

THE APPLICATION OF TEACHING OF PARTICIPATION IN THE ROBBING CRIMINAL ACT

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Abstract

This study aims to analyze and explain 1) Who are the parties that can be used as a suspect and how its position legally; 2) A criminal offence if the supposition to perpetrators. This study is a normative legal and empirical legal research. The results of the study that "participation teachings" in the case of Zakia Arifin Binti Zainal Arifin and Mrs. Tuti Ambarwati can be applied. However, there is a difference between the concept of participation in Article 55 of the Criminal Code with the element of cooperating or alliance in Article 363 and Article 365 of the Criminal Code. Article 55 of the Criminal Code is a general rule (*legi generali*) for acts of inclusion (*deelneming*) in a criminal act, namely for people who commit, order to do, participate in doing, and who advocate for criminal acts, in which the perpetrators are punished as a person who commits a crime; whereas Article 363 paragraph 1 number 4 of the Criminal Code, is a special rule (*lex specialis*) that is two people have committed acts of theft, and article 365 (specifically paragraph (2)) of the Criminal Code is a special rule (*lex specialis*), namely there is a criminal offense for theft with a joint charge (*allied*).

Keywords: Criminal Liability, Participation, The Criminal Deed Theft.

INTRODUCTION

This study is concerned with the case of the Criminal Act¹ done together by Zakiya Arifin Binti Zainal Arifin and Mrs. Tuti Ambarwati. Both this person was having the relationship between son and mother. The criminal case has been dealt with and carried out investigation by investigators Sat Reskrim Polres Magelang. In the allegations while investigators think Zakiya Arifin Binti Zainal Arifin has been doing criminal theft (article 362 of the CRIMINAL CODE) and criminal deed theft with *pemberatan* as referred to in article KUHPidana 363. As for the chronological events as follows:

In his statement Zakiya Arifin Binti Zainal Arifin, explains: in the evening at the home of the Naryo, Dearladiesandgents in Ponggok Rambeanak Mungkid, Magelang Regency of my mother (Tuti Ambarwati) said "kak ya over here tomorrow, the dude is no time tomorrow", while shows Tablet Handphone type. At that time my mother opening application OLX selling second-hand clothes, then I see the Tablet, but I did not answer the request of the mother ". So mother Tuti Ambarwati invites his daughter Zakiya Arifin Binti Zainal Arifin somewhere.

More is explained by Zakiya Arifin binti Zainal Arifin: in the morning at around 09.00 Gmt my biological mother Tuti Ambarwati, my brother and I, Belfana Estrelenia alias Abel Kosasih, set off riding a motorcycle belonging to the Naryo, Dear ladies and gents Brand

¹ Criminal acts are another term for criminal acts. Moeljatno defines criminal acts as actions which are prohibited by criminal law and are punishable by crimes against those who violate the prohibition. (Moeljatn. 2008. Criminal Law Principles. Revised Edition. Jakarta: Rineka Cipta. P.2

The red color of the Shogun to a place intended. Once the homes are on the go, i.e. housing Mount Pring Muntlan Magelang Regency. By the time we got to the place of destination, at that point our home owners who go are not at home (his home is empty), then while waiting for home owners came home, we went out riding a motorcycle circling in the residential area environment. Then when we got back home we go, the House is still in a State of empty and we waited in front of the House, not much later there was a young mother cradling her baby that's being out of his home, and then approached the us. The young mother chatting with my biological mother, Tuti Ambarwati. When chatting it up, my mother asked the room small and young mother offering her home. The House is about three young mother home from home that we want to go. Then our home young mother. My mother, Tuti Ambarwati entered the House with followed the young mother accompanied by/for the purpose indicated his small room. As for me and my Brothers waiting in front of the House. Then my mother came out, and sitting in the front room/TV room, joined my brother and I got into the front room/TV room.

