

# Reconstruction of Criminal System Regulations for Criminal Acts of Theft Based on the Value of Justice

Anny Yuserlina<sup>1\*</sup>, Anis Mashdurohatun<sup>1</sup>, Sri Endah Wahyuningsih<sup>1</sup>

<sup>1</sup>Sultan Agung Islamic University, Jl. Kaligawe Raya No.Km.4, Terboyo Kulon, Kec. Genuk, Kota Semarang, Jawa Tengah 50112, Indonesia

DOI: [10.36348/sijlcj.2023.v06i12.007](https://doi.org/10.36348/sijlcj.2023.v06i12.007)

Received: 18.08.2023 | Accepted: 25.09.2023 | Published: 30.12.2023

\*Corresponding author: Anny Yuserlina

Sultan Agung Islamic University, Jl. Kaligawe Raya No.Km.4, Terboyo Kulon, Kec. Genuk, Kota Semarang, Jawa Tengah 50112, Indonesia

## Abstract

This economic factor is a factor that influences the occurrence of crime, one of which is theft. It is caused in order to fulfill their needs, people will tend to do whatever it is, even if they commit theft. The purpose of this research is to analyze and find the regulation of the criminal justice system against the perpetrators of the crime of theft based on the value of justice. This type of research is social legal research, namely by studying or analyzing primary data and secondary data. This research uses the Constructivism paradigm. The function of theory in a study is to provide clues and predict and explain the object under study. The results of his research are the regulation of the penal system, in fact, it has not yet created justice for the perpetrators of the crime of theft based on the value of justice, because most of these regulations are still based on a classical legal approach which only focuses on punishment and treats all perpetrators of crimes equally without consider the social, economic, and psychological factors that influence the action. These regulations are often considered unfair and discriminatory towards certain social groups, such as the poor or minorities. This results in a widening social gap and a higher possibility of criminal acts. Therefore, a progressive legal approach is needed that takes into account the broader values of justice and the social, economic and psychological contexts that affect perpetrators and victims. With this approach, it is hoped that article 362 of the Criminal Code needs to be reconstructed.

**Keywords:** Reconstruction, Criminal System, Justice.

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## A. INTRODUCTION

One of the most common criminal acts in society is theft. The crime of theft is a common crime that occurs in society and can be said to be the most troubling to society<sup>[1]</sup>. Worry about theft causes everyone avoid theft, which can be done by hiding items that are likely to be stolen, and can also be done by installing security at the place where goods (money) are stored or a residence, such as installing a locking device. difficult to damage by thieves.<sup>[2]</sup> This often doesn't work either because thieves have learned various techniques in order to perform the stunt successfully under even the most difficult conditions. The crime of theft that occurs in the

community brings material and immaterial losses so that usually the victim of theft will feel scared and sometimes experience stress due to the possession of his property being taken by the perpetrator of the crime<sup>[3]</sup>.

The crime of theft is one of the crimes regulated in the Criminal Code (KUHP), namely in Article 362. This ordinary theft is formulated in Article 362 of the Criminal Code which reads:

"Anyone who takes something that completely or partly belongs to another person, with the intention of owning the item against his rights, is punished for theft with a maximum prison sentence of five years or a maximum fine of Rp. 900<sup>[4]</sup>."

<sup>1</sup> L.H.C. Hulsman, The Dutch Criminal Justice System from A Comparative Legal Perspective see too Barda Nawawi Arief, Several Aspects of Criminal Law Enforcement and Development Policy, Citra Aditya Bakti, Bandung, 2005, Page. 114

<sup>2</sup> Ridwan Hasibuan, Criminology in the Narrow Sense and Forensic Sciences, USU Press, Medan, 1994. Page.8.

<sup>3</sup> Subekti, R. (2017). Criminal Law Reform in Indonesia. Jurnal Dinamika Hukum, 17(3), Page.56

<sup>4</sup> Toto Hartono, Law Enforcement Against the Crime of Theft with Violence (Study of the Medan City Resort Police), Jurnal Retentum, Vol 2, No.1, Februari 2021, Page. 32-42. .

The crime of theft that occurs in today's society is not only committed by adult actors (legally competent) but also by many underage children. This is very worrying, not only because the crimes committed are very detrimental to the victim but also to the perpetrators of the theft because they can be subject to legal sanctions for their actions<sup>[5]</sup>. Based on the description of the background above, the problems in this research are why the regulation of the criminal justice system against the perpetrators of the crime of theft has not been based on the value of justice, and how to reconstruct the regulation of the criminal justice system against the perpetrators of theft based on the value of justice.

## B. RESEARCH METHOD

This type of research is social legal research,<sup>[6]</sup> namely by studying or analyzing primary data and secondary data in the form of secondary legal materials by understanding law as a set of rules or positive norms in the system of legislation that regulates human life. The research uses literature studies and field studies.<sup>[7]</sup> Field Research, namely collecting data obtained through direct interviews with competent parties. All data that is edited and processed, analyzed using qualitative methods, meaning that it is not solely aimed at revealing the truth, but understanding the truth. So conclusions are obtained that can answer the existing problems.

## C. RESEARCH RESULTS

### 1. The regulation of the Penal System for the perpetrators of the crime of theft is not based on the value of justice

Researchers also emphasize the importance of aspects of restorative justice in the application of the principles of Pancasila in the crime of theft. Restorative justice in this case is interpreted as an attempt to restore the original situation, both for perpetrators and victims of crime. Pancasila principles such as gotong royong, deliberation, and kinship can be applied in an effort to create restorative justice.

