

Legal Protection and Impact on Victims of Aggravated Theft



Samsul Arifin¹, Umi Enggarsasi², Cita Yustisia Serfiyani³

^{1,2,3}Faculty of Law, Wijaya Kusuma Surabaya University

ABSTRACT: In expanding its purpose, a convict must also pay attention to justice for the victim. The principle of equality before the law must be applied as equal justice for the perpetrator and for the victim. If the state takes over the enforcement of criminal law because of the victim's mandate as a citizen, then the state is responsible to the victim. This article will discuss the philosophical basis of the state's responsibility towards victims of criminal acts, the principle of justice in the form of the state's responsibility towards the victim as a result of the failure of the perpetrator's responsibility in carrying out his sentence. Because legal science has prescriptive characteristics, this study uses normative (doctrinal) legal research, namely research to produce new arguments, theories or concepts as prescriptions in solving the problems faced.

KEYWORDS: Principle of Justice; State Responsibility; Victims; Criminalization

I. INTRODUCTION

In the life of the nation and state, every citizen has basic rights to protection from violence and discrimination as well as civil rights and freedoms that must not be taken away by anyone, so it is only right that every citizen receives legal protection for safety and security in all aspects of life.¹

Law has a very strategic and dominant position in the life of the nation and state. The existence of rules, both formal and non-formal, that apply in society is a very basic need, from the simplest level to the most complex level and has a close relationship with the state of society.² The law not only provides a reward for someone who commits a crime, but the law must also be able to play a role in protecting someone who is a victim of a crime that occurs.

In exercising its power, the state must not reduce the freedom and rights of citizens without going through a clear legal mechanism. The existence of protection and respect for citizens is an important pillar in every country that claims to be a country of law, as in the objectives of the Indonesian state contained in the opening of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 UUDNRI) paragraph 4, which reads: "Protecting the entire Indonesian nation and the Indonesian homeland, and to advance public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace and social justice, the Independence of the Indonesian Nation is formulated in a Constitution of the State of Indonesia, which is formed in a structure of the Republic of Indonesia with people's sovereignty based on the One Almighty God, Just and Civilized Humanity, the Unity of Indonesia and Democracy led by the wisdom of deliberation/representation, and by realizing social justice for all Indonesian people".

The objectives of this state must be interpreted as comprehensive protection for all citizens without exception. The objectives stated in the opening of the 1945 Constitution of the Republic of Indonesia are further described in the articles in its body known as constitutional rights, including: the right to justice, the right to protection and the right to be free from threats, discrimination and violence. So that in order to implement these objectives, the state is obliged to provide protection to all Indonesian citizens due to a criminal act. Protection for victims of a crime, if observed, only provides abstract protection or indirect protection formulated into a formulative policy. Legal protection as a victim of a crime, the victim has the right to receive legal protection, in providing this legal protection must be maximized. The legal protection in question is in the form of restitution or compensation which is used as an additional penalty in addition to the penalty of corporal punishment or imprisonment for perpetrators of aggravated theft or abbreviated as curat.³

The state (in this case represented by the Law Enforcement Apparatus by the police and prosecutors) has a very dominant role in criminal law as a legitimate representative of the community to defend the public interest, has actually taken over the role of the

¹ Titik Triwulan Tuti, 2010, *Konstitusi Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945*, Kencana, Jakarta, p. 28.

² Marwan Effendy, 2005, *Kejaksaan RI Posisi dan Fungsi dari Perspektif Hukum*, Gramedia Pustaka Utama, Jakarta, p. 11.

³ Titik Triwulan Tuti, *Loc.cit.*, p. 30.

Legal Protection and Impact on Victims of Aggravated Theft

victim as the party suffering from a crime. The dominant role of the state is not followed by clear legal regulations regarding the legal relationship between victims of crime and the state. So that whatever and however the actions or steps taken by the police or prosecutors, are considered as steps and actions desired by the victim of a crime.⁴

The relationship between victims of crime and the state, in this case represented by the police and prosecutors, is described as an indirect relationship that does not have real legal consequences. It is very different when compared to the relationship between the suspect (perpetrator) and his legal advisor (advocate) where in the relationship between these two subjects, a direct relationship is established so that it will produce definite and targeted legal consequences.

The emergence of many legal theories that discuss protection for perpetrators, the rights of a suspect, defendant and convict so that the perpetrator of a crime is increasingly protected and vice versa, the victim is increasingly neglected. Police, prosecutors and judges are considered as representatives of victims of crime who are directly dealing with perpetrators of crime. What has been done by the public prosecutor as a representative of the state in prosecuting perpetrators of crime is considered sufficient in resolving criminal cases.⁵

A common sight is how a victim who has been questioned in court is no longer the one who has been harmed. There is a tendency for the state to ignore victims of crime, resulting in this being very ironic considering how important it is to provide protection for the constitutional rights of victims who have been harmed by the perpetrator.

The formulation of Article 365 of the Criminal Code (hereinafter abbreviated as KUHP) concerning aggravated theft still leaves problems for the security and comfort of the community. The light sentences imposed have not provided a deterrent effect for the perpetrators, on the contrary, it has increased the number of aggravated theft crimes. Therefore, the state through the judicial institution needs to be present to provide legal protection for material losses experienced by victims by imposing additional penalties in the form of compensation or restitution on the perpetrators, even though this additional penalty has not been regulated in the Criminal Code. The role of the judicial institution in this case is that judges must have the ability and activeness to find the law if there is a legal vacuum or the rules are unclear, as explained in Article 27 of Law No. 14 of 1970 concerning judicial power, which reads: "Judges as enforcers of law and justice are obliged to explore, follow and understand the legal values that exist in society."⁶

Victims are people who experience physical, mental, and economic suffering caused by a criminal act. Victims in the scope of victimology have a broad meaning because they are not only limited to individuals who actually suffer losses, but also groups, corporations, and governments. Given the condition of victims due to criminal acts of theft related to property and objects, better efforts should be made to provide legal protection.

