



Criminal Liability for the Act of Playing Judge Alone (*Eigenrichting*) Against the Perpetrators of the Crime of Theft in the Criminal Code at the Sukahaji Police Station

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Abstract.

Background. Vigilante cases generally exist in the crime of theft; the perpetrator is caught off because of the crime committed by the perpetrator, and residents who know about the incident will use their collective power to chase, hit, and gang up on the perpetrator. The act of vigilante itself is how to determine the criminal responsibility of the perpetrator, as well as the settlement of the crime of theft.

Aim. This study aims to determine the responsibility of vigilante crime perpetrators and their settlement with the Majalengka Police.

Methods. The method used is normative juridical, sourced from data taken at the Sukahaji Police Station.

Result. The meaning of criminal liability or guilt must be expanded while still considering the balance between the interests of individuals and the interests of the wider community. Furthermore, he reminded us that consideration must be made very carefully, especially when making a drastic leap from the conception of error that is expanded in such a way to the conception of no error at all. The latter is the deepest root of the values of justice based on Pancasila.

Conclusions. The concept of vigilante justice (*eigenrichting*) is not explicitly addressed in Indonesian criminal law within the Criminal Code. Individuals engaging in vigilante actions (*eigenrichting*) may face penalties commensurate with their conduct and can be prosecuted under Article 351 of the Criminal Code regarding persecution, Article 170 concerning violence, Article 406 paragraph (1) pertaining to destruction, Article 338 regarding intentional homicide, and Article 354 concerning severe persecution.

Implementation. The reform of the Criminal Law in Indonesia, specifically the Criminal Code Bill, has not explicitly addressed the act of vigilantism (*eigenrichting*). Typically, vigilantism is resolved through restorative justice, which seeks to reconcile the parties involved without resorting to legal proceedings.

Keywords: Crime, Vigilante, Criminal liability, Theft, *Eigenrichting*

INTRODUCTION

According to Sudikno Mertokusumo, vigilante action is the exercise of one's rights at one's discretion, without the approval of other parties, which may result in harm to others. The Great Dictionary of the Indonesian Language (KBBI), Language Center 4th Edition (2008) defines vigilantism as the act of adjudicating others without regard for the law, typically manifested through violence such as beating, torturing, or burning.

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Evaluating the offenders of criminal activities is inappropriate, since it constitutes a violation of human rights and adversely impacts the law enforcement process. Individuals often overlook or are unaware that their actions are governed by Human Rights; even perpetrators of criminal acts possess Human Rights, specifically the right to legal protection in court. The suffering endured by these offenders should not be disregarded, as they remain part of humanity. In connection with vigilante *play* (*Eigenrichting*), according to Mardjono Reksodiputro, there are 2 most commonly faced problems, namely:

1. It is difficult to clearly determine the victim (due to the existence of *abstract victims*) and *collective victims*),
2. The difficulty of criminal prosecution of the perpetrators is due to difficulties in collecting evidence, among others.

LITERATURE REVIEW

Crime of Theft

Cultural Deviance Theories in Criminology. This theory of cultural deviation emphasizes the social dynamics that drive individuals to engage in criminal behavior. Cultural deviance theories perceive evil as a constellation of values characteristic of the lower socioeconomic groups. The bulk of two-wheeled motor vehicle thefts are reportedly perpetrated by individuals from intermediate to lower socioeconomic backgrounds, rather than by organized criminal enterprises (White Collar Crime) based on the theory of social control (Control Social Theory) which refers to every perspective that discusses the control of human behavior, where the theory of social control refers to the discussion of delinquency and crime associated with sociological variables. (Arafat, 2021).

Walter Reckless that this theory explains the consequences of the interrelationship between 2 (two) forms of control, namely external control and internal control. According to Reckless, internal and external containment have a neutral position, being between social pressures and social pulls of the environment and the push from within the individual for social pressure (in this case related to the needs of life) and the encouragement from the individual who wants a profit regardless of the losses of others with the intention that his life needs are fulfilled either for himself or those closest to him (family).

