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Law Enforcement Towards Recidivism of Stealing in the Indonesian Criminal Code

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Abstract

Recidivism of crimes is regulated in Articles 486 to 488 of the Criminal Code. Although it is already regulated, theft recidivism still occurs in Indonesia. The purpose of this research is to understand the law enforcement of repeat theft offenses and what needs to be done to ensure effective prevention. The research results show that the factors causing children to become recidivists of theft are economic

factors, lack of knowledge, opportunity factors, and social environment factors. Efforts to address theft crimes in the jurisdiction of the Banda Aceh District Court include discussions involving multiple parties to ensure justice in preventing repeat theft offenses, as well as efforts in guidance, rehabilitation, and psychological support.

Keywords: Recidivism, Stealing, Indonesian Criminal Code

Introduction

A criminal act is an action that violates the law, whether intentionally or unintentionally, carried out by someone whose action must be accountable and is declared by law as a punishable act. Countermeasures and prevention of criminal acts are ways to respond to the phenomenon of criminal actions. Since crimes have become prevalent, the response to them has become more recognized. Each society will react to crime according to the level of culture that has been achieved by the respective society. A society that is already so modern can be characterized by a structured and complex division of labor, with reactions to criminal acts becoming increasingly modern thru the use of rationally determined types of sanctions. Rationality in the determination of types of sanctions reflects the level of knowledge and culture of a nation.¹

Crime is an anti-social act that is consciously committed and elicits a reaction from society, with the state imposing sanctions on such acts. Crime contains a certain emphasis, is a relatively relative term, also contains variability and dynamics, and is related to actions or behaviors, whether active or passive, which are considered by both the majority and minority of society as anti-social acts, and also a violation of a scale of social values or the sense of legal life within society according to space and time. The understanding of crime itself seems to lack unity among scholars. R. Soesilo distinguishes the definition of crime both juridically and sociologically. Whereas from a legal perspective.

The definition of a crime is an act of behavior that is contrary to the law.

Efforts to combat crime are essentially an integral part of social defense and social welfare efforts. Crime prevention policies or criminal policies have a primary goal, which is "the protection of society to achieve the welfare of society." Criminal policy is part of law enforcement policy. Law enforcement policy falls under social policy and legislative policy. Criminal politics is an integral part of social policy, which is a policy or effort to achieve welfare.²

Research Method

This is a normative legal study, which examines law as written norms (law in books). The data sources for this research are based on primary data obtained thru literature review in the form of legal regulations, legal books, scientific journals, theses, and official documents related to *recidivism and theft*. Data analysis is conducted qualitatively, which involves processing and

¹ M. Ali Zaidan, *Kebijakan Kriminal*, Jakarta; Sinar Grafika, 2006, p.102.

² Barda Nawawi Arief, *Bunga rampai kebijakan hukum pidana (Perkembangan penyusunan konsep KUHP baru)*, Jakarta; Kencana Praneda Media Group, 2008, p. 2.

interpreting the data systematically and logically.

Results and Discussions

Enforcement of Recidivism in Theft Crimes

Policies or efforts to combat crime are essentially an integral part of community protection efforts (social defense) and efforts to achieve welfare (social welfare). Crime prevention policies, also known as criminal policies, have the ultimate goal or main objective of "community protection to achieve community welfare." Crime prevention policies themselves are part of law enforcement policies. Law enforcement policies are part of social policies and also fall under legislative policies. Criminal policy, in essence, is also an integral part of social policy, which is the policy or effort to achieve social welfare.³

One form of effort in social protection planning is the tangible efforts of community members to combat political criminality. The ultimate goal of criminal policy is the protection of society. Efforts to combat child crime are actually not much different from the efforts applied to adults. In efforts to combat crime, a policy approach must be taken, meaning there is an integration between criminal policy and social policy, and there is an integration between penal and non-penal measures.⁴

The repetition of criminal acts is not a new phenomenon in the legal world because where there is crime, there is a repetition of crime, and the repetition of crime is considered a continuation of malicious intent, as stated by Bartolus, a legal expert, that "Humamum enimes peccare, angilicum, seemendare, diabolicum perseverare" or crime and the repetition of crime are considered a continuation of malicious intent.⁵ Reoffending or recidivism is the act of a person repeating their criminal behavior, whether the crimes are of the same type or not, for which there has been a final court ruling. Recidivism is a legal term for a type of crime that cannot be stopped but can only be prevented. Like a type of disease that cannot be cured but can only be prevented.⁶ Recidivism is poorly understood by many people, especially in Indonesia, who often commit crimes. The term "recidivist" comes from the French word "recidive." It is derived from two Latin words: "re," meaning again, and "co" or "cado," meaning to fall. Thus, in its absorption, recidivism means repetition (of crimes or actions).