Article 5 paragraph (1) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, hereinafter abbreviated as (UUPSK), that witnesses and victims have the right to: Obtain protection for the security of their person, family, and property, and be free from threats related to testimony that will, is, or has been given; Participate in the process of selecting and determining security support protection; Receive translation; Be free from ensnaring questions; Receive information regarding case developments; Provide information without pressure; Receive information regarding court decisions; Keep their identities confidential; Receive a new identity; Receive information in the event that the convict is released; Obtaining a new residence; Obtaining reimbursement for transportation costs according to needs; Obtaining legal advice; Receiving temporary living expenses assistance until the protection period ends; and/or Obtaining assistance.⁷

In Article 7A paragraph (1) Victims of Criminal Acts also have the right to obtain restitution in the form of: compensation for loss of wealth or income; compensation for losses caused by suffering directly related to the crime; and/or reimbursement of medical and/or psychological care costs. The obstacles that are factors inhibiting the implementation of the rights of witnesses and victims of aggravated theft in providing legal protection include:⁸

1. Community Factors. The low level of public understanding to know what their rights are, they still too often set aside the rights they have so that they do not process cases that their rights should be able to be implemented. It is very unfortunate that until now the Law in the Republic of Indonesia in the Criminal scope has not been fully socialized, this is proven by the ignorance of the community, especially victims of aggravated theft, not all of whom know about the judicial process.
2. Factors from Law Enforcement. Law enforcement officers have an important role in achieving legal protection for the community, but the information provided by the police or other law enforcement officers to victims of aggravated theft regarding the existence of laws and regulations relating to the rights that witnesses and victims receive is still lacking, this is

⁴ Barda Nawawi Arief, 2010, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Kencana Prenada Media Group, Jakarta, p. 223.

⁵ Soeparman, "Kepentingan Korban Tindak Pidana Dilihat Dari Sudut Viktimologi", *Varia Peradilan*, Vol. XXII No. 260 Juli 2007, p. 50.

⁶ Satjipto Rahardjo, 2006, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, p. 54.

⁷ <https://goodstats.id/article/sebanyak-30-ribu-kasus-curat-terjadi-di-indonesia-selama-januari-april-2023-eH1UI>, diakses pada Rabu 19 Juni 2024

⁸ *Ibid.*

Legal Protection and Impact on Victims of Aggravated Theft

also because they still do not know what the rights of witnesses and victims are in Article 5 paragraph (1) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.⁹

3. No application for compensation (Restitution). Based on the discussion above, it can be seen that there is no application process for compensation (Restitution) in the Surabaya District Court Area carried out by victims of aggravated theft, how can law enforcement provide compensation to victims while the case was not filed before or after the court decision that has obtained permanent legal force. Victims in the development of society can accelerate the occurrence of criminal acts that will be carried out by perpetrators who have an active role and victims have a passive role where in this case the victim is considered to be guilty of a crime. This results in the perpetrator being the focus of social reaction (court), while the victim experiences less attention and is ultimately considered less important in the social reaction process, except only as an object of evidence (victim witness) and not a subject (in the criminal justice system in Indonesia).¹⁰

This time the author will discuss and analyze more about how someone can become a victim of motorcycle theft. Motorcycle theft is not solely because of the perpetrator's intention but because the victim also gives the perpetrator the opportunity to carry out his actions. Therefore, it is very important to know that in the occurrence of a crime, especially the crime of theft of two-wheeled vehicles, there is a role for the victim that causes the crime of theft.

Theft of two-wheeled motor vehicles (or abbreviated as ranmor) occurs so often because of the open opportunities and convenience. This crime is classified as a form of crime against property that provides results and is classified as having a fairly good economic value for the perpetrators. The series of two-wheeled motor vehicle theft can be divided into several groups, including:¹¹ a. Acts at the scene, including theft using violence, aggravation, robbery, embezzlement, and theft of motor vehicles; b. Removing the identity of a two-wheeled motor vehicle, after being successfully stolen and secured by the perpetrator, they will usually change the color of the motorbike, change the plate, change the chassis number, engine number, and modify the motorbike.

Protection of witnesses at this time is indeed very urgent to be realized at every level of examination in cases that are considered to require special attention and extra tight security. Although Indonesia currently has positive regulations on witness protection, namely Law Number 13 of 2006, but until now it has not run as expected, especially in the Witness and Victim Protection Agency (or hereinafter abbreviated as LPSK) which is given the authority to provide protection for witnesses and victims.

