

## Optimization of Fine Payment in the Crime of Ordinary Theft as a Substitute of Imprisonment (Case Study of Decision Number 64/PID.B/2020/ PN SGR)

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### Abstract

This research aims to (1) find out and analyze the basis of judges' considerations in choosing imprisonment as a punishment for perpetrators of ordinary theft, and (2) determine the urgency of imposing fines in cases of ordinary theft. The type of research used in this study is empirical legal research with descriptive research. The location of the study was Buleleng Regency, Singaraja District Court Class I B. The data collection techniques used in this study were observational techniques, documentary research and conducting interviews. The sampling technique uses the non-probability sampling technique that selects the subjects using a target sampling technique. The data processing technique used in this study is a qualitative technique. The results of the study show that (1) the discretion of the judge to implement/arrange the decision of the 64/Pid.B/2020/PN SGR is based on the aggravating and mitigating circumstances surrounding the circumstances during the trial of the accused witnesses and evidence, and (2) the urgency of imposing fines in cases of ordinary theft because imprisonment is no longer effectively used to deal with prison overcapacity which causes the state budget to be wasted on prison operational costs and imprisonment does not allow victims to get justice regarding the losses they have suffered.

### 1. Introduction

Indonesia has gone through a very long historical journey. Indonesia also experienced colonization from several foreign countries in several periods. Of course, this also has a direct impact on existing laws in Indonesia, one of which is criminal law. The term criminal law itself is a translation of the Dutch word "*Strafrecht*", *Straf* which means punishment, while *Recht* which means law (H. Suyanto, 2018: 1). According to

Andi Hamzah, criminal law is a set of laws and regulations that contain prohibited matters and regulations, or violations that threaten punishment (legal sanctions) for each perpetrator.

Indonesia has the fourth largest population in the world after the United States, where the population of Indonesia reached 278.69 million people in mid-2023, according to BPS (Central Bureau of Statistics). This large population certainly brings various positive and negative impacts to the country and society. One of the negative impacts that can occur is the emergence of many problems, according to the National Police (Polri), there were 137,419 criminal cases in Indonesia from January to April 2023. This number jumped by 30.7% compared to January - April of the previous year, the increase was 105,133 cases. Of course, from these crimes, someone who commits them can be subject to criminal sanctions, which are listed in Article 10 of the Criminal Code which reads that punishment consists of additional and main punishment. Of the main types of penalties faced by a convict, imprisonment and confinement are penalties that are often used by judges when applying criminal sanctions (Fathurrahman et al. 2021: 41). The main purpose of these sanctions is to prevent offenders from engaging in activities that could send them to correctional institutions or state detention centers. One of the consequences of applying this sanction is the overcapacity in several detention centers in Indonesia (Fitri and Handayani 2021:750). Data obtained based on the Directorate General of Corrections Public Correctional Database System on September 28, 2023, there are 268,710 people sentenced in correctional institutions while the capacity is only 136,704. Thus, prison overcapacity in Indonesia has almost reached 100%.

Overcapacity can be caused by the number of inmates who enter is not proportional to the capacity of the correctional institution. Simply put, overcapacity in this prison is a situation where prisoners exceed the capacity of a prison (Jati, 2019: 81). These problems tend to have negative implications, such as guidance in correctional institutions becomes less than optimal and runs not according to existing rules, the physical and mental health of prisoners also deteriorates, the budget swells due to increased costs from the consumption of electricity, water and foodstuffs and there can also be riots or escape of prisoners due to supervision from correctional institutions that are less than optimal due to the imbalance in the number of correctional officers with existing prisoners (Abdillah, 2019). One of the highest contributors to overcapacity in prisons is ordinary theft cases which account for 15.18% of the current prison overcapacity. Petty theft is listed in Article 361 of the Criminal Code which states that: "Whoever takes possession of an object belonging to a stranger, wholly or partially contrary to right, shall be punished by the consequences of theft, namely imprisonment for a maximum of five years or a fine of up to Rp 900,-."