According to data released by the correctional institution, the recidivism rate in Indonesia shows a quite concerning

³ Barda Nawawi Arief, *Bungai Rampai Kebijakan Hukum Pidana, (Perkembangan Penyusunan Konsep KUHP Baru)*, Kencana Prenada Group, Jakarta, 2008, p. 1.

⁴ Hersyanda, M. D., Lubis, I. S., Ikhwan, N., Septriani, D., & Haqqi, M. (2024). Efektivitas sanksi pidana terhadap pengulangan kejahatan (residivisme) di Indonesia. *JIMMI: Jurnal Ilmiah Mahasiswa Multidisiplin*, 1(3), 253-265. p.260.

⁵ Boeky, B. C. (2023). Faktor Penyebab dan Upaya Penanggulangan Pengulangan dalam Tindak Pidana Pencurian dengan Kekerasan (Residiv) di Wilayah Hukum Kepolisian Resor Kupang Kota. *COMSERVA: (Jurnal Penelitian dan Pengabdian Masyarakat)-Vol, 3*. p. 89.

⁶ Lumataw, M. M., Barama, M., & Mangowal, M. (2020). Sanksi Pidana Akibat Melakukan Pengulangan Tindak Pidana Narkotika Menurut Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika. *Lex Et Societatis*, 8. p.217.

trend. Many offenders return to the justice system after committing crimes repeatedly. This raises concerns among the public and law enforcement about the judicial system's ability to control recidivism and ensure the proper reintegration of offenders into society.⁷ Tingginya angka residivisme juga berimplikasi pada kondisi lembaga pemasyarakatan di Indonesia, yang sudah mengalami kelebihan kapasitas (overcrowding) (Ikhsan, 2022). Penjara yang penuh tidak hanya menghambat proses rehabilitasi tetapi juga memperburuk kondisi sosial dan psikologis para narapidana. Kelebihan kapasitas ini turut berkontribusi pada lemahnya pengawasan serta kurang efektifnya program rehabilitasi, yang pada akhirnya berpotensi meningkatkan tingkat residivisme.⁸

Combating Theft Crimes in Indonesia

Crime or criminal acts are one form of "deviant behavior" that always exists and is inherent in every form of society. Deviant behavior is a real threat or a threat to the social norms that underpin life or social order, can cause individual tensions as well as social tensions, and is a real or potential threat to the maintenance of social order. Crime, beside being a humanitarian issue, is also a social issue, not only affecting certain communities but also becoming a problem faced by all societies worldwide.

One prominent type of crime is property crime, namely theft. The definition of theft is the unlawful taking of someone else's property without the owner's consent. The perpetrator of this theft crime is commonly referred to as a thief, and their actions are often known to the public as stealing. Theft consists of two elements, namely the objective element and the subjective element. The objective element of the crime of theft consists of the act of taking, the object being an item, and the accompanying or inherent condition of the item, which is partially or wholly owned by another person. The subjective element of the crime of theft includes the intention to possess and the act being unlawful. Theft is a crime directed against property and most often occurs within society. This crime is an act of wrongdoing that can shake the stability of security, both in terms of property and the lives of the community. Therefore, such criminal acts are strictly prohibited and detailed and severe punishments are threatened against the offenders. This can be seen from the form of punishment and the threats of punishment imposed.

Efforts to combat crime can be carried out from the perspective of criminal law policy using several approaches, namely the integrated approach, which is a combined approach between penal and non-penal approaches. According to Barda Nawawi Arief, the main issue in combating crime is to integrate and harmonize non-penal (non-criminal law) and penal (criminal law) activities or policies toward reducing or minimizing potential factors for the flourishing of crime. With this integral approach, it is hoped that "social defense planning" can truly succeed.⁹

⁷ Mutalib, A. (2017). Efektivitas Pidana Penjara Terkait Problematika Kelebihan Kapasitas Pada Lapas Kelas IIB Sleman Kanwil DI Yogyakarta. Universitas Islam Indonesia. p.230.

