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LAW ENFORCEMENT OF THE CRIME OF PERSECUTION TOGETHER COMMITTING VIOLENCE IN THE ACT OF VIGILANTE (*EIGENRICHTING*)

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Abstrac: The phenomenon of abuse, both physical and psychological, has become a common problem that can occur in various environments, including households, public places, and others. In Indonesia, the regulation regarding the act of vigilante (*eigenrichting*) in the Criminal Code has not been specifically regulated. However, this does not mean that the Criminal Code cannot be applied in such cases. Victims of abuse can report such acts to the authorities based on the provisions of Articles 351, 358, 170, and 406 of the Criminal Code. This study uses normative legal methods to collect data related to this problem, by utilizing secondary data that includes primary, secondary, and tertiary legal materials, as well as primary data as support. Data analysis was carried out with a qualitative juridical approach. The results of the study show that in practice, vigilante cases accompanied by persecution often do not provide a deterrent effect for the defendant. This causes victims to continue to experience injustice, considering that these actions can have fatal consequences, including permanent disability or even death. As such, it is important to pay attention to stricter enforcement of the law against vigilante acts and persecution so that justice can be served and victims receive the protection they deserve.

Keywords: : Law Enforcement, Persecution, Vigilante

1. Introduction

Humans have an instinct to live in friendship and live together with others in mutual cooperation. Every human being has physical and mental needs that are difficult for him to meet alone. He needs to eat, drink, have a family and move peacefully, and so on. To meet the needs and interests of the people, they establish relationships and cooperate with others by organizing various ways.¹ In an effort to adjust to the environment (social environment), a person or a certain group of people needs what is called culture. Human self-adjustment to the environment includes the natural environment where there are countless natural

¹ Miriam Budiardjo, *The Basics of Political Science*, (Jakarta: PT Gramedia Pustaka Umum, 2005), p. 33.

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resources. Thus, human self-adjustment to existing natural resources will bring benefits to their lives.²

If someone hits a chair, for example, there will be no social interaction because it will not react and affect the person who hit it. Social interaction would not be possible if humans had a direct relationship with something that had no effect on their nervous system at all, as a result of the relationship. The course of an interaction process is based on various factors, including imitation, suggestion, identification and sympathy.³ It should be noted that the state of Indonesia is a state of law in accordance with Article 1 paragraph 3 of the Constitution of the Republic of Indonesia of 1945. Therefore, the Indonesian state is based on law (*Rechstaat*), not based on mere power (*Machstaat*). As a state of law, the constitutional principle that must always be put forward is the guarantee of legal equality in the judicial process. The principles of the state of law demand, among others, the guarantee of equality *before the law*. Therefore, the 1945 Constitution of Indonesia also stipulates that everyone has the right to fair legal recognition, guarantee, protection and certainty as well as equal treatment before the law.⁴

Everyone is considered to know or understand the existence of applicable laws and regulations. Therefore, every person who is able to give criminal responsibility cannot use the excuse that he is not aware of the existence of a regulation or law with the threat of punishment for the acts that he has committed. Not knowing or not understanding the existence of a law is not a reason to exclude prosecution or even a reason to ease punishment.⁵ Lately, our beloved country Indonesia, there are a lot of events that make it sad and sad to see, the reason is the increasing number of cases of vigilante among the

² Suhermanto and Sapto Handoyo DP, *Diktat Introduction to Sociology of Basic Material Collections*, (Bogor: FH UNPAK, 2012), p. 14.

³ Soerjono Soekanto, *Sociology of an Introduction*, (Jakarta: PT RajaGrafindo Persada), 1982, p. 61

⁴ Muhammad Nuh, *Ethics of the Legal Profession*, (Bandung: Pustaka Setia), 2011, p. 270.

⁵ Mustafa Abdullah and Ruben Achmad, *Intisari Hukum Criminalana*, (Jakarta: Ghalia Indonesia, 1983), p. 39.

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community. It is so easy for people to do their own act of vigilance. Every time there is an act of vigilante by citizens, the police are the law enforcement officers who are most troubled.

