

CRIMINAL LIABILITY FOR PERSONS OF CRIMINAL ACTION OF HAND PHONE PROCEEDINGS FROM A CRIME BASED ON DECISION NUMBER 1870/Pid.B/2022/PN SURABAYA

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Abstract (size 12)

The crime of extortion or the crime of facilitating this is a crime that is closely related to the crime of destroying other people's assets. The crime of extortion or the crime of facilitating this is regulated in the title XXX, Book II in Article 480 of the Criminal Code (KUHP). Withholding as described in the article can be said to be an act of "conspiracy". The act of receiving objects obtained because of a crime is not seen as a crime that stands alone or as a zelfstandig misdrijf, but as an act of helping to commit a crime or as a medeplichtigheid in a crime, that is, by which act the perpetrator can obtain the objects obtained. from crime

The main issues that will be discussed in writing this thesis are how criminal responsibility is for the perpetrators of criminal acts of receiving cellphones as the result of a crime based on Decision Number 1870/Pid.B/2022/PN Surabaya and what are the legal considerations of judges in deciding the perpetrators of criminal acts of collecting cellphones proceeds from a crime based on Decision Number 1870/Pid.B/2022/PN Surabaya.

Based on this normative juridical research approach is used Using the case approach (Case Approach) aims to study the application of legal norms or rules carried out in legal practice. Especially regarding cases that have been decided as can be seen in the jurisprudence of cases that are the focus of research. The case approach (Case Approach) is used by practitioners in conducting research by identifying court decisions that have qualified jurisprudence to be used in concrete cases. Furthermore, the statutory approach (Statute Approach), this approach is carried out by examining all laws and regulations that are related to the problems (legal issues) that are being faced.

In the crime of collection, the perpetrator already knows or should suspect that the item or object is the result of a crime. Meanwhile, the motive of the intermediary acts almost always to enrich oneself in one way or another that cannot be allowed, so to take advantage of other people's crimes. The intermediary is always related to goods "obtained from crime

Keywords: Criminal Liability, Handpone Containment, Crime



Introduction

Humans as social beings (zoon politicon) cannot live alone and need the help of others to meet their needs. Man recognized as having a degree of freedom to act and to own normal functioning will and only humans can have rights owned by. The property right by one can be mastered or transferred to another party, so that the other party obtains property rights or someone's property rights over an item remains attached to it while the item is controlled by a party other. In such actions man is one with others enter into agreements that will lay down the rights and obligations on the shoulders of each party, which they will fulfill afterwards the agreement is closed. So whoever promises something means binding himself and must be carried out in the good faith of the parties who make it agreement.

On the other hand, some people carry out buying and selling transactions on principle the important thing is it's cheap and you can make a profit, without paying attention to that actually goods purchased from other parties are goods resulting from crime, such as theft, embezzlement, fraud and so on. Realized or not the public knows that the act is a crime, will but some of them tend to ignore it because lack of awareness and legal awareness of society, so that actions.

The actions mentioned above are not necessarily that someone who committing an act of buying goods resulting from a crime can be punished, because legal proof is still required by considering the elements element of guilt in the offender. Some elements of error such as with prove that the goods purchased by someone are goods as a result of crime, the price is not in accordance with the normal market price or goods that are bought at a price far below the market price both new items as well as old stuff, and so on.

Therefore the author takes an example of the case of the perpetrator of the collection Hand Phone Result of a Crime in Surabaya which was decided by Surabaya District Court with Decision Number 1870/Pid.B/2022/PN Surabaya which as the author makes a research in this thesis, mean while the chronology of the case is that on Sunday 03 July 2022 at approximately 12.00 WIB when the defendant was at Warung Giras Putra, Jl. Sidoyoso 1 Surabaya, then the defendant was visited by the child witness FADHILLAH NUR SALAM Bin late ABD SALAM then offered 1