However, the researcher also highlighted several obstacles in applying the principles of Pancasila

in the crime of theft. One of the most striking obstacles is the lack of public awareness and understanding of the principles of Pancasila. Therefore, efforts are needed to increase public understanding of the principles of Pancasila as the basis of national law.

In addition, there are still obstacles in the implementation of policies based on Pancasila principles in the crime of theft. This is due to the persistence of corruption and injustice in law enforcement. Therefore, there is a need for better legal reform and law enforcement so that the application of Pancasila principles in the crime of theft can run well.

The principles of Pancasila have high relevance in efforts to prevent and prosecute criminal theft. In this case, the author emphasizes the importance of law enforcement which not only emphasizes repressive aspects, but also preventive aspects. In addition, the application of Pancasila principles in criminal theft must also pay attention to aspects of restorative justice.

In enforcing criminal law on theft, the Pancasila principle that can be applied is the principle of social justice. This principle emphasizes that every citizen has equal and appropriate rights to obtain social justice, including justice in terms of protection against criminal acts of theft. The application of the principle of social justice will ensure that the legal policies implemented do not only prioritize the interests of certain individuals or groups, but also the interests of society as a whole<sup>[8]</sup>.

In addition to the principle of social justice, other Pancasila principles that can be applied to criminal theft are the principle of deliberation for consensus and the principle of mutual cooperation. The application of the principle of deliberation to reach a consensus in the crime of theft will ensure that the legal policies implemented involve the active participation of various parties involved, including victims, perpetrators, and the wider community. Meanwhile, the application of the principle of gotong royong can encourage the creation of good cooperation between various parties in efforts to prevent and prosecute criminal theft.

However, the application of Pancasila principles in criminal theft also faces several obstacles. One of the main obstacles is the practice of corruption and injustice in law enforcement<sup>[9]</sup>. These two things can affect the effectiveness of the application of Pancasila principles in criminal theft. Therefore, there is a need for better legal reform and law enforcement so that the

<sup>5</sup>Sri Endahwahyuningsih, 2014, The Urgency of Reforming Indonesian Material Criminal Law Based on the Values of the Almighty God, Jurnal Pembaharuan Hukum, Volume I No.1 Januari-April 2014.

<sup>6</sup>Irwansyah, Ahsan Yunus, Selected Legal Research Article Writing Methods & Practice, Mirra Buana Media, Yogyakarta. 2020.

<sup>7</sup> Soetandyo Wignjosoebroto, Law, Paradigm, Method, and Problem Dynamics, HUMA, Jakarta, 2002, p.198.

<sup>8</sup> Sulistyono, A. (2018). Construction of Legal Norms in Criminal Sanctions from the Pancasila Legal System Perspective. Jurnal IUS, 6(2).

<sup>9</sup> Sudarto. 2018. "Implementation of Pancasila in Making Legislation". Journal of Government and Social Political Science 6(2):

application of Pancasila principles in the crime of theft can run well.

Theft is a crime that is very detrimental to society and the state. In an effort to reduce this crime, the Indonesian government has issued various policies and laws that regulate the crime of theft. One of the bases used in setting criminal theft is the principles of Pancasila. The principles of Pancasila are considered as a moral and philosophical basis that must be used as a reference in legal arrangements in Indonesia. However, the application of Pancasila principles in criminal theft also faces several obstacles.

One of the main obstacles in applying the principles of Pancasila in criminal theft is the practice of corruption and injustice in law enforcement. Corruption in law enforcement can make criminal cases not handled properly or even decided unfairly. In addition, injustice in law enforcement can also occur due to differences in treatment in facing criminal cases, especially related to the social and economic status of the perpetrators.

Another obstacle in applying the principles of Pancasila in criminal theft is the lack of public awareness of the principles of Pancasila itself. Society must understand and appreciate the values of Pancasila in order to understand the importance of applying Pancasila principles in legal arrangements in Indonesia<sup>[10]</sup>. Lack of public awareness of Pancasila principles can also affect the performance of law enforcement officials in implementing Pancasila principles in criminal theft.

To overcome these obstacles, legal reform and better law enforcement are needed. Legal reform can be carried out by revising the laws and regulations related to the crime of theft so that the principles of Pancasila can be properly integrated. In addition, there is a need to increase the quality and capacity of law enforcement officers, both in terms of legal knowledge and professional ethics. This capacity building can be done through continuous training and development.

In addition, there is also a need for better education and outreach about the principles of Pancasila and the importance of their application in the legal system in Indonesia. This education and socialization can be done through various media, such as schools, universities, mass media, and social campaigns. Thus, the public will better understand and appreciate the principles of Pancasila and will support efforts to apply Pancasila principles in the crime of theft.

Talking about law as a system, Lawrence M. Friedman suggests that there are components contained in law, namely:

- a. The component is called the structure, namely the institutions created by the legal system such as district courts, administrative courts which have a function to support the functioning of the legal system itself. This structural component allows for the provision of services and regular legal proceedings. From here the legal structure in the Indonesian constitution needs to provide an example to provide the right action, especially the President, DPR, Police, Prosecutor's Office and the Ministry of Justice should not commit acts of corruption because according to researchers, corruption is the beginning of the birth of the crime of theft because corruption is the same as stealing what is not their right as the second Pancasila precept, namely fair and civilized humanity and progressive law, namely humanizing humans, by not taking what is not their right (stealing) so that if the legal structure, especially the DPR can be an example of a good figure, then theft can be minimized or even removed.
- b. The substance component is in the form of legal norms, be it regulations, decisions and so on, all of which are used by law enforcers and those who are regulated. In terms of legal substance, it has actually shown good regulation, with provisions prohibiting theft starting from Articles 362 and 365 of the Criminal Code, so according to researchers, it remains only to implement and protect the law against ex-convicts of theft to receive the same treatment and life after they are sentenced to a crime.
- c. The legal component is cultural, which consists of ideas, attitudes, expectations and opinions about the law. This legal culture is distinguished between internal legal culture and external legal culture, which is the legal culture of society in general. From here the regulations for the crime of theft are good, but the culture of Indonesian state officials such as the DPR (People Representative), the police, and others still shows a lot of corruption which is the root of theft, because according to researchers, taking something that is not rightfully theirs is the same as Stealing is just a different object, for example, in people's lives, what is stolen is chicken thieves, but if the DPR is stolen, it is people's money thieves.

<sup>10</sup> Supriyadi. (2017). The Crime of Theft in Indonesia: A Review of Legal and Criminological Aspects. *Journal of Law Enforcement*, 4(2).

## 2. Reconstruction of Criminal System Regulations for Theft Offenders Based on the Value of Justice

The dynamics of sentencing regulations for perpetrators of the crime of theft, including the interpretation of legal realities both concerning community behavior and law enforcement agencies (at the stages of investigation by the police, prosecution by the prosecutor and examination by judges) as well as related policy regulatory texts, will be analyzed using a justice perspective based on The philosophy of Pancasila, the 1945 Constitution of the Republic of Indonesia to laws and regulations in Indonesia and John Rawls's theory of justice. It is hoped that the results of this analysis will yield effective and efficient efforts towards law enforcement and legal protection for perpetrators of criminal acts in cases of theft, so that in the study of Chapter V it is necessary to focus on analyzing and reconstructing criminal regulations against perpetrators of value-based theft crimes. Justice that can accommodate the values and interests of the community, especially in the realm of law enforcement and interested parties, especially perpetrators of criminal acts who have not received justice, such as the lack of objectivity of judges in making decisions, imposition of sanctions that are disproportionate, discriminating between judicial services from an economic point of view of the perpetrators.

One of the guarantees of legal certainty is the right to benefit that the community will get in the future. Laws and regulations governing the application of proportionate and non-discriminatory punishments therefore the court's main focus should be considering relevant factors in determining a sentence, such as the crime rate, losses incurred, the condition of the perpetrator, and the interests of society [11].

The court was formed with the aim that the court was formed with the aim of being able to resolve disputes or disputes that arise between conflicting parties fairly and objectively. Through the court, the judge will evaluate the various evidence and arguments put forward by each party, and consider the applicable laws and principles of justice, to then decide who is entitled to a decision that is considered fair. In the context of sentencing regulations for the crime of theft, the court's duty is to decide on a sentence that is appropriate to the degree of crime committed by the perpetrator, taking into account various factors such as the intention of the perpetrator, the losses incurred, and so on. With this aim, the court is expected to support the national interest in improving justice.

In addition, the court must be able to protect the national interest, including, among other things, the court must be able to protect the national interest by ensuring that the decisions taken do not harm the national interest and do not undermine the stability of security and peace in society. In addition, the court must also be able to ensure that law and justice are properly upheld, so that no party feels disadvantaged or does not receive sufficient legal protection. Some of the things that the court focuses on in protecting national interests are law enforcement against criminal acts that harm national interests, protecting human rights, and maintaining social order.

In carrying out its duties, the court must be independent and not influenced by political interests or certain personal interests. The court must ensure that decisions are based on law and available evidence, without any pressure or intervention from any party.

Courts must also ensure that everyone has equal rights before the law and that judges decide cases fairly and objectively. This can be done by providing equal access to the courts, including access to legal aid services for the less fortunate. In addition, the court must also ensure that all parties involved in a case have equal opportunities to express opinions and relevant evidence [12].

Based on the provisions of Law Number 48 of 2009 concerning Judicial Power, there are laws that regulate judicial institutions in Indonesia. This law confirms that judicial power is in the hands of the Supreme Court, district court, religious court, and other judicial bodies determined by law.

Supreme Court Regulation Number 3 of 2017 concerning the Code of Conduct for Judges is a regulation issued by the Supreme Court to regulate the behavior of judges in Indonesia. This regulation covers various aspects, such as the integrity, competence and responsibility of judges in carrying out their duties. The purpose of this regulation is to ensure that judges can carry out their duties with professionalism and avoid behavior that could damage the image of the judiciary.

The two laws are part of the Indonesian government's efforts to strengthen the judiciary and maintain its independence in carrying out its duties [13].

The protection of human rights has always been fought for from ancient times until now, the last recognized being contained in the Universal Declaration

<sup>11</sup> Maria S. W. Sumardjono, *Land Policy: Between Regulation and Implementation*, Penerbit Buku Kompas, Jakarta, 2009, Page. 20..

<sup>12</sup> Miethe, T. D., & Meier, R. F. (1994). *Crime and its social context: Toward an integrated theory of offenders*,

victims, and situations. State University of New York Press.

<sup>13</sup>Law Number 48 of 2009 concerning Judicial Power and Supreme Court Regulation Number 3 of 2017 Concerning Guidelines for Judge Behavior.



of Human Rights from the United Nations (1948), which is detailed as follows: That everyone has the right to life, independence and security of body, to have their personality recognized according to law, to obtain equal treatment with other people according to law, to obtain legal guarantees in criminal cases, such as being examined in public, presumed innocent unless there is valid evidence, the right to enter and leave the territory of a country, the right to obtain nationality, the right to obtain property over differences, the right to be free and to express thoughts and feelings, the right to be free to embrace a religion and have and express opinions, the right to assemble, the right to obtain social security, etc.

