

Criminal Liability for Vigilantism Under Articles 351, 170, and 406 KUHP

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Abstract

This study was conducted with the aim of determining criminal liability for the crime of vigilantism (*eigenrichting*) in criminal law in Indonesia. This study uses a qualitative approach with an orientation towards a deep understanding of the phenomenology of the crime of vigilantism and the form of criminal liability for the perpetrators. Data analysis in this study was conducted using a qualitative legal analysis approach. The results of this study indicate that criminal liability for the crime of vigilantism (*eigenrichting*) is still enforceable under Indonesian criminal law. Everyone who commits the crime will undergo sanctions and cannot be represented by another person. Criminal liability for the crime of vigilantism (*eigenrichting*) is indeed not regulated in a limitative manner in the laws and regulations, however in the law there are elements of a crime as stated in the Criminal Code (KUHP), namely in Section 351 concerning Abuse, Section 170 concerning Abuse and Section 406 concerning Destruction. Therefore the perpetrators of the crime of vigilantism can be subject to several Sections above.

Keywords: criminal liability, criminal acts, vigilantes, *eigenrichting*, criminal law

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INTRODUCTION

The impact of allowing criminal acts of vigilantism to continue will cause society to become increasingly violent in venting its anger and eliminate the basic human rights of victims as human beings who have the right to live (Aditya Rambe, 2018). If this practice of vigilantism continues to be allowed, there will be an erosion of trust in the legal system and law enforcement officers. The public will tend to take justice into their own hands, which can ultimately create a prolonged cycle of violence, insecurity, and social instability. The increasing number of crimes that occur in society has led to many assumptions that law enforcers have failed to address the problem and are delayed in fulfilling their responsibilities. These causing feelings of public discontent because application of legal action does not take place as it should. This is due to the long process in the courts which is less educational and often the perpetrators of crimes are released due to lack of evidence. Even if the problem is processed in court, the punishment is also not in accordance with the expectations of the community (Donsisko Marbun, 2021).

Eigenrichting is a Dutch translation which means enforcing the law personally, claiming rights without regard to the law or unlawfully without the knowledge of the authorized government and without the use of government power (Veronica Sherly Margareta dan Wasipiah Wasipiah, 2020). One example of taking the law into one's own hands is beating perpetrators of crimes by the community (Marwan and Jimmy P, 2009). Taking the law carried out personally is an act of carrying out based on personal will that is arbitrary and lacks the consent of other concerned stakeholders, which may lead to harm (Sudikno Mertokusumo, 2010).

From a in terms of sociology, the phenomenon is simply a social symptom that is usually resolved without specific legal rules and is normative (Faliani Zaliaokta dan Tajul Arifin, 2023). An example of vigilante behavior is physical assault that are often carried out against perpetrators of crimes, immorality, muggings and others (Muh.Triocsa Taufiq, 2014). This act of vigilantism is closely related to the unlawful nature of every criminal act. Usually with a criminal act an individual suffers a loss. Sometimes the victim tries to eliminate the loss he suffered by himself, without waiting for the actions of state apparatus such as the Police or Prosecutors, as if he were judging himself (*eigenrichting*) (Wirjono Prodjodikoro, 2008).

In the provisions of Law Number 39 of 1999 concerning Human Rights, the right to personal freedom itself is the right to freedom that every Indonesian citizen has in living his life. According to Section 4 of Law No. 39 of 1999 on Human Rights, it is stated that:

The right to life, the right not to be tortured, the right to freedom of thought 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 right not to be prosecuted on the basis of retroactive laws are human rights that cannot be reduced under any circumstances and by anyone.

Then according to as provided in Section 33 Paragraph (1) of Law Number 39 Year 1999 regarding Human Rights, it declares that:

Everyone has the right to be free from torture, punishment or cruel, inhuman or degrading treatment or punishment.