(one) cellphone Brand OPPO Type A54 black crystal to the defendant. Then the accused Buy 1 (one) piece of OPPO Type A54 black crystal cellphone by exchanging with the defendant's cellphone, namely 1 (one) the defendant's OPPO A5 2020 mobile phone plus the amount of money 200.000 IDR (two hundred thousand rupiah). At that time the defendant bought 1 (one) cell phone brand OPPO Type A54 black crystal without equipped with a doosbook and receipts and letters of sale and purchase legitimate. - Then on Friday 08 July 2022 at around 21.00 WIB when the defendant was at Warung Giras Putra Jl. Sidoyoso 1 Surabaya, the defendant was arrested by the witness AHMAD ZEN and the witness NURWAHU PRADANA as a member of the Tanjung Perak Port Resort Police then the defendant and his evidence were taken to the District Police Office Port of Tanjung Perak for further inspection. For deeds the accused can then be charged with Article 480 of the criminal code (KUHP).

In the criminal act of detaining the perpetrator already knew or deserved suspected that the item or object was the result of a crime. Meanwhile, the motives of the recipients to act are almost always to enrich themselves with one or another that can't be allowed, so take advantage of other people's crimes. Recipients are always related to the goods obtained from evil". The problem is whether everyone who controls something results crime by buying can be punished under article 480 of criminal code (KUHP), for example due to ignorance and lack of understanding of someone so unintentionally possessing the proceeds of crime. Even because of the professi someone as a trader has bought goods resulting from crime, with normal price according to market price, can it be blamed.

Sub Title

A. Criminal Liability for Criminal Offenders Hand Phone Retention Result of a Crime Based Decision Number 1870/Pid.B/2022/PN Surabaya

1. The Form of the Actor Who Committed the Criminal Act of Collection

Dividing a group of objects or people in certain types or classify can be very diverse at will that classifies or classifies, that is, on the basis of what desirable, so is the case with criminal acts. The Criminal Code (KUHP) itself has classify criminal acts or delicts into two major groups, viz in the second



book and the third book they become crime groups respectively and violations. Then the chapters are grouped according to the target to be protected by the Criminal Code (KUHP) against such criminal acts. For example Chapter I the second book is crimes against state security, thus this is a group of crimes whose target is state security.

a. Crimes and Offenses

The Criminal Code (KUHP) places crimes in the Second Book and Offenses in Third Book, but no explanation of what constitutes evil and violations. Everything is left to science to gives the basics, but it seems nothing is complete satisfying.

Trying to distinguish that crime is a *rechtsdelict* or *delict law* and violation is a *wet delict* or *statutory delict*. Offense law is breaking the law such as murder, injuring another person, steal, and so on. While the *delict of the law* violates what determined by law, for example, the requirement to have a driver's license for those who drive motorized vehicles on public roads, or wear helmet when riding a motorcycle. Here it is not stuck at all justice issue.

b. Formal Offenses (Formal) and Material Offenses (Material)

In general, the formulation of offenses in the Criminal Code (KUHP) is a formulation that completed, that is, the deed done by the perpetrator. Formal offenses are offenses which is considered completed by doing the deed, or by In other words, the emphasis is on the action itself. Not questioned whether his actions, while the consequences only constitute accidental (accidentally). An example of a formal offense is a case of theft Article 363 of the Criminal Code (KUHP). In this article it is forbidden to take other people's things with invalid. The action is taking. With the completion of the deed theft occurred.¹

Regarding the form of the criminal act of receiving money, the Criminal Code (KUHP) has also placing the form of the crime of collection as a crime in the book second article 480 of the Criminal Code (KUHP) which

¹ Samidjo, Introduction to Indonesian Law, (Bandung: Armico, 2008), p.157



reads: “With a maximum imprisonment of four years and a maximum the amount of Rp. 900,- punished:

1. Because of a conspiracy, whoever buys, rents, exchanges, receives pawning, accepting gifts, or for profit, selling, rent, exchange, pawn, transport, store or hide something, which is known or should be. It must be suspected that it was obtained from the crime of collection.
2. Whoever benefits from the results of something, that is known or should reasonably be presumed to have been obtained from crime.