In this regard, Andi Hamzah [14], all of which can be found in the Criminal Procedure Code. Furthermore, R. Subekti [15] explained that: The rule of law of the Republic of Indonesia, the appreciation and implementation of human rights as well as the rights and obligations of citizens to uphold justice must not be abandoned by every citizen, every state administrator, and state institutions, both central and regional with the existence of criminal procedural law.

The development of national law in the field of criminal procedural law aims so that people can live up to their rights and obligations and so that it can be achieved and improved in fostering the attitude of law enforcers in accordance with their respective functions of authority towards upholding law, justice and protection which is the protection of all dignity and worth. according to Pancasila and the 1945 Constitution of the Republic of Indonesia [16].

Furthermore, according to Subekti [17] "the human rights that the Criminal Procedure Code seeks to guarantee are primarily: the right to freedom or independence, the right to honor and good name and the right to personal secrets. This fact was very different when the HIR was still used where guarantees for the protection of the human rights of suspects and defendants were inadequate, torture and violence often occurred in the examination system.

<sup>14</sup> Andi Hamzah, Principles of Criminal Law,, Rineka Cipta, Jakarta, 1986, Page. 13.

<sup>15</sup>Subekti. R, Protection of Human Rights in the Criminal Procedure Code, Pradnya Paramita, Jakarta, 1994, Page. 4.

<sup>16</sup> Department of Justice & Human Rights, Team of Legal Experts, "Legal Reform in Indonesia, an Inevitability", First Issue of Pelita Indonesia, 2001.

<sup>17</sup> Subekti, Op. Cit, Page. 4

<sup>18</sup> The General Statement on Human Rights (English: Universal Declaration of Human Rights; abbreviation: UDHR) is a recommendation-based statement adopted by the General Assembly of the United Nations (A/RES/217, 10 Desember 1948 di Palais de Chaillot, Paris). This statement consists of 30 articles outlining the views of the UN General Assembly on the guarantee of human rights (HAM) for all people.

In connection with the purpose of establishing the Criminal Procedure Code, there are several principles that are closely related to human rights. There is even the same with the Declaration of Human Rights [18]. Principles relating to the protection of human rights can be found in the Criminal Procedure Code and Law no. 48 of 2009 concerning Justice, including the principle of speedy trial [19].

In the Criminal Procedure Code the provisions regarding the presumption of innocence or everyone is considered innocent until there is a permanent judge's decision that he is guilty and the principle of speedy justice is many, as the general explanation of KUHAP point 3e says: Courts must be carried out quickly, simply and at low cost and free, Honesty and impartiality must be applied consistently at all levels of the judicial process.

The National Police in carrying out their duties in law enforcement must be guided by the Chief of Police [20] regulations which emphasize that:

1. Every member of the Indonesian National Police is obliged to understand human rights instruments both those regulated in Indonesian laws and regulations and international instruments, both those that have been ratified and those that have not been ratified by Indonesia.
2. In accordance with the principle of respecting and respecting human rights, every member of the Indonesian National Police in carrying out their duties or in daily life is obliged to implement the protection and respect for human rights, at least:
  - a. Respect the dignity and human rights of every person;
  - b. Act in a fair and non-discriminatory manner;
  - c. Behave politely;
  - d. Respecting religious, ethical and moral norms; And
  - e. Respect local culture as long as it does not conflict with law and human rights.

<sup>19</sup> This principle is the principle that underlies every judicial process in Indonesia. Basically this principle is not specific only to criminal justice, but at all levels of justice this principle is applied as a basic principle of administering the judicial process. Fast means that the Court can be used as an institution that can realize justice quickly by justice seekers. Simple means that all cases handling processes are carried out as efficiently and effectively as possible and Low Cost means that the costs incurred during the process of settling cases in court are costs that can be reached by the community.

<sup>20</sup> Article 8 Regulation of the Chief of the National Police of the Republic of Indonesia Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in Carrying out the Duties of the National Police of the Republic of Indonesia.

This general explanation is spelled out in many articles of the Criminal Procedure Code, for example: Article 24 paragraph (4), 25 paragraph (4), 26 paragraphs (4), 27 paragraphs (4), and 28 paragraphs (4). In general, these articles contain provisions that if the detention period as stated in the previous paragraph has passed, the investigator, public prosecutor and judge must have released the suspect or accused from detention for the sake of law. By itself encourages faster resolution of cases.

It is necessary to know that the time limit for detention is closely related to the protection of human rights which aims to reduce the suffering of the suspect or defendant. This is in accordance with Article 50 of the Criminal Procedure Code which emphasizes that a suspect has the right to receive immediate attention and examination by investigators and then submit it to the prosecutor's office and immediately be tried by the court.

Furthermore, Article 51 of the Criminal Procedure Code regulates the right of a suspect and/or defendant to immediately clearly inform in a language he understands about what is suspected or charged against him when the examination begins paragraph (1), immediately the case is submitted to court by the public prosecutor (paragraph 2) immediately tried by the court paragraph (3).

In addition, Article 102 (paragraph 1) states that an investigator who receives a report or complaint about the occurrence of a criminal act is obliged to immediately take the necessary investigative action, then Article 107 paragraph (3) in the event that a criminal act has been investigated by the investigator, Article 6 paragraph (1) letter b paragraph (1), he immediately delegates the results of his investigation to the public prosecutor through the investigator referred to in Article 6 paragraph (1) letter a.

