

CRIMINAL LIABILITY OF PERPETRATORS OF THE CRIME OF THEFT WITH VIOLENCE

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Abstract

The crime of theft with violence is a crime committed with the aim of facilitating theft, escaping when caught red-handed, or maintaining stolen goods. This crime is regulated in Article 365 paragraph (1) of the Criminal Code which states that theft preceded, accompanied, or followed by violence or threat of violence against persons, shall be punished by a maximum imprisonment of nine years. This research uses normative juridical methods to examine the regulation and criminal liability of perpetrators of theft with violence in Indonesia. Based on judicial practice, one example is found in Tangerang District Court Decision Number 1502/Pid.B/2021/PN.Tng, which imposed a one-year prison sentence on the defendant Andi Firdaus alias Ndi Bin Ardana, because he was legally proven to have committed theft with violence. This decision raises questions regarding the severity of the sentence imposed and the protection of victims. Therefore, it is necessary to reform the national criminal law by regulating more stringent and severe sanctions against perpetrators of theft with violence, either through the new Criminal Code, Government Regulation, or Minister of Law and Human Rights Regulation. In addition to imposing heavy penalties, the state is also expected to provide maximum protection for victims, including compensation for losses and physical and psychological recovery for victims of crime. Thus, the law can be enforced fairly and create order and security in society.

Keywords: Violence, Theft, Criminal Liability

INTRODUCTION

In every human behavior is largely regulated by binding legal rules. As stipulated in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3) which states that the Indonesian state is a state of law which implies that all order in the life of the nation, society, and state is based on applicable law. Law is a series of rules regarding the behavior of people as members of a society, while the only purpose of law is to establish safety, happiness and order in that society. In other words, the law is a series of rules containing orders or prohibitions that are compelling in nature in order to create a safe, orderly, peaceful and tranquil condition and there are sanctions for anyone who violates it (Soesilo, 1995). Along with the development of technology and increasingly advanced times and increasing human needs, it unwittingly follows the development of society itself. Criminality or crime in various forms and patterns, both in quantity and quality, which has a negative impact on the implementation of development (Ali, 2015).

In order to realize a just and prosperous society, the problem of crime needs serious service from all parties. So it takes good cooperation between the government and the community so that criminality that cannot be eliminated can be reduced in intensity as much as possible, one of which is violent theft committed by minors (Ilyas, 2012). In the Criminal Code the crime of theft is distinguished by various qualifications, including as regulated in Article 365 of the Criminal Code, namely theft with violence. Theft with violence is a crime against Violence committed in the theft has the aim of preparing or facilitating the theft or if caught there is an opportunity for the perpetrator to escape so that the stolen goods remain in the hands of the perpetrator (Harahap, 2007).

In the Criminal Code, in particular, the crime of theft is regulated in the Criminal Code Book II in articles 362 to 367 of the Criminal Code. Article 362 of the Criminal Code provides an understanding of theft, Article 363 of the Criminal Code regulates types of petty theft, Article 365 of the Criminal Code regulates theft with violence and Article 367 of the Criminal Code regulates theft in the family. One of them is theft accompanied by violence through threats of violence, for example hitting the victim by tying them up or holding them at gunpoint so that they are silent and do not move. Looking at the current state of society, it is very possible for someone to find shortcuts to commit theft, especially by using violence like this. The mass media and electronic media show that theft through violence is often motivated by economic reasons, so the community as a whole and law enforcement officials are obliged to overcome violent theft crimes as far as possible (Hartono, 2021). The crime of theft in law is categorized into ordinary theft, theft with aggravation, petty theft and theft with violence. Of the four types of theft, the most troubling form is theft with violence, because this form of theft not only causes loss of goods but can also cause injury, disability or even death to the victim (Hartono, 2021). The crime of theft with violence is a crime against property that is not common and occurs in many developing countries.

Furthermore, it is said that the crime of theft with violence and its contents is a criminal offense that accompanies development (Soekanto, 2008). Perpetrators of violent theft must be held accountable for their actions that have harmed others and it is fitting that law enforcement officials provide appropriate sanctions for perpetrators of violent theft so that the law is truly enforced and order is created in society. However, in addition, law enforcement officials must also pay attention to other considerations that are more comprehensive in imposing sanctions on perpetrators of violent theft so that the perpetrators of criminal acts are deterred and do not commit similar crimes.