Regarding the article above, R. Soesilo in his book entitled The Book of Laws The Criminal Code and its Comments are complete article by article say that:

1. The so-called "conspirator" or also known as "cistern". actually only the acts mentioned in sub 1 of this article.
2. The actions mentioned in sub 1 are divided into two parts:
 - a. Buy, rent, accept exchange, accept mortgage, receive as a gift (no need to make a profit) something that he knows or reasonably expects to have obtained because of crime.
 - b. Sell, exchange, pawn, carry, store or hide, with the intention of making a profit, something goods which he knows or reasonably suspects were obtained because of crime.
3. An important element of this article is that the suspect or defendant must know or should be able to presume that the goods originate from crime. Here the defendant does not need to know with certainty the origin of the goods from what crimes (theft, embezzlement, fraud, extortion, money fake, or others), but it is enough if he deserves it thought (thought, surmised, suspected) that the item was not goods "bright" / legal. To prove this element is indeed somewhat difficult, but in practice it can usually be seen from the circumstances or how to obtain the goods, for example purchased at a price below normal price / market or below fairness.
4. Goods originating from crime, for example originating from theft, embezzlement, fraud, counterfeiting money, etc. So if the item is purchased with circumstances or how to buy is not reasonable, and the



price of the item is far than the price it should be, then as a buyer it should be knew or reasonably suspected/suspected that the goods were likely it comes from evil.

B. Criminal Liability for Criminal Offenders Hand Phone Retention Result of a Crime Based Decision Number 1870/Pid.B/2022/PN Surabaya.

Law is formed and develops as a product at the same time influencing, and therefore reflecting the dynamics of that interaction proces continuously between various social realities (aspirations, human, religious beliefs, social, economic, political, moral, cultural conditions and civilization within natural boundaries) with one another confronting human awareness and appreciation of reality that society, which is rooted in the view of life that is adopted as well the interests of real human needs, so that the law and its legal order dynamic.²

Related to the case that the author takes Criminal Liability Retention of Cell Phones Result of a Crime Based on Decision Number 1870/Pid.B/2022/PN Surabaya, That he was accused by SAMSUL Bin P RU'I on Thursday May 12, 2022 at around 10.00 WIB or at least at another in May 2022 or at least in 2022 taking place at Warkop area Jl. Tempurejo Surabaya or at least somewhere which is still included in the jurisdiction of the Surabaya District Court which authorized to adjudicate has committed “whoever buys, offers, exchange, accept pledges, receive gifts, or to withdraw profits, sell, rent, exchange, pawn, transport, store or hide something, which is known or should be allegedly, that was obtained from the crime "the act which was committed by the defendant in the following way:

- a. Starting on Sunday 03 July 2022 at around 12.00 WIB on when the defendant was at Warung Giras Putra Jl. Sidoyoso 1 Surabaya, then the defendant was visited by the child witness FADHILLAH NUR SALAM Bin the late ABD GREETINGS then offered 1 (one) OPPO Type Brand Mobile Phone A54 black crystal color to the defendant. Then the defendant bought 1 (one) OPPO Type A54 black crystal cellphone by

² Alvi Syahrin, *Several Legal Issues*, (Medan: Sofmedia, 2009), p.3



exchanging with the defendant's cellphone, namely 1 (one) unit The defendant's OPPO A5 2020 cellphone was added to the amount of money 200.000 IDR (two hundred thousand rupiah).

- b. That at that time the defendant bought 1 (one) brand cell phone The OPPO Type A54 black crystal is not equipped with doosbook as well as receipts and legal sale and purchase documents.
- c. Then on Friday 08 July 2022 at around 21.00 WIB on when the defendant was at Warung Giras Putra Jl. Sidoyoso 1 Surabaya, the defendant was arrested by the witness AHMAD ZEN and the witness NURWAHU PRADANA as a member of the Tanjung Port Resort Police Silver then the defendant and his evidence were brought to the Office Tanjung Perak Port Resort Police for further investigation.