Article 110 of the Criminal Procedure Code regulates the relationship between the public prosecutor and the investigator, all of which are accompanied by the word "immediately". But it doesn't mean that in practice it's that fast, because no matter how good the law is it doesn't matter, if its implementation is not fair and correct and it's not accompanied by good morals from law enforcers.

The Criminal Procedure Code has introduced various kinds of changes including the rights of suspects (Article 50 to Article 68) and the existence of a "Pretrial" institution that assigns judges the task of supervising several implementations of coercive measures, such as arrest, detention or termination of prosecution and investigation.

Articles 191 and 197 of the Criminal Procedure Code which state that both in a guilty verdict and in an

acquittal decision this matter must be based on facts and circumstances and evidence obtained during trial examination so that the Supreme Court's decision highly upholds human rights.

For more details, see below the rights of suspects and defendants. Rights are something that is given to a suspect, or defendant. If these rights are violated, then the human rights of the suspect or defendant have been violated. These rights in the Criminal Procedure Code are as follows:

1. Obtain an immediate examination (Article 50:1).
2. The case will immediately proceed to the Court (Article 50:2).
3. Immediate trial by the Court (Article 50:3).
4. Prepare defense (Article 51 letter a).
5. Notified regarding what was charged against him (Article 51 letter b).
6. Provide information freely (Article 52).
7. Get the help of an interpreter (Article 52:1) for those who do not understand Indonesian.
8. Get help for the mute/deaf (Article 53:2).
9. Receive legal assistance (Article 54.55).
10. To be appointed defender in the rights of the accused under the threat of death penalty (Article 56).
11. Contact Legal Counsel (Article 57:1).
12. Receiving visits from private doctors (Article 58).
13. Inform his family (Article 59).
14. Contact and receive family visits (Article 60.61).
15. Sending and receiving letters (Article 62).
16. Contacting and receiving clergy (Article 63).
17. To be tried in courts open to the public (Article 64), except for cases of immorality, and cases of accused children who are still minors.
18. Seek and present witnesses/expert witnesses or witnesses A De Charge (favorable witnesses) (Article 65).
19. Not burdened with the obligation to prove (Article 66).
20. Appeal (Article 67).
21. Receiving compensation and rehabilitation (Article 68).
22. Obtain copies of all letters/case files (Article 72).

Paying attention to the rights mentioned above, becomes a guideline for law enforcers in carrying out their duties that really pay attention to and protect human rights. With regard to the above, according to Mardjono

Reksodiputro that <sup>[21]</sup>: these rights are not given to suspects/defendants as lawbreakers but as human beings who have rights and obligations, humans as objects and subjects as members of society, because someone who is charged is not necessarily guilty until there is a court decision.

There is an important thing in a rule of law, namely the existence of commitment and respect for upholding human rights and guarantees that all citizens share their position before the law. As stated in Article 27 paragraph (1) of the 1945 Constitution<sup>[22]</sup>. The principles embodied in this article should ideally not only be contained in the 1945 1945 Constitution of the Republic of Indonesia and legislation. But the main thing is in practice or implementation.

In the implementation of law enforcement, it is often colored by things that are contrary to the principles of the Constitution. For example the persecution of suspects to pursue confessions, engineering cases, extortion, extortion, intimidation and so on. In addition, victims also feel that their rights have been neglected, including weak indictments, not knowing the progress of case handling, light charges, not receiving compensation and other rights not being fulfilled. The rights of suspects or defendants are more popularly regulated in Law no. 8 of 1981 concerning Criminal Procedure Code (KUHAP) and other related legislation, even in the 1945 Constitution. When examined, the Criminal Procedure Code regulates more the rights of suspects and defendants. For the rights of victims (victim) the arrangements are not as explicit and not as much as the rights of suspects or defendants. It is possible that this right is due to the fact that the victims of crimes/crimes have been represented by the State (investigators and public prosecutors) <sup>[23]</sup>.

In the process of enforcing criminal law which is based on criminal law and criminal procedure, the state represented by its organs has the right or authority to impose a sentence (*ius puniendi*). Here if a crime occurs, then the perpetrator will be followed up through the judicial process by giving punishment. Victims of crime and society will automatically be represented by the State, namely by being tried and charged with a punishment commensurate with the actions committed by the accused. This fact is as stated by Hazel B. Kerper <sup>[24]</sup>.

Based on this history, with the passage of time, this habit was eliminated. After that it was the King who took over representing the State. And the King also takes on the dual role of being a judge and imposing sentences. The next historical journey, which took a lot of time, included the birth of Trias Politica. It is through judicial power that the judicial process is carried out in order to create a sense of justice, truth and legal certainty. It can be seen that victims of criminal acts cannot simply take their rights for granted without going through a legal process. This is the consequence of the rule of law, the settlement of victims' rights must also undergo a legal process.

If the victim directly asks for or takes (forcefully) his rights from the suspect or defendant it can be called extortion, when the victim takes revenge or takes the law into his own hands (*eigenriechting*) then what was previously a victim's status can turn into a suspect. In the initial criminal process, certain victims make reports or complaints. After that, the perpetrators of criminal acts are processed through investigations, investigations, prosecutions, examinations, decisions, and implementation of court decisions. In such a systematic process, in this case the victim can become a witness who can incriminate the defendant. Actually, based on Article 98-Article 101 of the Criminal Procedure Code, victims and other people who have been harmed can claim compensation, but in practice this is not effectively implemented.