Based on the description above, it can be formulated as follows: 1) How is the Regulation of Violent Theft Crime Based on Indonesian Legislation? 2) How is the Criminal Liability of Perpetrators of Violent Theft Based on Judicial Practice in Indonesia?

RESEARCH METHODS

The research methods that will be used are:

1. Form of Research

This research is included in the form of normative juridical research, namely research that emphasizes the use of written legal norms and is supported by the results of interviews with sources and informants.

2. Type of Research

This type of research is descriptive analytical, namely a study that describes the applicable laws and regulations and is associated with legal theories in practice implementation related to the problem, and describes / describes the facts in real terms.

3. Type of Data

The type of data is secondary data obtained directly through literature searches or from official documents. This is important for the author to sort out and then analyze the regulations / statutory provisions. This secondary data consists of three legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials supported by interviews from resource persons.

4. Types of Legal Materials

While the types of legal materials are:

- a. Primary Legal Materials
- b. Secondary Legal Materials
- c. Tertiary Legal Materials

RESULT AND DISCUSSION

A. Regulation of the Crime of Theft with Violence Based on Indonesian Legislation

The crime of theft with violence or aggravation (*gequalificeerde diefstal*) is regulated in Article 365 of the Criminal Code. According to P.A.F. Lamintan and Jisman Samosir (2010), what is meant by theft with violence or aggravation is theft that has elements of theft in its main form and because it is added with other elements, so that the threat of punishment becomes aggravated. Theft in aggravated form is a form of theft as formulated in Article 362 of the Criminal Code (principal form) plus other elements, both objective and subjective, which are aggravating to the theft, and therefore punishable by a heavier penalty than the theft in its principal form (Chazawi, 2007). *Violence* () contains two elements: firstly, a threat to use physical *violence* that has not yet been carried out, and secondly, the use of physical force that has already been carried out by the perpetrator. Both of these elements (threats and use of physical force) result in damage both physically and non-physically and the victims and perpetrators can be individuals (groups of people) or by themselves (individuals) (Mulyadi, 2001). Adami Chazawi (2002) said that violence (*geweld*) is an act committed by using great physical strength, which in this case is directed at a person resulting in the person being physically helpless. does not seem to expand the violence in question because violence should be directed at physical and non-physical, even though the law in Article 365 of the Criminal Code emphasizes violence and threats of violence which can be interpreted that violence is included in the category of having been committed while the threat of violence has not been carried out but is still a physical threat to someone.

Crimes categorized as violence are used to indicate acts that result in damage or injuries, physical and non-physical losses to a person or their property. For example, the crime of theft, although it is intended to take property, but because the perpetrator accompanies his actions by using violence, the theft is categorized as the crime of theft with violence. Violence in theft can cause physical injury and even death (Mulyadi, 2001). The crime of theft with violence or aggravation (*gequalificeerde diefstal*) is regulated in Articles 363 and 365 of the

Criminal Code, what is meant by theft with violence or aggravation is the act of theft which has the elements of theft in its main form, and because it is added with other elements, so that the punishment becomes aggravated (Lamintang & Samosir, 2010). According to Adami Chazawi (2007), theft in an aggravated form is a form of theft as formulated in Article 362 of the Criminal Code (principal form).

