Positive Law Enforcement in Countering Violent Crime

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Abstract. Law is a regulation made to regulate the behavior of society where the perpetrators and victims come from members of the community itself. One of the actions that deviate from society is the crime of robbery. This problem is commonplace and no longer a prolonged problem. As a recommendation for solving this case, through the concept of positive legal systems in various countries and others. Of course, the punishment for criminal acts must be strict. However, this is not the case in reality. Therefore, through this research we will explore these issues. This research uses normative juridical research using cases and laws and regulations. The data used in this research are primary data and secondary data. Primary data is obtained from books, journals, magazines and others related to the topic of this research. Then secondary data is obtained with several important documents that will be traced. Of course, this research will explain it descriptively and analytically. As a recommendation for resolving this case, through the concept of a positive legal system.

Keywords: Law Enforcement, Countermeasures, Violent Crimes.

1 Introduction

Crimes against goods and property that occur in society are not only in the form of theft or fraud, but the intensity of crime has increased in the form of robbery and robbery, especially against motorcyclists. Begal is often termed street crime, which has become a serious concern of the community and law enforcement officials in recent times. Acts of robbery or robbery on the road that often occur against motorcyclists become news both from the mass media, social media and conversations. mass media, social media and conversations among the public. The rapid growth of motorized vehicles, in fact, also affects the increase in the crime of begal, even in some cases leading to death [1].

In the corridor of positive law in Indonesia, the term begal crime is not definitively mentioned in the legislation. Criminology studies crime as a social phenomenon so that the perpetrators of crime are inseparable from social interaction, meaning that crime attracts attention because of the influence of these actions that are felt in human relations [2]. Since its birth, criminology has been closely related to criminal law. This is because the results of criminological investigations Lately in some mass media we often read about criminal acts that occur, especially in Medan City. There are fights between students, brawls, drug abuse and drinking, theft and many more crimes that occur in this city. Moral decay has spread to all levels of society, from children to adults and the elderly. Juvenile delinquency includes all behaviors that deviate from the norms

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criminal law committed by adolescents. This behavior will harm himself and those around him. The actions of teenagers who are still in the stage of self-discovery often disturb the peace of others. Minor delinquencies that disturb the peace of the neighborhood such as frequent night outs and spending time in vain. Pancasila as the basis of the State and is the source of all sources of state law, must be used as a guide by all can assist the government in dealing with the problem of crime, especially through the results of studies in the field of criminal etiology and penology. In addition, research in the field of criminology can be used to help make criminal laws (criminalization) or revocation of laws.

When looking at the concept of law enforcement that relies on the principle of legality as stated in Article 1 paragraph (1) of the Criminal Code, "nullum delictum nulla poena siena praevia lege poenali",[3] it explains that no act can be punished unless there is a law that regulates it. A crime has not been criminalized, does not mean that the act cannot be subject to legal sanctions. Although the mention of the term begal comes from the habits used by everyday people, this crime is still included in the classification of criminal acts. The term is identified with criminal acts committed by intercepting victims on the street and depriving them of their property, which is usually accompanied by violence and threats. This criminal act will certainly not be separated from criminal acts because it has violated the values of Pancasila which is the ideology and basis of our country, especially in the first and second precepts which regulate the calm rights of everyone. The crime of begal deprives a person of the right to personal property such as a motorcycle. The most distant begal action even deprives a person of the right to life, where all this contradicts the first precept. which in every religious teaching does not justify violence and the second precept which is guided by human rights in Pancasila. In general, the crime of begal is included in the category of criminal acts that can be charged with the Criminal Code (KUHP) including Article 365 and Article 368 Begal is categorized as a crime against property as outlined in book III of the Criminal Code. The classification of the crime of begal is included in theft accompanied by violence.

"Shall be punished by a maximum imprisonment of nine years for theft preceded, accompanied or followed by violence or threat of violence, against persons with intent to prepare or facilitate the theft, or in the event of being caught red-handed, to enable the escape of oneself or other participants".

This criminal act will certainly not be separated from the criminal offense because it has violated the values of Pancasila which is the ideology and basis of our country, especially in the first and second precepts which regulate the quiet rights of everyone. The crime of begal deprives a person of the right to personal property such as a motorcycle. The most distant begal action even deprives a person's right to life, where all of this contradicts the first precept that every religious teaching does not justify acts of violence and the second precept that is guided by human rights in Pancasila and positive law in Indonesia . Therefore, this research aims to find out "Positive Law Enforcement in Countering Violent Crimes".