Under Law Number 39 of 1999 regarding Human Rights, it not only regulates personal entitlements, but also the rights of others that must be protected and regulated more specifically as in Section 33 paragraph (1) above. From Section 33 paragraph (1) it is clear that the rights of others also need to be protected, but if later these rights are seized by others, the act must be processed according to applicable law. In criminal law provisions, a person who commits an act is not considered guilty before a judicial decision that holds permanent legal validity (Didik Purwadi, Amiruddin, 2022). Assuming the role of law enforcer without proper authority has also violated principal presumption the innocence (presumption of onnocent) in Latin *ei incumbit probatio qui dicit, non qui negat*. This means that a person cannot be considered guilty or treated as the guilty party before being proven in a final court that has permanent legal force convincingly without reasonable doubt (beyond reasonable doubt) which proves that the suspect is indeed legally guilty (Moeljatno, 1985).

This study uses a qualitative approach with an orientation towards an in-depth understanding of the phenomenology of vigilante crime (*eigenrichting*) as well as the type of criminal responsibility imposed on the perpetrators in Indonesia. That approach was chosen because the focus of this study is not only on written legal norms, but also on the social reality of society towards the practice of *eigenrichting* in the criminal law system in Indonesia. This study is based on relevant legal documents and literature, both in the form of primary and secondary sources. The primary data in this study were obtained through laws and regulations such as the Criminal Code (KUHP), Law Number 39 of 1999 concerning Human Rights, etc. While secondary data include criminal law books, scientific journal Sections, and the opinions of legal experts who study the criminal responsibility of vigilante perpetrators (*eigenrichting*). This was done by the author to strengthen the analysis of how *eigenrichting* actions should be positioned within the framework of criminal law in Indonesia, both normatively and theoretically.

Data analysis in this study was conducted using a qualitative legal analysis approach, namely analyzing primary and secondary legal materials systematically. This analysis is used to identify whether the act of *eigenrichting* meets the elements of a criminal act in the Criminal Code, especially Section 351 (assault), Section 170 (gangstaffing), or Section 406 (vandalism). In this stage, the principles of criminal law related to actus reus (act) and mens rea (evil intent) will be studied, as well as how the principles of culpa and dolus apply to perpetrators of vigilante crimes.

RESULTS AND DISCUSSION

Criminal Responsibility for Property in Criminal Law

According to foreign legal systems, criminal liability is also referred to as "teorekenbaardheid" can also be "criminal responsibility" resulting in punishment for the purpose of establishing whether a suspect and

defendant can be held responsible for a criminal act regardless of whether it occurs or not (Kiki Kristanto, 2017). A person can be prosecuted only if the act they committed fulfills the legal elements defined by law. From the standpoint of prohibited conduct, an individual is held responsible when their actions violate the law and no legal justification or grounds exist to negate the criminal nature of those actions (Kiki Kristanto, 2017).

In criminal law, criminal liability is limited by the provisions of the law and must meet the elements that have been established according to legal provisions as stated in the Criminal Code, especially Section 351 (assault), Section 170 (gang assault), or Section 406 (destruction). Viewed from the perspective concerning the incident of a banned act, an individual shall be considered responsible to their acts in case the act this unlawful and (not presence of justification) and has the ability to be responsible (Fitri Wahyuni, 2021). Regarding handling justice independently without going through legal procedures when viewed from provisions of principle legality, there are several aspects that must be considered (Didik Purwadi, Amiruddin, 2022), namely:

1. No act can be punished except based on the provisions of the Law.
2. In assessing whether a criminal act has occurred, analogy cannot be used.
3. Criminal provisions are not retroactive.
4. There is no punishment based only on custom.
5. There is no formulation of a criminal act that is unclear (*lexcetra*).
6. Criminal prosecution may only be carried out based on the provisions of the Law.
7. There is no other punishment other than that specified in the Law.

Acts of taking the law into one's own hands are carried out on the basis of emotional reasons (explosion of anger) and piles of disappointment (Soerjono Soekanto, 2019). This is what causes the perpetrator to take the law into his own hands. It could be that the perpetrator of taking the law into his own hands has experienced the loss of an item, as if a thief or victim who committed his crime elsewhere was caught red-handed by several members of the community. Members of the community who have experienced the loss of goods therefore cause emotions, resentment and disappointment to assume that he is the thief, causing the perpetrator to vent his anger and disappointment on the victim considering the thief or victim the same. Taking the law into his own hands cannot be justified by the positive law in force in Indonesia regardless of the reason.

