

**ANALYSIS OF THE CRIMINAL SYSTEM OF THE PRACTICE OF PERSECUTION  
IN THE CRIMINAL OF THEFT IN THE JURISDICTION OF THE ASMAT  
RESORT POLICE**

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**Abstract:** This study aims to determine the system of punishment for the perpetrators of the practice of persecution of the perpetrators of criminal acts of theft in the Legal Area of the Asmat Resort Police and to determine the obstacles to law enforcement against the perpetrators of the practice of persecution of the perpetrators of criminal acts of theft in the Legal Area of the Asmat Resort Police. The author analyzes the data using the socio-juridical approach method, that is, in addition to studying law theoretically and normatively in the form of analyzing various laws and regulations, books and articles that have a correlation and are relevant to the problems studied, will also examine the law in its implementation using techniques data collection through interviews and documentation. The criminal system and punishment that can be applied to perpetrators of persecution of perpetrators of criminal acts of theft is only limited to perpetrators of persecution who actually act as movers and provocateurs who influence the practice of persecution for members of the public at the place where the perpetrators of theft were caught, by imposing Article 170 Paragraph (3) and Article 351 of the Criminal Code, if the persecution is carried out until the perpetrator of the theft dies, while other residents who carry out the persecution are not harmed. The obstacles to law enforcement for perpetrators of persecution of perpetrators of criminal acts of theft include the lack of Investigation Unit personnel and members of the Asmat Police.

**Keywords:** Law Enforcement, Crime, Persecution

## I. INTRODUCTION

The State of Indonesia is a state of law, meaning a country in which all aspects of life are governed by law. This is expressly stipulated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, as well as clearly stated in the Law of the Republic of Indonesia Number 24 of 2003 concerning the Constitutional Court, especially in the preamble considering letter (a), namely: The Unitary State of the Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, which aims to create an orderly, clean, prosperous and just national and state life system.<sup>1</sup>

This has also been confirmed in Article 27 paragraph (1) of the 1945 Constitution which states: "All citizens have the same position before law and government and are obliged to uphold that law and government without exception".<sup>2</sup>

Based on the explanation of the constitution and rules above, it is understandable that the meaning of all aspects of life in society, statehood and government must always be based on law. In order to realize an ideal rule of law state, one of which is the need for legal instruments that are used to regulate the balance of justice in all areas of people's lives through statutory regulations.<sup>3</sup>

Thus all parties who have violated the applicable legal rules can be sentenced, but the process and form must still respect Human Rights (HAM), because the main principle of the state based on law is that law is the highest source in regulating and determining the mechanism of legal relations between state and society as well as between members or groups of people with one another.<sup>4</sup> Therefore to punish people who are guilty must be based on law. Punishment carried out without a legal basis is an arbitrary action.

However, nowadays there are many cases of persecution in Indonesian society. Therefore, it is only natural for us as the people of Indonesia to feel worried and anxious about this, because every crime creates symptoms that gradually get worse, so that many are worried that the state apparatus will no longer be able to withstand the shocks of crime. The term persecution according to the Big Indonesian Dictionary is defined as an arbitrary action against a person or group of people. Which in legal science, a term that can be equated with persecution is *eigenrichting* (Dutch) or *vigilante*.<sup>5</sup> In any legal country, vigilante action cannot be justified, because there are already provisions governing any deviant behavior and if there are differences of opinion in a society's life.

Acts of persecution that recently occurred in Indonesia started with provocations either through social media which became a tool for a person or group of people to mobilize the masses in an effort to intimidate certain parties who were deemed to have made statuses or posts on social media that offended people, others, groups and even certain figures. In a recent case, acts of persecution were carried out against account owners who were considered to have insulted religion or clerics on social media and were then hunted down by several parties. The development of social media, especially its users, is extraordinary in Indonesia. The circulation of words, news, pictures and videos is so fast and easy in seconds. As a result, friction occurs very quickly between those who upload and their readers.<sup>6</sup>

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<sup>1</sup>Abdul Latif, Functions of the Constitutional Court, (Yogyakarta: Creation of Total Media 2009), p. 2.

