



Juridical Analysis of Polri's Role in Committing The Crime of Theft With Violenceabstrak

Juhrin Pasaribu

Faculty of Law, University of Batam

juhrin.pasaribu@univbatam.ac.id

Whereas the legal arrangement for the role of the Indonesian National Police in tackling the crime of theft with violence is the Book of the Criminal Code Article 362 concerning Theft. Moreover, the mission by prioritizing changes in investigator behavior. Investigator behavior that must be changed immediately is a figure of power (arrogant). The factors that become obstacles to implementing accountability for the crime of theft with violence are the relevant statutory factors (legal substance), law enforcement factors, facilities or facilities, community factors, and cultural factors.

Therefore, it is necessary to have legal arrangements to support the performance of police officers as law enforcers; there must be legislation that is burdensome for the perpetrators of the crime of theft accompanied by violence because this crime commits two criminal acts at the same time, so it has a powerful effect. For the victims, the enactment of burdensome legislation can provide a deterrent effect for perpetrators so that recidivism does not occur.

Keywords: Police, Theft

INTRODUCTION

The State of Indonesia is a State based on the law, not based on sheer power. This statement is expressed in the General Explanation of the 1945 Constitution of the Republic of Indonesia. This shows that Indonesia is a state of law. As a rule-of-law country, Indonesia accepts law as an ideology to create order, security, justice, and prosperity for its citizens. The consequence is that the law binds every action taken by Indonesian citizens.

Therefore, the law works by providing instructions about behavior, and because of that, the law is also a norm. Laws in the form of norms are known as legal norms, where the law binds itself to society as the place where the law operates. The element of the crime of theft is the act of taking goods. The word take (wingmen) moves the hands and fingers, holds the object, and diverts it to another place. The history of human development, crime, or criminality has always existed and will continue. Crime will always grow and develop according to human life itself. Crime is a social problem whose development tends to follow social changes. The problem of crime or criminality is complex in a society experiencing social and economic development, as is the case in Indonesia. The role and function of the Police in realizing a just and prosperous

society that is evenly distributed materially and spiritually based on Pancasila and the 1945 Constitution (1945 Constitution) within the framework of the Unitary State of the Republic of Indonesia, which is independent, united and sovereign and has people's sovereignty in an atmosphere of safe national life, peaceful, orderly in a friendly and peaceful world association environment. The services provided by the Police to the community are by receiving reports and complaints from the public within 1 x 24 hours; the Police have provided a sense of security and comfort to the community in carrying out all their daily activities.

The primary duties of the Indonesian National Police are regulated in Article 13 of Law Number 2 of 2002 concerning the National Police. The public's desire to obtain an orderly and peaceful social life continues to be pursued, especially now in the law enforcement system. With good law enforcement, it is hoped that it will lead to order, security, and peace in society. Law enforcement can be done through prevention, eradication, and prosecution.

Apart from that, the figure of the police is the protector of the community, but what is felt by the community is not by what is the duty and function of the police themselves. Therefore, the police play a vital role in overcoming criminal acts. Apart from that, the police also need the community to have self-awareness in taking firm action against crimes that occur by applicable regulations and not take the law into their own hands because our country is a country of laws.

Universally, the role of the police in society is defined as law enforcement officers and order maintenance. This role also includes the notion of the police as crime fighters. However, in a country with an authoritarian political system, the meaning of the role of the police as an instrument of law enforcement is reduced to that of power. As a result, the existence of the police is not close to and protecting the community, but on the contrary, they are far away from the people and instead face the people. Meanwhile, in a democratic country, the police must be transparent and not defend power. Therefore, the supervision of institutions that have instruments of violence must be carried out by the people through an independent body that guarantees transparency and accountability. Based on the description above, the author is interested in writing research, namely, the Role of the National Police in Overcoming Violent Theft Crimes. Based on the background of this thinking, the problem can be formulated as follows:

1. What are the legal arrangements regarding the role of the Indonesian National Police in tackling criminal acts of theft with violence?

2. How is the implementation of the role of the Indonesian National Police in tackling the crime of theft with violence?
3. What are the factors that constrain the role of the police in tackling the crime of theft with violence?

RESEARCH METHODS

Related to the writing of this research, the author uses empirical or sociological legal research methods. This research is based on primary data/basic data, namely data obtained directly from the community as the first source through field research. Primary data is obtained through field research, for example, through observation and interviews by distributing questionnaires. Sociological, legal research can be realized into research on the effectiveness of the law that is currently in effect or research on legal identification. Primary legal research cannot be carried out separately from normative legal research. Normative legal research is library research or document study because it is mainly done on secondary data in the library. In normative research, secondary data as a source/information material can be primary legal material, secondary legal material, and tertiary legal material.