For perpetrators of vigilante actions in this case, they must be responsible for their actions because they harm others, these actions are a form of criminal act (Didik Purwadi, Amiruddin, 2022). The act of vigilantism has not been regulated in a limited manner in the Law, but perpetrators of *eigenrichting/vigilante* actions can be processed/prosecuted legally if they violate the provisions contained in criminal law, including:

Abuse (Section 351 of the Criminal Code)

This act of taking law into one's own hands tends towards abuse, where the victim experiences suffering or injury as a result of the act. Section 351 does not provide provisions on what is meant by "abuse" (mishandeling). According to Leden Marpaung, abuse is intentionally causing pain or injury to another person. However, an act that causes pain or injury to another person cannot be considered abuse if the act is carried aimed at enhancing physical security (Leden Marpaung, 2005). Abuse is like that too an act that is carried out intentionally causing unpleasant feelings (suffering), pain or injury. Below are some acts of vigilantism in a form of persecution. These forms of persecution depend on the consequences, resulting in light or heavy persecution or in other words have their own criteria. The following is a classification of criminal acts of persecution in the Criminal Code as follows:

a. Ordinary assault (Section 351 of the Criminal Code)

The provisions of Section 351 of the Criminal Code state that:

- 1) Abuse carries a maximum penalty of 2 years and 8 months in prison or a fine not exceeding four thousand five hundred rupiah.
- 2) In the event that the act causes severe injuries, the guilty party is subject to a maximum sentence of five years imprisonment.
- 3) In the event that it causes death, it is punishable with a sentence of up to seven years imprisonment.

- 4) Abuse is considered as deliberately harming health.
- 5) Any attempt to commit this offense is not subject to punishment.
- b. Minor Assault (Section 352 of the Criminal Code)
The prescribed terms of Section 352 of the Criminal Code state that:
 - 1) Except for those mentioned in Sections 353 and 356, mistreatment that does not result in illness or obstacles to performing official labor or investigation is subject to punishment as minor abuse, with no more than prison sentence for 3 months or a fine not exceeding IDR 4.5 million. The sentence may be elevated by one third for an individual who commits a violation directed at a person who is either in his service or under his supervision.
 - 2) Attempt this offense is not subject to punishment.
- c. Serious Assault (Section 354 of the Criminal Code)
The provisions of Section 354 of the Criminal Code state that:
 - 1) Anyone who intentionally causes serious injury to another person shall be punished for serious assault, punishable by imprisonment for a term not exceeding eight years.
 - 2) In the event that the act causes the death of the party, the responsible individual is sentenced to detention for up to ten years.

Assault (Section 170 of the Criminal Code)

Acts of vigilantism also tend to be carried out by committing violence that is carried out together. This is stated in Section 170 of the Criminal Code which states that:

- 1) Any person who collectively engages in acts of violence against individuals or property in public shall be punished by imprisonment for up to five years and six months.
- 2) Found guilty shall be penalized:
 - a) Punishable by a maximum of seven years in prison if the act is committed intentionally damages goods or acts of violence he commits results in injury.
 - b) Punishable by up to nine years in prison, in the event that the violence results in severe physical harm.
 - c) Punishable by up to twelve years in prison, provided that the violence results in death.

The elements contained in this Section are as follows:

1. Any person: Denoting the person or individual acting as the offender.
2. Within the public sphere, the act was committed within place where the public could see it.
3. Together: This means that it is done by at least two or more people. The meaning of the word together shows that the act was done intentionally or possessed a clear intention, so it is not an accident.
4. Violence: This means using physical force or strength that is not small and not legitimate. Violence in this Section usually consists of “damaging property” or “assault”.
5. Against people or property: The violence must be directed at people or property as victims.