<sup>2</sup>Winarno, New Paradigm of Citizenship Education, (Jakarta: PT. Bumi Aksara 2019), p. 2

<sup>3</sup>Accessed at <http://poskotanews.com/2017/06/04/dpr-nil-persekusi-bukan-Term-Hukum-kuhp/> July 18, 2022, 12.14 WIT

<sup>4</sup>Roni Rahman Nitibaskara, Enforce the Law Use the Law, (Jakarta: Kompas Media Nusantara, 2007, print. 2), page 59

<sup>5</sup>Accessed at <http://www.Hukumonline.com/berita/read/persecution-not-solusi-preceding-mediation-dan-litigation-oleh-reda-manthovani>, July 19 2022, 13.34 WIT

<sup>6</sup>Nasifah, Criminal Acts of Persecution in the Perspective of Islamic Law, (Jakarta: Thesis of the Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University), 2018, p. 2

Mass judgment or unilateral persecution without the knowledge of law enforcement officials who are obliged to handle it so that the judgment is not in accordance with the rules in force in Indonesia, even though every human being has rights or human nature that must be respected and protected by everyone without exception. No one wants to be treated arbitrarily before the law. Exactly the second precept of Pancasila "Just and civilized humanity", with the precepts of a just and civilized humanity, every human being is recognized and must be treated according to his rights and obligations without distinction of origin, ethnicity, religion and social status.<sup>7</sup>

It is on the basis of equality, rights and obligations that law enforcers need firm action against those who carry out mass judgments or what is known as persecution. And if caught, law enforcers must treat one or several suspects/defendants in a humane manner as stipulated in the Criminal Procedure Code (KUHAP). May not be treated in an arbitrary and arbitrary manner and manner.<sup>8</sup>

From the author's observation, in Asmat Regency, the risk of being persecuted, especially for the crime of theft which is caught red-handed by the masses, occurs frequently and the perpetrators are sure to be beaten up by the masses. After carrying out the persecution, the masses usually left or just disappeared, because the perpetrators had been arrested by the authorities or community leaders and traditional leaders in that area. Usually law enforcement officials only think that that is the risk of the perpetrators of theft, so they no longer ask who the perpetrators of the persecution are, but immediately take the perpetrators of theft to the hospital or to the nearest police station. Law enforcement officers do not care at all about the condition of the perpetrators of theft,

This situation is of course unfair to the perpetrators of the crime of theft, because it is as if they get a double punishment for one crime, namely a mass riot and a prison sentence. Whereas specifically for acts of persecution, it is a separate form of crime in the form of beatings or abuse that can cause minor injuries, serious injuries, to death. In fact, one of the goals of law is to protect the interests of mankind which concern their soul, honor, independence, property, and other things attached to them.

## II. RESEARCH METHODS

The type of research used is the socio-juridical approach method, that is, in addition to studying law theoretically and normatively in the form of analyzing various laws and regulations, books and articles that have a correlation and are relevant to the problems studied, it will also study law in its implementation by data collection techniques through interviews and documentation.<sup>9</sup>

The types and sources of data used as a basis to support research results are:

1. Primary legal materials; namely binding legal materials, consisting of:
  - a) Republic of Indonesia Law Number 11 of 2008 concerning Information and Electronic Transactions;
  - b) Criminal Code;
  - c) The Criminal Procedure Code;
2. Secondary legal material; in the form of books related to the issue of persecution, articles, newspapers, research results, reports, and so on;
3. Tertiary legal materials; namely supporting legal materials which include primary legal materials, secondary legal materials such as general dictionaries, legal dictionaries,

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<sup>7</sup>Ibid., p. 3-4

<sup>8</sup>M. Yahya Harahap, Discussion of Problems and Application of Criminal Procedure Code of Investigation and Prosecution, (Jakarta: Sinar Graphic, 2007), p. 68

<sup>9</sup>Derita Prapti Rahayu, Legal Research Methods, (Yogyakarta: Thafa Media. 2020) p. 8

magazines, scientific journals, as well as materials outside the relevant field and can be used to complete the data needed in this research.

All data collected by the author is then clarified and analyzed to produce conclusions from the material obtained in accordance with the problems discussed. Conclusions or messages from the various materials that have been analyzed are used to study and discuss the problems examined by the author in this study. This is intended to obtain discussions and conclusions that are relevant and appropriate to the problem.