In many cases, residents only reported the incident after the battered victim even died at their hands. The residents' rampage again reminded that the community needs certainty of law enforcement by the authorities. The number of cases of violence and vigilante itself shows the weak problem solving by the Government. The rise of violent cases has also further lowered public trust in the context of law and national security. The government and the public are asked not to allow the pattern of vigilante to continue, because if it continues to be allowed, the law of the jungle will apply, where the strong prey on the weak.

The vigilante attitude itself correlates with the low quality of law enforcement. People are stressed and frustrated: seeing cases of theft is common, acts of violence are increasing and later violence and sexual crimes, especially against minors, are already in an emergency. Observers assessed that the act of vigilante itself was caused by many things, including the public's distrust of the authorities' firmness in enforcing the law.⁶ As an order that aims to regulate human life, the law contains values and norms that must be carried out by society, if the provisions in the law are violated, there will be legal deviations resulting in the law not functioning properly. Acts that often occur as a form of legal deviation in society are acts of vigilante (*eigenrichting*).⁷

In connection with the matters described, the author examined 2 (two) decisions at the Cibinong District Court Class 1 A, each with decision number 175/Pid.B/2021/PN. Cbi and 399/Pid.B/2021/PN. Cbi. In the first verdict with the decision number: 175/Pid.B/2021/PN. The CBI has a legal event related to the criminal act of persecution by jointly committing

⁶<https://blog.unnes.ac.id/yuliawati/2017/11/30/analisis-kasus-berita-ketika-masyarakat-sudah-main-hakim-sendiri-negeri-ini-di-ujung-kehancuran/>, (Accessed 10/10/2024, 20.00 AM)

⁷ Abdul Kholik, "Law Enforcement Efforts on Vigilante Actions (Case Study in Sedari Village, Karawang Regency)", ISSN Legal Justice Journal 2528-2638 Vol 2, No. 2, Year 2021.

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violence in the act of vigilante (*eigenrichting*). The chronology of the incident is that on March 6, 2020 at 23:00 WIB, defendant I (Ridwan Junaidi Alias Boski, son of Asep Rimaman Alm), came with defendant II (Rizki Mawardi, son of Asep Rimaman Alm) and friends of defendant I (Ridwan Junaidi Alias Boski, son of Asep Rimaman Alm) and Defendant II (Rizki Mawardi, son of Asep Rimaman Alm) approximately (fifteen) people riding motorcycles, and parking on the side of the road in front of Izi's witness house which has no fence. Defendant II (Rizki Mawardi, son of Asep Rimaman Alm) entered the yard of the witness Izi's house saying "why did you make a fuss in the cave's house", witness Izi replied "I only asked for an electric bicycle but was thrown a plate".

Then suddenly defendant I (Ridwan Junaidi Alias Boski, son of Asep Rimaman Alm) climbed onto the bench and hit the head of the witness Izi with an iron stick 2 (two) times which hit the right hand and left hand of the witness Izi because the witness Izi fended off the defendant's attack. Defendant I (Ridwan Junaidi Alias Boski, son of Asep Rimaman Alm) then retreated and gave his iron rod to defendant II (Rizki Mawardi, son of Asep Rimaman Alm) who immediately hit witness Izi 2 (two) times, where the first hit the left arm of witness Izi and the second was successfully avoided by witness Izi. Then the friends of defendant I and defendant II, Mr. X. (DPO), also beat witness Izi with an iron rod 3 (three) times.⁸ Based on the description, the defendants' actions are formally contrary to Article 170 paragraph (1) of the Criminal Code and also materially contradictory because the act of vigilante (*eigenrichting*) is an act that is not allowed for any reason because it has denied the position of the law enforcement agency which should be a means for defendant I (Ridwan Junaidi Alias Boski, son of Asep Rimaman Alm) and defendant II (Rizki Mawardi, son of Asep Rimaman Alm) to defend his interests towards the victim.

⁸ Decision of the Cibinong District Court Class 1 A Number: 175/Pid.B/2021/PN. Cbi, Year 2021.