⁸ Zaidan, M. A. (2021). Kebijakan Kriminal. Sinar Grafika.

⁹ Eddy rifai, *Kebijakan kriminal penanggulangan kejahatan*, lampung; Laboratorium Hukum Fakultas Hukum Universitas Lampung. 2012.

Penal Approach (Criminal Law), meaning the application of criminal law or Criminal Law Application, which means if a child commits a crime, there is a procedure for handling sanctions in the form of punishment or action. This policy emphasizes the repressive nature of punishment, suppression, and eradication after a crime has occurred. Repressive measures are aimed at prosecuting criminals in accordance with their actions, which are illegal and harmful to society.

Non-Penal Approach (non-criminal law), which means efforts to address criminality are regulated outside of criminal law. This non-penal approach is one that seeks to address criminality in the form of guidance. The non-penal approach places more emphasis on a preventive nature, which includes deterrence, prevention, and control, before the occurrence of a crime. The main target of this effort is to address the conducive factors causing a crime, which include social problems or conditions that can directly or indirectly lead to a crime. Crime prevention is a variety of proactive and reactive activities directed at both perpetrators and victims, as well as the social and physical environment, carried out before and after the occurrence of a crime. There are three approaches to crime prevention that can be taken, namely pre-emptive, preventive, and repressive.

First, Pre-emptive. Pre-emptive refers to the initial efforts made by the police to prevent crime from occurring. The efforts made in addressing criminal acts pre-emptively involve instilling good values and norms so that these norms are internalized within each individual. Even if there is an opportunity to commit a crime, if there is no intention to carry out the act, then the crime will not occur. Therefore, in the pre-emptive aspect, the factor of intention is absent even if there is an opportunity to do so.

Second Preventive. These preventive efforts are a follow-up to pre-emptive efforts that are still in the prevention stage before a crime occurs. In it, the preventive efforts that must be emphasized are eliminating the opportunity to commit crimes. Here, the authorities, in this case, the police, conduct legal counseling related to crime, thereby minimizing the chances of offenders committing crimes. Additionally, the police can provide counseling to the community about actions that could lead to the occurrence of crimes.

Next, Repressive. In this effort, it is carried out after a crime has occurred, with actions in the form of law enforcement by imposing penalties on the perpetrators. The countermeasure taken is to act against the perpetrators who commit crimes according to their actions and rehabilitate them so that they realize that their actions are illegal. This effort can also be accompanied by decisive actions from law enforcement officers, especially the police, either thru direct physical contact or by using firearms, if faced with an urgent situation to use them. This can be done solely to provide a deterrent effect to every criminal, so that they do not commit criminal acts again. Efforts start from the investigator, prosecutor, examination in court, and the imposition of the sentence by the judge.¹⁰

A juvenile recidivist for theft is a situation where a child who has previously committed theft and has undergone legal proceedings commits theft again before reaching adulthood. The repetition of theft by a child indicates that the previous handling and rehabilitation efforts have not fully succeeded

in preventing the child from repeating the offense. This phenomenon has become an important focus in the study of criminology and juvenile criminal law because it is directly related to the effectiveness of the Juvenile Justice System. The crime of theft in Indonesian criminal law has various forms that are systematically regulated in the Criminal Code (KUHP). Theft is the act of taking someone else's property without permission with the intent to unlawfully possess that property.¹¹ The crime of theft is an act that is contrary to the law, committed intentionally or unintentionally by someone who can be held legally accountable for their actions, and according to legal provisions, can be declared as a punishable act.

Article 363 paragraph (1) of the Criminal Code (KUHP) regulates the crime of aggravated theft. This theft can be interpreted as a special theft, namely theft with aggravating circumstances. This theft can be interpreted as a special theft, namely theft in a certain manner that carries a heavier criminal threat. Anyone who violates this article shall be punished with imprisonment for a maximum of seven years. Aggravating circumstances in this article include theft of animals, theft committed during a disaster or emergency, theft at night, theft committed by two or more people together, theft committed by the perpetrator resulting in damage due to breaking, climbing, using false keys, false orders, or false uniforms, even though the provisions of article 363 paragraph (1) of the old Penal Code (wetboek van strafrecht) still apply. However, in the new Criminal Code, namely Law Number 1 of 2023 concerning the Criminal Code, the regulation regarding aggravated theft is also retained with a more detailed classification.