RESEARCH RESULTS AND DISCUSSION

1. Legal Regulations The role of the National Police in tackling criminal acts of theft with violence

Peraturan hukum positif utama yang berlaku di Indonesia adalah Kitab Undang-Undang Hukum Pidana, dimana Kitab Undang-Undang Hukum Pidana sendiri merupakan kodifikasi dari hukum pidana dan berlaku untuk semua golongan penduduk, yaitu golongan timur asing, bumiputera, dan eropa. Dapat dikatakan ada suatu bentuk kesamaan atau keseragaman dalam peraturan hukum pidana yang berlaku di Indonesia.

Since Law Number 73 of 1958, which determined the enactment of Law Number 1 of 1946 concerning criminal law regulations for all of Indonesia, Indonesia's material criminal law has become uniform throughout the country. According to Article VI of Law Number 1 of 1946, the official name of the Criminal Code was originally *Wetboek Van Strafrecht Voor Nederlandssch-Indie* which was changed to *Wetboek Van Strafrecht* or can also be referred to as the Criminal Code..

The articles governing theft are regulated in CHAPTER XXII of Article 362 of the Criminal Code. Anyone who takes something that entirely or partly belongs to another person to own said item against the right to be punished for theft with a maximum penalty of five years. The

elements of the crime of theft are elements of taking goods. The first element of the theft crime is "taking" goods. In a narrow sense, the word take is limited to moving the hands and fingers, holding the object, and diverting it to another place; what is meant by the word "take" is before the act is done.

The theft can be complete if the item has moved places. If a person is holding the item and has not moved, that person cannot be said to have stolen but has not tried to steal. The act of taking light does not exist if the goods are handed over to the perpetrator by the parties. If the surrender is caused by inducement using trickery, then there is a criminal act of fraud; if the surrender is caused by coercion by force by the perpetrator, then there is an act of extortion, and if this coercion is in the form of direct violence then there is a crime of threatening.

2. Implementation of the Police's Role in tackling criminal acts of theft with violence

Strategy and implementation as well as steps and policies that must be taken by the National Police in dealing with the crime of theft with violence so that ideas for changes to the Criminal Procedure Code, instructions and in the framework of investigations and the culture of investigators/assistant investigators can be followed up systematically and continues. The process of realizing this partnership must start with a vision and mission statement from the National Police, namely a law enforcement tool, professional domestic security guards, close to the community, responsible and committed to society, and its mission is to uphold the law fairly, cleanly and respect human rights. Humans maintain domestic security by paying attention to the norms and values that apply in society, protecting, nurturing, and serving the community, and encouraging increased awareness and compliance with community law.

Before the Community Policing concept was launched, especially in developed countries, the implementation of police duties in maintaining security and order and law enforcement was carried out conventionally. The police tend to see themselves solely as the holder of authority, and the police institution is seen solely as a tool of the state, so approaches to power and even repressive actions often color the implementation of the duties and authority of the police. Even though the principles of serving and protecting 'to serve and to protect' are emphasized, approaches that are bureaucratic, centralized, uniform/uniform characterize the presentation of police services. This policing style encourages the police to prioritize the central government's mandate and ignore the 'approval' of the local community they serve. In addition, the police tend to cultivate an attitude that presents itself as a formal and exclusive figure from other members of society. In the end, all of this resulted in the waning of the legitimacy of the

police in the eyes of the public on the one hand, as well as diminishing public support for carrying out police duties, as well as a bad image of the police on the other hand. In line with the shift in human civilization, universally, especially in developed countries, people tend to be increasingly 'saturated' with the ways of government institutions that are bureaucratic, official, formal/rigid, general/uniform, and others in providing public services. There is a tendency for people to prefer personal approaches and emphasize problem-solving rather than just fixating on rigid legal formalities. In law enforcement, especially those involving disputes between citizens, settlements using informal mechanisms are seen as more effective than processes in the formal criminal justice system which often do not provide a significant role for victims in making decisions to resolve their problems. The vision and mission that must be created is that everything must lead to or lead to the ultimate goal, namely law enforcement that is simple, fast, inexpensive, has legal certainty, and its tools that have a work ethic are professional, moral, credible, accountable, and modern. Investigators/assistant investigators must recognize the community as a whole and be in-depth about needs, driving factors, and their expectations of society's ever-changing expectations and demands, which can always be followed by developing innovations or updates and continuously dealing with the community.