Robert F. Meier states that: "The definition of crime is increasingly expanding politically, economically, socially, so that the school of thought born from the assumption that deviant behavior is called a crime must be explained by looking at the structural conditions that

exist in society and placing it in the context of unequal power, prosperity, economic and political changes in society." (Sahetapy, 1992).

To effectively prevent and combat crime, a comprehensive approach is essential, striking a balance between penal and non-penal strategies. The distinction lies in that penal measures emphasize repressive actions (oppression/eradication/suppression) post-crime, whereas non-penal measures prioritize preventive actions (prevention/deterrence/control) pre-crime. Crime prevention via penal means is achieved through the enforcement of criminal law, while non-penal means address and mitigate the factors, causes, and conditions that lead to criminal behavior.

Efforts to overcome crime by using criminal sanctions (criminal punishment) are the most ancient ways throughout human civilization, until now criminal law is still used and relied on as one of the means of criminal politics. Non-penal means are considered a potential strategy in order to prevent and overcome crime because penal means are still doubtful or questionable in their effectiveness or in other words, crime prevention with the application of criminal law is still limited. This is because the factors that cause crime are so complex and beyond the scope of the law, so it is necessary to handle and overcome the factors or causes and conditions that cause crimes such as increasing educational facilities and improving the quality of education, improving the economic condition of the community by making it easier for people to carry out business activities, adding skills for the workforce so that able to compete in getting a decent job, and often hold religious activities that contain encouragement not to do acts that violate God's commands.

Liability of the Judge Himself

Jung defines vigilantism in the Dictionary of Law as *eigenrichting*, signifying that the act of exercising one's rights independently is an arbitrary action conducted without the consent of the other party involved, representing the imposition of sanctions by individuals. The perpetrator is characterized as an individual who unlawfully executes an act driven by personal will to express displeasure and fury. KBBI defines vigilantism as the act of judging people without regard for the law, typically involving violence such as assault, torture, and fire. The action is executed without rights and without authorization. This act of self-judgment constitutes the exercise of one's rights according to personal volition, without the approval of the other involved party. Indonesia is a nation governed by the rule of law, as articulated in

Article 1, paragraph (3) of the 1945 Constitution. The act of vigilantism lacks a singular normative basis.

The Crime of Self-Judgment (*Eigenrichting*) refers to the act of administering punishment to an individual without adhering to legal procedures, sometimes resulting from a deficiency in legal awareness within society. Law enforcement against the offenders of self-judgment (*Eigenrichting*) must be executed decisively, transparently, and justly, grounded in the principles of justice and truth, rather than personal interests. This is crucial for establishing order, legal clarity, and societal peace. This study addresses the issue of how to legally hold mass perpetrators accountable for vigilante acts (*Eigenrichting*) against individuals accused of theft, as well as the factors that impede criminal liability for these mass perpetrators (Waliyudin, 2016).

The phenomena of solitary play among children is frequently observed in contemporary Indonesian society. The existing legislation in Indonesia fails to impose stringent penalties on those doing vigilante acts (*eigenrichting*). The act of vigilantism is a community response that engenders an atmosphere of disturbance. Individuals tasked with adhering to the established laws enacted by the authority instead contravene these regulations, responding to criminality by adjudicating the offenders independently. The community's actions against offenders of criminal acts, including severe beatings and even immolation, constitute another sort of crime. Engaging in the role of judges is akin to a crowd that defies legal rules (lawless crowds). Vigilante actions frequently result in fatalities. Law enforcement in vigilante situations must be approached with gravity and meticulous attention. If a nation prioritizes the rule of the jungle over formal legal norms, it is inevitable that society would gravitate towards submission to those possessing physical strength. Imposing sanctions is a method to deter vigilante behavior within the society. Action sanctions constitute a category of sanctions governed by criminal law. The sanctions imposed on perpetrators of vigilante activities aim to fulfill the law's mission, which is to reform these individuals as malleable human beings and to attain the highest form of justice (Ahmadi, 2023).