In Article 365 of the Criminal Code, the act of theft with violence also has an element of unlawful nature (*tercelanya*) of an act. Basically, human actions are of two nature, namely despicable (against the law), and not despicable (permitted by law). The despicable or prohibited nature of the act is what is called the "element against the law". Judging from its origin or source, the despicable nature or against the law comes from the law, which is called against formal law (*formelle wederrechtelijk*) and there is a source of public legal awareness called against material law (*materiele wederrechtelijk*) (Silfiyah et al., 2021). The unlawful element of Article 365 of the Criminal Code can be said to fulfill the element of dealing with people who are against the law or acts against the law. From the perspective of the law, then an act is labeled prohibited by legislation, that is what causes an act to be prohibited. the form of theft regulated in Article 365 of the Criminal Code known as theft with violence which is formulated as follows (Chazawi, 2002):

1. Shall be punished by a maximum imprisonment of 9 years for theft preceded, accompanied or followed by violence or threat of violence against persons, with intent to prepare or facilitate the theft or, in the event of being caught red-handed, to enable the escape of oneself or other participants or to retain possession of the stolen object.
2. Shall be punished by a maximum imprisonment of 12 years:
 - a. If the theft is committed at night in an enclosed dwelling or yard where there is a dwelling, on a public road or in a moving train or tram.
 - b. If the theft is committed by two or more persons acting in concert.
 - c. If the entry into the place where the theft has been committed is by breaking or climbing in, or by means of false keys, a false order or a false costume. If the theft results in serious injury.
 - d. If the theft results in the death of any person, a maximum imprisonment of 15 years shall be imposed.
 - e. Death penalty or life imprisonment or a maximum imprisonment of 20 years shall be imposed, if the theft results in serious injury or death and is committed by two or more persons jointly and accompanied by one of the persons described in point 1 and point 3.

Criminal Law is an important tool in crime prevention in eradicating crimes that disturb and harm society in general and victims in particular. Crime prevention can be done preventively and repressively. However, preventive efforts are not effectively implemented if it is not known what exactly causes a person to commit a criminal offense. The elements contained in Article 365 of the Criminal Code, namely (Prodjodikoro, 2002):

1. The elements contained in Article 365 of the Criminal Code paragraph (1), are:
 - a. Theft
 - b. Preceded or accompanied or followed.
 - c. Violence or threat of violence.
 - d. Against persons.
 - e. Committed with intent: To prepare or facilitate or

In the event of being caught red-handed To enable escape for himself or another participant; To ensure that the stolen property remains in his possession.

2. The elements contained in Article 365 paragraph (2) to 1 of the Criminal Code, namely:
 - a. Night time.
 - b. In a house or enclosed yard.

- c. On a public street.
 - d. In a running train or tram.
- 3. The elements contained in Article 365 paragraph (2) 2 of the Criminal Code, namely:
 - a. Two or more persons.
 - b. Together.
- 4. The elements contained in Article 365 paragraph (2) 3rd of the Criminal Code, namely:
 - a. Preceded, accompanied, or followed.
 - b. Violence or threat of violence With intent to prepare.
 - c. By means of dismantling, damaging, climbing, or
 - d. Using false keys, false orders, false uniforms.
- 5. The elements contained in Article 365 paragraph (2) 4th of the Criminal Code, is "causing serious injury". The definition of serious injury is set out in Article 90 of the Criminal Code, namely:
 - a. Falling ill or receiving injuries that will not heal completely, or causing danger of death Continuously unable to carry out his duties, position or occupation.
 - b. Losing one of the five senses.
 - c. Receive severe disability.
 - d. Suffering from paralytic pain.
 - e. Impaired mental capacity for more than four weeks.
 - f. The loss or death of the womb of a woman.
- 6. The elements contained in Article 365 paragraph (3) of the Criminal Code are:
 - a. Preceded, accompanied or followed
 - b. Violence or threat of violence
 - c. Resulting in death.
- 7. The elements contained in Article 365 paragraph (4) of the Criminal Code are:
 - a. Causing serious injury or death
 - b. Committed by two or more persons
 - c. With consortium
 - d. Accompanied by one of the elements of paragraph (2) 1st and 3rd.

Article 365 paragraph (3) and paragraph (4) of the Criminal Code have sanctions with severe penalties, namely if the theft with violence causes the death of a person, then subject to a maximum imprisonment of fifteen years. The term *violence* or *violence* refers to behavior that must be contrary to the law, and the act of threatening damage to property or physical including causing death to someone. These acts often use tools such as firearms or sharp weapons, so the crime of robbery also falls under this article.