Legal protection for Indonesian citizens is a must because it is an integral part of human rights, which is regulated in the constitution and international human rights instruments ratified by the government. As a concept, human rights have a very broad meaning, considering that human rights issues are universal, without borders: national territory, politics, economics, social, culture and law. As a gift, human rights are fundamental rights given by God Almighty to humanity without questioning differences in social, cultural, political and economic backgrounds. In addition, the law also functions as an instrument of protection for legal subjects. In addition, there is Government Regulation Number 2 of 2002 concerning Procedures for Protection of Victims and Witnesses in Serious Human Rights Violations (PP No. 22 of 2002). In this PP, the word victim is added as a "partner to the word witness. The term used in this PP is protection, which means a form of service carried out by law enforcement officers or security forces to provide a sense of security, both physically and mentally, to victims and witnesses from the threat of terror and violence from parties or given at the examination stage. Not many people are willing to take the risk of reporting a crime if they, their families, and their property are not protected from threats that may arise from the report. Likewise with witnesses if they do not receive adequate protection. So they become reluctant to provide information according to the facts experienced, seen and felt themselves.

The role of witness testimony is very important, especially in crimes that are grouped into extraordinary crimes and as one of the evidences listed in the Criminal Procedure Code (KUHP). However, this is in stark contrast to the form of attention or protection given by the state or law enforcement officers to witnesses. Protection here is in the form of legal protection and/or other special protection.

Starting from the understanding of witnesses and witness statements, it is certain that one or several people who become witnesses then become evidence in the form of witness statements playing a very important role in proving the guilt of the suspect or defendant both at the investigation level and at the prosecution level. A person who occupies the position of a witness in a crime means that the witness is the one who saw with his own eyes how an act (criminal act) was carried out by the suspect or defendant. The understanding of witnesses here includes witnesses not as victims or witnesses as victims.

The enactment of Law No. 13 of 2006 on August 11, 2006 is considered a breakthrough that is expected to be able to cover the weaknesses of our legal system related to the neglect of witness and victim elements in the criminal justice system as the Criminal Procedure Code regulates more about the rights of suspects and defendants only to receive protection from various

⁹ B.D.R. Manurung, 2018, *Analisis Viktimologi Terhadap Tindak Pidana Begal Di Kota Medan (Studi Pada Polrestabes Medan)*.7(2), p. 44-68.

¹⁰ *ibid.*, p. 70.

¹¹ M. Reksodiputro, *loc.cit.*, p. 98.

Legal Protection and Impact on Victims of Aggravated Theft

possible human rights violations. This law more specifically (*lex specialis*) regulates the requirements and procedures for providing protection and assistance for witnesses and/or victims which were previously divided into several regulations.

With the explanation of Law No. 13 of 2006 concerning Protection of Witnesses and Victims, it is stated that "In order to foster public participation in uncovering criminal acts, it is necessary to create a conducive climate by providing legal protection and security to anyone who knows or finds something that can help uncover criminal acts that have occurred and report it to law enforcement.

Based on the background that has been described above, the problem in this study can be formulated as: What is the form of state responsibility in providing legal protection for victims of aggravated theft?

II. RESEARCH METHOD

This research is normative juridical, namely legal research conducted by examining library materials or secondary data as basic materials for research by conducting a search for regulations related to the problems discussed in order to answer the legal issues faced in the legal aspects and their implementation.

III. DISCUSSION

1. Legal Protection for Victims Based on Law No. 13 of 2006 concerning Protection of Witnesses and Victims

Definition of Protection according to the provisions of Article 1 point 6 of Law Number 31 of 2014 amending Law 13 of 2006 concerning Protection of Witnesses and Victims determines that protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims that must be implemented by LPSK or other institutions in accordance with the provisions of this Law.¹²

A sense of justice and law must be upheld based on positive law, justice must be built in accordance with the ideals of law (*Rechtidee*) in a state of law (*Rechtsstaat*), not a state of power (*Machstaat*). Law functions as a protection of human interests, law enforcement must pay attention to 4 elements: a. Legal certainty (*Rechtssicherheit*); b. Legal benefits (*Zweckmassigkeit*); c. Legal justice (*Gerechtigkeit*); d. Legal guarantee (*Doelmatigkeit*).¹³

Law enforcement and justice must use the right line of thought with evidence and evidence to realize legal justice and the content of the law must be determined by ethical beliefs, whether a case is fair or not. Legal issues become real if legal apparatuses implement them properly and fulfill and adhere to the rules so that there is no abuse of the rules and laws that have been carried out systematically, meaning using legal codification and unification in order to realize legal certainty and legal justice.¹⁴

Form of Rights and Services in Legal Protection of Victims

Legal protection of victims is known by two models, namely:

1. Procedural Rights (*Partie Civile Model*). In this model, the victim's role is very active at every level of the case. This model allows victims to play an active role in the criminal justice process. Victims are given broad access to request immediate prosecution, he explained by giving an example.
2. Service Model. Emphasizes the provision of compensation in the form of compensation, restitution, or efforts to return to their original condition. This model determines the standard for services to victims carried out by the police, prosecutors and judges. For example, health services, assistance, provision of compensation and damages and restitution.¹⁵

The law on the protection of witnesses and victims also gave birth to a new institution as stipulated in Article 1 number 3, namely the Witness and Victim Protection Agency, which is an institution tasked and authorized to provide protection and other rights to witnesses and/or victims. LPSK is an independent institution in the sense that it is an independent institution, without interference from any party. LPSK is also domiciled in the Capital City of the Republic of Indonesia and has representatives in the regions as needed.

Roeslan Saleh's form of legal protection efforts for victims of service models, in criminal law can be done in 3 ways, namely:¹⁶ Compensation; Restitution; Efforts to restore the victim's condition to its original state.

2. Criminal Justice System That Relies on Judges' Decisions in Law Enforcement

More focused on the actions of the suspect. In fact, in terms of protection, the perpetrator, witness, and victim should receive balanced legal protection. In criminal law, there is knowledge and studies that are interrelated with criminal acts, perpetrators, punishment, victims, their handling and so on.