At that time the baby in carrying the young mother cried, and then my biological mother, Tuti Ambarwati took the baby and menggendongnya. The baby was taken out in front of the House (sitting in front of Posyandu). While my brother and my bladder (ABEL) were also out in front of the Posyandu, while the young mother still resides in the living room TV while folding

clothes. According to Arifin Zakiya Arifin binti Zainal Arifin: when sitting at the Posyandu my biological mother, Tuti Ambarwati, said to me: "Kak Later if you want to Ride Home Bathroom Yes, Entered the room, who knows there is no money, Ntar take Hpnya too!". Then I replied "Yes". After that my biological mother (Tuti Ambarwati) told me to ask for a drink, and I got into the House through the garage door the young mother. I ask for drinking with said "Bu Ask Trough Yes Ma'am"?, answered the young mother "Yeah, take it!" I took bottled water "aqua glass", then I give the drink a glass "aqua" to my biological mother, Tuti Ambarwati. Not long after that interval, the young mother out and approaching us, then I request permission to a small room to a young mother. By young mother allowed me, and then I went into the restroom, I pee, when you're done, I'm out of the shower, and then I went into the bedroom, I noticed there was a large white envelope on top of cupboards plastic (Axel), I open the envelope amplopnya, I see that contains the fractional money Two tens of thousands, but how the numbers I do not know, then I take the money, I save disaku long pants to the right. While the envelope I didn't take it, but I return to top cupboards plastic/Axel. After that I walked toward the outside of the House, once a TV room I saw HP laid on the table of the TV, I take HP and I save it in the pants (pinned between the stomach with the pants, and I cover it with a shirt that I wear, then I young mothers out of the home. After that a Baby in his arms my mother, was given to the young mother, and then we left to go home".

Further Zakiya Arifin Zainal Arifin Bint testified: when on the way home my biological mother, Tuti Ambarwati asks "What Can only Kak?", I replied "Can Hp and money". My biological mother, Tuti Ambarwati Aja Udah asks "is it?" I replied "Yes", my mother said "his cards Taken Continually Dumped!" Then I open up HP and issued the card/SIM-Card, after that I waste HP and the money I take I enter/save inside the bag cangklong charged my biological mother, Tuti Ambarwati. " Zakiya Binti Zainal Arifin Arifin also menearangkan: "once the market area of Muntilan, my mother stopped in front of the seller of the es campur, es campur ordered and I was told to offer HP we take it to the counter belongs to Anwar by saying" Kak Try There Tawarin ", then I take the bag off in HP cangklong/slempang belongs to the mother, I ride motorcycles to the contest Anwar, once the contest Anwar I offer the HP, at that time inexorably Joko Rp 700,000.-(seven hundred thousand Rupiah), then I go back to place the mother and tell if bargained Rp 700,000.-(seven hundred thousand Rupiah), then me and my biological mother Tuti Ambarwati returned to the contest Anwar, after which buying and selling between Anwar and my biological mother, Tuti Ambarwati, practice how many I don't know. Then we go home.²

A legal deed Zakiya Arifin Zainal Arifin Bint, it clearly can be said to perform any act of theft, namely taking someone else's property unlawfully. But the matter is not as simple as such, therefore certainly need to be

² BAP results of the investigation into the Magelang Police Criminal Investigation investigator

examined further, for example related to how position of Zakiya Arifin Zainal Arifin Binti and her mother in law. In the sense that whether in this case Zakiya Arifin Zainal Arifin Binti can be considered people socially, and how it is with his mother, Tuti Ambarwati, if he could be considered one who is not involved in the conduct of Criminal deeds or quite the contrary is indeed as a maker of Criminal deeds. And then the thing in question is criminal what has each of them do and how their respective position legally.

PROBLEM FORMULATION

Based on the explanation of the background which has been expressed above, in this study who want answered at issue are:

1. Who are the parties that can be used as a suspect and how its position legally?
2. A criminal offence if the supposition to perpetrators?

RESEARCH METHODOLOGY

Expert law generally distinguishes between normative juridical/legal research and empirical sociological/legal research.³ Which is then divided into three groups, namely normative legal research, normative-empirical legal research (applied) and empirical legal research.⁴ This research is the normative legal research. It is said, because of the normative legal research this research examines law conceptualised as the norm or

³ Bambang Sunggono. 2003. Legal Research Methodology. Jakarta: PT. RajaGrafindo Persada. P. 41-42.

⁴ Abdulkadir Muhammad. 2004. Law and Legal Research. Bandung: PT. Citra Aditya Bakti. P. 52-54.

the methods in force in the community, and become a reference for the behavior of each person.⁵ So on the ball as a legal research building system norm.⁶ Because the study of normative references is then basic data in this study.⁷ References are needed in this research is the legal materials derived from primary law, secondary law, material and non material law.⁸ As for the required legal materials derived from the legal materials of primary legal materials, subject matter, namely, the PENAL CODE and the BAP investigators. It also uses a secondary law, in the form of reading material that comes from books, journals and articles. The approach used in answering the problems on this research approach is legislation and the approach to the case.

