

Juridical Analysis of the Regulation and Criminal Sanctions of Theft with Violence

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Abstract

Theft with violence is a form of criminal offense that not only violates an individual's property rights but also threatens the safety and security of the victim's life. Therefore, its regulation in criminal law plays an important role as an effort to provide legal protection and uphold justice. This research aims to analyze the legal regulation of the crime of theft with violence under the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) and to examine the application of criminal sanctions against perpetrators of theft with violence. The research method employed is normative legal research using a statutory approach and a conceptual approach. The data consist of primary, secondary, and tertiary legal materials, which are analyzed qualitatively. The results of the study indicate that the regulation of the crime of theft with violence is stipulated in Article 365 of the Criminal Code, which contains the elements of the offense as well as aggravating circumstances based on the consequences and the manner of its commission. The application of criminal sanctions against perpetrators of theft with violence takes the form of imprisonment with varying penalties, depending on the level of violence, the resulting consequences, and aggravating circumstances. Thus, the regulation and criminal sanctions in the Criminal Code are expected to provide a deterrent effect and ensure legal certainty and protection for the public.

Keyword: Theft with Violence, Criminal Code, Criminal Sanctions, Criminal Law.

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Introduction

The criminal offense of theft with violence is a crime that targets property while simultaneously endangering the safety of the victim's life. This act cannot be equated with ordinary theft, as the perpetrator employs physical violence or threats of violence against another person. Such violence is carried out with the aim of facilitating the taking of property, enabling escape when caught in the act, or retaining the stolen goods. From the perspective of criminal law, theft with violence possesses distinct characteristics and carries more severe criminal penalties. The provisions governing this offense are expressly regulated in the Criminal Code, particularly Article 365 of the Criminal Code, which serves as the primary legal basis for its enforcement [1].

The legal basis for the regulation of theft with violence refers to the Criminal Code (KUHP) as substantive criminal law, which determines which acts are categorized as criminal offenses and what sanctions are imposed on the perpetrators. The Criminal Code itself is a product of national law that was adopted during the colonial period and later renewed through Law No. 1 of 2023 concerning the Criminal Code, which came into force on January 2, 2026, replacing the previous version of the Criminal Code. These provisions serve as the basis for assessing and adjudicating cases that occur within society.

Article 365 of the Criminal Code stipulates that theft committed by being preceded, accompanied, or followed by violence or threats of violence against a person constitutes a criminal offense [2]. Such acts are punishable by imprisonment, with a maximum sentence of nine years for the basic form of theft with violence. The element of violence or threat of violence under this provision includes the use of physical force or certain instruments intended to coerce, suppress, incapacitate resistance, or instill fear in the victim in order to facilitate the commission of the theft.

In addition, Article 365 of the Criminal Code also provides for aggravated penalties if the offense is committed under certain circumstances, such as when it is carried out by two or more persons, committed at night, or results in serious injury or even the death of the victim. Under such circumstances, the criminal sanctions may be increased, including the imposition of more severe penalties in the form of longer terms of imprisonment ranging from 15 to 20 years, depending on the consequences of the act [3]. The juridical regulation of criminal sanctions for theft with violence aims to provide a deterrent effect for perpetrators while simultaneously ensuring legal protection for victims and the public. In judicial practice, judges take into consideration the element of violence, the motive, and the impact on the victim when imposing sentences. Although criminal sanctions are normatively regulated, their application in court proceedings often results in variations in judicial decisions, reflecting differences in the interpretation of facts and legal elements in each case [4].

A juridical review of various court decisions indicates that although the provisions on sanctions in the Criminal Code have been formulated explicitly, their implementation has not always been able to optimally realize a sense of justice [5]. This condition is influenced by several factors, such as evidentiary difficulties that must be fulfilled by law enforcement authorities and judges' considerations regarding aggravating and mitigating circumstances of the defendant. In practice, cases of theft with violence examined by District Courts demonstrate disparities in sentencing, even though the perpetrators' acts equally fulfill the elements of the criminal offense as stipulated by law. Other relevant legal bases can also be found in the general principles of criminal law, including the principle of legality, the principle of justice, and the principle of individualization of punishment, which guide judges in determining appropriate sanctions based on the facts and the degree of culpability of the offender. The implementation of these principles is essential to ensure that the imposition of punishment is not merely retributive in nature, but also takes into account aspects of rehabilitation and prevention [6].

The regulation and criminal sanctions for theft with violence under the Criminal Code cannot be sufficiently addressed solely through normative interpretation of statutory provisions.