The importance of adequate legal protection for victims of crime is not only a national issue, but also an international issue. Therefore, this problem needs serious attention. The importance of protecting victims of crime receives serious attention, which can be seen in the form of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse Power by the United Nations, as a result of The Seventh United Nations Congress on the Prevention of Crime and The Treatment of Offenders, which took place in Milan, Italy, September 1985.

In the declaration in Milan 1985, the form of protection provided has expanded not only to be aimed at victims of crime, but also to protect victims as a result of abuse of power <sup>[25]</sup>.

Issues regarding human rights and justice in relation to criminal law enforcement are not an easy task to be implemented. There are various kinds of events in

<sup>21</sup>Mardjono Reksodiputro. Human Rights in the Criminal Justice System, Third Collection of Essays. UI Institute of Criminology. Jakarta. 1994, Page. 85.

<sup>22</sup> Anis Mashdurohaturun, Erman Suparman, I Gusti Ayu Ketut Rachmi Handayani, Authority of the Constitutional Court in the Dispute Resolution of Regional Head Elections, Lex Publica, Volume.6. Issue. 1.2019.pp.52-60

<sup>23</sup> Bambang Waluyo, Victimology Victim and Witness Protection, Sinar Grafika, Jakarta, 2011, Page.2.

<sup>24</sup> Ibid. Page.3

<sup>25</sup>Dikdik M Arif Mansur, Elisatris Gultom, The Urgency of Protection of Crime Victims Between Norms and Reality, Rajawali Pers, Jakarta, 2006, Page.23.

people's lives which show that justice and human rights do not get serious attention by the government, even though justice and human rights are very clear in Pancasila, as the ideology of the Indonesian nation, issues of humanity and justice get such a position. Urgent as a form of embodiment of just and civilized Humanity Precepts as well as Social Justice Precepts for all Indonesian people. Legal protection for victims of criminal acts is an example of the lack of attention to justice and human rights issues in criminal law enforcement [26].

Administration of government in order to harmonize the development and dynamics of people's lives in tune with the demands of the globalization era is a top priority, where conducive conditions of peace and public order are a fundamental requirement for all people to improve their quality of life. The position of law always has a role in the order of society, starting from the simplest level to the complex level, the need for law enforcement is aimed at creating order that has a close relationship with the general condition of society, where this order is a basic requirement for an orderly society in its life.

Everyone has the right to obtain legal protection from the State as stipulated in Article 7A paragraph (1) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

Violent crime is a problem that always arises in society. This problem arises and develops and brings its own long-term consequences. Violent behavior is increasingly visible, and it really disturbs the peace of life in society. If there is no systematic effort to prevent it, it is possible that it will cause real harm to every element of society.

The existence of criminal acts of violence in society caused by a small problem such as someone who committed theft, or pickpocketing, was persecuted by the community until they were injured and even died is considered a reflection of hypermorality that occurs in society. Hypermorality is a condition or situation where members of society cannot determine which is good or bad. This is what makes society commit violence against someone who is felt to be the right form of action and must be done but it is precisely this that has violated the rule of law, this also proves that society is currently

experiencing a decline in values and norms. This hypermoral attitude occurs as a result of the attitude of society that does not use law as a reference [27].

The crime of theft is a crime that harms the victim both materially and immaterially [28]. Therefore, adequate legal protection is needed for victims of criminal acts of theft. This article aims to analyze legal protection for victims of criminal acts of theft from a criminal law perspective. The research method used is normative legal research with statutory and conceptual approaches. The results of the study show that legal protection for victims of criminal acts of theft includes protection of victims' rights, recovery of victims' losses, as well as providing security and welfare guarantees for victims. This protection is regulated in various related laws and regulations. In addition, victims can also obtain legal protection through the criminal process, namely by filing criminal charges and participating in the trial process. Even so, there are still some weaknesses in legal protection for victims of the crime of theft, such as the lack of information available to victims and the weak implementation of compensation for losses. Therefore, efforts are needed to improve legal protection for victims of criminal acts of theft.

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Legal protection for victims of the crime of theft is regulated in various relevant laws and regulations, and includes protection of victims' rights, recovery of

<sup>26</sup> Ibid, Page.24.

<sup>27</sup> Franco Williander Sitanggang, Analysis of Legal Protection for Victims of Mass Amok, Universitas Lampung, 2015..

<sup>28</sup> I Gede Pradnyana Adi Wibawa dan I Ketut Sudarsana. Legal Protection for Victims of the Crime of Theft from a Criminal Law Perspective. Jurnal Hukum Ius Quia Iustum, Vol. 27, No. 2, 2020. DOI: 10.24843/IUS.2020.v27.i02.p07.

<sup>29</sup> Alfaqir, A. (2019). The Government's Role in Providing Legal Protection to Victims of Crime. Journal of Legal and Citizenship Education, 6(1), Page. 37-45.

<sup>30</sup> Damayanti, D. A. (2020). Legal Protection for Victims of Crime. Scientific Journal of Citizenship Education, 8(1), Page. 89-99.



victims' losses, and provision of security and welfare guarantees for victims [31]. However, there are still several weaknesses in legal protection for victims of the crime of theft, which need to be addressed so that legal protection can run better and optimally.

In carrying out its duties, the court must be independent and not influenced by political interests or certain personal interests. The court must ensure that decisions are based on law and available evidence, without any pressure or intervention from any party.

