, we must look at the actions of each participant in relation to and as a whole with the actions of the other participants.

The definition of Dader is those who make and they all have physical contributions. That for Doenpleger/person who orders to do/orderer/intellectual actor is a person who has the intention but uses the hands of others to commit a crime. However, the person who is ordered/physical perpetrator cannot be held accountable because he is a person who has a basis for forgiveness such as overmacht, namely a person who does not know that he is being tricked/lie to bring narcotics. That Mededader (participating) is a crime committed by several perpetrators with 3 conditions, namely first there is a unity of the same intention from the participants in the crime (Meeting Of Mind), second there is a physical contribution or cooperation. However, several decisions determine that people who do not

meet the elements of the crime but have the same intention are also considered participants in the crime. Third there is a direct interest in the results of the crime.

Furthermore, the Honda Vario motorcycle No. Pol. B-5489-KBS was handed over to the defendant who had replaced it using a fake key and the Honda Vario motorcycle No. Pol. B-5489-KBS was stored in the defendant's boarding house, after that Mr. DEDE and Mr. AHMAD ATARAYANZA immediately went back to riding his Scoopy motorbike.

Then on Wednesday, February 14, 2024 at around 06.30 WIB, the defendant took the Honda Vario motorcycle with the police number B-5489-KBS alone to Cikalong, Cianjur Regency, West Java with the intent and purpose of selling it to someone the defendant knew named Mr. AJAT (DPO) located in the Cikalong area, Cianjur Regency, West Java.

On the way to the place of Mr. AJAT (DPO) as the buyer of the motorcycle that the defendant brought and the defendant planned to sell for Rp. 5,000,000,- (five million rupiah) and on the way the defendant's actions were discovered by a party from PT. Mandiri Cipta Sejahtera named ENCA MULYANA who monitored the motorcycle because it was equipped with GPS, it was seen that the motorcycle was on the border between Bogor and Cianjur.

That the defendant's intent and purpose together with Mr. DEDE and Mr. AHMAD ATARAYANZA (DPO) took the motorbike to sell it, and the proceeds from the sale would later be divided into three, but the defendant was caught with the stolen motorbike;

Thus, the element of wanting to gain profit has been proven and has been fulfilled legally and convincingly according to the law.

That because all the elements contained in the Second Alternative Indictment violating Article 480 paragraph (1) of the Criminal Code have been fulfilled, the Panel of Judges does not need to consider the First Alternative Indictment and the Defendant must be declared legally and convincingly proven guilty of committing the crime of "Receiving" in the Second Indictment of the Public Prosecutor; Considering, that because the Defendant was proven to have committed the crime as charged by the Public Prosecutor and during the trial no excuse or justification was found as a reason to eliminate the guilt of the Defendants, then they can be held accountable for their actions and declared guilty so that based on Article 193 of Law Number 8 of 1981 concerning the Criminal Procedure Code, they must be sentenced to a criminal sentence. The Defendant's oral defense, which in essence asked for a lighter sentence on the grounds of feeling guilty, regretting his actions and never having been convicted, according to the Panel of Judges, this is a mitigating circumstance for the Defendant.

The doctrine of criminal law teaches that criminal law is the ultimum remedium, namely if other efforts are unsuccessful, then criminal law in casu imprisonment is the final sanction if it is seen as the most ideal form of reform for the Defendant.

If the defendant is arrested and/or detained, then in accordance with the provisions of Article 22 paragraph (4) of Law Number 8 of 1981 concerning the Criminal Procedure Code, the period of arrest and/or detention that has been served by the defendant will be deducted in full from the sentence imposed.

That because the detention of the Defendant is still necessary and there are no reasons to release the Defendant from detention, therefore the Defendant must be determined to remain in detention.

That regarding the evidence submitted by the Public Prosecutor in the trial, namely 1 (one) sheet of STNK for a Honda Vario motorcycle, Black with No. Pol. B-5489-KBS along with a motorcycle key and 1 (one) unit of a Honda Vario motorcycle, Black with No. Pol. B-5489-KBS by considering the sense of justice, it must be returned to the parties of PT. Mandiri Cipta Sejahtera named ENCA MULYANA, and the evidence in the form of a fake motorcycle key is an item used to commit the crime of theft and because it is feared that it will be used again by the Defendant to commit a crime, it must be

confiscated to be destroyed.

Based on the above matters and guided by Article 193 of Law Number 8 of 1981 concerning the Criminal Procedure Code, he must be declared guilty and sentenced to a penalty in accordance with his actions, and based on Article 222 of Law Number 8 of 1981 concerning the Criminal Procedure Code, he must also be sentenced to pay court costs.