### **III. RESULTS AND DISCUSSION**

#### **Law Enforcement Theory**

Law enforcement is an attempt to uphold legal norms, as well as the values behind these norms.<sup>10</sup>If law enforcers (Judges, Prosecutors, Advocates, and Police) are immoral or in carrying out their duties ineptly. It's just random, just a formality, so don't blame it completely, because they are products of our society, products of our universities as well. Our law enforcers have been plagued by a formalistic way of working or habits. They are used to playing shortcuts, not pursuing the substantial. Court hearings are sometimes just pro forma, especially in big cases involving big figures.

According to Satjipto Rahardjo, law enforcement is a process to make legal wishes come true.<sup>11</sup>This means that the wishes of the law are the thoughts of the law-forming body which are formulated in legal regulations. The formulation of the thoughts of law makers as outlined in legal regulations also determines how law enforcement is carried out. In turn, the law enforcement process culminates in its implementation by law enforcement officials. In an extreme tone, it can be said that the success or failure of law enforcers in carrying out their duties has actually started since the legal regulations that were implemented were made.<sup>12</sup>

#### **The punishment system for perpetrators of the practice of persecution of perpetrators of criminal acts of theft in the Legal Area of the Asmat Resort Police**

The penal system is a rule of law relating to criminal sanctions and sentencing. If the definition of the penal system is broadly defined as a process of awarding or imposing a sentence by a judge, then it can be said that the penal system includes all statutory provisions governing how the criminal law is enforced or operationalized in a concrete manner so that a person is subject to criminal (legal) sanctions. The penal system holds a strategic position in efforts to deal with criminal acts that occur.

According to Andi Hamzah, the meaning of the penal system is the structure and method of sentencing.<sup>13</sup>This means that all laws and regulations regarding substantive criminal law, formal criminal law, and criminal law implementation can be seen as an integrated punishment system.

Thus there is a very close relationship between the penal system and the crime itself, and it can be said that the penal system cannot be separated from the types of punishment regulated in the positive law of a country. Prof. Van Hammel interprets punishment (straf) according to positive law as a special suffering. The suffering is imposed by the power which has the authority to impose criminal punishment on behalf of the state as the person in charge of public

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<sup>10</sup>Muladi, *Projection of Indonesian Material Criminal Law*, (Semarang: Diponegoro University, 1997), p. 16

<sup>11</sup>Golkar Pangarso RW, *Law Enforcement of Cinematographic Creation Protection*, (Bandung: PT. Alumni, 2015), p. 52

<sup>12</sup>*Ibid.*, p. 52

<sup>13</sup>Ekasaputra, Muhammad, and Abul Khadir, *The Criminal System in the Criminal Code and Its Arrangements According to the New Criminal Code Concept*, (Medan, USU Press, 2010), page 12.

law order for a violator, where the suffering is imposed solely because the person has violated a legal regulation that must be enforced by the state.<sup>14</sup>

Meanwhile Prof. Simon also defines punishment (*straf*) as suffering that is inflicted on someone, where this suffering by criminal law is associated with a violation of a norm, which by a judge's decision has been imposed on someone who is guilty.<sup>15</sup>

Related to acts of persecution which can be interpreted as a form of beating or vigilante action by two or more people who experience direct or indirect losses or even have no relationship at all with the perpetrator of the theft, is a contradiction with positive criminal law, especially the Criminal Code.

A thief who is caught red-handed is usually immediately beaten up by a mob of more than two people, depending on where the perpetrator was caught. If caught in a densely populated area, the number of mobsters or vigilantes can be more than ten to a dozen people. Among the mobsters there may be no owner of the object stolen by the thieves, but these mobsters voluntarily sacrifice their energy and emotions to join in ganging up on the perpetrators. They do not realize that this beating or vigilante is a separate crime that is separate from the crime of theft, and is punishable by a separate crime.

Article 170 of the Criminal Code paragraph (1) reads:

"Anyone who openly and jointly uses violence against people or goods, shall be punished by a maximum imprisonment of five years and six months".