2 Research Method

This research is included in descriptive analytical research, namely the data obtained will be described by providing a description of legal issues, the legal system and studying or analyzing it according to the needs of the research, then analyzed based on existing theories to solve the problems in this writing, namely related to the criminological concept of the crime of begal in accordance with the positive legal rules in force in Indonesia.

3 Results and Discussion

Criminal responsibility that leads to the punishment of the perpetrator with the intention of determining whether a defendant or suspect is responsible for a criminal act that occurs or not. The criminal act he committed fulfills the elements of the offense that have been determined in the law . In general, the concept of responsibility in every country, whether it adheres to the European continental legal system or the Anglo-Saxon legal system. Roscou Pound discusses liability from a philosophical point of view and the legal system reciprocally. Pound systematically outlines the development of the concept of liability. In his theory, it is defined as an obligation to pay retaliation that the perpetrator will receive from an injured person. The measure of compensation is not derived from the value of a reprisal that must be purchased, but from the point of view of the loss or suffering caused by the perpetrator concerned .

Thus, the concept of liability is interpreted as reparation, resulting in a change in the anti-conception of liability. The change from monetary compensation to punitive damages is historically the original concept of liability. In the concept of responsibility, a person is responsible for his actions. According to Roeslan Saleh, that they have done, analysis or conception of criminal responsibility, namely by concluding that the person who is responsible for what is done is the act committed with free will, so it can be said that they do not talk about the concept of responsibility itself . Roeslan Saleh revealed that being responsible for a criminal act means that the person concerned can legally be subject to punishment because of that act. In short, it can be said that the action (punishment) is justified by the legal system.

The definition of criminal offense does not include criminal liability. A criminal offense only refers to a prohibited act as stipulated in a statutory regulation. Whether the perpetrator has committed a prohibited act (criminal offense) and can then be sentenced, depends largely on the issue of whether in committing a criminal offense, the perpetrator can be held accountable. In other words, whether the maker has a fault. According to Moeljanto, fault is a separate notion, independent of criminal acts. In criminal acts, the center of attention is the "act" while in terms of responsibility (fault), the center of attention is the person who commits the act.[9]

A person can be convicted not only because he has been proven to have committed an act that violates the law, violates (contradicts) the law, is against the law, or fulfills the elements of a criminal offense, in other words, has committed a criminal offense. Although the act has fulfilled the formulation of a criminal[3] offense in the Law and is not justified, it does not yet fulfill the requirements for the imposition of punishment.

For the existence of punishment, there is still a requirement, namely that the person who commits the criminal offense must have a mistake or be guilty. The imposition of the element or requirement of guilt in the provision of punishment (punishment) means that there is recognition of the applicability of the "principle of no punishment without guilt". Culpa here is in a broad sense, which also includes "Intentionality", this principle is briefly often referred to as the Principle of Error .

The meaning of guilt includes a broad understanding. A person who is still a minor, even if he commits a criminal act, cannot be punished because his mental function or soul is still imperfect. Likewise, an insane person who commits an act cannot be convicted because his mental function is not normal. Even though the person who commits the criminal act is an adult and not insane, the person cannot necessarily be convicted. This must be seen first whether he committed the act of his free will or there are elements of external coercion, such as force, forced defense, and emergency so that the maker is not punished because of the existence of excuses .

From this description, it shows that in proving whether a person can be sentenced to punishment, this view adheres to the doctrine of dualism. The doctrine views that in order to impose punishment, it must first be seen whether the alleged act has fulfilled the elements of the offense formulation. If the elements are fulfilled, then the second step is to see whether there is guilt and whether the perpetrator is capable of being held responsible. On the other hand, monoism views that a person who has committed a criminal act can already be punished if the act has fulfilled the formulation of the offense without having to see whether he has guilt or not.