¹²<https://www.kompas.tv/article/272756/mengapa-perempuan-sering-menjadi-korban-kejahatan?page=all>, diakses pada 19 Mei 2024

¹³ *Ibid.*

¹⁴ Ony Rosifany, "Perlindungan Hukum Terhadap Korban Kejahatan", *Jurnal LEGALITAS*, Volume 2 Nomor 2 (Desember 2017), p. 22.

¹⁵ Budi Sastra Panjaitan, "Tindak Pidana Tanpa Korban", *Jurnal Mercatoria*, 15 (1) Juni 2022, p. 2.

¹⁶ *Ibid.*

Legal Protection and Impact on Victims of Aggravated Theft

A victim is a person who is physically, mentally, or financially injured due to a crime. Not a few in criminal acts, victims participate in criminal acts. Victims of crime sometimes also develop a situation where the perpetrator wants to commit a crime either unconsciously or consciously or indirectly or directly.¹⁷

Victims are parties who experience misfortune due to their own actions or those of others. "A person who suffers physically and mentally as a result of the actions of others who want to fulfill their own interests or those of others who conflict with the interests and human rights of the person who suffers, is considered a victim. In criminal acts, sometimes the victim has a role in this happening, according to Stephen Schafer there are 4 types of victims, namely:¹⁸ 1. A person who becomes a victim without doing anything wrong. The perpetrator is entirely to blame in this case; 2. A person who consciously or unconsciously makes others feel compelled to commit a crime. When the perpetrator and victim are both guilty of a crime, the victim plays a role in it; 3. A person who is viewed socially as an easy target for crime, namely the elderly, people who are considered immature, people who have physical or mental disabilities, minority groups and so on. In this case, the fault lies in the indifference of society to their surroundings; 4. The real victim is the perpetrator, this is a crime without a victim, namely prostitution, adultery, gambling. The rights obtained depend on the contribution taken by the victim, both in restitution and in the criminal justice process.

Lack of protection received by victims from the state, in the form of economic or physical recovery or the need to carry out obligations as witnesses in criminal trials while the opposite is seen in the perpetrator who is given more attention, both in terms of providing drinking and eating needs. The state through its legislature and executive has passed Law Number 31 of 2014 which amends Law Number 13 of 2006 concerning Protection of Witnesses and Victims based on real facts.¹⁹

Analysis of Decision Number 1839/Pid.B/2023/PN.Sby in Demanding Compensation for Material and Immaterial Losses

The crime occurred on December 31, 2021 at approximately 22:00 WIB, the Defendant together with Witness SELAMET Bin MARZUKI (separate prosecution), Witness MUJIB RIDWAN bin KASIAN (separate prosecution), Witness AKBAR AMIRUL LUKMAN Bin Alm. MUDGIARTO (separate prosecution), Witness HERU HARTOYO Bin Alm IMAM SUCIPTO Alias PAK KUCING (separate prosecution), BONI (DPO), MAFUD (DPO), KIKUK (DPO), HAFID (DPO), DOFIR (DPO), ARIK (DPO) and YUNUS (DPO) held a convoy using 5 (five) motorbikes. At approximately 01.00 WIB on Saturday, January 1, 2022 in front of Circle K Jl. Rajawali Surabaya Witness SELAMET Bin MARZUKI (separate prosecution) blocked the vehicle of witness ONGKI FIRMANSYAH AHMADI then after stopping Witness SELAMET Bin MARZUKI (separate prosecution) tried to take items from the right and left pockets of witness ONGKI FIRMANSYAH AHMADI's pants but witness ONGKI FIRMANSYAH AHMADI pushed away Witness SELAMET Bin MARZUKI's hand (separate prosecution), then witness ONGKI FIRMANSYAH AHMADI was hit by Witness SELAMET Bin MARZUKI (separate prosecution) using his right hand towards witness ONGKI FIRMANSYAH AHMADI's cheek causing witness ONGKI FIRMANSYAH AHMADI to fall from a red Honda Scoopy motorcycle with Police Number: L-6949-VX year 2020 Frame Number. MH1JM31321LK565548 Engine Number. JM31E3563793 which belongs to witness ONGKI FIRMANSYAH AHMADI, then after witness ONGKI FIRMANSYAH AHMADI fell, the DEFENDANT hit the back of witness ONGKI FIRMANSYAH AHMADI and Witness AKBAR AMIRUL LUKMAN Bin Alm. MUDGIARTO (separate prosecution), Witness HERU HARTOYO Bin Alm IMAM SUCIPTO Alias PAK KUCING (separate prosecution), BONI (DPO), MAFUD (DPO), KIKUK (DPO), HAFID (DPO), DOFIR (DPO), ARIK (DPO) and YUNUS (DPO) also hit witness ONGKI FIRMANSYAH AHMADI except for Witness MUJIB RIDWAN bin KASIAN (separate prosecution) who was on standby on the motorbike to wait for the Defendant's motorbike and the Defendant's friends.