Generally, what is done is to be the master and not to serve; this is what causes law enforcement services not to run according to the demands of society. Service to the community "quality is perceived, but the form and results of its activities can be measured in real terms, namely community satisfaction and accountable forms of transparency, and the parties provide an assessment of the expected legal certainty. Investigators/assistant investigators who can produce good service are always given "motivation" for self-development and clear "rewards," improvements are always made and lead to quality improvement and community satisfaction to avoid providing inadequate investigative services.

The steps above will help develop a new community-oriented investigator service system. The system must be easily accessible and used by the community to channel their demands and expectations. In order to produce optimal, effective, and efficient investigations, of course, the improvement of the four aspects cannot be carried out all at once but requires proper, gradual, and continuous arrangement and prioritization. For this reason, the reform of the Polri investigation process needs to prioritize improving the culture of investigators, especially those related to morals and ethics, so as not to injure and harm justice seekers. Through the above changes, a professional, clean, authoritative investigator who is loved by the people who are protected, nurtured, and served will be created. These steps are reflected in

the personal integrity of each investigator/assistant investigator. Starting from the discussion above, the strategy for reforming the Polri investigation process is carried out as follows:

1. Returning to the identity of the National Police as law enforcement officers by the vision and mission by prioritizing changes in the behavior of investigators.
2. The behavior of investigators that must be changed immediately is someone in power (arrogant) and extortion or asking for compensation in money and goods in handling cases.
3. The approach to achieving the goal of a prosperous life by gathering as much material as possible must be changed to live a virtuous *prasaja* life.

3. Factors that constrain or hinder the role of the Police in tackling the crime of theft with violence

In social life, there is often an application of law that needs to be revised. The issue of legal effectiveness has a very close relationship with the issue of the application, implementation, and enforcement of law in society in order to achieve legal objectives. This means that the law applies philosophically, juridically, and sociologically. Discussing the ineffectiveness of the law, it is also good to pay attention to the factors that affect the effectiveness of an application of the law because, in the law enforcement process, there are factors that influence and have meaning so that the positive and negative impacts lie in the content of these factors. There are several obstacles faced by the police in handling several cases regarding the crime of theft with violence. Law enforcement is not merely the implementation of legislation, but some factors influence it. According to Soerjono, are :

a. Statutory Factors (Legal Substance)

In practice in administering law in the field, there are times when there is a conflict between legal certainty and justice because the conception of justice is an abstract formulation. In contrast, legal certainty is a procedure determined normatively. A policy or action that is not entirely based on law is something that can be justified as long as the policy or action is not contrary to the law, so, in essence, the implementation of law does not only include law enforcement but also peace maintenance because law enforcement is a process of harmonizing values actual rules and patterns of behavior that aim to achieve peace.

Every social problem does not mean that it can only be solved by written law because there cannot be laws and regulations that can regulate all human behavior, whose contents are evident to every member of the community they regulate and harmonize the need to implement regulations with the facilities that support them. The law has elements including statutory law,

treaty law, juridical law, customary law, and scientific or doctrinal law. Ideally, these elements must be harmonious, meaning that they do not contradict each other vertically and horizontally between one law and another; the language used must be clear, simple, and precise because the contents are the role of the community members affected by the legislation. In imposing a sentence on the perpetrator of a crime, the judge does not rule out the possibility that it is too light or that the difference between the charges and the sentence imposed is too stark. This is an obstacle in law enforcement.

There are several principles in enacting laws whose purpose is for these laws to have a positive impact. That is so that the law achieves its goals effectively in people's lives. In implementing law enforcement in the field, there often needs to be more clarity between legal certainty and justice. This is because the conception of justice is an abstract formula, while legal certainty is a procedure determined normatively. Policies that are not entirely based on law are justifiable as long as the policies are not against the law.

b. Law Enforcement Factors

Law enforcers have a position (status) and a role (role). A person who has a particular position is usually called a role occupant. A right is the authority to do or not do, while an obligation is a burden or duty. This structural component shows the existence of institutions created by the legal system. These institutions have different criminal law laws. In short, this structural component allows us to expect how a legal system should work.