Criminal Law Regulations Against Acts of Violence Against Persons or Goods and Those Committed Jointly. The Criminal Code classifies violence as a crime. Violence is contained in Book II of the Criminal Code, which can be seen in Chapter V on Crimes against Public Order, namely in Article 170.[3] Acts of Violence Against Persons or Goods Committed Jointly are regulated in Article 170 paragraph (1) of the Criminal Code, namely:

"Any person who openly and with joint effort uses violence against persons or property, shall be punished by a maximum imprisonment of five years and six months."

The formulation of Article 170 in the translation of P.A.F. Lamintang and C.D. Samosir is as follows,[12]

(1) Any person who openly and jointly commits violence against persons or property shall be punished by a maximum imprisonment of five years and six months.
(2) The person guilty shall be punished:
    1. by a maximum imprisonment of seven years, if he with deliberate intent destroys property or if the violence committed by him causes bodily harm to any person;
    2. by a maximum imprisonment of nine years, if the assault has caused serious bodily harm to any person;
    3. by a maximum imprisonment of twelve years, if said violence has caused death.

Based on these translations, the following conclusions can be drawn regarding the elements of Article 170 of the Criminal Code: (1) whoever; (2) openly / openly; and,
(3) by joint/co-operative force;(4) using/performing violence;(5) against persons/human beings or property.

1. Subjective element

The subjective element of Article 170 paragraph (1) of the Criminal Code is "whoever". What is meant by "whoever" is an individual or legal entity or legal subject as a

supporter of rights and obligations and can be responsible for his actions before the law (Toerekening Van Baarheid).

2. Objective element

a. openly

The element of blatantly means that the place or location where the crime occurred is a public place that can be seen by the public, in other words, the place where the crime occurred can be easily seen or reached by the public or the community.

Violence committed openly is included in the class of public order crimes. Openly means in a place where the public can see it. According to S.R. Sianturi,[13] the element of blatant or openly (openlijk) here is that the action can be witnessed by the public. So it is not disputed whether the action is carried out in a public place or not. The point is that it can be seen by the public. Even in judicial practice, if the act is committed in a quiet place, where there are no people, the application of this offense is considered inappropriate.

b. by Joint or Jointly Exertion.

According to J.M. van Bemmelen,[14] "We are already dealing with 'joint energy' when two people participate in committing an act". Based on this opinion, two people are sufficient to fulfill this element. Jointly also means that the act of violence must be committed by at least two or more perpetrators. People who only follow and do not actually participate in committing violence cannot be subject to this article. In contrast to the above opinion, S.R. Sianturi, by pointing to several other scholars, has a different opinion on this matter by arguing that: Some scholars say that only two people are not enough. The reason is, that the term "with joint energy" is more indicative of a human mob. Then it is added that if two subjects are considered to fulfill the element of the subject of this offense, why not just use the term "two or more people" which is familiar in criminal law terminology.

c. committing Violence.

"To commit violence means to use force or physical strength in an unlawful manner, such as hitting with force or with all kinds of weapons, kicking, kicking, and so on." .

d. against persons or property.

Against persons or property means that the violence is an act that is committed against persons or property. Regarding the acts referred to in this article, for example fighting in a restaurant which is carried out together, causing damage to the furniture of the restaurant and this also causes minor and serious injuries to other people who are in the restaurant.

According to J.M. Van Bemmelen, "The act of violence need not result in harm to persons and property" . So, even though the criminal act of violence is aimed at people or goods, it is not necessary that there has been a loss to the people or goods concerned. In relation to this crime, R. Sosilo argues that violence generally consists of damaging goods or committing maltreatment, but nowadays it can also take the form of a group of people throwing stones at other people or other people's houses, or throwing merchandise so that it is damaged, even though there is no intention and purpose to harm other people or damage other people's property the aforementioned. To further clarify the meaning of Article 170 of the Criminal Code, it is necessary to see the difference with Article 358 of the Criminal Code which has similarities in certain parts with Article 170 of the Criminal Code.

4 Conclusion

The crime of begal is subject to criminal liability if the act committed fulfills the elements of criminal liability in the positive law applicable in Indonesia, and the regulation of criminal acts of violence against persons or goods committed jointly with violence with joint force against persons or goods in Article 170 of the Criminal Code is intended to overcome acts of violence that occur in Indonesia. One of the events that may reflect the implementation of this article is anarchist acts in a demonstration by the masses, where this anarchist act can be in the form of the use of violence by the masses against people or goods.

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