The trial stage is central to the criminal justice system, as it is at this stage that it is decided whether a de- fendant can be found guilty and sentenced, or found innocent and cleared of all charges. Prior to this, a three-person panel of judges will examine the suspect, except for suspects who file a pre-trial motion who will only be examined by a single judge. The process of sentencing is also inseparable from the legal process that has been carried out previously, which starts from investigation, investigation, prosecution, to examination before the court. In the context of sentencing, the court is tasked with considering the criminal offense and the responsibility of the perpetrator of the criminal offense in a balanced manner as the basis for the imposition of the sentence.

On the one hand, criminal acts emphasize the will of society which must be protected by legal norms. On the other hand, the legal obli- gation based on the specific circumstances and conditions of the criminal offender is em- phasized by the guilt and responsibility of the criminal offender. Consideration of these two things is intended to place the "imposition of

punishment" as a fulfillment of the needs of society and individuals based on *daad en dader strafrecht* (Syamsu, 2016).

B. Criminal Responsibility of Perpetrators of Violent Theft Based on Indonesian Judicial Practice

1. Case Position

The District Court of Tangerang tried a criminal case, namely:

a. Identity of the Defendant

Andi Firdaus als. Ndi Bin Ardana, Lubuk Linggau, 26 years old / August 15, 1995, Male, Indonesia, Islam, Private Sector, residing in Bogor.

b. Brief proceedings

The defendant was detained in detention by:

- 1) Investigators from July 18, 2021 until August 6, 2021.
- 2) Investigator Extended by Public Prosecutor from August 7, 2021 to September 15, 2021
- 3) Public Prosecutor from September 16, 2021 to October 15, 2021
- 4) District Court Judge Extended by the President of the District Court from October 16, 2021 to December 14, 2021.

2. Indictment

The defendant was brought to trial by the Public Prosecutor charged based on the following indictment: Article 365 paragraph (1) of the Criminal Code. 137

3. Charges

The criminal charges filed by the Public Prosecutor were basically as follows (Tangerang District Court Decision, 2021):

- a. To find the defendant ANDI FIRDAUS guilty of committing the crime of theft preceded by, accompanied by violence as regulated and punishable under Article 365 paragraph (1) of the Indonesian Penal Code in the indictment.
- b. Sentenced the defendant ANDI FIRDAUS to 1 (one) year imprisonment, with the order that the defendant remain in detention.
- c. Stating the evidence in the form of: 1 (one) case of cellphone type A15, 1 (one) cellphone payment receipt, 1 (one) cellphone type A15 Oppo type black color returned to its owner, namely the witness Jaenab bint Rohli, 1 (one) Yamaha Lexi motorcycle no.pol. A.6440VAD returned to its rightful owner through the defendant, 1 (one) black sweater to be destroyed.
- d. To pay court costs of Rp. 2000,-.

4. Verdict

The Panel of Judges delivered its verdict, which was basically as follows:139 M E N G A D I L I:

- a. Stating that the defendant Andi Firdaus als. Ndi Bin Ardana has been proven guilty of committing the crime of theft accompanied by violence as charged in the single indictment of the Public Prosecutor.
- b. Sentencing the defendant Andi Firdaus als. Ndi Bin Ardana with imprisonment for 1 (one) year.
- c. Stipulating that the period of arrest and detention served by the Defendant shall be deducted in full from the punishment imposed.
- d. Stipulate that the Defendant remains in custody
- e. Stating that the evidence in the form of:
 - 1) 1 (one) case of HP brand oppo type A15;
 - 2) (one) HP payment receipt sheet;
 - 3) 1 (one) unit of cellphone brand Oppo type A15 black color returned to the witness Jaenab binti Rohli, 1 (one) unit of Yamaha Lexi motorcycle no.pol.

A.6440VAD was returned to the defendant;

4) (one) black sweater to be destroyed.

f. Charged the Defendant to pay court costs in the amount of Rp. 5,000.00 (five thousand rupiah).

