



Law Enforcement Criminal Act of Theft of Mushola Charity Box Money

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Abstract

Society or social life is a collection of various kinds of relationships between its members, this relationship which then forms social life and in social life there are legal rules that regulate both laws and norms that are considered good by society that aims to sanction its violators. Any violation of existing legal regulations will be subject to sanctions in the form of penalties in reaction to acts that violate legal regulations committed. A charity box is a charity container that is managed by each mosque as a forum for donations from the community as well as donations from several authorities. Theft of charity boxes is still rife, and this action has a major impact on the comfort of the local community because charity box funds are funds for the benefit of religious people. The present study aims to elaborate criminal law enforcement against the theft of charity boxes that often occurs in various mosques in several regions in Indonesia. The present research uses discourse analysis as method of the study in elaborating issues concerning criminal law enforcement against charity box theft cases. This study concludes that there are two stages in criminal law enforcement of charity box theft cases. The first stage of criminal law enforcement is the enforcement of criminal law in abstracto or the formulation stage of the criminal law which is then stated in the legislation. The second stage is criminal law enforcement in concreto where this stage consists of the implementation stage (investigation) and the stage of law implementation by law enforcement officials.

Keywords: *Criminal Law; Charity Box; Mosque*

Introduction

Society or social life is a collection of various kinds of relationships between its members, this relationship which then forms social life and in social life there are legal rules that regulate both laws and norms that are considered good by society that aim to sanction its violators (Rahardjo, 2000). Any violation of existing legal regulations will be subject to sanctions in the form of penalties in reaction to acts that violate the legal regulations committed (Chanawi, 2006).

A charity box is a charity held by each mosque as a forum for donations from the community as well as donations from several authorities. These donations are generally made by putting money in charity boxes available in all mosques. A charity box certainly has as much security as a padlock lock. But this kind of security is very vulnerable to theft.

The theft of the charity box stole the attention of the community to further secure the charity box, the action had a great impact on the comfort of the local community because the charity box fund is a fund for the benefit of religious people. In many cases of theft, thieves not only steal money but also take away the charity box. Because there is no system that can monitor the whereabouts of the charity box that the thief carries. This makes it difficult to know the location of the charity box that the thief brought.

This crime of theft is not something we are unfamiliar with, but the crime that is most often reported. As evidenced by the mass media and electronic media, they did not escape reporting on cases of frequent cases of theft with various backgrounds and theft motives. However, the pretext that is often heard when people steal is in the background of insufficient economic needs.

In Indonesia, determining a sentence for perpetrators of crimes is handed over to the authorities through the police, prosecutors, and judges. through the process prescribed in the Act including through trial in the Court. Of course, the law used uses the Criminal Code (Criminal Code) but in determining the judge also has consideration in deciding a decision.

Theft is one of the acts of criminality that many of us get in society. It is explained in Article 362 of the Criminal Code which reads Whoever takes something, which is wholly or partly in the possession of another person, with the intention of being possessed unlawfully, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of sixty rupiahs. Behavior that is not in accordance with the norms or can be called a violation of the agreed norms turns out to cause disruption of the order and peace of human life. Such misappropriation, usually by society is labeled as an offense or even a crime. Crime in people's lives is a social symptom that will always be faced by every human being, society, and even the state (Waluyo, 2008).

Article 362 of the Criminal Code formulates anyone who takes something, all or part of the property of another person, with the intention of being unlawfully possessed, threatened with theft, a maximum imprisonment of 5 (five) years and a maximum fine of 900 (nine hundred) rupiah. The penalty of this fine is certainly adjusted to the development of the currency value. Theft offenses are regulated in Article 362 of the Criminal Code to Article 367 of the Criminal Code.

One of the thefts that is happening now is the theft of charity box money. The theft of charity box money should be included in the theft of ballast because the money in the charity box does not belong to an individual. The contents in the charity box are donations from the community so neither party can claim to be the owner. A charity box is a public asset whose management and use are carried out by the administrators of the foundation or the administrators of houses of worship. If the funds raised are classified as publicly owned assets, then the punishment of the perpetrators can be more severe.