In ordinary theft, the judge may choose the punishment against the perpetrator, which is imprisonment or fine. The judge is not only free to determine the type of punishment, but also free to determine the severity and lightness of the punishment to be applied against the perpetrator (Wijayanto, 2014: 8). Based on existing data, it shows that judges more often impose prison sentences than fines for ordinary theft (Zulfan and Tarmizi 2019: 691). Criminal fines can be a solution to prevent prison overcapacity, and judges offer a choice of types of crimes that are prioritized in the fine itself. (Fathurrahman et al. 2021:43). Considering that imprisonment is not necessarily able to restore the loss suffered by the victim, the length of punishment in the form of imprisonment imposed on convicts does not guarantee that they will become better after leaving prison, so it does not guarantee that crime will decrease (C. Kamea, 2013: 48).

Looking at the issue of imprisonment, it is natural that fines become the focus of attention. Based on the description above, the author is interested in conducting a research entitled: "**Optimization of Fine Payment in the Crime of Ordinary Theft as a Substitute of Imprisonment (Case Study of Decision Number 64/PID.B/2020/ PN SGR)**".

## 2. Research Methods

The research used is empirical legal research which is research that focuses on legal realities that include social and cultural realities. This study refers to the study of written law or customary law, which is based on the existence of an imbalance between the application of norms (*das sollen*) and the reality that exists in society (*das sein*). The difference in factors between laws and other regulations and the application of laws in community life. This final work is descriptive in nature that describes briefly, objectively, accurately and systematically about fines as a substitute for imprisonment. This final work uses data and sources derived from primary and secondary data. In this research, primary data is sourced from Singaraja Class IB District Court located in Buleleng Regency, Bali. Secondary data is obtained from literature review obtained from scientific works, laws and regulations, documents from various authorities and some information documented in legal sources related to the issues studied.

The method of data collection used by the author in collecting data both primary data and secondary data by means of observation is a method of collecting data carried out through direct observation of the place to be studied, document studies by interpreting and reviewing library materials obtained and interviews by visiting and interviewing the parties regarding the issues being discussed. The method used in this research is the *non-probability sampling* method which means there is no definite decision (Muhyi, et al 2018: 44). The form of application of the *non-probability sampling* method in this final work is *purposive sampling*, meaning that sampling is based on certain objectives, as for the sample used in this final work, namely judges who understand the problems to be studied.

Data processing is the act of improving the data obtained by collecting data that has been collected in the field for analysis. This research is handled and examined in a qualitative way, that is, the material is not in the form of numbers, but the material is presented in the form of words, which are then arranged systematically, or you can say that the conclusions are drawn logically from the results of interviews with informants and respondents as well as information that has been collected from literature research (Kusumastuti and Khoiron, 2019: 30). The stages of qualitative analysis in this study are processing the data that has been obtained, then grouped or classified based on some existing data, then interpreted in order to understand the meaning of the data in social conditions and interpreted from the research point of view. after you understand all the data, the analysis process is carried out continuously, starting with the search for qualitative analysis, after which the material is presented with qualitative and systematic descriptive.

## 3. Results and Discussion

### 3.1 Basic Considerations of Judges in Choosing Imprisonment as a Punishment for Common Theft Offenders in Decision Number 64/Pid.B/2020/PN SGR

According to the results of research conducted directly in the field with interviews on February 6 and April 2, 2024 to Mr. I Gusti Made Juliartawan, S.H., M.H. as a Judge appointed by the Court to explain more deeply about Decision Number

64/Pid.B/2020/PN SGR and regarding the perspective of the judge's position in deciding the punishment for a person who committed the crime of ordinary theft. The decision in the trial itself must go through a long process of consideration based on the examination conducted during the trial.

According to Article 362 of the Criminal Code, the imposition of imprisonment or fines is an alternative punishment and therefore depends entirely on the decision of the judge in court. However, in this case, judges rarely impose fines on perpetrators of the crime of theft, and more often impose prison sentences. Imprisonment is now one of the most common punishments compared to fines, one of which applies to the crime of ordinary theft. In this case, of course, the judge has considerations in making a decision, which means that in making a decision for each case at hand, the judge considers several matters relating to legal relations, the legal value of an act and the legal status of the parties, because judges are given the task of deciding court cases to be impartial in accordance with applicable regulations.