Peter Mahmud Marzuki say, "approaches used in legal research is an (statute approach), case approach, historical approach, the comparative approach, and a conceptual approach."⁹ In this research, analysis using the method of induction. The method of induction is departing from the facts are specifically for later generalized into general provisions. So, to formulate inductive step is fact-finding.¹⁰

DISCUSSION

⁵ Ibid.

⁶ Mukti Fajat ND and Yulianto Achmad. 2007. *Dualism in Legal Research*. Yogyakarta: Communicator Pencil. P. 25.

⁷ Soerjono Soekanto and Sri Mamudji. 2001. *Normative Legal Research A Brief Review*. Jakarta: PT. Raja Grafindo. P.24.

⁸ Peter Mahmud Marzuki. 2005. *Legal Research*. Jakarta: Prenada Media. P. 141-169.

⁹ Op.p.93.

¹⁰ Peter Mahmud Marzuki. *Op-Cit*. Hlm. 47.

Parties can be suspect and his position is legally

Refers to article 1 paragraph (1) of the CRIMINAL CODE which determines an act cannot be convicted, unless based on the strength of provisions of criminal legislation that has there are.¹¹ In the theory of criminal law, the Criminal deeds done collectively with participate doing criminal or briefly referred to as inclusion. Inclusion is all forms of participation/involvement of the person or persons either psychologically or physically by doing the deed so that each gave birth to a criminal offence. The crime in question is the Act by law declared prohibited accompanied criminal threats on anyone who violates the ban. The subject of law mentioned and referred to in the outline of the crime is just one person, not some people. The inclusion of language in the Netherlands or "deelneming" in criminal law.¹²

Deelneming in question because it is based on reality, often a delik conducted jointly by several people. When a criminal in an event there is more than one person, then to look for accountability and the role of each in the event. The concept of the teachings of the inclusion in the Act of Criminal deeds and closely related to criminal liability. The basic concept is the concept of criminal liability a criminal deed. So the teaching of criminal participation and accountability in the criminal

¹¹ Soenarto Soerodibroto. 1999. *Criminal Code and Criminal Procedure Code Equipped with Supreme Court Jurisprudence and Hoge Raad, Fourth Edition*. Jakarta: Raja Grafindo Persada. P.7.

¹² Linda Ulfa, Mohd. Din, Dahlan. *Application of Teachings and Corruption Cases Associated with Theory of Criminal Responsibility*. *Legal Science Kanun Journal*. Vol. 19, No. 2, (August, 2017), pp. 285-304.

law has always stemmed from the teachings of criminal participation decline and deeds the criminal with the dimensions of a role in the inclusion of Criminal deeds in a criminal offence.¹³

Doctrinal basis of criminal liability in the teaching of criminal participation there are 2 (two) familiar i.e. first, as a form of inclusion in its own right called *zelfstandige vormen van deelneming* i.e. criminal liability is located on each participants are valued individually and secondly, forms of participation that does not stand on its own called *onzelfstand ige vormen van deelneming van deelneming accesoire* or i.e. the criminal liability of participants depending on the participants of the other criminal.Regarding the inclusion (*deelneming*) is regulated in article 55 and 56 KUHPidana.

Article 55 KUHPidana:

- (1) Convicted as the person who committed the criminal event:
 - 1e. People who do, who sent presents to do, or doing a deed;
 - 2e. The person with the grant agreement, the wearing of power or influence, force, threat or deception or by giving the opportunity, effort or description, deliberately inducing things to do the deed.
- (2) About people who are in it to be sub 2e accounted for him is simply the Act of intentionally persuaded by them, as well as its aftermath.