The use section is not the same as the use of Section 351 of the Criminal Code. Because in Section 170 of the Criminal Code, the perpetrator is more than one, while in Section 351 of the Criminal Code. The perpetrator is one person or can be more than one person with the note that it is not done at the same time. A person can receive violent treatment from two or more people but the perpetrators do not do it together or do not agree and understand to carry out the violence, then this has entered the realm of Section 351 of the Criminal Code. Violence carried out according to Section 170 of the Criminal Code is certainly carried out by the perpetrators at the same time or in close proximity with the condition that there is an agreement and understanding to carry out the violent act against people or goods.

Vandalism (Section 406 of the Criminal Code)

If it is related to perpetrating justice independently without legal authority with a destruction contained in Section 406 of the Criminal Code, it also fulfills its elements. Section 406 (Criminal Code) states that:

- 1) Anyone who, with intent and without legal justification, destroys, harms, makes unusable or removes an object that fully or partially belongs to someone else, shall be subject to an upper limit of prison sentence with imprisonment up to two years and eight months, or a fine reaching four thousand five hundred rupiah.

- 2) The same penalty shall be applied to an individual who deliberately and without legal justification takes another's life, damages, makes inoperable or removes on living being, which in whole can be also in part belongs to someone else.

The application of Section 406 paragraph (1) of the Criminal Code in vigilante actions that are accompanied by damage or destruction of goods in the vicinity, whether the victim's property or the property of another person, can also be imposed under Section 406 paragraph (1) as an additional sanction that is aggravating. Specifically for violence against property, the Section that also regulates vigilante actions accompanied by damage to property is regulated in Section 406 paragraph (1), which reads: Anyone who intentionally and unlawfully destroys, damages, renders unusable or removes goods that are in whole or in part owned by someone else, is to be subject to a custodial sentence up to two years and eight months, or a financial penalty up to four thousand five hundred rupiah. The components of Section 406 of the Criminal Code include:

1. Any person who;
2. Intentionally and unlawfully;
3. Commits an act of destroying, damaging, rendering unusable or removing an item;
4. The item belongs in full or in part to another party.

The party who orders to do it is not the perpetrator who directly commits the crime. However, in criminal law, the party who can be punished as the perpetrator is not limited to the perpetrator who directly commits the crime. In criminal law, those who are classified/considered as perpetrators (*dader*) of a crime are at least 4 types as stipulated in Section 55 of the Criminal Code (Soesilo, 2008), namely:

1. Those who commit a criminal act themselves (*plegen*);
2. Those who order others to commit a criminal act (*doen plegen*);
3. Those who participate (together) in committing a criminal act (*medeplegen*); and
4. Those who intentionally encourage (motivate) others to commit a criminal act (*uitlok*).

In addition, in criminal law there is also a term known as an accomplice to a crime (*medeplechtige*) which is regulated in Section 56 of the Criminal Code which stipulates: Punishable as accomplice (*medeplechtige*) for a criminal offense:

1. Individuals who deliberately provide assistance when the offense takes place;
2. Those who intentionally provide the opportunity, means or information to commit the crime.

This is included in the act of ordering another person to do a criminal act (*doen plegen*), and the person gets the same punishment as the perpetrator who directly committed the act of destruction (Laurensius Arliman S, 2019). The person who ordered the craftsman to commit the destruction can be punished like the perpetrator who directly committed the offense of destruction based on the provisions of Section 406 of the Criminal Code.

For a craftsman that receives wages, if he does not know that the order is intended to damage something (for example, the craftsman thinks that he must destroy a building because it is no longer used and a new building will be built), then in this case there is no element of intent to damage something belonging to someone else in an unlawful manner (Soesilo, 2008). If the craftsman knows from the start that the order is indeed to harm someone else by damaging the item, then there is an element of intent in his actions and the craftsman can be punished as a perpetrator based on Section 406 of the Criminal Code.

