

The Enforcement of Criminal Law Against Violent Theft Crimes

Mabsuti^{1)*}; Santy Fitnawati WN²⁾
^{1,2}*Law Faculty, Universitas Primagraha*
 Email: ^{*)} ibnumarhas2@gmail.com

ARTICLE HISTORY

Received [12 May 2023]
Revised [30 May 2023]
Accepted [10 June 2023]

KEYWORDS

Theft
Violence
Law enforcement

**This is an open access article
 under the [CC-BY-SA](https://creativecommons.org/licenses/by-sa/4.0/) license**



ABSTRACT

Occasionally, technological advancements and the growth of human civilization are accompanied by an increase in human requirements. This has a negative effect because it will increase the likelihood of criminal activity. Theft with violence is a type of crime that has recently occurred in every region and has been extensively discussed, as it severely disrupts security and public order. Consequently, the purpose of this study was to investigate the enforcement of criminal law against the offense of larceny with violence. Using a normative juridical approach with a statutory approach and a case approach, secondary data with additional primary, secondary, and tertiary legal materials were analyzed qualitatively in this study. In light of these findings, Chapter XXII of the Criminal Act of Theft is governed by Articles 363, 363, and 365 of the Criminal Code (KUHP). This indicates that law enforcement officials must refer to these articles when imposing violent punishments on thieves. Violent crime Criminal law enforcement is an effort to translate concepts of criminal law justice into legal certainty and social benefits in every legal relationship. There are three factors that must always be considered in law enforcement: 1) legal certainty (*Gerechtigkeit*), 2) justice, and 3) effectiveness. Legal structure, legal substance, legal culture, and legal remedies (preventive and punitive measures) comprise the efforts to uphold the law in instances of theft crimes involving violence.

INTRODUCTION

Along with technological progress and the passage of time, human interests are expanding. This has a negative effect because it will increase the likelihood of criminal activity. The case of robbery, which is a serious threat to public safety and order, has recently been widely discussed in every region. Although robberies have been occurring in every region for a long time, only recently has this been brought to the attention of the public or the media. A small number of individuals were responsible for the initial street activity. Over time, however, the action was carried out in coordination with various factions. Its membership includes both males and women. There is no specific definition of robbery or burglary within the Criminal Code (KUHP). Robberies can be prosecuted under the provisions of Article 365, paragraph 1:

“Theft that was preceded, accompanied, or followed by violence or threat of violence against a person with the intent to prepare or facilitate theft, or in the case of being caught red-handed, to enable the escape itself or other participants, or to retain control of the stolen goods, is punishable by up to nine years in prison.”

In accordance with article 365 of the Criminal Code, this act is not referred to as "BEGAL" but as CURAS (Theft with Violence) in the Criminal Code, as "BEGAL" is always synonymous with violence and taking or acquiring things that are not legitimately his. The taking or theft of a motorized vehicle is a street-level offense that can be detrimental to the victim's mental and physical health [6]. Thefts frequently occur in vulnerable areas, at night, when the victims are alone on motorcycles, or when night descends before dawn. Even this case is enough to make us wince; the perpetrators are adolescents between the ages of fifteen and twenty. Children who should spend more time in education and extracurricular activities are instead engaged in illicit activity. There are numerous means by which perpetrators can incapacitate their victims in order to carry out their crimes, and criminals typically work in tandem. In the middle of a quiet road, one thief pretended that his motorcycle had broken down, then asked the victim for assistance. After the victim provided assistance, the thief acted by harming the victim while making threats, and he stole the victim's motorcycle. Theft that is accompanied by threats of violence, such as striking the victim by tying them up or holding them at gunpoint to keep them still and silent [3].

Clearly, this condition creates new problems. However, this crime could not have occurred if the convicted criminals had faced strict, plain, and transparent punishments. Priority must be given to perpetrator prosecution [8]. Because Crime is behavior that is prohibited by the state, because it is an act

that is harmful to the state, and because the state views punishment as the ultimate remedy (Ultimum Remedium) [9], the state employs punishment as the ultimate remedy. Society actually anticipates this. From the numerous opinions expressed by the public, it is clear that they want the perpetrators to be prosecuted according to rigorous laws, just as they would be in other cases such as robbery. Published in a transparent manner with the expectation that it serves as a deterrent for others. Again, the robberies that occurred have caused unrest among the populace, which the populace does not want. Therefore, the perpetrators' legal proceedings. This creates a debate about how to enforce criminal law against violent offenses committed by criminals in order to create a sense of justice for victims, the majority of whom have not only lost their property but also a few of whom have lost their lives.

