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**Redaktur Office**
Faculty of Sharia and Law UIN Syarif Hidayatullah Jakarta
Street Ir. H. Juanda 95 Ciputat Jakarta 15412
Phone. (62-21) 74711537, Faks. (62-21) 7491821
Website: www.fsh-uinjkt.net, E-mail: jurnal.citahukum@uinjkt.ac.id,
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Jurnal

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INDONESIAN LAW JOURNAL

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# The Implementation of Supreme Court Regulation Number 2 of 2012 concerning Limitation Adjustment of Mild Criminal Offenses and Amount of Fines in the Criminal Code Towards Handling of Minor Crime Cases*

**Abbas Sofwan Matlail Fajar,[1] Mara Sutan Rambe[2]**
[1]International Islamic University (IIU) Islamabad, Pakistan
[2]Universitas Islam Negeri Syarif Hidayatullah Jakarta, Indonesia

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**Abstract:**

The case of theft with a small value of goods which is now being tried in court is quite under public's spotlight, public are generally considering that it is very unfair if the cases are threatened with a penalty of 5 (five) years as determined in article 362 of the Criminal Code. Since the punishment is not comparable to the value of the stolen goods, these cases have also encumbered the court, both in terms of the budget and public perceptions of the court. After analyzing the problem, the authors concluded that the application of PERMA Number 2 of 2012 as for Adjustment of Light Crime Limits and the Amount of Mulcts in the Criminal Code has not been used as a Court or Judge as a material consideration or a reference to decide criminal acts whose goods value is below IDR 2,500,000.00 (two million five hundred thousand rupiah).

**Keywords**: Supreme Court Regulations, Mild Crimes, Fines

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[1] **Abbas Sofwan Matlail Fajar** is researcher at International Islamic University (IIU) Islamabad, Pakistan.
[2] **Mara Sutan Rambe** is a lecturer at Universitas Islam Negeri Syarif Hidayatullah Jakarta, Indonesia. E-mail: ***Corresponding Author**: mara.sutan@uinjkt.ac.id.

## Penerapan Peraturan Mahkamah Agung Nomor 2 Tahun 2012 Tentang Penyesuaian Batasan Tindak Pidana Ringan dan Jumlah Denda Dalam KUHP Terhadap Penanganan Kasus Tindak Pidana Ringan

***Abstrak:***

*Perkara pencurian dengan nilai barang yang kecil yang kini diadili di pengadilan cukup mendapat sorotan masyarakat. Masyarakat umumnya menilai bahwa sangatlah tidak adil jika perkara-perkara tersebut diancam dengan ancaman hukuman 5 (lima) tahun sebagaimana diatur dalam pasal 362 KUHP. Oleh karena tidak sebanding dengan nilai barang yang dicurinya, perkara-perkara tersebut juga telah membebani pengadilan, baik dari segi anggaran maupun dari segi persepsi publik terhadap pengadilan. Setelah melakukan analisa terhadap permasalahan, penulis berkesimpulan bahwa penerapan PERMA Nomor 2 Tahun 2012 tentang Penyesuaian Batasan Tindak Pidana Ringan dan Jumlah Denda dalam KUHP belum dijadikan pengadilan atau hakim sebagai bahan pertimbangan atau pun acuan untuk memutus tindak pidana yang nilai barangnya di bawah Rp. 2.500.000,00 (dua juta lima ratus ribu rupiah).*

***Kata Kunci:*** *Peraturan Mahkamah Agung, Tindak Pidana Ringan, Denda*

## Осуществление постановления Верховного суда № 2 от 2012 года, касающегося корректировки ограничений в отношении легких уголовных преступлений и размера штрафов в Уголовном кодексе в отношении рассмотрения мелких дел о преступлениях

***Аннотация:***

*Дело о краже с небольшой стоимостью товаров, которое сейчас рассматривается в суде, находится в центре внимания общественности, общественность, как правило, считает, что очень несправедливо, если этим случаям грозит штраф в 5 (пять) лет, как определено в статье. 362 УК РФ. Поскольку наказание несопоставимо со стоимостью похищенных товаров, эти дела также обременяют суд, как с точки зрения бюджета, так и общественного восприятия суда. Проанализировав проблему, авторы пришли к выводу, что применение PERMA № 2 от 2012 года в отношении корректировки пределов легкой преступности и количества элементов в Уголовном кодексе не использовалось в качестве суда или судьи в качестве материала для рассмотрения или ссылки на принимать решения о преступных деяниях, стоимость товаров которых ниже 2 500 000,00 (два миллиона пятьсот тысяч) рупий.*

***Ключевые слова:*** *постановление Верховного суда, легкие преступления, штрафы*

## Introduction

Criminal law is a jus that relies on sanctions. Therefore, in riding into the globalization era, law enforcement must pay attention and calculate the costs and results. In this case, the choice of prison sanctions should be chosen as a primary choice, it must be abandoned, for instance, prioritizing amercements to fulfill the results of use. Then, the choice of burdening fines must meet the interests of state order, society, individuals and the international community (Bakhri, 2009: 144).