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Furthermore, the second researcher examined the verdict with the decision number: 399/Pid.B/2021/PN. Cbi. In the verdict, there is a legal event related to the criminal act of persecution jointly committing violence against people. The chronology of the incident is that defendant I Jamal Mahfud alias One bin H. Muhamad Achyat together with defendant II Alfiandi alias Al Bin Marsudi on Tuesday, June 15, 2021 at approximately 15:30 WIB or at least at any other time in 2021 at Kp. Panjaungan Batu Tulis Village, Nanggung District, Bogor Regency or at least in other places that are still included in the jurisdiction of the Cibinong District Court which is authorized to examine and Judging this case, openly and with joint force using violence against persons or goods, the defendants committed the act in the following ways:

That at such a time and place, the defendants using a carry-on public transportation, blue and silver, Police Number F 1241 N approached Witness Ishak Natalis who was sitting in a fried food stall wearing a t-shirt and shorts. That then defendant I Jamal Mahfud alias one told the witness "I still remember me", then the witness replied "I don't remember" then defendant II Jamal Mahfud alias One Bin H. Muhamad Achyat pulled the witness's t-shirt then defendant II Alfiandi alias Al Bin Marsudi said "if it doesn't come off I will slam it with a wheel lock, quickly take it off" then the witness took off his t-shirt and shorts and pulled into the public transportation, then the witness sat in the back seat by defendant II Alfiandi alias Al Bin Marsudi.

That after the witness in the next public transportation the defendant I Jamal Mahfud Alias One Bin H. Muhamad Achyat hit the witness with his right hand on the witness's right temple 1 (one) time and kicked with his right foot 1 (time) and defendant II Alfiandi alias Al Bin Marsudi kicked the witness hit the witness in the head and hit the witness with a wheel lock and hit the witness's right back 1 (one) time. Furthermore, the defendants left the place using a blue and silver carry brand angkot Police Number F 1241 N. The actions of the

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defendants were as regulated and criminally threatened in article 170 paragraph (1) of the Criminal Code.

That the element of "joint personnel" means that the perpetrator consists of two or more people, where among the perpetrators have the awareness that they are or more, where among them the perpetrators have the awareness that they are cooperating. That in article 170 (1) of the Criminal Code, it does not require that all perpetrators must all commit violence but only one person who commits violence, as long as the perpetrator's friends have the awareness that they are cooperating, no matter how light their role, are also classified as joint personnel. That from the Jurisprudence of the MARI Decision No.916.K/PID/1989 dated June 17, 1989 it states that "for article 170 of the Criminal Code, the role of each participant is not relevant, it is enough to participate in committing something violent no matter how light the role".⁹

2. Method

The approach is descriptive analytical, the specification of the research is carried out using descriptive, which is a research method aimed at describing existing phenomena that are taking place in the present or in the past. The collection of legal sources in this normative juridical research is from various legal sources, which consists of primary legal materials such as the Cibinong District Court Class 1 A Decision with decision number 175/Pid.B/2021/PN. Cbi. and the Decision of the Cibinong District Court Class 1 A with decision number 399/Pid.B/2021/PN. The CBI, secondary legal materials, includes all publications on law that are not text documents, legal journals and commentaries on court decisions, Tertiary legal materials, includes materials that provide information on primary

⁹ Decision of the Cibinong District Court Class 1 A Number: 399/Pid.B/2021/PN. Cbi, Year 2021.

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legal materials and secondary legal materials. The materials used in this study are legal dictionaries and encyclopedias. The data collection technique used is library research.

3. Analysis or Discussion

A. Regulations regarding the crime of persecution that is carried out jointly to commit violence against people

Before discussing the regulation of the crime of persecution that is committed jointly to commit violence against people, it should be noted that if we talk about legal regulation, it will lead to legal certainty. Legal certainty as one of the legal goals can be said to be part of efforts to realize justice. The real form of legal certainty is the implementation or enforcement of the law on an action regardless of who did it.

With legal certainty, everyone can estimate what will be experienced if they take certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination. The word "certainty" is closely related to the principle of truth, which is something that can be strictly synogized legally. Through deductive logic, positive legal rules are placed as the major premise, while concrete events become the minor premise.