RESEARCH METHOD

This study employed a normative juridical methodology, i.e., it examined the relevant theories, concepts, legal principles, and statutes and regulations based on the primary legal material. Where it referred to literature studies in the field of law employing a case approach and concept-related discussion. Utilized secondary data in normative (doctrinal) legal research, such as data obtained indirectly or via books, books, and other documents. According to Soerjono Soekanto, secondary data are generally complete and promptly usable. This study utilized primary, secondary, and tertiary legal materials as secondary sources. Then, these data were analyzed using deductive methods, i.e., reasoning from one or more general statements to certain logical conclusions.

RESULTS AND DISCUSSION

A. Violent Theft

Begal is a verb, and its synonym is the word thief. *Begal* is also a process, method, or act that signifies deprivation or thievery. In terms of terminology, the word *Begal* can be interpreted as a crime (criminal) such as robbery or deprivation perpetrated with the use of sharp instruments, motorized vehicles, and even the murdering of victims, with motorcyclists being the typical targets. Therefore, *Begal* is a robbery involving the use of a motorized vehicle and a pointed weapon.

Clearly, acts of larceny disrupt public security and even endanger human security. The expression *Begal* is exclusive to the culture of Indonesia. *Begal* or commonly known as *Begal* is an act of forcibly seizing something from another's property, similar to a criminal except that the perpetrator injures the victim directly. The criminals committed their crimes indiscriminately and were even classified as sadists because they lacked compassion and ventured to inflict fatal injuries on their victims before abandoning them.

Under the England and West of larceny Act, a person is considered to have committed robbery if he committed larceny or robbery by force with the intent to frighten the victim. According to Louise E. Porter, a burglary can be committed for the purpose of obtaining commercial goods (typically with more planning and in greater quantities) or personal goods. According to Porter, criminals who target personal belongings are typically more vicious or antagonistic. According to Muhammad Mustofa, the term *Begal* has long been used in the criminal community. Even burglary has occurred in China and Indonesia since the imperial period. The term *Begal* appears frequently in Javanese literature. *Begal* is a burglary committed in a desolate location. In this peaceful location, the person who brought the property was awaiting their arrival.

Begging is a social deviation associated with offenses that damages numerous individuals. Social deviation is possible anywhere and by anyone. Regardless of how large or minor these deviations are on a broad or narrow scale, they will undoubtedly disrupt the equilibrium of life in society. A behavior is considered deviant if it is not in accordance with the values and social norms of the society; in other words, deviation refers to all types of behavior patterns that do not conform to the will of the society.

The Great Dictionary of the Indonesian Language defines *begal* as a thief or pirate, while *begal* is defined as robbery or street stealing. Therefore, robbery is classified as a criminal act, the crime of robbery or robbery or larceny on the street, and is accompanied by acts of violence conducted against a victim whose property is taken, such as a motorcycle and other property. *Begal* refers to an individual or group who commits a robbery through the use of force or threats of force. If we examine the Criminal Code (KUHP) as *lex ganarale*, we will not find a definition for the offense of larceny because *Begal* is a language that evolves and develops alongside society.

The Big Indonesian Dictionary defines *Bebegalan* as the noun (noun) process, method, act of



robbery, street deprivation, and criminals. The frequency of robberies in the area discourages locals from wearing jewelry when traveling. Begal is a term used by traditional society that evolved into a term for criminals who intercept victims and steal their belongings. Therefore, begal is classified as a criminal act, the offense of robbery or robbery or larceny on the street, and is accompanied by acts of violence against a victim whose property is confiscated, such as a motorcycle and other property. The Criminal Code itself classifies robbery as a crime against property, as stated in book III of the Criminal Code, where Article 365 of the Criminal Code includes robbery as larceny accompanied by violence.