Such analysis must also be accompanied by an assessment of how these legal provisions are applied in judicial practice. This comprehensive approach is essential to evaluate the effectiveness of criminal law in achieving its primary objectives, namely reducing the occurrence of criminal acts, providing protection to society, and ensuring the fulfillment of a sense of justice for both victims and perpetrators in accordance with applicable legal principles. The researcher formulates the research problems as follows: (a) How is the legal regulation of the criminal offense of theft with violence under the Criminal Code? (b) How are criminal sanctions applied to perpetrators of theft with violence? This research is expected to provide both academic and practical contributions in enhancing the effectiveness of the application of criminal law to the offense of theft with violence in order to realize justice and legal protection for society.

Research Methodology

This research constitutes normative legal research employing a normative juridical approach, aimed at analyzing the legal regulation and the application of criminal sanctions for the offense of theft with violence as regulated under the Criminal Code (KUHP). The approaches used in this study include a statutory approach, by examining the provisions of Article 365 of the Criminal Code as well as other relevant regulations, and a conceptual approach, by analyzing criminal law concepts related to theft, violence, and criminal sanctions. The sources of legal materials consist of primary legal materials in the form of the Criminal Code, secondary legal materials in the form of criminal law textbooks, scientific journals, and expert opinions, as well as tertiary legal materials such as legal dictionaries. The technique for collecting legal materials is conducted through library research, while the analysis of legal materials is carried out qualitatively using deductive reasoning to draw conclusions.

Results

Legal Regulation of the Criminal Offense of Theft with Violence

The definition and principal regulatory framework of the Criminal Code concerning theft with violence indicate that this offense, known in legal terminology as theft with violence or robbery, constitutes a criminal offense under Indonesian criminal law and falls within the category of crimes against property. This crime is regulated in Article 365 of the Criminal Code (KUHP), which explicitly outlines the elements of theft that are preceded, accompanied, or followed by violence or threats of violence against another person, with the intent of facilitating the theft or enabling the perpetrator to escape after being caught in the act. This provision demonstrates that theft with violence differs from ordinary theft as regulated in Article 362 of the Criminal Code.

Article 365 of the Criminal Code regulates the criminal offense of theft accompanied by elements of violence or threats of violence under various aggravating circumstances and contains several constituent elements [7]. Paragraph (1) stipulates that theft is punishable when it is committed with violence or threats of violence against a person, whether carried out before, during, or after the theft, with the intent to prepare for or facilitate the commission of the act, or to enable the perpetrator to escape or to retain control over the stolen property. Paragraph (2) provides for aggravated penalties if the theft is committed at night, in a house or enclosed yard containing a house, on a public road, or in a means of public transportation while in operation; if it is committed jointly by two or more persons; or if it is carried out by means of breaking in, climbing, or using false keys, false orders, or false official attire. In addition, the penalty is further aggravated if the act results in serious injury. Paragraph (3) stipulates that theft with violence resulting in death is punishable by a maximum imprisonment of fifteen years. Furthermore, paragraph (4) contains the most severe provision, namely when the theft is committed jointly, accompanied by violence or threats of violence, and results in serious injury or the death of the victim.

Article 365 of the Criminal Code requires the fulfillment of both subjective elements (the intent of the perpetrator) and objective elements (the physical act). The objective elements include the act of unlawfully taking property belonging to another person, accompanied or followed by violence against the victim. Meanwhile, the subjective element consists of the perpetrator's intent to obtain the property through such means or to facilitate escape if apprehended. Thus, Article 365 of the Criminal Code combines the elements of theft and violence, rendering the offense more serious than ordinary theft. The Criminal Code specifies criminal sanctions for perpetrators of theft with violence across several levels of criminal severity. Paragraph (1) of Article 365 imposes a maximum imprisonment of nine years for perpetrators of theft accompanied by violence or threats of violence. This sanction is more severe than that for ordinary theft, as the perpetrator's conduct not only deprives property rights but also endangers the victim's safety. These sanction provisions are intended to provide a deterrent effect and to protect both property rights and the right to personal security.

In addition to the principal sanctions, Article 365 of the Criminal Code also recognizes aggravating circumstances that increase the severity of punishment. For instance, paragraph (2) raises the maximum penalty to twelve years' imprisonment if the violence is committed under certain aggravating conditions, such as being carried out at night, committed by two or more persons, or resulting in serious injury. This regulation reflects the principle of criminal law that considers not only the outcome of the act but also the manner in which it is committed, with the aim of addressing forms of crime that pose greater danger to society [8]. Harsher penalties are imposed when the victim suffers serious injury or death. Under Article 365 of the Criminal Code, higher levels of punishment apply if theft with violence results in serious injury or the death of the victim. According to these provisions, perpetrators may be sentenced to up to fifteen years' imprisonment, or even up to twenty years or life imprisonment when accompanied by additional aggravating factors such as severe violence and commission of the offense jointly with others. This regulation demonstrates the attention of criminal law to the consequences arising from the act, not merely to the core conduct itself.