The crime of theft, occurred on Monday, March 28, 2022 at around 02.30 WIB at the DARUS SULKHI Mosque, precisely jabon rt/rw environment: 004/007 Jogosari Village/Kelurahan Kec.Pandaan Kab.Pasuruan carried out by the suspect MOCHAMMAD KARIM Bin KISOM, male gender, Place of birth in Pasuruan, May 28, 1991, age 31 years, Islamic religion, Indonesian citizen, Javanese Tribe, Private Jobs, Last Education SMK (finished), Address: Dsn. Asemjajar Rt.002 Rw: 004 Ds.Rebono Kec.Wonorejo Kab. Pasuruan. And the goods that can be confiscated from the suspect are cash of Rp. 1,365,000 (one million three hundred and sixty-five thousand rupiah), 1 (one) red bag, 1 (one) white padlock, 1 (one) black jacket, 1 (one) red scabbard, 1 (one) black blue waist bag containing 2 (two) letter l keys, 1 (one) screwdriver, 1 (one) piece of red cutting tool (pliers), a pair of wrenches, 29 (twenty-nine) key children who were made into one bendel and the evidence was seized when the perpetrator was arrested by police officers and the evidence was secured at the Pandaan Police Station for further investigation. For this act, the suspect was threatened with article 363 theft with impunity.

Criminal law must be harsh, strict, and indiscriminate anyone can be charged if they commit a criminal act. A distinctive trait in criminal law is its sanction in the form of retaliation that can deprive a

person of rights. Although the rights of a person are non-dominatable rights or *Non Derogable Rights* which are rights that cannot be taken away in a human being under any circumstances even in an emergency that threatens the life of the nation at once. But still our criminal sanctions still adhere to penalties that violate this right but are limited to crimes that are considered very dangerous that result in enormous losses to a country. Criminal liability leads to the conviction of the offender with a view to determining whether a defendant or suspect is accountable, or a criminal act occurred or not.

Methods

The present study uses a normative legal research method that is conducted in finding solutions for legal matters (Isnaini & Utomo, 2019). The research approach used is the statute approach and conceptual approaches.

Discussion

We need to divide the definition of thieves into two groups, namely: active theft and passive theft:

1. Active theft Active theft is the act of taking someone else's property without the owner's knowledge.
2. Theft passively is the act of withholding what should belong to another person.

A person who commits an act or has a career in theft is called a thief and his/her action is called stealing. In the Legal Dictionary theft is said to be a process, deed, or way of stealing.

Theft is generally defined as taking someone else's goods that do not belong to him. In terms of Language (etymology) theft comes from the word "steal" which gets the prefix "pe", and the suffix "an". The meaning of the word steal is to hide or secretly or not by a legitimate way or to commit theft secretly or not by being known to others the deeds he did (Sudarsono, 1992). Stealing can be inferred taking someone else's property unlawfully or unlawfully. Meanwhile, people who steal things that belong to others are called thieves. Theft itself means an act or case related to stealing, According to Article 362 of the Criminal Code is: Whoever takes something, which wholly or partly belongs to another person, with the intention of being unlawfully possessed, is threatened with theft, with imprisonment for a maximum of five years or a fine of not more than sixty rupiah (Moeljatno, 2003).