B. Regulating the Crime of Theft with Violence

Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia states that "Indonesia is a state of law," meaning that every citizen and administrator of the state must abide by the applicable legal rules [12]. Similarly, larceny obviously disrupts the security and order of people's lives, and the term 'robbery' is on the rise in Indonesia. Since the rise of this crime, almost every location in Indonesia has experienced the same robbery problem. Begal is essentially equivalent to theft or the forcible deprivation of rights. Begal is only a distinguishing term because it centers on the seizure of a motorized vehicle by a group of individuals with the potential to injure and murder the victim. Articles 362, 363 and 365 of the Criminal Code (KUHP) govern the crime of larceny, including the crime of theft from Chapter XXII. In order to convict robbery offenders, law enforcement must refer to these articles.

Theft encompasses property offenses as outlined in Articles 362 through 367 of the Criminal Code. The Criminal Code regulates the following forms of theft: Article 362 of the Criminal Code is a larceny offense of ordinary gravity. Article 363 of the Criminal Code is a larceny offense of exceptional quality or weight. Article 364 of the Criminal Code is a larceny offense of minor severity. Article 365 of the Criminal Code defines larceny by force or threat of force as an offense. Article 367 of the Criminal Code defines larceny within the family as a theft offense. This issue is consistent with the provisions of the regulation of legal snares in the aforementioned article regarding larceny by force [4].

According to the Criminal Code, burglary is defined as larceny with force. In Indonesia, violent theft is a serious problem. Within the context of the clause In common parlance, theft with violence is also referred to as burglary. larceny with violence, as defined by Article 365 of the Criminal Code, is defined as larceny that is preceded, accompanied, or followed by violence with the intent of making the crime simpler to commit.

In accordance with Article 362 of the Criminal Code, larceny is punishable by a maximum sentence of five years in prison or a maximum fine of nine hundred rupiahs for anyone who takes an object that is entirely or partially owned by another person with the intent to unlawfully possess it. This indicates that the robbery offenders were sentenced to five years in prison [5].

In accordance with Article 362 of the Criminal Code, the subjective element of the offense of larceny is the intent to acquire unlawful possession of the object. The first element of the objective is the act of taking the object, where taking in a restricted sense refers to moving the object and fingertips, holding the object, and redirecting it to another location. The nature of larceny is to diminish the victim's wealth, so the stolen property must be of high value. Clearly, there is no act of taking if the goods are surrendered to the perpetrator by the legitimate owner. However, there is a fraudulent act committed by the perpetrator if the surrender is the result of coercion by force. Then there is extortion if the coercion is in the form of direct violence, and there is intimidating if the threat is to reveal secrets.

The following are then re-explained in Criminal Code article 363: Sentenced to a maximum of seven years in prison: a) Theft of animals. b) Theft during a fire, volcanic eruption, flood, earthquake, tsunami, shipwreck, railway accident, unrest, rebellion, or war threat. c) Theft at night in a closed home or yard where there is a house, committed by individuals who are not known or sought by those with the right. d) Theft committed in concert by two or more individuals. e) Theft is committed by breaking, cutting, or climbing, or by using phony keys, phony orders, or phony official attire, in order to gain access to the location of the crime or to the stolen property. If the larceny described in point 3 is accompanied by one of the items listed in points 4 and 5, the maximum sentence is nine years in prison.

After examining article 363 of the Criminal Code, it can be concluded that the perpetrators of robbery are included in paragraph (1) number 4 where the perpetrators are partners, so they can be sentenced to seven years, even though the punishment for criminals is harsher than that of article 362 of the Criminal Code. Then, in Article 365 of the Criminal Code, it is explained as follows: Theft that was preceded, accompanied, or followed by violence or threats of violence against a person, with the intent to prepare or facilitate theft, or in the case of being caught hand, to allow escape of oneself or another participant, or to retain possession of stolen items, is punishable by a maximum of nine years in prison. Punishable by a maximum of twelve years of imprisonment. If the conduct results in death, it is punishable by a maximum of fifteen years in prison. 4. Punished with the death penalty or imprisonment

for life, or for a maximum of twenty years, if the act results in grievous injury or death and is committed by two or more persons in partnership in conjunction with one of the items described in paragraphs 1 and 3;

The elements of the offense listed in paragraph 1 of Article 365 are as follows: 1. objective factors
a) Methods or endeavours 1) Conflict. 2) Threats of physical harm.

b) Addressed to individuals. c) the appropriate time to use or threaten violence is: 1) before. 2) At this time. 3) Once 2. subjective factors The use of violence or threats of violence with the intent to: a) plan a theft; or b) facilitate a theft. c) Permitting itself or other participants to escape if discovered red-handed. d) Controlling the stolen item so that it remains in his possession. According to Article 365 of the Criminal Code, it is theft with aggravating circumstances if it is preceded, accompanied, or followed by violence or threats of violence with the intent of preparing, facilitating, escaping himself, or retaining control over the stolen goods, which are carried out at a specific time and manner. This article is referred to as larceny with violence because it involves two or more persons and results in the conduct described in Criminal Code Article 265 paragraphs (2) and (3).