The imposition of criminal punishment must always generate a feeling of justice. With the loading of criminal law, it is expected that the conflict will end, so that the objectives of criminal law will be achieved, those are welfare, peace, and balance in society. The aim of modern criminal law always heads to liberation, guidance and community protection. In the development of the criminal system, the purpose of criminal law rests on a variety of interrelated theories, but the most modern is the need for community protection oriented towards efforts to fix up perpetrators through rehabilitation, social adaptation, socialization. In addition, a balance or harmony of various values is needed which has disturbed by the existence of crime, so that the criminal goal is to restore the balance of society (Bakhri, 2009: 145).

The criminal law of a nation is a very essential indication to find out the nation's level of civilization because, in criminal law, it is implied how the nation's views on ethics (governance), society, and religious morals (Sudarto, 1990: 4). From the fundamental of this idea, there should be an update on the current criminal law in Indonesia. Renewal of criminal law is not only about fixing an existing law, as A. Radbruch stated that: "reforming criminal law does not mean correcting criminal law, but replacing it with a better one (Sudarto, 1990: 4).

In this regard, the update of criminal law essentially implies as an effort to carry out a reorientation and reform of criminal law in accordance with the socio-political, socio-philosophical and socio-cultural values of Indonesian society which underlie social policy, criminal policy and legal policy in Indonesia (Saleh, 1984: 45).

In this case, Indonesia is a country that is very sluggish to render changes to its national law. In the field of criminal law, the Criminal Code is the legacy of colonial products that are most talked about and highlighted; because it's very ancient and outdated. Therefore, seeking the establishment of the national Criminal Code in the framework of renewing Criminal Law which has rooted

in the socio-cultural values of the community becomes very urgent. The current criminal law system in some countries originating from foreign law during the colonial era is generally obsolete and unjust and is outmoded and unreal (Arief, 1998: 103).

Consequently, the backwardness of Criminal Code has affected the unsuitable articles with the current conditions, for example, the light theft limit settled in Article 364 of the Criminal Code is currently goods or money whose value is below IDR 250,- (two hundred fifty rupiah), this value is certainly inappropriate at this time. There are almost no items below IDR 250, - (two hundred and fifty rupiah), the amount of IDR 250, - (two hundred and fifty rupiahs) is a number determined by the Government and Parliament in 1960 through PERPPU Number 16 in 1960 which changed the criteria for several types of minor crimes in the Criminal Code such as "minor theft (Article 364), minor embezzlement ( Article 373), minor fraud (Article 379), fraud in buying and selling (384), and destruction of goods (Article 407 paragraph 1) from 25 guilders to IDR 250.00 (two fifty rupiahs) (Bakhri, 2009: 343).

Since 1960 until now, there are no stipulations that adjust the size of the prices of the goods that have increased in the Indonesian economy. Hence, this thing is used as an excuse for law enforcers to implement the loss of independence, compared to the provision of criminal penalties. One of the high judges at Pekanbaru High Court, in his experience as a judge said that: "Court has never imposed a fine for a crime determined in the Criminal Code, but what has been taken into consideration is the imposition of criminal sanctions or probation as an option in giving punishment other than imprisonment (Suharyono, 2012: 179).

Responding to these problems, the Supreme Court then issued a Supreme Court Regulation Number 2 of 2012 about the adjustment of Light Crime Limit and the Number of Fines in the Criminal Code. With the issuance of PERMA as a legal breakthrough by the Supreme Court to cover up the shortcomings and weaknesses in the Dutch Criminal Code, which many consider being "outdated."

**The Advantages of Supreme Court Regulation issuance Number 2 of 2012**

The Supreme Court is a highest judicial institution which has implementing Judicial Power of all judicial environments. "In executing its duties the Supreme Court is free from government influence, the influence of legislators and other external influences (Djohansyah, 2008: 19). As the judicial power holder in

Indonesia, its independence has the authority to decide how the law can be run in order to create justice for Indonesian people. As the executor of independent judicial power, the Supreme Court must also be able to absorb the aspirations of justice seekers in society. Hence, in carrying out its duties, the Supreme Court is given the authority to take the initiative to establish written regulations that are arranging, particularly in matters relating to the role and justice execution (Lumbuun, 2011: 146).