From a juridical perspective, the regulation of theft with violence under the Criminal Code aims to provide a deterrent effect for society in order to prevent actions that endanger others. The imposition of severe criminal sanctions reflects the legal value placed on the protection of property rights and the physical safety of citizens. Criminal law scholars argue that the severity of criminal penalties should be proportionate to the level of danger posed by the offense in order to maintain social order and public security. Theft with violence constitutes a distinct offense from ordinary theft due to the presence of violence or threats of violence against the victim; criminal law doctrine classifies it as an aggravated form of theft because the element of violence increases the gravity of the offense and therefore justifies the imposition of heavier sanctions [9]. The clarity of these elements is crucial for evidentiary purposes in judicial proceedings and for establishing the criminal liability of the perpetrator.

Application of Criminal Sanctions against Perpetrators of Theft with Violence

Theft with violence is a criminal offense that is specifically regulated in the Criminal Code because it involves the unlawful taking of property accompanied by threats to the victim's personal safety. This regulation indicates that the state regards such conduct as a serious offense that endangers public order. The application of criminal sanctions against perpetrators aims to create a deterrent effect while simultaneously protecting society from the potential recurrence of similar crimes [10]. In Indonesian criminal law, theft with violence is understood as the act of taking property belonging to another person with the intention of unlawful possession, accompanied by violence or threats of violence against the person entitled to the property. This offense is specifically regulated under Article 365 of the Criminal Code (KUHP), which constitutes a qualified form of the basic offense of theft under Article 362 of the Criminal Code, with the addition of the element of violence or threat thereof. If the offense of theft with violence is committed by a child, the application of sanctions may be diverted through restorative justice

mechanisms, thereby ensuring that children in conflict with the law receive justice and legal protection [11].

Article 365 of the Criminal Code adopts the principle that violence accompanying theft constitutes an aggravating factor, thereby resulting in more severe criminal penalties compared to ordinary theft. In general, the maximum penalty for this offense may reach up to nine years' imprisonment, or even higher when accompanied by specific aggravating circumstances, as stipulated in Article 365 of the Criminal Code. The application of criminal sanctions in court demonstrates that judges impose imprisonment on perpetrators of theft with violence pursuant to Article 365 of the Criminal Code while taking into account the facts of the case and the nature of the violence involved. For instance, in a particular judicial decision, the defendant was sentenced to two years and six months' imprisonment, even though the theoretical statutory maximum penalty could have been significantly higher. This illustrates that the application of the law is not solely based on the statutory maximum penalties but also considers the objective and subjective circumstances of each case.

The judge's juridical considerations in imposing sanctions involve comparing the factual elements of the case with the formulation of the offense under Article 365 of the Criminal Code, followed by an assessment of mitigating and aggravating circumstances [12]. These considerations include whether violence actually occurred, the intensity of the threat, the impact on the victim, and whether the defendant has a prior criminal record. Such considerations serve as the basis for imposing a fair and proportionate sentence.

The aggravation of sanctions for theft with violence is not merely a matter of retribution, but also serves a deterrent function to prevent society from readily engaging in criminal acts that endanger the physical integrity and security of others. Due to the presence of violence, criminal law imposes harsher sanctions as a means of protecting victims and affirming the supremacy of law. When the perpetrator is a child (under the age of 18), the application of criminal sanctions is governed by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which emphasizes protection, guidance, and rehabilitation rather than imprisonment alone.

In practice, judges take into account the best interests and welfare of the child, as well as the availability of more restorative or rehabilitative forms of punishment rather than conventional imprisonment. In addition to imprisonment for perpetrators, the Indonesian legal system also provides avenues for restitution and compensation to victims as part of the restoration of victims' rights resulting from the crime of theft with violence. Such legal protection for victims is essential to affirm every individual's right to personal safety and property as protected under criminal law.

Conclusion

Theft with violence under Article 365 of the Criminal Code constitutes a crime against property accompanied by violence or threats of violence against a person, thereby distinguishing it from and rendering it more serious than ordinary theft. The elements of this offense include the unlawful taking of property belonging to another with a specific intent and the use of violence, and it is subject to graduated criminal sanctions ranging from imprisonment to more severe penalties when aggravating circumstances are present or when the act results in serious injury or death, as a form of legal protection for property rights and the safety of victims. Theft with violence is regulated under Article 365 of the Criminal Code, with heavier penalties than those prescribed for ordinary theft under Article 362 of the Criminal Code due to the inclusion of violence or threats against the victim. In applying sanctions, judges take into account the facts of the case, the degree of violence involved, and mitigating and aggravating circumstances. Child offenders receive special treatment in accordance with the Juvenile Criminal Justice System Law, while victims may obtain restitution or compensation as part of legal protection.