Based on the case above that the defendant is capable of being responsible, because the defendant does not belong to a state of mental disability growth or disturbed due to disease as stipulated in Article 44 of the Criminal Code (KUHP)

Next is related to the error that the error made the defendant is the act of buying, renting, exchanging, accepting mortgage, accept gifts, or withdraw profits, sell, rent, exchange, pawn, transport, store, or hide something that is known or should reasonably be presumed to have been obtained from the crime of extortion. The defendant SAMSUL BIN P RU'I bought goods that were should be suspected of proceeds of crime.

So that the actions of the defendant can be charged with Article 480-1 Criminal Code (KUHP). The elements of Article 480 1 of the Criminal Code are as follows:

- a. Whoever buying, offering, exchanging, accepting pledges, receiving gifts, or for profit, sell, rent, exchange, mortgage, transport, store or hide something objects, which are known or should reasonably be suspected, that are obtained from crime.
- b. That whoever means whoever the person is as the subject perpetrators or legal subjects who commit criminal acts, and accountability. In this case



before the court and was charged with committing a crime was the Defendant SAMSUL BIN P RUI whose identity is clearly described in the indictment Public Prosecutor and recognized by the person concerned and during the trial examination took place, the defendant was able to answer all questions raised by the Panel of Judges and the Public Prosecutor fine and smooth. Therefore all the actions of the accused can accounted for by the defendant himself and was not found there is a reason for the elimination of punishment from all actions committed by the defendant, thus this element has been legally proven and legally enforceable.

- c. Buying, offering, exchanging, accepting pledges, receiving gifts, or for profit, sell, rent, exchange, mortgage, transport, store or hide something objects, which are known or should reasonably be suspected, that are obtained from crime:

1) That from the fact that on Sunday July 3, 2022 at around 12.00 WIB The Defendant was at Warung Giras Putra Jl. Sidoyoso 1 Surabaya, visited by child witness FADHILLAH NUR SALAM Bin the late ABD SALAM then offered 1 (one) OPPO Brand Mobile Phone Type A54 black crystal color. Then the Defendant exchanged OPPO Type A54 brand cellphone, crystal black color with HP owned The defendant was the OPPO A5 2020 cellphone brand by adding money 200.000 IDR (two hundred thousand rupiah).

2) That the OPPO Type A54 black crystal color cellphone belongs to witness DYAH KARTIKA FADILAH MAUL, who disappeared on Wednesday June 29 2022 is known at 03.00 WIB, in the house platuk Donomulyo 2/12 Surabaya being cashed in the kitchen.

The fact that when the Defendant exchanged the HP, no there is a container, where Fadhillah Nur Salam was still a child, facts This shows that the Defendant carried out the collection by means of exchange his cellphone with a stolen cellphone, thus all the elements of Article 480 1st of the Criminal Code have been fulfilled by the actions of the defendant, the indictment was legally proven and legal assurance.



C. Legal Considerations of Judges in Deciding Offenders Criminal Hand Phone Retention Result of a Crime Based on Decision Number 1870/Pid.B/2022/PN Surabaya

The Surabaya District Court examines and adjudicates cases The criminal justice system has handed down a decision in the case of the defendant Samsul bin P Ru'I born in Surabaya Surabaya City, Age 45 Years, new address Cotton 6/7, RT, 12, RW. 07, Ex. New Middle Cotton, Kec. Tambak Sari Surabaya City, Islam Religion and coffee shop clerk jobs.