When parsed, the provisions of article 55 of the CRIMINAL CODE, it can be difference the perpetrators who commit criminal deeds into 4 groups, namely:

1. Pleger (who do);
2. Doen Plegen (people who sent do);
3. 3.Medepleger (people who do);
4. Uitlokker (the man who persuaded do).¹⁴

Doctrinal views about special liability Article 55 KUH Criminal contained the notion of first coverage, or for those who commit criminal deeds (*pleger*), i.e. the deed of their appropriate formula *delik* or meet all elements *delik*.The culprit may be a, and can be more than one. In the case of Zakiya Binti Zainal Arifin Arifin and Mrs. Tuti Ambarwati culprit there are two persons, but that meet the elements of the Criminal deeds only Zakiya Arifin binti Zainal Arifin, while Mrs. Ambarwati Tuti appropriate *delic* formulation. Therefore if applied article 362 KUHPidana, then that can be accused is just another Zakiya Arifin binti Zainal Arifin.

Second, for those who enjoin doing criminal or called *propenent* (*doen plegen*), with the requirement that they do send the criminal is a person who is sick of his soul (article 44 KUH Criminal); or they do the deed a criminal in the State of *overmacht*; or they do command post was given unlawfully; or they mistakenly interpret about one element *delic*; where they have no purpose; and they also do not have the quality of a requirement than the requirement, whereas *delic* only

¹³ Tommy J. Bassang. Accountability of *Deelneming* Criminal Actors. *Lex Crimen* Vol. IV / No. 5 / July / 2015. Pp.122-128.

¹⁴ R. Soesilo. 1991. *The Criminal Code (KUHP) and its Comments Complete Article For Article*. Jakarta: Politeia.

exists and is owned by *mannus domina* (puppeteer). In the case of Zakiya Binti Zainal Arifin Arifin and Mrs. Tuti Ambarwati, the requirements of people who sent do not met.

Third, for those who commit criminal (medepleger), with a requirement that participation must be doctrinal physically and presence awareness in Criminal deeds and accompanying in-between it must be also the existence of a causal relationship. If viewed in the case of Zakiya Binti Zainal Arifin Arifin and Mrs. Tuti Ambarwati requirements are met. Thus they can join in doing criminal accused. Because physically and awareness in the accompanying criminal deeds among them both there is a causal relationship, i.e. Mother Tuti Ambarwati role to facilitate the occurrence of Criminal deeds and Zakiya Arifin Zainal Arifin Bint acts take the property of others.

Then the fourth, namely for those who are persuaded to do criminal deeds with the requirement that the presence of Activator (*Uitlokker*); limitatif efforts (for legal certainty in the form of promises); that has driven the maintainability and responsible; and the man who persuaded doing criminal because it is driven by the persuade. Participation forms to conduct criminal deeds, in General does not stand on its own called *onzelfstandige vorm van deelneming vorm accessoire* or; but there are also stand-alone called *zelfstandige vorm van deelneming*, for example Article 236 and 237 KUH criminal. In this case there are no promises between them both. It is therefore not referred to their relationship as a promising party and the party that promised.

Criminal Deeds that can be applied to the Perpetrator

As for the Criminal deeds that can be accused to the perpetrator is in violation of the provisions of article 362 juncto article 55 paragraph (1) Figure 1 participate doing criminal, or article 363 para (1) of the PENAL CODE or article 365 number 4 paragraph (2) of the CRIMINAL CODE number 2. Article 362, specifying: "whoever took something, which in whole or in part belonging to another person, with the intent to unlawfully owned, was threatened because of theft, with imprisonment of not longer than five years or a maximum fine many of the nine hundred dollars".

Elements of article 362 of the CRIMINAL CODE are:

- 1) The Act of taking,
- 2) Taken must be something goods,
- 3) The goods were to be entirely or partially belonged to others,
- 4) Intent to unlawfully

Take owned means the same as the master for the acquisition, meaning time stealing took it, the item does not exist in the his power, in time to have that item already exists in his hand, then deed it is not theft, but embezzlement (article 372 KUHPidana). Retrieval (theft) it can already be said is done, when such items have already moved premises. When a new person just holding stuff, and have yet to move, then that person can not be said to be a steal, but a new "trial of stealing". Something stuff means

everything that exists including animals (humans do not enter). For example; money, clothes, necklaces etc. In terms of incoming goods also electric power and gas, although intangible, but streamed dikawat or pipes. Items that do not need to have an economical price.