5. Legal Considerations of the Panel of Judges

The aforementioned verdict is based on legal considerations basically as follows (Tangerang District Court Decision, 2021):

a. That because all elements of Article 365 paragraph (1) of the Criminal Code have been fulfilled, the Defendant must be declared legally and convincingly proven to have committed the crime as charged in the single indictment of the Public Prosecutor.

b. That during the trial, the Panel of Judges did not find anything that could eliminate criminal responsibility, either as justification or excuse, so the Defendant must be held accountable for his actions, because the Defendant is capable of being responsible, he must be found guilty and sentenced as well

c. That in this case the Defendant has been subject to lawful arrest and detention, therefore the period of arrest and detention must be deducted in full from the punishment imposed.

d. That since there is no legal reason to remove the Defendant from detention, the Defendant shall remain in detention.

e. That regarding the evidence in the form of:

1) 1 (one) case of HP brand oppo type A15

2) 1 (one) HP payment receipt sheet

3) 1 (one) unit of cellphone brand Oppo type A15 black color; It belongs to witness Jaenab binti Rohili so it is returned to its owner, namely witness Jaenab binti Rohli

4) 1 (one) unit of Yamaha Lexi motorcycle no.pol. A.6440VAD was returned to its owner through the defendant,

5) 1 (one) black sweater to be destroyed.

f. That because the Defendant is sentenced, he is also burdened to pay court costs.

With due observance of Article 365 paragraph (1) of the Criminal Code and other relevant provisions relating to this case.

6. Analysis of Tangerang District Court Decision Number 1502/Pid.B/2021/PN.Tng

The criminal responsibility of the perpetrator of the crime of theft with violence based on the decision of the Tangerang District Court number 1502/Pid.B/2021/PN.Tng., by imposing a prison sentence of 1 (one) year because the defendant Andi Firdaus als. Ndi Bin Ardana has been proven guilty of committing the crime of theft accompanied by violence as stated in the single charge of the Public Prosecutor. A person or perpetrator of a criminal act will not be held criminally liable or sentenced if he does not commit a criminal act and the criminal act must be against the law, but even if he commits a criminal act, he cannot always be convicted, a person who commits a criminal act will only be convicted if he is proven legally and convincingly guilty. Based on the description above, as for the conditions of whether or not someone can be held accountable (criminal) there must be guilt. Fault can be divided into 3 (three) parts, namely:

a. Ability to be held responsible

In terms of the ability to be held responsible, it can be seen from the mental state of the person who commits the criminal act to determine the existence of guilt, where the mental state of the person who commits the criminal act must be such that it can be said to be normal, this healthy person can regulate his behavior in accordance with the measures that are considered good by society.¹⁴¹ Meanwhile, for people whose

souls are not healthy and normal, these measures do not apply to them and there is no point in holding accountability. What is mentioned as incapable of responsibility is the general reason for criminal expulsion that can be mentioned in Articles 44, 48, 49, 50 and 51 of the Criminal Code. Therefore, those who are incapable of responsibility are not only due to defective mental growth or illness, but also because they are generally young, hypnotized and so on (Tangerang District Court Decision, 2021).

b. The existence of fault (willfulness and negligence)

The criminalization of a person, it is not enough that the person commits an act that is contrary to the law or is against the law. So even though the formulation meets the formulation of the offense in the law and is not justified because it does not meet the requirements for criminalization. For this reason, criminalization still needs a condition, namely that the person who commits the act has a mistake or is guilty (subjective guilt). This is where the principle of "No Punishment Without Fault" (*geen straf zonder schuld*) or *Nulla Poena Sine Culpa* applies.

c. Absence of Excuses for Criminal Erasure

One of the requirements to be held criminally liable for someone is whether or not there is a reason for criminal expungement. The Criminal Code is contained in Chapter I Book III on matters that eliminate or aggravate the imposition of punishment. As it is known that the current Criminal Code can generally be divided into two general parts contained in the first part (on general regulations) of special reasons such as and special parts consisting of two books as contained in the second book (on crimes) and the third book on offenses (which apply specifically to certain criminal acts as formulated in the article).

From what has been mentioned above, it can be said that fault consists of several elements, namely:

1. The existence of the ability to be responsible in the maker (*schuld-fahigkeit or zurechnungsfahigkeit*): meaning that the mental state of the maker must be normal.
2. The mental connection between the maker and his actions in the form of intent (*dolus*) or negligence (*culpa*): these are called forms of guilt.
3. The absence of reasons that erase the guilt or there are no excuses.