The consideration of the panel of judges is the main aspect in the judge making a decision which contains the value of justice and has the value of legal force and benefits for many people. The facts disclosed will later be accepted by the judge so that the judge can use them for consideration in determining his decision. The judge's decision against the defendant certainly contains important aspects such as the charges of the public prosecutor, the evidence found in the trial, witness testimony and also the testimony of the defendant, as well as the testimony of the public prosecutor's charges in the case. Based on Decision Number 64/Pid. B/2020/PN SGR, the judge's consideration in making a decision must be based on the instructions contained in the indictment made by the public prosecutor. From that case, the prosecutor noted in the indictment sheet read out in court, Komang Arya Sudanta alias Kocos was found guilty of violating Article 362 of the Criminal Code related to ordinary theft. The public prosecutor submitted a criminal report in such a way that the defendant was sentenced to imprisonment for four months, minus the detention period.

Based on the legal facts applicable in court, the Panel of Judges concluded that the defendant committed his actions intentionally so that in this case the defendant fulfilled the elements of the article in the Penal Code, namely Article 362. The perpetrator was charged by the public prosecutor based on a single indictment with elements such as "whoever", the element of "taking goods", the element of "wholly or partially belonging to another person" and the element of "intentionally unlawfully possessing another person's goods". The consideration of the panel of judges before sentencing the defendant was not only based on juridical facts, but also based on non-juridical factors, namely several things that were contained in the defendant, for example the aggravating and mitigating circumstances of the defendant. As an aggravating circumstance in this case, the defendant was charged that the defendant's actions caused harm to the victim. In addition, the defendant's actions caused public concern. There were mitigating circumstances because during the trial the defendant was cooperative by admitting all of his mistakes and said that he would not reoffend. Furthermore, this was the first time the defendant had committed this crime. In addition, during the trial the defendant was polite and expressed regret for his actions.

Therefore, it can be concluded that the judge's consideration is based on juridical and non-juridical considerations in choosing a prison sentence for the perpetrator of this ordinary theft case, where the legal consideration must be based on the formal provisions in the legislation. A judge must be legally convinced that a crime has actually



occurred and that the perpetrator is guilty, and in this case the judge can impose a sentence if there are at least two valid pieces of evidence.

### **3.2 The Urgency of Imposing Fines in Cases of Ordinary Theft**

The selection of fines as an alternative to imprisonment in cases of ordinary theft is a step that can be taken by the government. Based on an interview with I Gusti Made Juliartawan, S.H., M.H. as a Judge of Class IB District Court in Singaraja as the spokesperson of the Court. The judge as one of the law enforcement officers in charge of sentencing the perpetrator of a criminal offense must consider and decide whether or not a person is guilty based on the results of the examination conducted at trial. The judge can choose the appropriate punishment for the defendant. In addition to the judge being able to determine the criminal punishment to be imposed, the judge is also free to determine the severity and lightness of the criminal punishment to be imposed on the perpetrator, but must remain within the maximum and minimum limits contained in the Criminal Code rules. Compared to imprisonment, which actually causes prison overcapacity, this study found that fines are actually feasible because they are considered more effective both in terms of prison conditions and the state's financial condition. This is because the fines paid by criminals essentially go to the state treasury.

As for further observation, this ordinary theft case involves property as the object taken. In the sense that the perpetrators of ordinary theft take goods belonging to other people that have a selling value to be used in meeting their personal needs. So that it is necessary to optimize the imposition of fines for the perpetrators of this ordinary theft crime, then it will make someone think again to commit theft. The benchmark for determining whether the imposition of fines for ordinary theft cases is optimal or not cannot be done, because apart from the problems related to overcapacity, the existing law in Indonesia has regulated the imposition of criminal penalties for criminal offenders. The main types of punishment are contained in Article 10 of the Criminal Code, which states that imprisonment and fines are the main punishments. Therefore, the imposition of imprisonment or fines is up to the Panel of Judges handling the case.

The imposition of fines is no longer categorized as optimal or not optimal, but more inclined to the usefulness of the imposition of punishment. The law has regulated the application of imprisonment followed by a fine, which in fact the fine is only an alternative. Therefore, it is necessary for this fine to be maximized. Therefore, fines should be maximized as much as possible because fines also have several advantages, namely by applying fines, unnecessary social costs in maintaining correctional institutions can be avoided, unnecessary detention and unnecessary capital in detention centers can be avoided.