Here, the punishment for those who commit larceny with violence is harsher than for those who commit ordinary theft. Article 365 of the Criminal Code, which was previously explained, stipulates that larceny with violence carries a severe penalty (nine years in prison). This sentence may be increased to twelve years in prison if (according to Article 365, paragraph 2 of the Criminal Code) the special theft is accompanied by other factors that are similar to the aggravating circumstances of common theft (Article 363). The purpose of another thing is to commit this theft on a public road or on a moving train. The aggravating factor is that it was difficult for the victim to obtain assistance from others, and it was not mentioned that the theft was committed on a moving public bus, which is of the same nature as theft on a moving train. Consequently, by analogy, Article 365 paragraph 2 can also be applied to thefts on moving public buses.

Particularly, Article 365 of the Criminal Code imposes restrictions on the distinction between robbery and theft because, prior to stealing other people's property, robbery uses violence or threats of violence against individuals in order to facilitate or prepare for the theft. Article 365 specifies a minimum of nine years and a maximum of twelve years for larceny committed at night or on public highways. Therefore, if the robbery victim dies, the utmost penalty for larceny is 15 years to the death penalty or life imprisonment. In Article 285 of the Criminal Code, which states: "Whoever with violence or threats of violence forces a woman who is not his wife to have sexual relations with him shall be punished with a maximum of twelve years in prison for rape."

This punishment is nearly identical to that for hirabah, which in Islamic law entails death, crucifixion, and amputation of the hands and feet. Even though the normative basis for larceny is very strong and unambiguous in the Criminal Code, it must be acknowledged that the recent epidemic of robberies is also attributable to lenient court decisions against perpetrators. The violation of this law is a vile act that merits appropriate legal punishments. Crime is a violation of the law that the state considers to be a crime; the severity of the crime must be accompanied by adequate punishments. In general, these sanctions can take the form of prison terms for those who are convicted or for the offense committed [15].

C. The Enforcement of Criminal Law Against Violent Theft Crimes

Enforcement of criminal law is an attempt to realize ideas about criminal law justice in legal certainty and social benefits into legal reality in legal certainty and social benefits into legal reality in every legal relationship. In Law Enforcement there are 3 elements that must always be considered, namely: 1) Legal Certainty (Rechtssicherheit) 2) Justice (Gerechtigkeit) and 3) Efficacy (Zweckmassigkeit). Legal certainty is a justifiable protection against arbitrary actions, with legal certainty the community will be more orderly, how the law should apply in concrete events. In law enforcement, justice must be paid attention to, but law is not always synonymous with justice because law is general in nature and binds everyone. The community expects benefits from law enforcement, not to the extent that law enforcement can cause unrest in society. There are two underlying factors for the occurrence of the crime of theft with violence, namely the education factor, and the perpetrator's income factor [2]. The efforts to uphold the law in cases of criminal acts of robbery are as follows:

1) Legal Structure

Fridman said the first aspect of upholding the legal system is the legal structure. The legal structure is the entire legal instrument and institution that implements the provisions of criminal law. To reveal a crime, the police are needed; to prosecute, a prosecutor is needed; and to try someone suspected of committing a crime, a judge is needed. This means that it is impossible for law enforcement to occur in a country without the establishment of an institution authorized to carry out legal actions. In this regard, the spearheads of law enforcement in Indonesia are the Police, the Attorney General's Office, the Judiciary, and also Correctional Institution officers, all of whom must unite in upholding criminal law so



that what is called the Integrated Criminal Justice System is realized.