Whatever a reason, if act harms others in inhumane ways, it must be accounted for. The system of criminal liability in current positive criminal law is based on the fault principle, which is one of the fundamental doctrines besides the legal certainty principle (Grace Yurico Bawole, 2018). Criminal liability represents a type of conduct by perpetrator pertaining to an offender act against the mistake he made. Responsibility under criminal law occurs due to the presence of is a mistake that constitutes a criminal act perpetrated by a person, as well as the existence of already regulations governing the criminal act. The the components of criminal responsibility consist (S.R. Sianturi dan E.Y. Kanter, 1989), including:

- a. The condition of his mind:
 - 1) Unaffected by either ongoing or momentary illness (*Temporari*)
 - 2) Not deformed in development (dumb, very low intelligence, mental retardation, other intellectual disorders), and

- 3) Free from interference caused by shock, hypnosis, intense emotional outbursts, or unconscious impulses (reflex movements), slipping (slaapwandel), disturbed by fever (koorts), urges and similar impulses. To put it differently, he possesses awareness.
- b. His Emotional Abilities
 - 1) Has the ability to comprehend the core meaning of his conduct.
 - 2) Has the ability to establish his will concerning the action, whether to carry it or refrain from doing so. Is able to know the blameworthiness regarding the act.

Committing an deed that cannot be held accountable due to impairment of his mental state its developmental or impaired by sickness, does not punishable (Elyada Umbu Ndapabehar dan R. Rahaditya, 2023). Not having the capacity for accountability is a condition of mind, namely like a people with mental disorders where in this case a people with mental disorders cannot be held responsible for his actions. The act of taking the law into one's own hands is not regulated in the Criminal Code and in other laws, but this the act of enforcing justice personally without legal authority contains elements of a criminal act that can be processed according to applicable law. This the act of personally enforcing the law breaches the provisions of the Criminal Code like abuse, violence destruction on the basis of which the state prosecutor submits the matter to the District Court to be processed and decided by a panel of authorized judges with permanent legal force (Didik Purwadi, Amiruddin, 2022).

From a criminal law perspective, taking firm action against perpetrators of vigilantism aims to maintain public order (de handhaving van de maatschappelijke) and to prevent crime (ter voorkoming van de misdaad). Thus, vigilante behavior in society can be minimized (Kiki Kristanto, 2017). Therefore, taking firm action against perpetrators who commit vigilantism is a form of criminal responsibility for the perpetrators. In other research conducted by La Ode Awal Sakti, et al. in relation to criminal responsibility for perpetrators of vigilante justice, the perpetrators can be held accountable for their conduct in accordance with their role and the nature of their actions (La Ode Awal Sakti, Yeni Haerani, Yahyanto, 2024).

CONCLUSION AND SUGGESTION

Criminal liability against the crime of taking the law into one's own hands (*eigenrichting*) in criminal law in Indonesia must still be held accountable, because he who committed the crime, then he will also undergo the sanctions and cannot be represented by another person. Criminal liability against the crime of acting as a self-appointed enforcer of the law (*eigenrichting*) is indeed does not regulated in limited manner in the law but in this action, there are elements of the crime as stated in the Criminal Code (KUHP) namely in Section 351 concerning Assault, Section 170 concerning Mob Attacks and Section 406 concerning Vandalism. In relation to an act that can harm others in inhumane ways, it must still be accountable. legal responsibility for a criminal act occurs due to the existence of a fault that constitutes a criminal offense act carried out by an individual, and there exist already regulations governing criminal acts.

Vigilante justice occurs because the lack of public trust in law enforcers. Law enforcers are expected to be able to provide a sense of justice and security to the public so that the public trusts them. So the author's suggestion is that there should be efforts by the government and law enforcers to conduct legal counseling to provide or build public legal awareness so that they do not take the law into their own hands, there are many facts in society where the public does not know that the actions taken are criminal acts. Victims of assuming control over the law their personal control in criminal justice systems must receive more status or attention from the State. The position of victims in criminal law must be given attention to their rights and protection by law. In addition, law enforcers should form regulations that regulate taking the law into their own hands more specifically and in detail in their regulations, so that if taking the law into their own hands they can be charged with these regulations.

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