

A NORMATIVE JURIDICAL ANALYSIS OF THE APPLICATION OF CRIMINAL SANCTIONS BY JUDGES IN DECIDING THEFT CASES IN THE FAMILY (Study of Decision Number 65/Pid.B/2024/PN.Tbt)

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ABSTRACT

Theft is rampant in society. The current state of society makes it very possible for people to find shortcuts by stealing. From print and electronic media, it is shown that theft crimes often occur with various types which are motivated by unmet living needs, and the perpetrators do not close from their own families. Based on the position of the case and decision number 65 / Pid.B

/ 2024 / Pn.Tbt above, there are legal regulations against perpetrators of criminal acts of theft in the family that have been tried by the Panel of Judges, namely Article 367 of the Criminal Code, Application of Article 367 of the Criminal Code in cases of theft in the family committed by the defendant against the victim which is a complaint offense, in this case the judge applies the elements of Article 367, namely, Whoever takes goods that are entirely or belong to someone else, with the intention of being owned unlawfully, and is carried out by blood relatives or by marriage.

1. Introduction

Theft is a crime directed against property and is the most common crime in society. This crime can destabilize both property and lives.

The penalties for theft under Indonesian criminal law are regulated in the Indonesian Criminal Code (KUHP), Book Two, Chapter XXII, concerning crimes against property, from Articles 362 to 367. Article 362 of the KUHP reads as follows: "Anyone who takes any property, wholly or partially belonging to another person, with the intent to appropriate it unlawfully, shall be punished, for theft, by imprisonment for a maximum of five years or a maximum fine of Rp 900,000."

Theft can also occur within families, such as children stealing their parents' belongings because they are greedy and need money. This can occur due to a lack of parental involvement in providing religious education to children, resulting in

children behaving inappropriately.

A family is a group of people living in a household, consisting of at least a husband, wife, and children. The family is the smallest social group characterized by shared residence, economic cooperation, and reproduction. A family is a social group united by socially approved ties of kinship, marriage, or adoption, who generally occupy a common residence and interact with each other according to clearly defined social roles.

The connection to the aforementioned crime is found in Decision Number 65/Pid.B/2024/PN Tbt. In this case, theft occurred within a family. For this act, the public prosecutor declared that the defendant Alwin Permana Sebayang alias Banteng had been legally and convincingly proven guilty of committing the crime of "taking something, which in whole or in part belongs to another person, with the intention of unlawfully possessing it while he is a blood relative or kinship in the direct line or the second deviant line" in violation of Article 367 of the Criminal Code as stated in the Public Prosecutor's Single Indictment and sentenced the defendant to 1 (one) year and 6 (six) months imprisonment, minus the time the defendant has been in detention.

The sad thing is that this incident of theft committed by a family, in this case using the concept of second-degree family (father, mother, and child), against their own family reflects the very low personal morals of society, how can someone who is still related by blood or marriage have the heart to take their family's property without the permission of the person who owns it.

2. Research Method

The type of research used in this study is normative juridical research. Normative juridical research is a documentary study, in accordance with the definition of normative law, which examines documents, namely legal source materials consisting of legislation, court decisions or rulings, agreements, legal theories, and doctrines or opinions of legal experts.

The nature of the research used by the author in writing this thesis is descriptive analysis, namely describing applicable laws and regulations in relation to legal theories and the practice of implementing positive law related to the formulated problem.

The research method used in writing this thesis is a normative juridical approach. This normative juridical approach means that in this study, only library materials or secondary data are examined, which may include primary, secondary, and tertiary legal materials.

Data analysis techniques are necessary because they facilitate researchers in

simplifying data into a more understandable form so that it can serve as reference material for further research. The data analysis technique for activities carried out in normative legal research data analysis is by analyzing the data obtained in a qualitative descriptive manner, namely analyzing data that cannot be calculated.

3. Results And Discussion

Deviate acts or crimes often occur anywhere and at any time, regardless of who the perpetrator or victim is. For example, theft often occurs not only in public places but also in places considered safe, such as within the family environment.