Courts must also ensure that everyone has equal rights before the law and that judges decide cases fairly and objectively. This can be done by providing equal access to the courts, including access to legal aid services for the less fortunate. In addition, the court must also ensure that all parties involved in a case have equal opportunities to express opinions and relevant evidence.

Courts must also be able to ensure that law and justice are upheld properly, so that no party feels disadvantaged or does not receive sufficient legal protection. Some of the things that the court focuses on in protecting national interests are law enforcement against criminal acts that harm national interests, protecting human rights, and maintaining social order.

According to the elucidation of Law Number 48 of 2009 concerning Judicial Power, there are laws that regulate judicial institutions in Indonesia. This law confirms that judicial power is in the hands of the Supreme Court, district court, religious court, and other judicial bodies determined by law [32].

Supreme Court Regulation Number 3 of 2017 concerning the Code of Conduct for Judges is a regulation issued by the Supreme Court to regulate the behavior of judges in Indonesia. This regulation covers various aspects, such as the integrity, competence and responsibility of judges in carrying out their duties. The purpose of this regulation is to ensure that judges can carry out their duties with professionalism and avoid behavior that could damage the image of the judiciary [33].

In carrying out its duties, the court coordinates with various parties related to the sentencing of criminal cases of theft, such as the police, public prosecutors and other related parties. Courts can also coordinate with experts or witnesses in resolving cases [34].

The criminal process of theft begins with an arrest by the police, then an investigation by the prosecutor's office, and finally a trial by the court. The court's decision will be the basis for the execution of the sentence against the defendant.

After the trial, the court will make a decision which will form the basis for executing the sentence against the defendant. The punishment given can be imprisonment, a fine, or a combination of both. In addition, a defendant who is proven to have committed the crime of theft may also be subject to the obligation to return stolen goods or provide compensation to the victim.

If the defendant is dissatisfied with the court's decision, there are legal remedies that can be taken, namely an appeal or cassation. An appeal is made by submitting an appeal to the competent high court within 7 days after the decision is rendered. While cassation is carried out by submitting a cassation request to the Supreme Court within 14 days after the decision was handed down by the high court.

The legal process in criminal cases of theft can take quite a long time and is complex. Therefore, related parties must cooperate and coordinate properly to resolve the case in a fair and timely manner [35].

The regulation of the penal system was created by the government with the aim of providing clear and sufficient legal rules in dealing with criminal cases. This regulation also aims to carry out legal activities that are fair, transparent, and prioritize human rights. The following are some activities that can be carried out using sentencing regulations [36]:

Investigations and investigations into criminal cases: Investigations and investigations are the initial process in dealing with criminal cases. Investigation is the process of collecting initial evidence carried out by the police, while investigation is an in-depth process of collecting additional evidence and determining suspects in a criminal case. This activity is carried out by the prosecutor's office in coordination with the police and may use sentencing regulations in implementing it.

Prosecution of perpetrators of criminal acts: After the investigation process is complete, the prosecutor's office has the authority to determine whether a criminal case deserves to be tried in court or not. If deemed appropriate, the prosecutor will charge the

<sup>31</sup> Putri, I. S. (2018). Legal Protection for Victims of Criminal Acts of Theft in Indonesia. *Jurnal Ilmiah Hukum*, 18(1), Page. 87-96.

<sup>32</sup> See Law Number 48 of 2009 concerning Judicial Power.

<sup>33</sup> Supreme Court Regulation Number 3 of 2017 concerning Judges' Code of Conduct.

<sup>34</sup> Lestari, Fitria Dwi. 2020. "Punishment in Theft Cases". *Jurnal Hukum Tatarupa*, Vol. 4, No. 1, Page. 36-40.

<sup>35</sup> *Ibid*. Page. 41-47.

<sup>36</sup> *Ibid*. Page. 49

perpetrators of the crime before the court. This activity requires sentencing regulations as a reference in determining charges and the appropriate type of punishment for criminal offenders.

Conduct of trials in court: After the prosecution has been carried out, the criminal case will be heard in court. These activities include preparing for the trial, summoning witnesses, examining evidence, reading out the indictments and pleadings, and making a decision by the panel of judges. This trial process must be carried out in accordance with the applicable sentencing regulations.

Implementation of court decisions, including execution of sentences, rehabilitation of perpetrators of criminal acts, and restoration of victims' rights: After the court has decided on a criminal case, the decision must be implemented properly. This includes the implementation of punishments for perpetrators of criminal acts, rehabilitation for perpetrators of criminal acts, and restoration of victims' rights. This activity also requires sentencing regulations as a reference in its implementation.

In order to provide legal protection, the drafting of laws and regulations governing the application of proportionate and non-discriminatory punishments so that the main focus of the courts must consider the relevant factors in determining the sentence, such as the crime rate, losses incurred, the condition of the perpetrator, and the interests of the perpetrators. Public [37].

Reconstruction of sentencing regulations against perpetrators of criminal acts of theft based on the value of justice must consider several important factors. First, it is important to ensure that the punishment given is commensurate with the crime committed [38].

The second thing to consider is the social and economic conditions that motivate the perpetrators to commit acts of theft. Perpetrators of criminal acts of theft can commit these crimes because of difficult economic and social situations, such as poverty, unemployment, or economic injustice that harms them significantly. Therefore, the reconstruction of sentencing regulations must take into account these factors so that the sentencing is truly fair and based on the value of justice.