According to Moeljatno, criminal acts are basically a basic understanding in criminal law. Criminal act is a juridical sense just as it is to provide a definition or understanding of legal terms, so it is not an easy thing to provide a definition or understanding of the term criminal act. The discussion of criminal law is intended to understand the meaning of criminal as a sanction for offenses, while punishment is related to the basics of justifying the imposition of criminal offenses as well as theories about the purpose of punishment. It should be stated here that, criminal is a juridical term that has a special meaning as a translation of the Dutch "straf" which can be interpreted as "punishment" (Moeljatno, n.d.). Criminal liability in foreign terms is referred to as *theorekenbaarddheid* or criminal *responsibility* which leads to the conviction of the perpetrator with a view to determining whether a defendant or suspect is accountable, or a criminal act occurs or not. Criminal liability leads to the conviction of an accuser, if he has committed a criminal act if he has committed a criminal act and meets its elements specified in the law. From the point of view of an act that is prohibited (required), a person will be held accountable for these actions if the act is unlawful for it. Viewed from the point of view of the ability to be responsible, only a person who can take responsibility can be criminalized (Farid, 2010). Law enforcement in Dutch called *rechtstoepassing* or *rechtshandhaving* includes macro and micro meanings. The macro meaning covers all aspects of people's lives, nation, and state, while in the micro

sense it is limited to the examination process in court including the process of investigation, investigation, prosecution to the implementation of criminal decisions that have permanent legal force.

Law enforcement is the process of making efforts to establish or function legal norms in a real way as a guide for behavior in traffic or legal relations in social and state life (Isnaini & Wanda, 2017). From a subject point of view, law enforcement can be done by a broad subject and can also be interpreted as an effort to enforce the law involving all subjects. Law enforcement is an attempt to bring the ideas of justice, legal certainty, and social expediency into reality (Rahardjo, 2000). Criminal law enforcement is an effort to realize the ideas of indifference in criminal law in legal certainty and social expediency into legal reality in legal certainty and social expediency into legal reality in every legal relationship (Marzuki, 2008). Abdulkadir Muhammad argued that "law enforcement can be formulated as an effort to carry out the law as it should be, supervise its implementation so that no violations occur, and if there is a violation, recover the violated law so that it is re-enforced" (Muhammad, 1991).

Broadly speaking, the presentation of experts in formulating an act that can be said to be a criminal act is an act done by someone who can be responsible, where the act must be an act prohibited by law. In accordance with the principle of legality in Article 1 paragraph (1) of the Criminal Code which stipulates that an act cannot be punished if the act has not been regulated in the legislation, or in Latin it is called *nullum delictum nulla poena sine praevia lege*. Actions committed by people who violate the laws and regulations must have an element of error, be it intentionality (*dolus*) or oversight (*culpa*). While the element of being able to take responsibility, the person must have been considered an adult by the law that is alleged to him or she does not have a mental disorder or be under guardianship.

In the Law The elements of criminal acts in the law consist of objective elements and subjective elements (Utomo, 2020). Where the objective element focuses on elements that are outside the perpetrator's self. Meanwhile, the subjective element focuses on the elements that are inside the perpetrator. It turns out that there is an element that is always mentioned in every formulation, which is about behavior/deeds, although there are exceptions such as article 351 (persecution). Elements of guilt and against the law are sometimes listed, and often also not listed. Anything not listed at all is about the element of responsible ability. In addition, many include other elements both around / about the object of crime and deeds specifically for certain formulations. From the formulations of certain criminal acts in the Criminal Code, it can be known that there are 8 elements of criminal acts, namely:

- a. Behavior.
- b. Unlawful element.
- c. Error element.
- d. Constitutive consequent elements.
- e. Elements of the accompanying state.
- f. Additional elements of conditions for criminal prosecution.
- g. Elements of additional conditions to aggravate the criminal.
- h. Additional elements of conditions for conviction.

Of the 8 elements, two of them, namely guilt and against the law, are subjective elements, while the rest are objective elements. Regarding the unlawful element, sometimes it is objective, for example, against the law the act of taking on theft (362) It lies that in taking it beyond the consent or will of the owner (against objective law). Or at 251 on the sentence "without government permission". Also article 253 of the sentence "unlawfully using the original stamp" is against the objective law. But there are also subjective against laws e.g. against the law on fraud (*oplichting*, 378), extortion (*afpersing*, 368), stoning (*afdreiging*, 369) in which it is mentioned the intent to benefit oneself or others unlawfully. Likewise, the unlawful element of the act of possessing in embezzlement (372) is subjective, meaning that there is an awareness that possessing someone else's object in his power is a reproach of society.