That then witness ONGKI FIRMANSYAH AHMADI fled and the motorcycle belonging to witness ONGKI FIRMANSYAH AHMADI was taken by Witness AKBAR AMIRUL LUKMAN Bin Alm. MUDGIARTO (separate prosecution), then at approximately 03.00 WIB Witness AKBAR AMIRUL LUKMAN Bin Alm. MUDGIARTO (separate prosecution), DAVID (DPO) and Yunus (DPO) sold the motorcycle belonging to witness ONGKI FIRMANSYAH AHMADI to SUHAR (DPO) who was in the Sumbo flats, Surabaya for Rp. 5,000,000,- (five million rupiah) and the proceeds from the sale of the motorcycle were divided by the Defendant together with Witness SELAMET Bin MARZUKI (separate prosecution), Witness MUJIB RIDWAN bin KASIAN (separate prosecution), Witness AKBAR AMIRUL LUKMAN Bin Alm. MUDGIARTO (separate prosecution), Witness HERU HARTOYO Bin Alm IMAM SUCIPTO Alias PAK KUCING (separate prosecution), BONI (DPO), MAFUD (DPO), KIKUK (DPO), HAFID (DPO), DOFIR (DPO), ARIK (DPO) and YUNUS (DPO), where the Defendants received a share of money of Rp. 50,000, - (fifty thousand rupiah).

That the Defendants took a red Honda Scoopy motorcycle with Police Number: L-6949-VX year 2020 Frame Number. MH1JM31321LK565548 Engine Number. JM31E3563793 which belonged to witness ONGKI FIRMANSYAH AHMADI without permission from witness ONGKI FIRMANSYAH AHMADI so that witness ONGKI FIRMANSYAH AHMADI suffered a loss of approximately Rp. 15,000,000,- (fifteen million rupiah).

¹⁷ Moeljanto, 1987, *Azas-Azas Hukum Pidana*, Bina Aksara, Jakarta, p. 54.

¹⁸ *Ibid.*

¹⁹ Dellyana Shanty, *Loc.cit.*, p. 35.

Legal Protection and Impact on Victims of Aggravated Theft

According to Article 365 paragraph (2) 1e, 2e, and 4e of the Criminal Code, the defendant is charged with a single crime. The following are the elements of the charge: 1. Element of Every Person; 2. Element of taking goods with the intention of preparing or facilitating theft or if caught red-handed, so that he or his friends who participated in the crime can escape or so that the stolen goods remain in his hands, taken out at night in a closed house or yard, in his house or on a public road, in his house or in a moving train or tram, carried out by two or more people together resulting in serious injury. The defendant must be held accountable for his actions because nothing was found that could eliminate criminal responsibility or provide justification or reason for it. The mitigating and aggravating factors for the defendant need to be considered before sentencing them, the aggravating circumstances are that the defendant's actions disturbed the community and harmed others, especially the victim. The defendant, on the other hand, did not have mitigating circumstances.²⁰

The judge sentenced the defendant based on Article 365 paragraph (2) 1e, 2e, and 4e of the Criminal Code, as well as other related laws and regulations and Law No. 8 of 1981 concerning the Criminal Procedure Code: 1. Declaring that the defendant was found guilty of committing the crime of "Theft with Violence" in accordance with the single charge; 2. The sentence imposed on the Defendant which includes a prison sentence of seven years; 3. Determining how much the defendant's sentence will be reduced by the amount of time spent in detention and arrest; 4. Enforcing conditions that require the Defendant to remain in detention; 5. Providing Evidence; 6. The Respondent pays court costs of Rp. 5,000.00 in Words (Five Thousand Rupiah) In this decision, the legal protection obtained by the victim is the imposition of a sentence on the perpetrator who is legally and convincingly proven guilty of committing the crime of theft with violence or snatching by imposing a sentence on the Defendant, namely a sentence of Sentencing the defendant Moch Irfan bin Tiam to 2 (two) years in prison.

The judge sentenced the defendant based on Article 365 paragraph (2) 1e, 2e, and 4e of the Criminal Code, as well as other related laws and regulations and Law No. 8 of 1981 concerning the Criminal Procedure Code:²¹ 1. Declaring that the defendant was found guilty of committing the crime of "Theft with Violence" in accordance with the single charge; 2. The sentence imposed on the Defendant which includes a prison sentence of seven years; 3. Determining how much the defendant's sentence will be reduced by the amount of time spent in detention and arrest; 4. Enforcing conditions that require the Defendant to remain in detention; 5. Providing Evidence; 6. The Respondent pays court costs of Rp. 5,000.00 in Words (Five Thousand Rupiah).

In this decision, the legal protection obtained by the victim is the imposition of a sentence on the perpetrator who is legally and convincingly proven guilty of committing the crime of theft with violence or snatching by imposing a sentence on the Defendant, namely the sentence of Imposing a sentence on the defendant Moch Irfan bin Tiam with a prison sentence of 2 (two) years.²²

Legal Considerations of Decision Number 1839/Pid.B/2023/PN.Sby

Considering, that the Panel of Judges will then consider whether based on the legal facts above, the Defendant can be declared to have committed the crime with which he was charged, that the Defendant has been charged by the Public Prosecutor with a single charge as regulated in Article 365 paragraph (2) 1, 2 of the Criminal Code, the elements of which are as follows:

- a. Element of whoever. that the legal definition of "whoever" is every person or who in this case is the Legal Subject, a person or human being as the perpetrator of an act that is legally prohibited from doing / criminal act and legally must be competent and able to be responsible for his criminal act based on the legal facts revealed according to the results of the examination at the trial, that the Defendant, namely the defendant Moch Irfan bin Tiam with all his complete identities has been confirmed by the Defendant himself, this means that the Defendant as the person charged with committing a criminal act in this case is correct, therefore it means that in this case there is no mistake regarding the person (error in persona) based on the considerations above, the Panel assesses and is of the opinion that the element of "whoever" has been fulfilled and proven even though the element of "whoever" has been fulfilled, however the issue of whether or not the Defendant can be blamed, this cannot be separated from his criminal act, as stated in the proof of the following elements as stated below.
- b. Element carried out at night on a public road. Considering, that in the trial the facts of the incident have been revealed, where on Friday, December 31, 2022 at around 21.00 WIB, at the Jl Tambak Gringsing Gang IV Surabaya Guardhouse, the Defendant met and gathered with his friends named Mujib Ridwan bin Kasian, Selamat, Boni, Mafud, Akbar, Kikuk, Hafid, Dofir, Arik, Pak Kucing and Yunus who were drinking alcohol, and after getting drunk, they held a convoy riding 5 (five) motorbikes, with the Defendant's friend riding 3 (three) people, upon arriving at a public road, namely on Jl Rajawali Surabaya, precisely in front of Circle K, blocking the victim witness Ongki Firmansyah Ahmadi who was riding a red Honda Scopy motorbike with the number plate L-6949-VX, then after being successfully stopped, the Defendant's friend named Selamat offered alcohol to the victim witness Ongki Firmansyah Ahmadi, but was rejected by the victim witness Ongki Firmansyah Ahmadi, then the defendant's friend Selamat hit the victim witness Ongki Firmansyah Ahmadi and was followed

²⁰ Petrus C.K.L. Bello, *Loc.cit.*, p. 35.

²¹ Didik Endro Purwoleksono, "Tindak Pidana Di Bidang Merek dan Jenis Sanksinya", *Yuridika*, (2005) 20, p. 281.

²² Philipus M. Hadjon, 1987, *Perlindungan Hukum Bagi Rakyat Indonesia, Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara*, PT Bina Ilmu, p. 19.

Legal Protection and Impact on Victims of Aggravated Theft

by the defendant's other friends, including the Defendant, hitting the victim witness Ongki Firmansyah Ahmadi's back 1 (one) time and the victim witness Ongki Firmansyah Ahmadi who was riding then ran away and left his red Honda Scoopy motorbike, and the motorbike was then driven by the Defendant's friend named Akbar, and the Defendant's group then left the location and returned to the Jl Tambak Gringsing Surabaya guard post, and what the Defendant later found out was that his friends named Akbar, David and Yunus sold the motorbike, but the Defendant did not know where it was sold and to whom and after the incident, the Defendant ran away to Lamongan, and when he was about to return to Surabaya, the Defendant was arrested by the police on his way on Jl Raya Pantura Lamongan Surabaya;

- c. The element of taking something that is wholly or partly owned by another person with the intention of unlawfully possessing it with violence or threat of violence, against a person with the intention of preparing or facilitating theft or in the case of being caught red-handed, to enable escape by oneself or other participants or to retain control of the stolen goods; That the element of "taking something" has the same legal meaning as "intentionally", while the Criminal Code does not provide a definition of "intentionally", instructions for knowing the meaning of intention can be taken from M.v.T (Memorie van Toelichting) which defines "intentionally (opzet)" as "willing and knowing" (willens en wetens) (pompe, 3rd edition, 1959 page 166), so it can be said that intentionally means wanting and knowing what is being done. A person who commits an act intentionally intending the act and in addition knows or is aware of what is being done so that the element of "without rights and against the law", has the meaning that the act was intentionally carried out with full awareness and in violation of the provisions/regulations of the applicable laws based on the legal facts revealed in the trial in the form of witness statements, the Defendant's statement is connected to the evidence presented in the trial, it has been proven that the defendant has forcibly taken a red Honda Scoopy motorcycle with the number plate L-6949-VX, belonging to the victim witness Ongki Firmansyah Ahmadi by blocking the victim witness Ongki Firmansyah Ahmadi who was passing by and offering the victim witness alcohol, but because he refused, the victim witness was then beaten by the Defendant and his friends, so that the victim witness Ongki Firmansyah Ahmadi left his Honda Scoopy motorcycle, then the motorcycle was taken by the Defendant's friend named Akbar who was then sold and the proceeds of the sale were enjoyed together with the Defendant and his friends, and the Defendant himself has enjoyed the proceeds of the sale, by getting a share of Rp. 50,000.00 (fifty thousand rupiah) and has been used up by the Defendant as previously considered, that the red Honda Scoopy motorcycle with the number plate L-6949-VX, belongs to the victim witness Ongki Firmansyah Ahmadi, and the actions of the Defendant and his friends resulted in the victim witness Ongki Firmansyah Ahmadi suffering a loss of Rp. 15,000,000.00 (fifteen million rupiah), that thus the element of "taking something that is wholly or partly owned by another person with the intention of being owned unlawfully, with violence or threat of violence, against a person with the intention of preparing or facilitating theft or in the case of being caught red-handed, to enable escape by oneself or other participants or to maintain control of the stolen goods" has been fulfilled,
- d. The element of the act is carried out by two or more people in league; that as previously considered, that the act was committed by the Defendant with his friends named Mujib Ridwan bin Kasian, Selamat, Boni, Mafud, Akbar, Kikuk, Hafid, Dofir, Arik, Pak Kucing and Yunus and among the Defendant's friends, Ridwan bin Kasian and Pak Kucing have been punished and are now free, while Slamet and Akbar are still serving their sentences in prison, and for the Defendant's other friends, the Defendant does not know their whereabouts that based on the considerations above, the Panel assesses and is of the opinion that the element of "the act was committed by two or more people in collusion" has been fulfilled and has also been proven as the Defendant's act because all elements of the Public Prosecutor's single indictment have been proven and fulfilled, then the Panel of Judges is of the opinion that the Public Prosecutor's indictment has been proven legally and convincingly according to the law, therefore the Defendant must be declared guilty and sentenced in this case there is no reason to eliminate the criminal penalty, either justification or forgiveness, because the Defendant is considered capable of being responsible for his actions and therefore the Defendant must be convicted according to his guilt from the results of the evidence there are sufficient reasons to reduce the sentence to be imposed on the Defendant with the detention period he has served, then the Panel will apply Article 22 (4) of the Criminal Procedure Code because the Defendant will be sentenced to a criminal penalty, then he must also be burdened with paying the court costs as referred to in Article 222 (1) of the Criminal Procedure Code against evidence in the form of 1 (one) photocopy of the Credit or Loan Agreement and 2 (two) photocopies of the BPKB for a black Honda Beat motorbike with the number plate L - 4028 - KD, required as evidence in this case, then the evidence is stated to remain attached to the case file.