If the three elements mentioned above are fulfilled, the person concerned can be held guilty or has criminal responsibility, so that he can be punished. Although fault has been accepted as an element that determines the responsibility of the perpetrator of a criminal offense, there is still debate among experts on how to interpret fault.

According to the author, the criminal responsibility of the perpetrator of the crime of theft with violence by serving imprisonment for 1 (one) year is very light and does not reflect the value of justice and the special section consisting of two books as contained in the second book (on crimes) and the third book on offenses (which applies specifically to certain criminal acts as formulated in the article). From what has been mentioned above, it can be said that fault consists of several elements, namely:

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3. The absence of reasons that erase the guilt or there are no excuses.

If the three elements mentioned above are fulfilled, the person concerned can be held guilty or has criminal responsibility, so that he can be punished. Although guilt has been accepted as an element that determines the responsibility of the perpetrator of a criminal offense, there is still debate among experts on how to interpret guilt. According to the author, the criminal responsibility of the perpetrator of the crime of theft with violence by serving

imprisonment for 1 (one) year is very light and does not reflect the value of justice of the Judge's consideration in terms of imposing the severity of criminal sanctions against perpetrators of theft preceded by, accompanied by violence as regulated and threatened with punishment in Article 365 paragraph (1) of the Criminal Code. The provisions of Article 183 of the Criminal Procedure Code state that the Judge may not impose a criminal penalty on a person unless he/she is convinced by at least two valid evidences that a criminal offense has actually occurred and that the defendant is guilty of committing it. This provision aims to ensure the establishment of truth, justice and legal certainty for a person. The judge's decision is closely related to how the judge expresses his opinion or consideration based on the facts and evidence in court and the judge's belief in a case, therefore the judge has an important role in imposing a court decision, in a court decision there are things that aggravate and mitigate other punishments (Nurhafifah & Rahmiati, 2015).

There are 2 (two) categories of Judges' considerations in deciding a case, especially decisions containing punishment, namely juridical Judges' considerations and non-juridical Judges' considerations. Juridical considerations are considerations of the Judge based on factors that are revealed in the trial and by law have been determined as things that must be contained in the decision.

The judge's consideration in imposing a prison sentence on the perpetrator of theft preceded by, accompanied by violence as regulated and threatened with the crime of Article 365 paragraph (1) of the Criminal Code in the decision of the tanggerang district court number 1502/Pid.B/2021/PN.Tng., does not refer to the article charged by the Public Prosecutor in the indictment, which should draw on the legal facts revealed in the trial that arise which are the conclusions of the testimony of the witnesses who have been presented, the testimony of the defendant and the evidence submitted and examined in court should be punished as stipulated in Article 365 paragraph (1) of the Criminal Code, "Threatened with a maximum imprisonment of 9 years theft preceded, accompanied, or followed by violence or threat of violence against persons.

The panel of judges should have considered the case of theft preceded by, accompanied by violence is closely related to the main task of a judge, namely the duty to receive, examine and try and resolve every case submitted to him, then the judge examines the case and finally adjudicates which means giving the interested person his rights or law (Mertokusumo, 2002). The judge's legal consideration is one of the most important aspects to determine the realization of the value of a judge's decision that contains justice (*ex aequo et bono*) and contains legal certainty in addition to the benefits for the parties concerned so that the judge's consideration must be addressed carefully and carefully. If the judge's consideration is not examined properly and carefully, the judge's decision derived from the judge's consideration will be canceled by the High Court or Supreme Court (Arto, 2004). Aristotle's opinion in his book "Nichomachen Ethics", as quoted by Shidarta, has written at length about justice. Justice is a virtue related to human relations. The word fair contains more than one meaning. Fair can mean according to the law, and what is comparable, that is, what should be (Salim, 2006). The existence of sentencing guidelines will facilitate the judge in determining the punishment, after it is proven that the defendant has committed the act charged to him. The list contains subjective matters which concern matters other than the perpetrator. By paying attention to these points, it is hoped that the imposition of punishment will be more proportional and better understood why the punishment is as imposed (Muladi & Arif, 1998).