#### **Effectiveness of imprisonment for perpetrators of the crime of ordinary theft**

Judges in Indonesia still apply imprisonment as the most common sanction in sentencing perpetrators of theft (R.A. Koesnoen, 1964: 90 - 91). Imprisonment is a form of deprivation of liberty of a person for committing a crime that has caused conflict in society. Imprisonment limits all movements of the convict, in an institution that is tasked with providing guidance and assistance for convicts while serving their sentence. This institution is called Correctional Institution or abbreviated as Lapas.

The effectiveness of imprisonment is still a topic of discussion, because imprisonment at this time cannot be the purpose of punishment. The purpose of punishment is to provide a sense of justice that is fair to all parties. Along with the times, until now the pattern of crime has become more varied, so it is necessary to review each crime committed whether imprisonment can be a solution that is in accordance with the conditions of society later. The definition of the prison system itself philosophically is a

system that leads to criminal direction. This is different from the philosophy and purpose of the correctional institution as a place to implement imprisonment, which prioritizes rehabilitation and guidance. In ordinary theft cases, the sentence imposed by the judge is often in the form of imprisonment.

The sentence of imprisonment given by the judge in this theft case is to provide a deterrent effect for the perpetrators of ordinary theft. On the other hand, it is also so that everyone can make an example not to commit the crime of theft, if they do not want to be sentenced to prison. However, in reality, there is a massive increase in ordinary theft cases every year. Therefore, imprisonment cannot be used as a benchmark in providing a deterrent effect for perpetrators (Lommpo and Muhammad, 2023: 624). The imprisonment of criminals by putting them in correctional institutions with the aim of retaliation, rehabilitation, community protection and deterrence so that they can return to socialize in the community is identical to prisoners learning new crimes in correctional institutions. The purpose of retaliation itself is not fully realized because imprisonment makes the perpetrator not recover the losses of the victim, instead the victim and other communities pay the costs for the fulfillment of inmate development in correctional institutions through taxes. In terms of rehabilitation, imprisonment also often fails, because prisoners often become experts in committing new crimes. So in terms of deterrent effect, it also does not fully deter victims because the fact is that crime in Indonesia remains high despite being the country that most often chooses imprisonment as a criminal sanction. Therefore, imprisonment to produce a deterrent effect is also not very significant.

### **3.3 Optimization of Criminal Penalty Imposition for Offenders of Common Theft Crime**

The imposition of fines in the Indonesian criminal system is still classified as a secondary sanction, in contrast to imprisonment which is still the first number in imposing punishment for criminals. Decision Number 64/Pid.B/2020/PN SGR is one example, where the judge imposed imprisonment on the defendant without payment. Imprisonment is a deprivation of liberty experienced by a person, and if the person has committed a serious crime, imprisonment is very important to impose restrictions on the perpetrators of criminal acts so as not to disturb the community for the actions committed. If minor crimes also receive imprisonment, then of course there will be more cases which can eventually increase the number of inmates in prison fines and compensation for victims. In addition, in almost all court decisions the judge always places imprisonment as the main punishment.

Overcapacity in correctional institutions often results in disputes within correctional institutions, causing ineffective guidance in correctional institutions. Prisonization or it can be said that the adjustment of the behavior of convicts is also difficult to avoid, so that a prisoner who was originally only tried for petty theft, but after serving a sentence in prison and re-establishing social relations with the community, actually commits more crimes than before. This may be because the convict has learned to commit new crimes while in prison. Therefore, if imprisonment is a criminal sanction that is often applied, it can indirectly make coaching in correctional institutions not run effectively because the prison population exceeds capacity. In addition, the expenditure from correctional institutions is also a burden on the state to cover the living costs of prisoners whose numbers have experienced overcapacity. Therefore, the optimization of fines is very important to replace prison sentences for crimes with relatively light prison sentences, one of which is ordinary theft.

Fines can be an alternative in solving problems related to criminal offenses that have a short imprisonment period or that do not have a major impact on community life. The *non-custodial* nature of fines makes the application of criminal sanctions will not have a bad stigma in the community. In addition, the state will also get revenue from the payment of fines and can reduce the social costs arising from the imposition of imprisonment. Criminal fine can bring many positive sides that can be taken into consideration so that the criminal fine can be the main point for judges when imposing punishment for ordinary theft offenders whose cases are classified as non-severe crimes and crimes that have a short period of time. The understanding related to the limitations of the use of criminal fines contained in Articles 30 and 31 of the Criminal Code can be taken into consideration so that the implementation of criminal fines is more effective and right on target.