The Purpose of Law Number 13 of 2006 Concerning Protection of Witnesses and Victims is to Accommodate the Rights of Victims and Witnesses in the Judicial Process

The vision is intended so that the Institution is given the authority or responsibility to provide protection for victims and witnesses. The Institution is expected to be able to realize a situation where victims and witnesses can have their protection fulfilled so that the disclosure of cases is expected to be easier to reveal. There are several missions that LPSK has, including:²³

²³ Gosita Arif, 2009, *Masalah Korban Kejahatan*, Universitas Trisakti, Jakarta, p. 75.

Legal Protection and Impact on Victims of Aggravated Theft

Realizing the fulfillment of protection and rights that should be received by victims and witnesses in court; Strengthening the legal basis for fulfilling the rights of victims and witnesses; Realizing and developing relations with authorized officials in order to fulfill the rights of victims and witnesses; Realizing a situation where the community can play an active role in fulfilling the rights of victims and witnesses.

It is as if the rights and position of victims have been ignored by the state in crimes that leave victims without physical and psychological protection. Victims seem to be required to accept reality and be satisfied with the arrest and punishment of criminals. In fact, it is often believed that the type of punishment imposed on the perpetrator is not enough to compensate for the losses and pain of the victim. In this case, protection for victims of crime is very much needed because victims experience various losses, both material and immaterial.

Legal Protection for Victims of Criminal Acts of Theft and Aggravated Crimes According to the Criminal Code

The lack of firmness of the Criminal Code in regulating protection for victims and witnesses, tends to be seen that there are decisions that have significance related to guarantees. For example, when a judge can impose a conditional sentence in Article 14 c, which allows the judge to impose special conditions on the perpetrator or convict to repay all or part of the misfortune caused by the crime.²⁴

Article 14 a states that unless a fine is imposed, the judge can determine a special agreement that will replace the criminal act, namely all or part, within a certain time shorter than the probation period. Article 14 c paragraph (1) contains an implied meaning in providing protection for victims.

Articles 14a and 14b, as stipulated in paragraph (1) of Article 14c, indicate that the protection comes from the law, so it is called "abstract" or "indirect" protection. The protection obtained is in the form of a sentence imposed by a judge which includes provisions regarding general and special compensation for victims of crime. Compensation is only a special provision for the implementation of the punishment given to the perpetrator; the judge cannot determine compensation as a punishment or sanction that stands alone in addition to the main crime. Imprisonment for a maximum of one year or special provisions, namely compensation, can only be determined if the judge imposes it. As a result, special provisions intended to compensate for losses can be said to be optional because they are subject to the judge's policy or can be interpreted as not absolute. In relation to this, if observed, it can be observed that the parties who are harmed and harmed by the crime appear to be neglected or do not receive full freedom in criminal justice.²⁵

The Criminal Procedure Code Serves as the Basis for the Criminal Justice System in Indonesia

The Criminal Procedure Code serves as the basis for the Indonesian criminal justice system, which is considered Indonesia's most significant contribution to formal law. So far, the public has argued that being tried and questioned by perpetrators of crimes is already a form of protection for victims because criminals cannot easily disturb them. However, this is not enough to hold perpetrators accountable, they also need to be held civilly accountable to hold perpetrators accountable to victims in order to further increase the deterrent effect.²⁶

Article 77 Juncto displays victim protection. The right to control the Public Prosecutor and investigators of the Republic of Indonesia Police in terms of stopping investigations and prosecutions is regulated in Article 80 of the Criminal Procedure Code. This requirement must be met to thwart attempts to stop the examination by various parties with ulterior motives. The victim still has an interest in the investigation as a reporter or injured party, even though the Public Prosecutor (JPU) represents the perpetrator of the crime in court. Because there is a guarantee that the criminal case process can be resolved in accordance with legal provisions, this is a form of protection for victims.

The right to request compensation arising from a crime by combining related criminal cases is also regulated in Articles 98 to 101 of the Criminal Procedure Code. This is expected to make it easier for victims to secure claims as remuneration, especially by accelerating the most common way to repay both the person concerned and the victim's family by the perpetrator. However, an application for merging compensation cases can only be made before a criminal charge is filed by the public prosecutor or if the public prosecutor is unable to attend.²⁷

IV. CLOSING

Conclusion

The results of the research and analysis that have been carried out and described in the writing of this scientific paper can be concluded as follows: The philosophical basis of the state's responsibility to victims of criminal acts is because the state has taken over the right to retaliate by victims or the community to perpetrators of criminal acts to prevent "eigenrichting" based on state sovereignty and the sovereignty of the state's law itself which has been stated in the constitution, namely the 1954 Constitution of

²⁴ Lilik Mulyadi, 2007, *Kapita Selekta Hukum Pidana, Kriminologi dan Victimologi*, PT. Djambatan, Jakarta, p. 122-123.