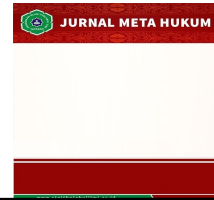
In the above case, Defendant Alwin Permana Sebayang, also known as Banteng, was charged under Article 367 of the Criminal Code. Because the public prosecutor's indictment was a single indictment, the Panel of Judges found the legal facts straightforward to determine. Furthermore, throughout the trial and the verdict, the Panel of Judges found Defendant Alwin Permana Sebayang, also known as Banteng, legally and convincingly guilty of "Theft Within the Family," as stated in the single indictment.

Based on the case and decision number 65/Pid.B/2024/Pn.Tbt above, the legal provisions for perpetrators of theft within the family, which have been tried by the Panel of Judges, are Article 367 of the Criminal Code.

If we look at the basic form of the crime of theft as regulated in Article 362 of the Criminal Code, namely that anyone who commits the crime of theft is threatened with a maximum prison sentence of five years or a maximum fine of sixty rupiah. In relation to Article 367 of the Criminal Code, is the formulation of the basic form of the crime of theft in Article 362 of the Criminal Code absolute with no exceptions? In other words, should anyone who commits the crime of theft be prosecuted and, if proven guilty, be punished?

According to the Criminal Code ("KUHP"), theft committed by a relative or family member of the victim, in this case a child, is considered intra-family theft. This is regulated in Article 367 paragraph (2) of the Criminal Code, which reads in full: "If the person is a husband (wife) separated from each other by bed and board or property, or if they are related by blood or marriage, either in the direct line or the second degree, then prosecution may only be initiated against that person upon a complaint of a crime."

In principle, theft is a common crime. However, in some cases, such as theft within the family, as stipulated in Article 367 of the Criminal Code, the law defines theft as a complaint-based crime, meaning that theft can only be prosecuted upon a complaint from the injured party. The type of complaint contained in Article 367 of the Criminal Code is a relative complaint, namely a



complaint against the person who committed the theft.

If a complaint has been filed, but the victim subsequently wishes to withdraw the complaint (if the victim is within the family circle as stipulated in Article 367 of the Criminal Code), the complaint can be withdrawn within three months of filing.

Therefore, it can be concluded that the perpetrator's parents have the right to file a police report against their child for theft. However, the parents can withdraw the complaint within three months of filing the complaint. However, in Decision Number 65/Pid.B/2024/Pn.Tbt, the victim's parents did not withdraw their complaint because the defendant had repeatedly committed the same offense, had been imprisoned three times, and had not changed his behavior. That based on the legal facts revealed in the trial, it is true that the Defendant took 1 (one) unit of 32 Inc Toshiba brand black TV, 1 (one) 3 kg green gas cylinder, 1 (one) black Nokia Type N105 cellphone, 5 (five) cooking pots, 1 (one) iron ladder with a length of \pm 3 meters, 2 (two) large red and brown shelves and the tool that the Defendant used in carrying out the theft using 1 (one) iron wheel wrench was the iron wheel wrench of the Defendant's parents' car which was in front of the house. That based on the above considerations, the Defendant's actions in taking items that all belong to other people on Tuesday, November 21, 2023 at approximately 02.00 WIB at the Defendant's parents' house and the Defendant took 1 (one) unit of 32 Inc Toshiba brand black TV, 1 (one) green 3 kg gas cylinder, 1 (one) black Nokia Type N105 cellphone, 5 (five) cooking pots, 1 (one) iron ladder with a length of \pm 3 meters, 2 (two) large red and brown shelves, the Panel of Judges is of the opinion that the element of "Taking Items That Wholly or Partially Belong to Another Person" so that this element has been legally fulfilled. The Defendant, without permission from the victim, Martessa Sebayang, also known as Ukok, the Defendant's mother, took one black 32-inch Toshiba TV, one green 3-kg gas cylinder, one black Nokia N105 cell phone, five cooking pots, one iron ladder approximately 3 meters long, and two large red and brown baskets. Due to these actions, the Defendant, Martessa Sebayang, also known as Ukok, the Defendant's mother, suffered a loss of approximately Rp7,000,000 (seven million rupiah). Based on these considerations, the element of "conduct within the family circle" has been met.