If the convicted person is imposed with a fine and the convicted person does not pay until the due date, the fine can be obtained/received from the property or income of the convicted person. However, if it is not possible to take the property or income of the convicted person, then the unpaid fine can be replaced through community service. Punishment in the form of social work itself is unpaid work because it is a "*work is penalty*" *punishment*, so it cannot involve profit...And the government can also start to provide more significant arrangements regarding punishment in lieu of fines.

### **3.4 Fulfillment of Sense of Justice for Victims of Crime of Ordinary Theft**

The role of judges is very important to ensure justice and maintain justice for victims of theft that is often committed by criminals. Judges must be based on the principles of justice, certainty and expediency in imposing criminal penalties on offenders. This principle is a guideline for judges to always follow the existing procedures in imposing decisions. Judges are the pillars in providing a sense of justice for victims who have suffered losses as a result of actions committed by the perpetrator. Judges must be able to provide decisions that contain a sense of justice for all parties, both victims and defendants (Mustofa, 2013: 55).

Ordinary theft is a crime that makes the victim feel materially and formally disadvantaged. The definition of a victim is anyone who faces suffering caused by the actions of others both physically and spiritually. Someone whose rights and obligations have been violated by others in order to fulfill personal satisfaction (Mansur and Elisatris, 2007: 27). Victims of theft crimes have the right to defend and fight for justice for themselves. In the trial process, the judge who has the right to determine and provide justice is the one who determines the justice obtained by the victim and the defendant.

The losses incurred by the defendant through the court process cannot all be returned to the victim. Therefore, the victim has the right to claim compensation for the losses incurred by the defendant. The provision of compensation is also called retribution. Victims who have suffered losses can file a joint prosecution with a lawsuit regarding compensation. The victim has the right to request the district court to combine the compensation claim with the criminal case. However, if the criminal case that also contains a claim for compensation is not appealed, then the lawsuit cannot also be appealed. Compensation can be appealed if the victim applies to the court in a civil case, but the application must await a decision in the ongoing criminal case. Meanwhile, if the victim wants to sue the perpetrator for the losses caused by the theft. The victim can make a separate civil claim against the perpetrator. However, the prosecution filed if the amount of loss suffered by the victim is not too large will actually have an impact on the victim himself. because the process of prosecuting compensation to be made actually

requires complicated and large time and costs, so it is not comparable if the loss suffered by the victim is not too large.

#### 4. Conclusion and Recommendations

Based on the discussion of the research results described above, conclusions can be drawn from this research, among others:

1. The judge's consideration in decision number 64/Pid.B/2020/PN SGR is based on several factors, for example; the rules of this law, where according to Indonesian positive law, the judge is free to determine the type of criminal sanction related to the use of an alternative system in the law. In addition, the judge is of course free to impose the severity of the criminal penalty that will be given to the perpetrator. On the other hand, juridical and non-juridical considerations also influence the judge's opinion when making a decision, where legal considerations must be based on the provisions of the law when making a formal decision. According to the law, the judge must have certainty that the crime did occur and that the person who committed the crime is guilty, and in this case the judge can impose a sentence if there are at least two valid pieces of evidence.
2. The urgency of imposing fines in cases of ordinary theft is because imprisonment is no longer effective for the perpetrators of ordinary theft so that the optimization of fines needs to be done because in addition to reducing the level of prison capacity, fines can also reduce the state budget from the fulfillment of social costs to meet the daily needs of prisoners while in prison.

Based on the conclusions that the author obtained, the suggestions that the author can convey:

1. The government should adjust the nominal amount of the fine to the type of crime committed so that the judge does not hesitate in applying the fine itself.
2. In order for the purpose of punishment to be achieved, the fine as the main punishment must also be properly functioned, not just as an alternative punishment.
3. The government must be firm in providing rules related to the period of payment of fines. If the defendant is unable to pay the fine, it can be paid in installments, or it can also be taken/obtained from the wealth or income of the convicted person and can also be replaced by carrying out punishment in the form of social work, or the government provides other punishment arrangements in lieu of a more significant fine.

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