Likewise Article 351 paragraph (1) reads: "Abuse is punishable by imprisonment for a maximum of two years and eight months or a maximum fine of four thousand five hundred rupiahs". Both of these articles can be imposed on perpetrators of persecution or in other words perpetrators of beatings or vigilantes, but until now law enforcement officials have not processed the perpetrators of persecution with justification for the crime that is the risk of perpetrators of theft who have taken other people's goods illegally. against the law. They had the courage to carry out spontaneous beatings without knowing what the perpetrators had done, because only based on people shouting that there was theft, they beat them without feeling the suffering of the perpetrators who were beaten by many people, and they do not realize that what was done to the perpetrators has crossed the line of punishment that must be received by the perpetrators. Usually when the perpetrators of theft die, then the security forces look for the provocateurs to be prosecuted, even though they should process all the perpetrators of persecution, because everything that caused the death of the perpetrators.

The results of the interview with the Head of Serse of the Asmat Police, Iptu Pol. Lambherthus Palpialy, S. Sos, said:<sup>16</sup>

"When there was a beating of the perpetrators of theft, we couldn't do anything because it was the fault of the perpetrators themselves, which had provoked the emotions of residents who had long felt grudges against the perpetrators of theft. Unless the victim dies, then we try to find several people who acted as provocateurs of the beating to be legally processed by applying Article 170 paragraph (3) of the Criminal Code, because it is impossible for us to arrest all the residents who were directly involved in the beating."

Of course, the author's attitude towards the Police cannot be legally accepted, because beatings are not the right of the perpetrators of persecution to give punishment to the perpetrators, because the perpetrators have human rights that must be protected by anyone.<sup>17</sup> If he has been abused, even if he is lightly injured or dies, all perpetrators of persecution without exception must be arrested and processed according to applicable law. And if they are not

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<sup>14</sup>Barda Nawawi Arief, *Anthology of Criminal Law Policy*, (Bandung: Citra Aditia Bakti, 1996), page 17

<sup>15</sup>*Ibid.*, p. 18

<sup>16</sup>Interview with Head of Serse of the Asmat Police, Iptu Pol. Lambherthus Palpialy, S. Sos, September 7, 2022

<sup>17</sup>Bahder Johan Nasution, *Philosophical Studies on the Concept of Justice From Classical Thoughts to Modern Thoughts*, *Yustisia* Vol. 3 No.2 May - August 2014, p. 120

caught, then the perpetrators of theft should no longer need to be arrested and prosecuted. Especially if the stolen goods have not been enjoyed. He should have gone through the normal legal process in prison.<sup>18</sup>

This theory of law enforcement in practice must be supported by a sense of justice for society. That is, the law must be upheld for the perpetrators of the crime of theft, and must also be enforced against the perpetrators of persecution as a whole. If there are ten people who carry out the persecution, then those ten people must be processed by the same law. It is not permissible to arrest only the provocateurs, because all commit physical crimes in the sense of carrying out the same beatings, some even use hard blunt objects or sharp weapons.

In the author's opinion, this is where the punishment and criminal system for perpetrators of persecution of perpetrators of criminal acts of theft must be implemented by the National Police consequently and whether there is positive law that applies in Asmat Regency. When there is persecution against the perpetrators of the crime of theft, the National Police must be brave and be able to ignore the old habit of letting the public lay their hands on the perpetrators. The National Police must apply Articles 170 and 351 of the Criminal Code against the perpetrators of persecution. Polri is obliged to carry out arrests and legal proceedings against all perpetrators of persecution, so that a sense of justice can be created for the community members, as stated in John Rawls's theory of justice:<sup>19</sup>"Justice is equality". This opinion is simple but logical, and very appropriate when applied to the role of the National Police in seeking balanced justice for justice seekers, especially for the perpetrators of theft who are persecuted by members of the public without valid reasons and based on law.