Therefore take a few strands of hair for a keepsake women not with the woman's consent, theft, though no price. That all or part of the goods that belong to other people. For example A shared B bought a bicycle, then that bike belongs to A and B, kept in A House, then stolen by B or A and B receive the goods inherited from C's in store at A, then stolen by B. Taking it must be deliberately and with intent to. Does that mean people because of falsely taking other people's stuff it's not theft find items on the street then taken. When time took it already there's intent to have the goods, his deeds entered the theft. Then the theft with pemberatan (article 363 KUHPidana) the term "theft" is usually pemberatan with the doctrinal basis is referred to as "the qualification" theft. The theft qualification this refers to a theft perpetrated by certain ways or in certain circumstances, and so are heavier and therefore liable to a more severe crime from theft. Because the qualification theft is theft perpetrated by certain ways and in certain circumstances are aggravating, then the proof against the elements of the crime of theft with weight should be beginning with proving the theft in the form anyway. Based on the formulation contained in article 363 of the CRIMINAL

CODE, then the elements of the crime of theft with weight are:

1. The elements of theft Article 362 of the Criminal Code
2. Incriminating elements, in Article 363 of the Criminal Code which include:
 - a) Theft of livestock (Article 363 paragraph (1) 1st Criminal Code);
 - b) Theft at the time of fire, eruption, flood, earthquake or sea earthquake, volcanic eruption, shipwreck, shipwreck, train accident, riot, rebellion or danger of war (Article 363 paragraph (1) to 2 of the Criminal Code);
 - c) Theft at night in a house or enclosure that has a house, carried out by the person there is unknown or unwanted by the rightful person (Article 363 paragraph (1) 3rd Criminal Code);
 - d) Theft carried out by two people allied (Article 363 paragraph (1) 4th Criminal Code);
 - e) Theft to enter the place of committing a crime, or to arrive at the goods taken, is done by damaging, cutting or climbing or by using fake keys, fake orders or fake office clothes (Article 363 paragraph (1) 5th Criminal Code) .

If the provisions of Article 362 and 363 of the Criminal Code are related to the case that the author examines, the makers of criminal acts can be charged with violating Article 363 paragraph (1) of number 4, namely theft committed by two or more people by alliance.

The above conclusions are strengthened by HR December 10, 1894, which determines: "theft committed by two or more people in an

alliance must be carried out in a participatory manner and not by assistance".

Then it was reaffirmed in HR December 1, 1902, which emphasized: "to prove theft that was committed by allies of two or more people was sufficient, that it was clear that the act had been carried out and that they were directly involved in doing so. There is no need to find out how many parts they do. "

On the basis of HR December 10, 1894 and HR December 1, 1902, the author can emphasize that in the case of the author, there has been a violation of article 363 paragraph 1 number 4 of the Criminal Code, namely two people have committed theft, took money and owned cellphone other people with the intention to possess unlawfully. Based on Article 363 paragraph (2) it is threatened with imprisonment for a maximum of nine years. In addition, Zakia Arifin Binti Zainal Arifin and Mrs. Tuti Ambarwati can also be suspected of violating Article 365 paragraph (2) number 2, which determines: "Threatened by imprisonment for a maximum of twelve years, if the act is committed by two or more people by allying / cooperate".

Regarding the elements of "cooperating" and "alliance" in Article 365 of the Criminal Code, paragraph (2) number 2, the meaning is a crime of theft with violence carried out by two or more people who work together (together), with the aim of facilitating the theft.¹⁵ Or at least fulfill the elements of Article 362 of the Criminal Code in conjunction with

Article 55 paragraph (1) of the First Criminal Code, namely "committing or participating in committing a criminal act of taking something which is wholly or partly owned by another person, with the intent to be unlawfully , threatened with theft, with a maximum of five years imprisonment."

CONCLUSIONS

To conclude, it can be concluded that "participation teachings" in the case of Zakia Arifin Binti Zainal Arifin and Mrs. Tuti Ambarwati can be applied. However, there is a difference between the concept of participation in Article 55 of the Criminal Code with the element of cooperating or alliance in Article 363 and Article 365 of the Criminal Code. Article 55 of the Criminal Code is a general rule (*legi generali*) for acts of inclusion (*deelneming*) in a criminal act, namely for people who commit, order to do, participate in doing, and who advocate for criminal acts, in which the perpetrators are punished as a person who commits a crime; whereas Article 363 paragraph 1 number 4 of the Criminal Code, is a special rule (*lex specialis*) that is two people have committed acts of theft, and article 365 (specifically paragraph (2)) of the Criminal Code is a special rule (*lex specialis*), namely there is a criminal offense for theft with a joint charge (*allied*).

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