The third factor that needs to be considered in the reconstruction of penal regulations against the perpetrators of the crime of theft is rehabilitation efforts. Providing a commensurate punishment with the actions taken by the perpetrators of the crime of theft is only part of the solution to reduce crime rates. Perpetrators of theft crimes who are successfully rehabilitated are more likely

to return to being productive members of society, and less likely to commit crimes again in the future. Therefore, the reconstruction of penal regulations must include an effective and credible rehabilitation program, which can help the perpetrators of the crime of theft to change their behavior and return to society.

Lastly, the reconstruction of penal regulations must also take into account the importance of a fair and transparent justice system. A fair justice system will ensure that the perpetrators of the crime of theft have the same rights and get justice in the legal process. In this regard, it is important to ensure adequate access to the justice system, an independent and impartial court, and a judge who considers all factors related to a case and decides on an appropriate sentence.

The reconstruction of the penal system regulations in this study will also look at the concept of punishment that is more humane and achieves restorative justice. Humanism as a movement raises awareness of human values which have the main emphasis on humans as individual and personal beings, humans as beings who are knowledgeable, and humans who have history and shape themselves and shape the world naturally. Restorative justice is an alternative settlement of criminal cases focused on punishment which is transformed into a process of dialogue and mediation involving the perpetrator, victim, perpetrator/victim's family, and other related parties to jointly create an agreement on a fair and balanced settlement of criminal cases for the victim and actors by prioritizing restoration to its original state and restoring good relations in society.

It is hoped that the values of humanism in restorative justice are realized by carrying out movements to support an approach that allows all victims or perpetrators of crimes to access restorative justice procedures at all stages of the criminal process. One of the ways to think about the humanist aspect from a criminal perspective is to address systemic overcapacity of correctional institutions, one of which is through this reconstruction.

Several things that can be considered, namely the completion of a good legal process is more placed on the quality aspect of the choice that is most appropriate to be applied to a crime and does not set a quantity target for how many criminal acts are decided at the operational level, looking for solutions to delays in completing the process and more emphasis on prevention than case handling in the context of law enforcement functions as well as public security and order. The sentencing process starts from a perspective that does not only focus on imprisonment because the sentencing process can be

<sup>37</sup> Maria S. W. Sumardjono, Land Policy: Between Regulation and Implementation, Penerbit Buku Kompas, Jakarta, 2009, Page. 21.

<sup>38</sup> Ashworth, A. (2017). Sentencing and criminal justice. Cambridge University Press, Page. 295.

given in addition to prison sanctions and will create more humane punishment and achieve restorative justice.

In order to achieve fair and justice-based sentencing regulations for the perpetrators of the crime of theft, these factors must be considered holistically. Punishment commensurate with the crime, taking into

account the social and economic conditions of the perpetrators, providing opportunities for effective rehabilitation, and ensuring a fair and transparent justice system will guarantee the values of restorative justice, so that article 362 of the Criminal Code needs to be reconstructed.

**Table of Reconstruction of Theft Regulations in Article 362 of the Criminal Code**

No.	Before Reconstruction	Weaknesses	Reconstruction
1	Article 362 of the Criminal Code concerning theft "Whoever takes wholly or partly the property of another person with the intention to unlawfully own it, is threatened with theft with a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs"	In Article 362, law enforcement officials tend to enforce this article only by looking at the elements of the unlawful nature of the formal criminal law without examining in depth the elements of the unlawful nature of the material criminal law, so that there are perpetrators of theft only wearing elements of the nature of being against the law formally and there is no balance between the norms contained in the law and the causes of someone committing theft. And also there is still a lot of social justice that has not been fulfilled even though Article 362 of the Criminal Code has been implemented.	It should be hoped that in Article 362 of the Criminal Code there will be a clearer regulation regarding the element of unlawful nature so that law enforcers when implementing Article 362 of the Criminal Code can achieve a balance of the Norms contained in the Law with the causes of the crime of theft occurring. It is hoped that this article will explain the types of unlawful behavior in certain cases, have a more diverse type of punishment, not just focus on imprisonment and have more humane criminal options and achieve restorative justice and material justice in society. The amount of theft that can be resolved through restorative justice is not regulated in the SEMA but is indeed stated in the theft article, regarding the determination that restorative justice can be implemented it is also hoped that it is not just a single decision from the victim but can be seen from the justice of society.

#### D. CONCLUSION

The regulation of the penal system, in fact, has not yet created justice for the perpetrators of the crime of theft based on the value of justice, because most of these regulations are still based on a classical legal approach that only focuses on punishment and treats all perpetrators of crimes equally without considering social factors. economic, and psychological factors that influence these actions. These regulations are often considered unfair and discriminatory towards certain social groups, such as the poor or minorities. This results in a widening social gap and a higher possibility of criminal acts. Therefore, a progressive legal approach is needed that takes into account the broader values of justice and the social, economic and psychological contexts that affect perpetrators and victims. With this approach, it is hoped that article 362 of the Criminal Code needs to be reconstructed. The values of humanism in restorative justice are realized by carrying out

movements to support an approach that allows all victims or perpetrators of crimes to access restorative justice procedures at all stages of the criminal process. One of the ways to think about the humanist aspect from a criminal perspective is to address systemic overcapacity of correctional institutions, one of which is through this reconstruction. Several things that can be considered, namely the completion of a good legal process is more placed on the quality aspect of the choice that is most appropriate to be applied to a crime and does not set a quantity target for how many criminal acts are decided at the operational level, looking for solutions to delays in completing the process and more emphasis on prevention than case handling in the context of law enforcement functions as well as public security and order. The sentencing process starts from a perspective that does not only focus on imprisonment because the sentencing process can be given in addition to prison sanctions and will create more humane punishment and achieve restorative justice.