²⁵ Press Release Lembaga Perlindungan Saksi dan Korban Nomor: 26/Pr/Lpsk/1v/2012.

²⁶ Soerjono Soekanto, 1981, *Pengantar Penelitian Hukum*, UI Press, Jakarta, p. 43.

²⁷ *Ibid.*

Legal Protection and Impact on Victims of Aggravated Theft

the Republic of Indonesia, the purpose of which is to provide justice to anyone based on the principle of "equality before the law", the principle of justice in the form of state responsibility to victims because the consequences of the perpetrator's responsibility to carry out criminal punishment are basically to provide justice through the enforcement of criminal law by the state. The state should not only allow victims to fight for justice for themselves through other civil legal remedies, and or only be responsible for losses in the form of compensation to victims if the perpetrator cannot provide Compensation or restitution.

Suggestion

From the conclusion above, it provides suggestions on the issues raised, which in this case still require special attention in order to answer the challenges that arise now and in the future in protecting the victims as in the problems above and so that the perpetrators of the crime of aggravated theft get a deterrent effect in order to create justice for the victims and receive special attention regarding compensation from the State: The President and the DPR need to improve the legislation by adding restitution or compensation as an additional penalty in Article 365 of the Criminal Code concerning the Crime of Aggravated Theft, so that the benefits of legal protection can be felt directly by the victims. However, before the enactment of restitution as an additional penalty, the President should first make a Regulation in Lieu of Law (hereinafter referred to as Perpu). This aims to make it easier to implement court decisions that have permanent legal force regarding the provision of restitution for victims in the future.

REFERENCES

- 1) Undang-Undang Dasar Republik Indonesia Tahun 1945.
- 2) Kitab Undang-Undang Hukum Pidana.
- 3) Kitab Undang-Undang No. 8 Tahun 1981 tentang Hukum Acara Pidana.
- 4) Undang-Undang Nomor.13 tahun 2006 tentang Perlindungan Saksi dan Korban.
- 5) Undang-Undang Nomor 14 Tahun 1970 tentang Kekuasaan Kehakiman.
- 6) Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia.
- 7) Undang-Undang No.07 Tahun 2017 Tentang Pemilihan Umum.
- 8) Putusan Pengadilan Negeri Surabaya Nomor 2040/Pid.B/2023/Pn.Sby.
- 9) Putusan Pengadilan Negeri Surabaya Nomor 1839/Pid.B/2023/Pn.Sby.
- 10) B.D.R. Manurung, 2018, *Analisis Viktimologi Terhadap Tindak Pidana Begal Di Kota Medan (Studi Pada Polrestabes Medan)*.7(2).
- 11) Barda Nawawi Arief, 2010, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Kencana Prenada Media Group, Jakarta.
- 12) Budi Sastra Panjaitan, "Tindak Pidana Tanpa Korban", *Jurnal Mercatoria*, 15 (1) Juni 2022, p. 2.
- 13) Didik Endro Purwoleksono, "Tindak Pidana Di Bidang Merek dan Jenis Sanksinya", *Yuridika*, (2005) 20.
- 14) Gosita Arif, 2009, *Masalah Korban Kejahatan*, Universitas Trisakti, Jakarta.
- 15) <https://goodstats.id/article/sebanyak-30-ribu-kasus-curat-terjadi-di-indonesia-selama-januari-april-2023-eH1UI>, diakses pada Rabu 19 Juni 2024
- 16) <https://www.kompas.tv/article/272756/mengapa-perempuan-sering-menjadi-korban-kejahatan?page=all>, diakses pada 19 Mei 2024
- 17) Lilik Mulyadi, 2007, *Kapita Selekta Hukum Pidana, Kriminologi dan Victimologi*, PT. Djambatan, Jakarta.
- 18) Marwan Effendy, 2005, *Kejaksaaan RI Posisi dan Fungsi dari Perspektif Hukum*, Gramedia Pustaka Utama, Jakarta.
- 19) Moeljanto, 1987, *Azas-Azas Hukum Pidana*, Bina Aksara, Jakarta.
- 20) Ony Rosifany, "Perlindungan Hukum Terhadap Korban Kejahatan", *Jurnal LEGALITAS*, Volume 2 Nomor 2 (Desember 2017), p. 22.
- 21) Philipus M. Hadjon, 1987, *Perlindungan Hukum Bagi Rakyat Indonesia, Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara*, PT Bina Ilmu.
- 22) Press Release Lembaga Perlindungan Saksi dan Korban Nomor: 26/Pr/Lpsk/1v/2012.
- 23) Satjipto Rahardjo, 2006, *Ilmu Hukum*, Citra Aditya Bakti, Bandung.
- 24) Soeparman, "Kepentingan Korban Tindak Pidana Dilihat Dari Sudut Viktimologi", *Varia Peradilan*, Vol. XXII No. 260 Juli 2007.
- 25) Soerjono Soekanto, 1981, *Pengantar Penelitian Hukum*, UI Press, Jakarta.
- 26) Titik Triwulan Tuti, 2010, *Konstitusi Hukum Tata Negara Indonesia Pasca Amandemen UUD 1945*, Kencana, Jakarta.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.