Criminal Liability

Criminal Law is a public statute designed to regulate human conduct and uphold societal order. The government and authorized entities, governed by laws and regulations, execute its enforcement. The theory of criminal liability is paramount in criminal law, as the application of criminal law is intrinsically linked to this theory; thus, the author presents

criminal liability within a theoretical framework. The author's methodology is normative juridical, employing a framework derived from literature and qualitative research. Liability in criminal law can be understood as criminal liability, referred to in Dutch as *torekenbaarheid*, and in English as criminal responsibility or criminal liability. Criminal culpability entails the imposition of sanctions on the perpetrator for actions that contravene prohibitions or engender unlawful conditions. Criminal responsibility pertains to the mechanism of assigning the established punishment for a criminal conduct to the offender.

Criminal liability requires three conditions: the intentional commission of a criminal act (*dolus*), negligence resulting in the occurrence of a criminal act (*culpa*), and the absence of any grounds for exoneration from criminal responsibility. The author concludes that criminal liability is the paramount and foundational theory in the discipline of criminal law. The principle that governs criminal liability is a fundamental tenet of criminal law, exemplified by the maxim "no punishment without fault" (*Actus non facit reum nisi mens sit rea*). (Fadlian, 2020).

Andi Hamzah said that criminal acts are acts that are intertwined with criminals, which are unlawful in nature related to mistakes and are committed by people who are able to take responsibility. The act must meet several conditions, namely: 1. Threatened with criminal punishment by law. 2. Contrary to the law. 3. Committed by a guilty person. 4. The person is considered responsible for his actions (Andi Hamzah, 2010). Criminal acts perpetrated by groups can be characterized as collective actions, as these offenses involve multiple individuals who, whether through direct or indirect collaboration—planned or unplanned—engage in the commission of crimes. This may occur jointly or individually within a sequence of events that leads to criminal behavior, resulting in both physical and non-physical harm. The vigilante actions of a crowd against a criminal or suspected criminal can be characterized as sadistic, merciless, and inhumane. It is said to be inhumane because this vigilante act has involved many people who commit violence or persecution *en masse* against a person or several perpetrators of criminal acts or who are suspected of being perpetrators of criminal acts. This violence or persecution is often accompanied by the use of hard, blunt and sharp objects as the medium.

The Criminal Code in Indonesia itself has not specifically regulated the act of vigilante, but it does not mean that in the Criminal Code there is no regulation on the act of vigilante. Although it is not directly stated that an act that is regulated is called a vigilante act. For example, the regulation regarding acts of persecution in Article 351 of the Criminal Code does not mention that persecution is an act of vigilantism. However, if we look at the elements of

the article, it can be concluded that certain situations (for example, when there are perpetrators of motorcycle theft who are beaten en masse by residents), the act of persecution by the residents can be categorized as an act of vigilantism. Vigilantism in the Criminal Code is more often referred to as violence. The phrase violence refers to a conduct, either overt or covert, offensive or defensive, characterized by the application of force by another.

METHOD

The research conducted is normative, involving analyzing library resources or secondary data. It is also referred to as doctrinal research. Peter Mahmud Marzuki contends that the study of normative law is a methodology for discerning legal norms, principles, and doctrines to resolve legal challenges. This journal engages in normative legal research, utilizing literature as the principal data source for case analysis.

DISCUSSION

Recently, we have been astonished by media reports, both online and traditional, regarding the widespread phenomenon of persecution, which begins with the identification, apprehension, and execution of individuals suspected of criminal activity based on the aforementioned reasons. In essence, this persecution constitutes a form of judgment rendered without adherence to the appropriate legal processes, commonly referred to in criminal law as *eigenrechting*. Persecution and vigilantism possess distinct characteristics; nonetheless, from the author's perspective, persecution is perceived as a type of vigilantism, thereby characterizing persecution as a novel manifestation of vigilantism (*eingerechting*). Consequently, both acts of persecution and vigilantism become criminal offenses, rendering any perpetrator of these acts liable to criminal prosecution (Pujayanti & Soeskandi, 2018).