Through a closed logic system, conclusions can be immediately obtained. That conclusion must be something predictable, so everyone is obliged to stick to it. With this hand, the community becomes orderly. Therefore, certainty will lead the community to order. Legal certainty will ensure that a person behaves in accordance with the applicable legal provisions, on the other hand, without legal certainty, then a person does not have standard provisions in carrying out behavior. Thus, it is not wrong for Gustav Radbruch to put forward certainty as one of the purposes of law.

In the system of public life, it is closely related to certainty in the law. Legal certainty is in accordance with the normative nature of both the provisions and the

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judge's decision. Legal certainty refers to the implementation of a life system that in its implementation is clear, orderly, consistent and consequential and cannot be influenced by circumstances that are subjective in people's lives.

Legal certainty is a question that can only be answered normatively, not sociologically. Normative legal certainty is when a regulation is made and promulgated definitively because it regulates clearly and logically. It is clear in the sense that it does not cause doubt (multi-interpretation) and logical in the sense that it becomes a norm system with other norms so that it does not clash or cause a conflict of norms. Norm conflicts arising from rule uncertainty can be in the form of norm contestation, norm reduction, or norm distortion.

Gustav Radbruch stated 4 (four) basic things related to the meaning of legal certainty, namely:

1. First, the law is positive, meaning that the positive law is a law.
2. Second, that the law is based on facts, meaning that it is based on reality.
3. Third, that the facts must be formulated in a clear way so as to avoid errors in interpretation, besides being easy to implement.
4. Fourth, the positive law must not be easily changed.

The legal rules regarding criminal acts have a different structure from the rules on how to react to those who violate them. This means that enforcement of these obligations requires an application program called the criminal liability system. Rules regarding criminal liability are not standards of behavior that must be obeyed by the community, but regulations on how to treat those who violate these obligations. In this relationship, fault is a determining factor for criminal liability.

Whether or not there is a mistake is especially important for law enforcement to determine whether a person who commits a criminal act can be held accountable and therefore deserves to be punished. In other words, the rules of criminal law that

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determine the existence of criminal acts are *primary rules*, while criminal liability is defined in *secondary rules*. Therefore, from this point of view, criminal acts and criminal liability should be separated.¹⁰

If it is associated with the regulation of the criminal act of persecution committed jointly to commit violence against persons in 2 (two) decisions, namely decision number: 175/Pid.B/2021/PN Cbi and decision number: 399/Pid.B/2021/PN Cbi, that in decision number: 175/Pid.B/2021/PN Cbi, the public prosecutor charged the defendants with alternative charges, namely with the first indictment Article 170 paragraph (1) of the Criminal Code and the second indictment is Article 351 paragraph (1) of the Criminal Code jo. Article 55 paragraph (1) 1 of the Criminal Code.

From the position of the case above, it can be seen that in the case of the criminal act of persecution that is committed jointly to commit violence against persons and in its consideration the Panel of Judges looks at the facts of the law and directly chooses the first alternative indictment as stipulated in Article 170 paragraph (1) of the Criminal Code, the elements of which are as follows:

1. Any Element;
2. Elements in a clear way and;
3. With a joint force, they commit violence against people or goods.

In connection with the two district court decisions mentioned above, namely the District Court Decision Number: 175/Pid.B/2021/PN Cbi and the Cibinong District Court Decision Number: 399/Pid.B/2021/PN Cbi, if connected in the application of analysis wrapped in the theory of legal certainty from Radbruch, it is relevant and meets three aspects, namely justice, finality and certainty. In a state of law, the state and individuals must stand on *equal footing*. The state will be strong if the people are

¹⁰ Chairul Huda, *From No Crime Without Fault to No Criminal Responsibility Without Error A Critical Review of the Theory of Separation of Crime and Criminal Responsibility*, (Jakarta: Kencana Prenada Media Group, 2006), p. 19.

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also strong. State power is limited by human rights. All state acts are restricted and regulated by law. The Constitution limits the power of the state.