Whereas from a legal perspective, theft is a crime against property regulated in the 2023 Penal Code, Chapter XXIV, concerning theft offenses. That crime is a formal crime, prohibited and punishable by law. The definition of theft according to Article 476 of the 2023 Penal Code is "Anyone who takes an item that is partially or wholly owned by another person, with the intent to unlawfully possess it, shall be punished for theft, with a maximum prison sentence of 5 years or a fine of up to category V."¹²

This provision will come into effect on January 2, 2026, and is stated in Article 477, which reads: (1) Anyone who commits theft of religious or belief sacred objects, Theft of antiquities, Theft of livestock or items that are a source of livelihood or the main source of income for someone, Theft during a fire, explosion, natural disaster, shipwreck, stranding, aircraft accident, train accident, road traffic accident, riot, rebellion, or war; Theft at night in a house or in an enclosed yard with a house, committed by someone whose presence is unknown or uncontrolled by the rightful owner; Theft by means of destruction, dismantling, cutting, breaking, climbing, using a false key, using a false order, or wearing false official clothing, to enter a place to commit a crime or to reach the stolen item; or theft in collaboration and conspiracy.

Aggravated theft is regulated under Article 363 of the Criminal Code (KUHP). Based on this article, a person who

¹⁰ M. Zaidan, "kebijakan kriminasi". Jakarta; Sinar Grafika, 2016, Hlm 109.

¹¹ Sudarso, *kamus hukum*, Jakarta; Rineka Cipta, 2007, Hlm 92.

¹² Nurainin, A. B., Mufidah, I., Imayuri, I. R., Putri, W. A., & Rahmawati, Y. (2024). Tindak Pidana Pencurian Dalam Perspektif Hukum Pidana: Kajian Terhadap Jenis-Jenis Tindak Pidana. *Lentera Ilmu*, 1(1), 75-85. p.80.

commits aggravated theft is threatened with a prison sentence of up to 7 years, and even up to 9 years if the theft mentioned in point 3 is accompanied by elements of aggravated theft. Criminal acts of theft cannot be subjected to diversion efforts even if the threat of punishment is below 7 years if the act is a repetition or recidivism. Recidivism is one of the impacts of the helplessness within a former juvenile inmate to reintegrate into society as a responsible teenager amidst negative perceptions of themselves. society In the context of juvenile criminal justice, the existence of juvenile recidivists is important to test the success of the imposition of penalties. In handling juvenile cases, it is essential for judges to exercise wisdom so that the punishment imposed is not retribution but rather an effort to prevent the child from repeating their actions.

In relation to children as recidivist offenders, the failure of diversion should not automatically be interpreted as a reason to impose harsher penalties. On the contrary, such a condition actually serves as an indicator that the child needs a more intensive and directed rehabilitation approach. An individual approach to recidivist children becomes very important, considering that each child has different family backgrounds, social environments, and levels of psychological maturity. Thus, the imposition of penalties on recidivist children should be directed toward efforts to improve behavior and strengthen the child's capacity to take responsibility for their actions, rather than merely providing a temporary deterrent effect.¹³

Conclusion

To sum up, recidivism of crimes is regulated in Articles 486 to 488 of the Criminal Code. Meanwhile, in the new Penal Code of Indonesia, it is regulated in Article 23. Although it is already regulated, theft recidivism still occurs in Indonesia. Law enforcement in addressing theft crimes is carried out with a penal approach, but if possible, it is first followed by deliberation and rehabilitation involving many parties to achieve justice against the recurrence of theft crimes. It is recommended that law enforcement pay attention to the factors causing the existence of recidivists in theft crimes, such as economic factors, lack of knowledge, opportunity factors, and social environment factors.

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¹³ Setya Wahyudi, *Implementasi Ide Diversi dalam Pembaruan Sistem Peradilan Pidana Anak di Indonesia*, Genta Publishing, Yogyakarta, 2011, hlm. 112.