CONCLUSIONS

The crime of theft with violence is regulated in Article 365 of the Criminal Code as a form of theft that is aggravated due to the element of violence. The punishment for the perpe-

trator can reach nine years of imprisonment. Criminal responsibility against the perpetrator can only be imposed if it fulfills the elements of guilt, namely the existence of the ability to be responsible, the existence of intent or negligence, and the absence of reasons for criminal erasure.

Based on the decision of the Tangerang District Court Number 1502/Pid.B/2021/PN.Tng, the defendant was only sentenced to one year in prison, even though he was proven to have committed theft with violence. This verdict is considered too light and does not reflect a sense of justice as mandated in Article 365 paragraph (1) of the Criminal Code. Therefore, the application of criminal sanctions should be more proportional and stricter in order to provide a deterrent effect and realize justice in law enforcement in Indonesia.

REFERENCES

- Ali, Z. (2015). *Sosiologi hukum*. Sinar Grafika.
- Arto, M. (2004). *Praktek perkara pidana pada Pengadilan Negeri (Cet. 5)*. Pustaka Pelajar.
- Chazawi, A. (2002). *Percobaan & penyertaan: Pelajaran hukum pidana*. Raja Grafindo Persada.
- Chazawi, A. (2007). *Pelajaran hukum pidana bagian I*. PT Raja Grafindo Persada.
- Harahap, Y. (2007). *Pembahasan permasalahan dan penerapan KUHAP: Penyidikan dan penuntutan*. Sinar Grafika.
- Hartono, T. (2021). Penegakan hukum terhadap tindak pidana pencurian dengan kekerasan (Studi pada Kepolisian Resor Kota Besar Medan). *Jurnal Retentum*, 2(1).
- Ilyas, A. (2012). *Asas-asas hukum pidana*. Pukap Indonesia.
- Indra Silfiyah, Harwika, D. M., & Palmasari, E. K. (2021). Peran kriminologi sebagai ilmu bantu hukum pidana (Studi kasus pembunuhan Cakung). *Jurnal Court Review: Jurnal Penelitian Hukum*, 1(3).
- Kitab Undang-Undang Hukum Pidana [KUHP].
- Kurnia, L. C. (2024). Tinjauan yuridis terhadap kejahatan harta benda menurut Pasal 365 KUHP tentang pencurian dengan kekerasan. *Jurnal Hukum (Online)*.
- Lamintang, P. A. F., & Samosir, J. (2010). Delik-delik khusus kejahatan yang ditujukan terhadap hak milik dan lain-lain hak yang timbul dari hak milik. Nuansa Aulia.
- Muladi, & Arif, B. N. (1998). *Teori-teori dan kebijakan pidana*. Alumnus.
- Mulyadi, M. (2001). *Makna kejahatan kekerasan daripada tindak pidana dengan kekerasan*. Media Press.
- Nurhafifah, & Rahmiati. (2015). Pertimbangan hakim dalam penjatuhan pidana terkait hal yang memberatkan dan meringankan putusan Banda Aceh. *Kanun: Jurnal Ilmu Hukum*, 17(2).
- Prodjodikoro, W. (2002). *Tindak-tindak pidana tertentu di Indonesia*. Refika Aditama.
- Putusan Pengadilan Negeri Tangerang Nomor 1502/Pid.B/2021/PN.Tng.
- Salim. (2006). *Dasar-dasar hukum kehutanan*. Sinar Grafika.
- Soekanto, S. (2008). *Penanggulangan pencurian dengan kekerasan: Suatu tinjauan kriminologi*. Aksara.
- Soesilo, R. (1995). *Kriminologi (Pengetahuan tentang sebab-sebab kejahatan)*. Politea.
- Sudikno Mertokusumo. (2002). *Hukum acara perdata Indonesia*. Liberty.
- Syamsu, M. A. (2016). *Penjatuhan pidana dan dua prinsip dasar penjatuhan pidana*. Kencana.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.