The state is restricted in human rights so as not to violate or abuse power (*abus de pouvoir*), let alone paternalistic. The society considers itself to be subordinate to the state and therefore must serve the state that holds power. In addition, the state that holds power is also served by the community (*primus inter pares*). When the state represented by the Government considers itself the superior of the Society at that time, there will be an abuse of power and the arbitrary use of state power.

In a country, the law that governs is the law or the law and not the people. Therefore, all state acts are regulated by law. The laws made must be fair and humane. Fair and equitable laws can be created if they are made by the people, from the people and for the people.

The law is above everything including the state, this is what is called the rule of law. To prevent the abuse of power and the arbitrary use of state power, state power must be divided into three (*Trias Politica*), namely executive power, legislative power, and judicial power. The power supervises each other (*checks and balances*).¹¹

B. Law Enforcement Regarding the Crime of Persecution Together Committing Violence in Acts of Self-Vigilance (Eigenrichting) According to Indonesian Criminal Law

Criminal law is seen as a reaction to acts or people who have violated moral norms and laws and therefore have threatened the foundations of government, law, order and social welfare. The perpetrators of crimes are considered to have disregarded the public

¹¹ Frans Hendra Winata, in *Indonesia the right to be accompanied by legal counsel for all citizens*, (Jakarta: PT. Elex Media Komputindo, 2011), p. 125.

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welfare, security and property rights of others. In the above view, evil precedes the law. First of all, there are acts that are considered to be very detrimental to society.

Then came criminal law that aimed to protect the interests of the community that had been or would be harmed by certain people. Here, the analysis of crime and the implementation of criminal justice (*the administration of criminal justice*) accepts without criticism the existence of behavior that must be prohibited, because it threatens the welfare of the community, and the sanctions given through the criminal law are intended to protect society as a whole.

The criticism conveyed above certainly affects the understanding of law enforcement. And furthermore, this understanding will also affect the critical attitude of the public about the success of the criminal justice system in enforcing the law and tackling crime. The task of monitoring behavior that is more detrimental than "street crime", lies in the making of laws. In a broad sense, law enforcement must also include the vigilance of lawmakers about the existence of acts in society that have not been netted by the existing criminal justice system. Either because of the loopholes in the criminal law that allow the perpetrator to evade criminal sanctions, or because the law itself has consciously, but unfairly, sided with powerful groups by not formulating these acts as crimes.

Talking about law enforcement regarding the crime of persecution together committing violence in the act of vigilante (*eigenrichting*) according to Indonesian criminal law, the perpetrators of these criminal acts can be burdened with responsibility for the actions that have been committed. Referring to Article 170 of the Criminal Code, it regulates legal sanctions for perpetrators of violence against people or goods in public. If we can say that this article is a combination of Article 351 of the Criminal Code concerning persecution and Article 55 of the Criminal Code concerning participating in committing an act.

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However, when compared, of course, the meaning or purpose desired by Article 170 of the Criminal Code is different from Articles 351 and 55 of the Criminal Code. It is necessary to be careful in the application of this article, because it can touch the provisions of Article 351 of the Criminal Code. Therefore, investigators often make this article *in conjunction with* 351 of the Criminal Code and at the level of prosecution the public prosecutor often uses alternative types of indictments, where later the judge can directly choose to determine which indictment is suitable and in accordance with the results of the evidence at trial.¹²

If it is associated with law enforcement regarding the crime of persecution jointly committing violence in the act of vigilante (*eigenrichting*) according to Indonesian criminal law in 2 (two) decisions, namely decision number: 175/Pid.B/2021/PN Cbi and decision number: 399/Pid.B/2021/PN Cbi, that in decision number: 175/Pid.B/2021/PN Cbi, the public prosecutor charged the defendants with alternative charges, namely with the first indictment Article 170 paragraph (1) of the Criminal Code and the second indictment is Article 351 paragraph (1) of the Criminal Code jo. Article 55 paragraph (1) 1 of the Criminal Code.