Before the Panel of Judges issues a verdict, based on the provisions of Article 197 paragraph (1) letter f of Law Number 8 of 1981 concerning the Criminal Procedure Code, the circumstances that can be used to determine the severity of the sentence to be imposed on the Defendant will be taken into consideration.

circumstances :

- The defendant's actions disturbed other people , especially the community around the scene of the incident;
- The Defendant's actions resulted in PT. Mandiri Cipta Sejahtera named ENCA MULYANA experiencing a loss in the form of 1 (one) Honda Vario motorcycle with license plate number B-5489-KBS with a price of Rp. 29,500,000 ,- (twenty nine million five hundred thousand rupiah).

factors :

- The defendant was polite and openly admitted his actions in court, thus facilitating the smooth running of the trial;
- The defendant regretted and promised not to repeat his actions;
- The defendant has never been convicted;

After the Panel of Judges has considered the aggravating and mitigating factors that are present in the Defendant and by paying attention to the intent and purpose of the punishment which is not merely a fine from the state, but is more aimed at preventive, repressive and educational efforts, which at the same time can be used as a concern for the Defendant and/or anyone else so that they do not commit the same act, then the verdict that is handed down later is expected to fulfill a sense of justice.

By considering the matters as the Panel of Judges has considered above, the Panel of Judges finally came to the conclusion that the punishment to be imposed on the Defendant as stated in this verdict is a criminal act that is appropriate, just and wise in accordance with a sense of justice.

That the intention of imposing a criminal penalty on the Defendant is basically not aimed at making the Defendant repeat the mistakes he has made, but the essence of a punishment is more towards an effort to provide guidance so that the Defendant can correct his mistakes and will not repeat his actions, so that it is hoped that the person concerned can become a better person in the future by paying attention to the Articles in the Criminal Procedure Code, and other relevant Laws and Regulations, especially Article 480 Ke-1 of the Criminal Code, Law Number 8 of 1981, and other provisions related to this case, then the panel of judges in Decision Number 285 / Pid.B / 2024 / PN.Jkt.Brt is appropriate and fair as in the following ruling:

1. Declare that the Defendant Sandi Akbar alias Adul Bin Alm. Fahru with the above identity, has been proven legally and convincingly guilty of committing the crime of "Receiving ";
2. Therefore, to sentence the Defendant to 1 (one) year and 6 (six) months in prison;
3. Determine that the period of arrest and/or detention that the Defendant has served is deducted in full from the sentence imposed;
4. Determine that the Defendant remains in detention;
5. Determine evidence in the form of:
  - 1 (one) sheet of STNK for a Honda Vario motorcycle, Black with Nopol. B-5489-KBS along with the motorcycle key.
  - 1 (one) unit of Honda Vario motorbike, Black with license plate number B-5489-KBS.

Returned to PT. Mandiri Cipta Sejahtera named ENCA MULYANA.

- Fake motorcycle key.

Seized for destruction.

6. Charge the Defendant with paying court costs of Rp. 5,000 ( five thousand rupiah).

## CONCLUSION

The process of overcoming the crime of receiving the proceeds of crime is a form of crime against people's assets that is very difficult to investigate in its actions is the crime of receiving. This form of crime actually often occurs in the surrounding community, so over time this crime is only seen as an ordinary or normal act and is not a form of crime. Receiving in this case is a violation based on Article 480 Ke-1 of the Criminal Code combined between the crime of intentionally (knowing) the goods come from a crime and the crime of negligence (culpa) marked by the words "should have known" the goods came from a crime. The element of intention or culpa is alternatively mentioned against other elements, namely that the goods were obtained by crime. It is not necessary for the perpetrator of receiving to know or should have been able to suspect what crime the goods were obtained by, namely whether by theft, or embezzlement, or extortion, or threats, or fraud.

The criminal penalty for the crime of receiving goods from the proceeds of crime in Decision Number 97/Pid.B/2024/PN Jkt.Br., and Decision Number 285/Pid.B/2024/PN Jkt.Br., is based on legal facts both through witness statements, defendant statements, and evidence. In addition, it is also based on legal considerations, namely the indictment and the prosecutor's demands. In this case, the prosecutor used a single charge, namely the Public Prosecutor charged Article 480 point 1 of the Criminal Code. The Public Prosecutor charged the defendant with imprisonment for 1 (one) year and 6 (six) months, but according to the author, the charge given by the Public Prosecutor was inappropriate because it was very disproportionate to the consequences of the crime he committed. The Judge's legal considerations in imposing the severity of the sentence against the perpetrator in the criminal case of receiving goods in the decision were appropriate because they were based on the explanation of Article 183 of the Criminal Procedure Code concerning the basis for deciding and Article 184 of the Criminal Procedure Code concerning evidence, as well as Article 197 paragraph (1) letter f concerning aggravating and mitigating factors for the defendant and the existence of legal considerations according to the Criminal Code, mitigating and aggravating factors and which were strengthened by the Judge's conviction. However, judges must also pay attention to the basis and purpose of the punishment itself, so that the criminal sanctions are beneficial to society so that violations of the law committed by society itself do not occur or are minimized. The imposition of a penalty on a person means that he is carrying out a punishment to be held accountable for his actions which are considered bad and endanger the public interest.

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