The police, as the spearhead, must actively look at the facts that are happening in society and see the impact and scope of them. Like it or not, the police have to make a priority scale to determine which crimes are currently really urgent and must be eradicated immediately. Begal is now having an extraordinary impact; people are worried and afraid because it is not uncommon for the perpetrators to injure their victims. Therefore, the police, as law enforcers, have been given the authority by law to eradicate this crime. So that law enforcement against this robbery crime will run more effectively [14].

2) Legal Substance

When the legal structure has been formed and works optimally in law enforcement, the second aspect of law enforcement is the substance of the law. Legal substance includes norms or provisions in Indonesian laws and regulations that can accommodate crimes called Begal. Because even in law enforcement, we must pay attention to the principle of legality (*Nullum Dlictum Nulla Poena Siena Preavia Lege Poenali*). No act can be punished unless there is a law that regulates it before it is committed. If we look at the Criminal Code, there are actually no rules that directly lead to the crime of robbery. However, seeing the situation that developed in the community, the robbery occurred because of the confiscation of goods by force, accompanied by violence, which was carried out by several people. Even the victim suffered injuries and died. Seeing this, perpetrators of robbery crimes can be charged with Article 365 of the Criminal Code, paragraph (1), which states "threatened with a maximum imprisonment of nine years for theft which is preceded, accompanied, or followed by threats of violence, against people with the intent to prepare or facilitate theft, or in the case of arrest, to enable escape of oneself or another participant, or to retain possession of stolen property". Then article 365 paragraph (2) states that a criminal sentence of 12 years can be imposed if the act is committed by two or more persons and also results in serious injury. Then, if it results in the death of the victim, under Article 365, paragraph (3), the perpetrator is threatened with imprisonment for 15 years [10]. Although it involves violence and theft, beheading is a different act. There are many terms for theft among the public, such as mugging, deprivation, robbery, shoplifting, klitih, and other languages. The language or terms used by the people and in each region also have different names, but the action is still the same, namely theft.

3) Legal Culture

After substance and legal structure, the third element that guarantees law enforcement is legal culture. The legal culture here concerns the views, mindsets, and ways of acting of society as a whole, including its legal apparatus. Society is expected to actively participate in upholding the law. Communities can work together with law enforcement officials by reporting every crime that occurs, being willing to be a witness, and not taking the law into their own hands.

4) Legal Remedies

Efforts to deal with robbery The crime of robbery is a crime that not only seizes property but also the life of a person. The perpetrators do not hesitate to commit violence in order to obtain or maintain the stolen property. In the process of dealing with crimes committed by the Police in order to maintain security and public order, as stated in Article 13 of Law Number 2 of 2002, two efforts can be made: preventive efforts and repressive efforts. a) Preventive Efforts: Involve community leaders, youth, and religious leaders to prevent acts of violence against victims of robbery. Tightening the implementation of siskamling, or environmental security, in crime-prone areas Installing CCTV cameras in various places Installing warnings of rampant robberies The police carry out general operations that are routinely carried out every day and every night, carrying out patrol activities at times that are prone to theft and in places prone to theft [13]. b) Repressive Efforts: Using various methods or tactics to reveal the perpetrators to be processed according to existing laws and the existence of social control that aims to restore harmony that has been disrupted due to the occurrence of a violation by imposing sanctions according to the violations committed. And the law enforcement actions carried out by the police regarding the robbery case are complete [1].

CONCLUSION

Based on the explanation above, it can be concluded that, in terminology, the word robbery can be interpreted as an act of crime (criminal) such as robbery or deprivation carried out by someone accompanied by violence using sharp weapons and motorized vehicles, even the usual, to the point of killing victims and victims who are usually targeted. motorbike rider. Beggarly is a term used by traditional

society that later developed into the term for criminals who intercept victims and confiscate the victim's property. So begal is an act that is categorized as an act that violates the law, the crime of robbery or robbery or theft on the street, and is accompanied by acts of violence committed by someone against a victim whose property is confiscated, such as a motorbike and other property. In the Criminal Code (KUHP), the crime of robbery, including the crime of theft, is regulated in Articles 362, 363 and 365.