The act of vigilante itself (*eigenrichting*) is an act that is not allowed for any reason because it has denied the position of the law enforcement institution which should be a means for the Defendants to defend the interests of the victims and the actions of the Defendants are certainly not exemplary acts, because they are very contrary to the sense of propriety of the community. The Panel of Judges should give a fairer verdict so that it will have a deterrent effect on the Defendants.

¹² Sumardi Efendi "The Crime of Self-Righteousness (Eigenrichting) According to Positive Law and Fiqh Jinayah", Journal of Islamic Laws and Criminal Law Vol. 5 Edition I 2020, Pages 53-71 P-ISSN: 2527-9424 E-ISSN: 2614-7971, Year 2022.

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In connection with the two district court decisions mentioned above, namely the District Court Decision Number: 175/Pid.B/2021/PN Cbi and the Cibinong District Court Decision Number: 399/Pid.B/2021/PN Cbi, if connected in the application of analysis wrapped in law enforcement theory from Prof. Sudarto, S.H. is relevant, considering that the Panel of Judges has decided the two criminal cases mentioned above on the legal basis contained in the Criminal Code and the Criminal Code and supported by the applicable rules and the confidence of the Panel of Judges in deciding the case.

That is very related to the views of Prof. Sudarto, S.H, regarding law enforcement, according to him law enforcement is very broad, not only related to actions, especially if there is already or there is a suspicion that a crime has occurred, but also maintains the possibility of crime. In enforcing (again) the (authoritative) law, we should focus especially on the sub-system of the court, because in this sub-system there are legal processes that concern three legal professions, namely lawyers (legal advisors), prosecutors and judges. We often hear the phrase "the court as the last bastion of justice". The judicial process indeed aims to provide justice or equity by equalizing all people before the law (*equality before law*). Criticism and lack of trust in the court essentially contain accusations of injustice, a claim that the court cannot "correct wrong". Even more severe, the legal profession (lawyers, prosecutors and judges) who work in the courts are accused of having committed acts that violate professional ethics (*unethical*) or that violate the law (*illegal*).

The above allegations have a heavy impact on the Indonesian criminal justice system. If what is accused or sued is true and often happens (which is a "habit"), then this is a failure of the courts and the Indonesian legal system to provide justice. Such failures (if this is true) cannot be solely blamed on individuals (it is our "habit" to look for "scapegoats"). We must dare to admit that as a result of the "stuck" (there is a "*break down*" in) the system, which therefore cannot function properly. The built-in *control* that

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was supposed to be able to overcome the "bottleneck" turned out to be not working. As described above, the congestion in this sub-system of courts does not always come from within the sub-system itself. Maybe at first (the reason) started with another sub-system of the criminal justice system. However, due to the nature of this "connectedness", it is difficult to trace where this congestion started.

The problem becomes more complicated when we have to realize that the "criminal justice system" is really just a sub-system of a higher system. At a higher level we must also take into account the influence of the economic, technological, educational and political sub-systems. What must also be taken into account is that finally our social system has an impact on this (criminal) sub-system. Law enforcement that contains the principle of proportionality means that this enforcement is not only carried out by enforcing in terms of legal certainty, but also enforcing in terms of justice. This has the purpose of realizing balanced law enforcement, so a judicial system is needed.¹³

3. Conclusion

Based on the research carried out by the author, the author concludes as follows:

- A. Regulations regarding the criminal act of persecution that is carried out jointly and collectively committing violence against people can be charged with Articles 351 of the Criminal Code, 358 of the Criminal Code and 170 of the Criminal Code.
- B. Law enforcement regarding the crime of persecution together committing violence in the act of self-immolation (*eigenrichting*) according to Indonesian criminal law, especially in the Criminal Code, has not specifically regulated these acts. However, this does not mean that the Criminal Code cannot be applied at all if there is an act of vigilante (*eigenrichting*). Victims can report to the authorities, among others, the

¹³ *Op. cit.* thing. 347.

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basics of the provisions as stipulated in Articles 351 of the Criminal Code, 358 of the Criminal Code, 170 of the Criminal Code and 406 of the Criminal Code.

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