Law enforcement officials play an essential role in the functioning of the law, both in mentality and personality; if the regulations are reasonable, but the quality of the officers could be better, problems will arise. One of the keys to success in law enforcement is the mentality or personality of law enforcement, quoting the opinion of J. E. Sahetapy, who said that in the framework of law enforcement and implementation of law enforcement, upholding justice without truth is a policy. Upholding the truth without honesty is hypocrisy. Within the law enforcement framework of every law enforcement agency (human inclusive), justice and truth must be stated, felt, seen, and actualized. The context above explains that regarding the personality and mentality of law enforcers, there has been a strong tendency among the public to interpret the law as officers or law enforcers. This means that the law is identified with the actual behavior of officers or law enforcers, but in carrying out their authority, problems often arise due to attitudes or treatment that are seen as exceeding authority or other actions that are considered to tarnish the image and authority of law enforcers, this is due to the low quality of law enforcement officials the

a. Facility Factor

Law enforcement can only run smoothly with the factor of facilities or facilities. These facilities include educated and skilled human resources, good organization, adequate equipment, and adequate and proper finances. Facilities can be formulated as physical facilities, which function as supporting factors to achieve goals. Supporting facilities include software and hardware.

b. Public

Every citizen or group must have legal awareness, namely high, medium, or low legal compliance. As is well known, legal awareness is a process that includes legal knowledge, legal attitudes, and legal behavior. The degree of public compliance with the law indicates the functioning of the relevant law. That is, if the degree of compliance of citizens with a regulation is high, then the regulation is functioning.

Law enforcers come from the community and aim to achieve peace in society. Every citizen or group has more or less legal awareness. The problem that arises is the level of legal compliance, namely high, moderate, or poor legal compliance. The degree of public compliance with the law indicates the functioning of the relevant law.

c. Cultural Factors

The culture of the legal system includes the values that underlie applicable law, which are abstract conceptions of what is considered good so that it is adhered to and what is considered flawed so it is avoided. As a result, work, creativity, and taste are based on human initiative in social life. Many cultural variations can lead to particular perceptions of law enforcement. Cultural variations are challenging to uniform. Therefore, law enforcement must be adapted to local conditions. Based on the explanation above, the researcher analyzes that laws that are not yet optimal in overcoming various problems increase people's frustration amid poverty, further exacerbating the lives of disadvantaged people. This condition is exacerbated by the weakening of the level of belief of some people in Pancasila ideology as a result of the influence of globalization. Injustice and poverty further distance marginalized communities from Pancasila ideology. These groups of people who feel marginalized are, of course, very vulnerable and easily exploited by radical groups and terrorist networks to carry out actions that lead to acts of theft. In everyday life, people often talk about culture. According to Soerjono Soekanto,

culture has a considerable function for humans and society: regulating so that humans can understand how they should act, act, and determine their attitudes when they relate to other people. Culture is one of the main lines of behavior that sets rules about what to do and what is forbidden.

CONCLUSION

1. Legal arrangements The role of the Indonesian National Police in tackling the crime of theft by force is regulated in the Criminal Code Article 362 concerning theft.
2. Implementation The implementation of the role of the police in tackling the crime of theft with violence is through returning to the identity of the police as law enforcement officers according to the vision and mission by prioritizing changes in the behavior of investigators. The behavior of investigators that must be changed immediately is a figure of power (arrogant) and blackmail or asking for monetary and in-kind rewards in dealing with cases, and the approach to achieving the goal of a prosperous life by gathering as much material as possible must be changed by living a virtuous *prajaya* life.
3. The factors that become obstacles to implementing accountability for the crime of theft with violence are the relevant statutory factors (legal substance), law enforcement factors, facilities or facilities, community factors, and cultural factors.

REFERENCE

Suharto, Op Cit, hlm. 79

http://www.ubb.ac.id/menulengkap.php?judul=Tindak%20pidana%20pidana%20pencurian%20dengan%20pemberatan&nomorurut_artikel=463,

Gerson W. Bawengan, Hukum Pidana didalam Teori dan Praktek , cet : II, Jakarta: P.T. Pradnya Paramita.

Wirjono,Prodjodikoro, Tindak-Tindak Pidana Tertentu Di Indonesia, Cet : II, Jakarta-Bandung: P.T. Eresco.

Tim Permata Press, Perlindungan Anak & Undang-Undang RI No. 11 Th.2012 tentang Sistem Peradilan Anak, Jakarta:Permata Press.2013.

Results of interviews conducted with informants Head of Criminal Investigation Unit of the Barelang Police, Batam City.

Kartanegara, Satochid, Hukum Pidana, Kumpulan Kuliah Bagian Dua: Balai Lektor Mahasiwa.

Results of interviews conducted with informants Head of Criminal Investigation Unit of the Barelang Police, Batam City.

Results of interviews conducted with informants Head of Criminal Investigation Unit of the Barelang Police, Batam City.

Sutarto, Suryono, Hukum Acara Pidana, Semarang: Badan Penerbit UNDIP Semarang, 2003.