Vigilantism constitutes a form of self-appointed adjudication when individuals assert rights independently of governmental authority, devoid of legal transgression, and without utilizing state apparatus. Moreover, vigilantism refers to administering punishment for a perceived wrong without adhering to legal procedures. Playing judges themselves is akin to a crowd that defies legal rules (lawless crowds). Soerjono Soekanto categorizes lawless crowds into two distinct types.

1. Emotional mobs are crowds that seek to accomplish a purpose through physical force, violating societal legal norms.
2. Immoral crowds consist of inebriated individuals.

Law number 39 of 1999 concerning Human Rights, in Article 4, reads, "The right to life, the right not to be tortured, the right to personal freedom, mind and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the rights of the 1945 Constitution of the Republic of Indonesia. Law Number 39 of 1999 concerning Human Rights which cannot be reduced under any circumstances and by anyone".

Criminal liability refers to an individual's accountability for a committed criminal act, which arises from the perpetration of such an act. Moeljanto asserted that criminal responsibility alone is insufficient for committing a criminal act; there must also be errors or culpable mental states, as expressed in the principle of unwritten law, which stipulates that actions are not criminalized in the absence of wrongdoing.

The foundation of a criminal act is the concept of legality, whereas the principle of culpability establishes a crime. The perpetrator of criminal conduct will be punished only if found guilty. He underscored that criminal liability pertains to individuals' accountability for their offenses. Consequently, criminal culpability arises from an individual's commission of a criminal act. The community has collectively decided to reject a specific act, resulting in a prohibition of that act. Due to the community's rejection, the individual responsible for the conduct will face reproach, as the creator may have pursued an alternative course of action in this occurrence. Criminal culpability is fundamentally a construct established by criminal law to respond to breaches of an accord and abstain from specific actions.

Pipin Syarifin stated that in Indonesian criminal law theory, error manifests through intentionality and negligence, which may be categorized into three forms of intentionality. Purposeful intentionality enables the criminal to be held accountable and comprehensible to the public. If such intentionality is present in criminal conduct, the culprit warrants criminal punishment. This intentional purpose indicates that the perpetrator genuinely seeks to get a result, which is the primary motivation for the threat of punishment. Intentionality is the awareness of certainty. This intention arises when the perpetrator, through his actions, does not seek to attain the outcome upon which the offense is predicated, yet is fully aware that the consequence will inevitably ensue from the act. Intentionality is a potentiality. This goal is clearly devoid of any certainty regarding the outcome, merely envisioning a potential effect.

In order to be asked or burdened with criminal responsibility, a perpetrator of a criminal act or a person who commits an unlawful act that has been regulated in the applicable

law must have an element of guilt, either in the form of intentionality or forgetfulness. In addition, the perpetrator must be able to take responsibility, and there must be no excuse or justification for the act committed.

Criminal liability or the imposition of a criminal penalty will be adequate when the formulation of criminal provisions for a criminal act contains clear and firm provisions about the elements of criminal acts and criminal sanctions that can be imposed on the perpetrator.

Playing vigilante (*Eigenreching*) means playing by yourself, taking rights without the government's knowledge, and using government power tools. The act of vigilante is almost always parallel to the violation of the rights of others, and therefore, it is not allowed to show that there is an indication of a low awareness of the law.

Assuming the role of a judge constitutes a criminal offense that may result in detrimental consequences for the offender and establish a negative precedent for other communities. Consequently, the act is replicated when the community sees offenders perpetrating offenses within their vicinity. In such circumstances, the role and function of the police are crucial to prevent activities that result in vigilantism. Diverse measures can be implemented, encompassing both preventive and repressive strategies. Preventive measures can be implemented by counseling and socialization about legal awareness, while repressive actions are executed through law enforcement targeting vigilante offenders. (Kristanto, 2017)

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CONCLUSION

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