The author concludes that, in relation to Decision Number 65/Pid.B/2024/Pn.Tbt, the severity and leniency of a sentence imposed by a judge must be adjusted to the defendant's intent, motivation, and consequences of his actions. Each sentence handed down by the panel of judges against a defendant must comply with the articles charged by the public prosecutor, which in this case provide guidelines on

the maximum and minimum limits, so that the judge is deemed to have properly and correctly implemented and enforced the law. Therefore, based on the trial results and the explanation of the elements above, the defendant was legally proven to have committed the crime of theft within the family as stipulated in Article 367 of the Criminal Code.

In the author's opinion, the application of the law stipulated in Article 367 of the Criminal Code, as charged against the defendant, could have resulted in the judge imposing a higher prison sentence. In this decision, the judge only imposed a prison sentence of two years for the defendant, while this type of theft carries a maximum prison sentence of 12 years.

The author believes the defendant should be sentenced to more than two years, citing the investigator's investigation, which revealed that the perpetrator had repeatedly committed theft within the family. However, in this case of domestic theft, the victim ultimately reported the perpetrator. Based on this statement, the author believes that the judge should impose a maximum prison sentence, as the perpetrator has committed several thefts within the family, but the family has tolerated them. Therefore, the judge should be more proactive, based on the facts of the trial and his or her convictions, to issue the maximum sentence, with the aim of creating a deterrent effect so that when the perpetrator returns to his or her family, he or she will not repeat the offense.

From the ruling in the family theft case above, it is clear that the Tebing Tinggi District Court panel of judges based its decision on the facts of the trial and the evidence presented by the public prosecutor, allowing the panel of judges to consider the defendant's decision.

Furthermore, based on the considerations of the Panel of Judges at the Tebing Tinggi District Court, including the aggravating and mitigating circumstances, as well as the aforementioned considerations of the incident during the trial, the Judge believes the sentence imposed is commensurate, appropriate, and just under the law. Therefore, the decision rendered provides a sense of fulfillment of the law in accordance with the application of criminal law.

Therefore, the considerations of the Tebing Tinggi District Court judges in considering cases of domestic theft are closely related to the primary duties of a judge: to receive, examine, adjudicate, and resolve every case submitted to them. The judge then examines the case and finally adjudicates, meaning granting the parties their rights or legal rights.

Therefore, from the perspective of both legal and non-legal considerations, and referring to Tebing Tinggi District Court Decision No. 65/Pid.B/2024/Pn.Tbt, the panel of judges' application of the sentence in cases of domestic theft adheres to

the application of criminal law, providing a sense of justice and legal certainty for victims of crime.

4. Conclusion

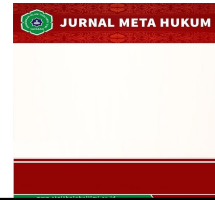
Based on the case and decision number 65/Pid.B/2024/Pn.Tbt above, there are legal provisions for perpetrators of the crime of theft within the family that have been tried by the Panel of Judges, namely Article 367 of the Criminal Code. In principle, theft is a common crime. However, in some types of theft, such as theft within the family as regulated in Article 367 of the Criminal Code, the legislators define theft as a complaint-based crime, meaning that theft can only be prosecuted upon a complaint from the injured party. The type of complaint contained in Article 367 of the Criminal Code is a relative complaint, namely a complaint against the person who committed the theft.

That the legal review of the application of Article 367 of the Criminal Code in the case of theft within the family committed by the defendant against the victim, which is a complaint-based offense, in this case the judge applied the elements of Article 367, namely: "Anyone who takes property that is wholly or partly owned by another person, with the intention of unlawfully possessing it, and committed by a blood relative or by marriage." Therefore, having fulfilled all of these elements and proven guilty of the crime of theft, the judge sentenced the defendant to two years in prison.

The judge's considerations in sentencing the perpetrator of the crime of theft within the family in case number 65/Pid.B/2024/Pn.Tbt included legal considerations (witness testimony, the defendant's statement, clues, and evidence) and non-legal considerations (the background of the defendant's actions, the consequences of the defendant's actions, the defendant's condition, aggravating and mitigating circumstances).

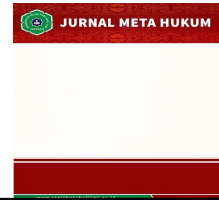
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