In this regard, the spearheads of law enforcement in Indonesia are the Police, the Attorney General's Office, the Judiciary, and also Correctional Institution officers, all of whom must unite in upholding criminal law so that what is called the Integrated Criminal Justice System is realized. The police, as the spearhead, must actively look at the facts that are happening in society and see the impact and scope of them. Like it or not, the police have to make a priority scale to determine which crimes are currently really urgent and must be eradicated immediately [7]. As for enforcement efforts, namely the Legal Substance, Legal structure, legal culture, and Legal measures (preventive and repressive Measures (Preventive Efforts and Repressive Efforts).

REFERENCES

- [1] Fauzi, Yimdi. Penegakan Tindak Pidana Pencurian Kendaraan Bermotor Roda Dua Dengan Kekerasan (Begal): Studi Kasus Wilayah Hukum Polres Metro Bekasi. 2018. PhD Thesis. UIN Sunan Gunung Djati Bandung. BAB III.pdf Diakses 25-10-2022
- [2] Harianto, H., Natsir, M., & Syahril, M. A. F. (2022). Kajian Hukum Pencurian dengan Kekerasan. *Jurnal Litigasi Amsir*, 9(3), 202-207.
- [3] Hartono, T., Lubis, M. A., & Siregar, S. A. (2021). Penegakan Hukum Terhadap Tindak Pidana Pencurian Dengan Kekerasan (Studi Pada Kepolisian Resor Kota Besar Medan). *Jurnal Retentum*, 2(1), 32-42.
- [4] Lubis, N. F., Ablisar, M., Yunara, E., & Marlina, M. (2023). Kebijakan Hukum Pidana, Pencurian dengan Pemberatan (CURAT) dan Pencurian Dengan Kekerasan (CURAS). *Jurnal Sosial dan Sains*, 3(3), 271-285.
- [5] Moeljanto, 2009, Kitab Undang-Undang Hukum Pidana, Jakarta: Bumi Aksara, Pasal 365 ayat 1, hal.129.
- [6] Ostin, B. (2019). Penanggulangan Tindak Pidana Pencurian Dengan Kekerasan di Kota Palembang. *Lex Lata*, 1(2).
- [7] Ramadhani, S. K. (2013). *Dasar Pertimbangan Hakim Dalam Menjatuhkan Sanksi Pidana Penjara Terhadap Pelaku Tindak Pidana Pencurian Dengan Kekerasan (Studi Di Pengadilan Negeri Sidoarjo)* (Doctoral dissertation, Brawijaya University).
- [8] Romdoni, M., WN, S. F., & Nurdiansyah, R. (2022). Impact Of Political Policy On The Implementation Of Law Enforcement. *Mediation: Journal of Law*, 67-74.
- [9] Surbakti, M., & Zulyadi, R. (2019). Penerapan hukum terhadap anak sebagai pelaku tindak pidana pencurian dengan kekerasan.
- [10] Soesilo.R. 1995, Kitab Undang-Undang Hukum Pidana. Bogor:Politea
- [11] Wahyudin, M. T. I., Shafira, S., Putri, F., & Putra, R. S. (2023). Pengegakan Hukum terhadap Tindak Pidana Pencurian dengan Kekerasan. *JURNAL EDUKASI NONFORMAL*, 4(1), 228-238.
- [12] Widayati, W. (2022). Penegakan Hukum Dalam Negara Hukum Indonesia yang Demokratis. *PLEDOI (Jurnal Hukum Dan Keadilan)*, 1(1), 19–31. <https://doi.org/10.56721/pledoi.v1i1.28>
- [13] Wijayanto, R. A. R. (2020). Upaya penegakan Hukum terhadap pelaku kejahatan Pencurian dengan Kekerasan. *Dinamika Jurnal Ilmiah Ilmu Hukum*, 26(8).
- [14] WIRADHARMA, I. Made Oka; DEWI, Anak Agung Sagung Laksmi; KARMA, Ni Made Sukaryati. Sanksi Pidana terhadap Pelaku Begal Bersepeda di Masa Pandemi Covid-19. *Jurnal Konstruksi Hukum*, 2022, 3. 1 : 24-28.4229-Article Text-22854-1-10-20220124.pdf Diakses 25-10-2022
- [15] Yesmil Anwar / Andang. 2009. Sistem Peradilan Pidana (Konsep, Komponen dan Pelaksanaanya Dalam Penegakkan Hukum Di Indonesia). Bandung : Widya. *JURNALHK10428.pdf* *JURNALHK10428.pdf* Diakses 25-10-2022