As for when the unlawful element is in the form of an objective or subjective law, depends on the editorial sound of the formulation of the criminal act in question. Objective elements are all elements that are outside the inner state of the human being / the maker, namely all elements regarding his actions, the consequences of his actions and certain circumstances that are inherent (around) to the deeds and objects of criminal acts. Meanwhile, the subjective elements are all elements that are about the mind or attached to the inner state of the person.

Elements of criminal acts in the form of mistakes and against the law are subjective elements. However, this does not apply to all articles in the Criminal Code, such as in Article 362 of the Criminal Code on theft, Article 251 of the Criminal Code and Article 253 of the Criminal Code which contain objective unlawful elements. Unlawful elements that are subjective in nature, some examples are contained in Article 378 of the Criminal Code on fraud, article 368 of the Criminal Code on extortion, Article 369 of the Criminal Code on stoning, and Article 372 of the Criminal Code on embezzlement.

Roeslan Saleh argued that "both crime and violation are criminal acts, i.e., acts that by criminal law are prohibited and threatened with criminality whoever violates the prohibition". Crime and offense used to be qualitatively distinguished where an act that is not regulated in the law but has been felt to injure norms in society is classified as a crime. Meanwhile, an act that has only been realized as an act that injures norms in society when the act has been regulated in the law is classified as a violation.

However, this qualitative division has been abandoned because not all crimes regulated by law as crimes are perceived by society as an act that injures norm in society. Likewise, with violations, there are many violations in society that although there is no regulation in the law but are felt to be injurious to the norm in society. Currently between a crime and an offense is distinguished quantitatively, based on the severity of the severity of the crime.

Criminal liability refers to the conviction of an accuser, if he has committed a criminal act if he has committed a criminal act and meets its elements specified in the law. Based on the point of view of an act that is prohibited (required), a person will be held accountable for these actions if the act is unlawful for it. Viewed from the point of view of the ability to be responsible, only a person who can take responsibility can be criminalized.

Law enforcement in Dutch called *rechtstoepassing* or *rechtshandhaving* includes macro and micro meanings (Hatta Isnaini Wahyu Utomo, 2019). The macro meaning covers all aspects of the life of society, nation and state, while in the micro sense it is limited to the examination process in court including the process of investigation, investigation, prosecution to the implementation of criminal decisions that have permanent legal force. Law enforcement is the process of making efforts to establish or function legal norms in a real way as a guide for behavior in traffic or legal relations in social and state life. From the subject's point of view, law enforcement can be carried out by a broad subject and can also be interpreted as a law enforcement effort that involves all subjects. Law enforcement is the process of making efforts to establish or function legal norms in a real way as a guide for behavior in traffic or legal relations in social and state life. From the subject's point of view, law enforcement can be carried out by a broad subject and can also be interpreted as a law enforcement effort that involves all subjects.

Conclusion

Based on the explanation above, the case of theft of a mosque charity box committed by a person can be categorized as an act of punishment. Enforcement of criminal cases of theft of charity boxes is based on two foundations, namely the enforcement of criminal law in *abstracto* or the formulation stage and enforcement of criminal law *in concreto* where this stage consists of the stage of application (investigation) and the stage of implementing the law. The enforcement of criminal law in *abstracto* against cases of theft of mosque charity boxes has been clearly stated in the legislation (Criminal Code)

where the act of theft of charity boxes is a criminal act that has been formulated as a form of responsibility for the individual who committed the act. Meanwhile, law enforcement *in concreto* is carried out by parties who have also been regulated in the legislation of their authority in conducting investigations and implementing punishments that have been regulated in the legislation. The parties who have the authority to carry out criminal law enforcement *in concreto* are the legal apparatus which includes the Police, Courts, and Prisons.

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