Bearing in mind the articles of the applicable laws and regulations and other provisions related to this case, especially article 480 1st of the Criminal Code regarding Retention, hereby tries the defendant Samsul bin P Ru'I as follows:

- a. Declare that the Defendant SAMSUL BIN P RU'I is proven guilty legally and convincingly guilty of committing a crime fencing.
- b. Sentenced a sentence against the Defendant with imprisonment for 6 (six months).
- c. Declare the period of arrest and detention to be reduced entirely of the sentence imposed.
- d. Ordered the accused to remain in custody.
- e. State the evidence in the form of:
 - 1 (one) OPPO Type A54 black crystal cellphone.
 - 1 (one) black OPPO Type A54 cellphone doosbook
 - crystal.
 - 1 (one) blue Type A5S cellphone doosbook.
 - Returned to witness An. Dyah Kartika Fadilah Maul.
- f. Burdened the Defendant to pay court fees of 2000 IDR (two thousand rupiah)



D. Legal Considerations of Judges in Deciding Offenders Criminal Hand Phone Transfer Result of a Crime Based on Decision Number 1870/Pid.B/2022/PN Surabaya

The judge's considerations in imposing a sentence on a case of action the crime of receiving a mobile phone as a result of a crime in the decision 1870/Pid.B/2022/PN Surabaya, based on several considerations, the judge in matters of examining and passing a decision based on the indictment. After the judge read the contents of the indictment, the judge could not determine whether or not the defendant has committed a crime so that The panel of judges has yet to make a decision. Therefore, for get the conviction to decide this case, the panel of judges taking into account the evidence and juridical considerations in this case.

E. Author Analysis

After paying attention to the verdict, it appears that the judge took it consideration in making a decision against the accused was very appropriate. The basis for the judge's consideration in making a decision is based on juridical facts revealed in court and by law stipulated as the intended thing, among others, is the indictment The Public Prosecutor, the statements of the accused and witnesses, the elements of the offense charged.

In this case the defendant was charged with Article 480 1 of the Criminal Code regarding collection. After that the panel of judges considered whether there were other reasons to be the basis to abolish the crime against the accused, both for excuses and excuses justification reasons. However, in this case the Panel of Judges did not find the basis for abolishing the sentence against the accused. Hence the accused must be held accountable for his actions. In case This decision handed down by the Panel of Judges to the defendant was lower than demands of the Public Prosecutor, this is due to the existence of things that mitigating for the defendant who became the consideration of the Panel of Judges in pass judgment.



The mitigating factors for the defendant in this case include: is:

- a. The defendant regretted his actions.
- b. The defendant was not complicated in giving testimony.

Based on the things mentioned above and accompanied by the facts that were revealed at trial, as well as the criminal charges of the public prosecutor and criminal threats from the offense in question is related to the function and purpose of punishment, then the Panel of Judges held deliberations and argued that the crime The decisions made are deemed appropriate and in accordance with taste Justice then passed the verdict

Conclusion

Based on the description of the author above, the authors draw conclusions as following :

1. Criminal responsibility of perpetrators who commit criminal acts Receiving mobile phones resulting from a crime in case No 1870/Pid.B/2022/PN Surabaya must first fulfill the elements in 480 ke-I of the Criminal Code(KUHP) and in this case that the defendant has complied the elements of article 480 of the Criminal Code (KUHP). In relation to the case in case Number 1870/Pid.B/2022/PN Surabaya which the author takes that the defendant is capable responsible, because the defendant was not included in the circumstances the soul is crippled in development or disturbed by disease as stipulated in article 44 of the Criminal Code (KUHP). Further related to guilt that the guilt committed by the defendant is an act buy, rent, trade, accept a pledge, receive a gift, or profit, sell, lease, exchange, mortgage, transporting, storing, or hiding any object, that is known or should reasonably be suspected to have been obtained from a crime fencing.
2. Consideration of judges in imposing criminal sanctions on perpetrators Hand Phone transfer resulting from a crime in case No 1870/Pid.B/2022/PN Surabaya is in compliance based on the description of the information the witnesses and testimony of the accused as well as any considerations juridical considerations, mitigating matters and other matters incriminating the



defendant, as well as paying attention to the law related to and strengthened by the conviction of the judge.

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