References

- [1] M. Insani and I. Ismawati, "Tindak Pidana Pencurian Dengan Kekerasan Dalam Kitab Undang-Undang Hukum Pidana No Title," *J. Pena Huk.*, vol. 1, no. 3, pp. 1–20, 2022.
- [2] A. J. R. Jingga, M. D. Hapsari, and A. U. Hosnah, "Tinjauan Yuridis terhadap Kejahatan Harta Benda Berdasarkan Pasal 365 KUHP tentang Pencurian dengan Kekerasan," *J. Pendidik. Tambusai*, vol. 8, no. 1, pp. 16222–16228, 2024, doi: <https://doi.org/10.31004/jptam.v8i1.14697>.
- [3] D. A. Pratama, "Sanksi tindak pidana pencurian dengan kekerasan dalam Pasal 365 KUHP perspektif hukum pidana Islam," UIN Sunan Gunung Djati Bandung, 2018.
- [4] I. A. Sakti, M. Ilyas, and M. Z. Muhdar, "Tinjauan Yuridis Terhadap Tindak Pidana Pencurian dengan Kekerasan," *Qawanin J. ilmu Huk.*, vol. 2, no. 2, pp. 1–12, 2021.
- [5] M. K. Arkan, K. Rizkianto, and F. D. Aryani, "Penerapan Hukum terhadap Pelaku Tindak Pidana Pencurian dengan Kekerasan (Pembegalan) di Pengadilan Negeri Pematang," *Pancasakti Law J.*, vol. 2, no. 1, pp. 1–12, 2024, doi: <https://doi.org/10.24905/plj.v2i1.54>.
- [6] M. F. M. Amzak, R. Renggong, and Y. A. Hasan, "Penanganan Tindak Pidana Pencurian Dengan Kekerasan Di Wilayah Hukum Kepolisian Resor Pangkajene Dan Kepulauan," *Indones. J. Leg. Law*, vol. 7, no. 1, pp. 39–25, 24AD, doi: <https://doi.org/10.35965/ijlf.v7i1.5269>.
- [7] R. C. Auli, "Simak Begini Bunyi dan Unsur-Unsur Pasal 365 KUHP," *Hukum Online .com*, 2024. <https://www.hukumonline.com/klinik/a/simak-begini-bunyi-dan-unsur-unsur-pasal-365-kuhp-lt65cb50141d1a0/>
- [8] A. S. Wibowo, "Analisis Yuridis Pemeriksaan Tindak Pidana Pencurian Dengan Kekerasan (Studi Kasus Pengadilan Negeri Malang)," *DINAMIKA*, vol. 28, no. 16, pp. 5535–5552, 2022.
- [9] B. Indah, R. D. Ariesta, and Y. R. Mundu, "Upaya Penegakan Hukum Terhadap Tindak Pidana Pencurian Dengan Kekerasan Terhadap Pengendara Bermotor Roda Dua Di Kota Balikpapan," *J. Lex Suprema*, vol. 3, no. 1, pp. 582–598, 2021, doi: [10.12345/lexsuprema.v3i1.527](https://doi.org/10.12345/lexsuprema.v3i1.527).
- [10] A. Simbolon, H. Aziz, and P. Hafidati, "Analisis Yuridis Sanksi Pidana Terhadap Anak Pelaku Tindak Pidana Pencurian Dengan Kekerasan Secara Bersama (Studi Kasus Putusan Nomor: 585/Pid.B/2020/PN Jkt Utr)," *J. Pemandu*, vol. 4, no. 2, pp. 30–46, 2023.
- [11] R. A. Fikri, A. R. M. Siregar, and F. Rafianti, "Restorative Justice Efforts To Provide A Sense Of Justice For Children," *Int. J. Manag. Soc. Sci.*, vol. 10, no. 10, pp. 65–70, 2022.
- [12] M. Mulyoto, N. Purba, and A. Sahlepi, "Kajian Yuridis Terhadap Perbuatan Seseorang Yang Melakukan Pencurian Dengan Kekerasan Dalam Perspektif Kuhp (Studi Putusan 2964/Pid. B/2019/PN. Mdn)," *J. Ilm. Metadata*, vol. 3, no. 2, pp. 432–451, 2021.