### **Obstacles to law enforcement against the perpetrators of the practice of persecution of the perpetrators of the crime of theft in the Legal Area of the Asmat Resort Police**

The problem of law enforcement in Indonesia is not just a surface phenomenon, but has penetrated the core of the legal system itself. Law enforcement in Indonesia often does not go hand in hand with what the law wants in Indonesia, not to become commander in chief, but to become a tool of politics and power. Because as the commander in chief, the law must be able to answer, decide, or resolve a case without being affected by any tendencies or interests attached to it.<sup>20</sup>

Regarding the obstacles to law enforcement against perpetrators of persecution of perpetrators of theft in the Legal Area of the Asmat Police, when interviewed by Head of Serse Unit of the Asmat Police, Iptu Pol. Elvis Lambherthus Palpialy, S.Sos says:<sup>21</sup>

"The obstacles to law enforcement that we face against the perpetrators of persecution are the lack of adequate personnel to be able to deal with the perpetrators of persecution, which are far more numerous than our personnel, vehicle facilities at the Asmat Police Station, insufficient legal knowledge due to the absence of literature books. textbooks that cover issues of law enforcement, as well as habits of thinking and acting in accordance with the conditions of the region and local communities. We often discuss this about how to find a way out in order to improve professionalism in law enforcement at the Asmat Police, especially the Investigation Unit, but there are still many obstacles that we face, related to the condition of the Asmat area which is still like this, so there is no meaningful progress".

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<sup>18</sup>Candra, Septa, Criminal Law Reform; The Concept of Criminal Liability in the Future National Criminal Law. Journal of Cita Hukum. Vol. 1 No. 1 2013.

<sup>19</sup>Karen Lebacqz, Theories of Justice, (Bandung: Nusa Media, 1986), p. 161

<sup>20</sup>Yadin, Abdul Razak, Aswanto, Law Enforcement Problems in Indonesia Towards Responsive Law Based on Pancasila Values, (Faculty of Law, Hasanuddin University, 1999)

<sup>21</sup>Interview with Head of Serse of the Asmat Police, Iptu Pol. Elvis Lambherthus Palpialy, S.Sos, September 7, 2022

According to the author, this explanation from the Head of the Criminal Investigation Unit is quite reasonable in connection with the perpetrators of the persecution always involving many people as a condition of their courage in carrying out the persecution, so that members of the National Police, especially the Criminal Investigation Unit, which are small in number, are unlikely to be able to overcome them, let alone immediately take action to arrest and took them on foot in tandem to the Polres. Of course, they can escape on the road, considering that the Asmat Police do not have an operational car, because in Asmat District there is not a single vehicle that can operate, because Asmat Regency is a Regency that is floating above the swamp and does not have strong road facilities for traffic. car.

Facing problems like this, especially the problem of truck facilities that can transport many people, of course the law enforcement process against perpetrators of persecution cannot be carried out optimally for a sufficiently long period of time or it could be for ever, and can only be prosecuted if seen from the perspective of the number of perpetrators is only one or two people. The Asmat Resort Police must take more flexible concrete steps that are adapted to the conditions of the Asmat Regency Regional Area, if they are to be serious in carrying out the law enforcement process for perpetrators of persecution of perpetrators of criminal acts of theft, so that a fair and adequate law enforcement process is realized for perpetrators of criminal acts. crime of theft in Asmat Regency.

#### IV. CONCLUSION

Based on the results of the discussion above, it can be concluded that the criminal system and punishment that can be applied to perpetrators of persecution of perpetrators of criminal acts of theft are only limited to perpetrators of persecution who actually act as movers and provocateurs who influence the practice of persecution for members of the public at the place where the perpetrator was caught. theft, by applying Article 170 Paragraph (3) and Article 351 of the Criminal Code, if the persecution is carried out until the perpetrator of the theft dies, while other residents who carry out the persecution are not harmed. The obstacles to law enforcement for perpetrators of persecution of perpetrators of criminal acts of theft include the lack of Investigation Unit personnel and members of the Asmat Police,

The criminal and criminal system for the perpetrators of the persecution of the perpetrators of the crime of theft must be implemented by the National Police consequently and whether there is a positive law that applies in Asmat Regency. When there is persecution against the perpetrators of the crime of theft, the National Police must be brave and be able to ignore the old habit of letting the public lay their hands on the perpetrators. The National Police must apply Articles 170 and 351 of the Criminal Code against the perpetrators of persecution. Polri is obliged to carry out arrest and legal proceedings against all perpetrators of persecution, in order to create a sense of justice for the community.

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