As the top-level of judicial institution, the Supreme Court has several functions to carry out its role, those are: "the function of adjudicating at the cassation level, the function of examining every statutory regulation under the law against the law and having other authorities granted by law in accordance with Article 24 A paragraph (1) of Indonesian's Constitutional of 1945 (Lumbuun, 2011: 3). In addition, there is a function to provide advice to other state institutions, the function of overseeing all the judicial institutions located under it, administrative functions and regulating functions. The regulatory function possessed by the Supreme Court creates an authority to issue Circular of the Supreme Court (SEMA) and Supreme Court Regulation (PERMA) (Panggabean, 2001: 78).

The function of the regulations issued by the Supreme Court is different in nature from the regulations compiled by the legislature as the legislators. The authority of the Supreme Court to issue regulations is only limited to the scope of procedural law. (Lumbuun, 2011: 147).

In Article 79 of Law Number 14 of 1985 as amended and supplemented by Law Number 5 of 2004 and Law Number 3 of 2009 determined that: "The Supreme Court can further regulate matters necessary for the continuity of judiciary operation if there are unregulated matters in law." Another example is the provision of Article 14 paragraph (4) of the Law Number 48 of 2009 regarding Judicial Power which expressly states that: "further arrangements about the judge's deliberation session are regulated through PERMA."

In tone with the two provisions of the law, the legislature has delegated authority as a formal basis for the Supreme Court to issue regulations aimed at facilitating the judicial administration. So that, the authority to render regulations is no longer fully monopolized from the legislative institution (Lumbuun, 2011: 150).

According to this, the Supreme Court has first issued a Supreme Court Regulation of the Republic of Indonesia on March 18, 1954 Number 1 of 1954 concerning Court Decisions. Then after more than 60 years post- independence,

the Supreme Court as one of the government administrators in the field of justice is still often faced with a lack of regulation by law in the field of procedural law, since the Indonesian government is still unable to complete procedural provisions adapted to community development (Lumbuun, 2011: 3).

As it has known that the current Criminal Code (KUHP) is the result of an adaptation of the criminal regulations that were valid during the Dutch East Indies. The practice of the Criminal Code was ratified through Law Number 1 of 1946 concerning Indonesian Criminal Law Regulations. The value of the case object in the articles of minor criminal offenses at that time was only IDR 25.00 (twenty-five rupiahs). "In 1960, the government issued two Government Regulations Substituting the Law (Perppu) which regulated the adjustment of the object value of the case and the fine in the Criminal Code (Angraini, 2014: 49).

Perppu Number 16 of 1960 concerning a number of Amendments in the Criminal Code changes the nominal value of cases in articles of minor criminal offenses to IDR 250.00 (two hundred fifty rupiah). The intended criminal offenses are Article 364, 373, 379, 384, 407 paragraph (1) and 482 of the Criminal Code. Meanwhile, Perppu No. 18 of 1960 adapted the value of fines in the Criminal Code to 15 times. However, in the period since the Perppu was issued until the end of 2011, the object value of the case in the articles of minor criminal acts has never been renewed. Therefore, the aforementioned articles become irrelevant and ineffective to be applied.

Some cases that appear in the mass media, such as cases of theft of cocoa beans, theft of flip flops, watermelon theft, pepper theft, and others are considered to not fulfill a sense of justice in society. For these cases, prosecutors are more likely to use the article on ordinary theft as regulated in Article 362. Every theft with a value of goods above IDR 250.00 (two hundred and fifty rupiahs) is observed as ordinary theft. However, in these cases even though the item value was stolen is more than IDR 250.00 (two hundred fifty rupiahs), but the handling is sometimes considered to be disproportionate to his actions.

Build upon the general explanation in the PERMA, there are at least 3 benefits of the PERMA issued by the Supreme Court, those are, first, re-effective the articles of minor criminal offenses. Second, reducing the accumulation of cases in the Supreme and Third, minimizing an overcapacity of Penitentiaries (Lapas):

**First: Re-Enabling the Article of Mild Crimes**

The articles of minor criminal offenses arranged in the Criminal Code are Article 302 paragraph (1) towards mild torture of animals, Article 352 paragraph (1) on minor maltreatment, Article 384 concerning fraud in sales, Article 407 paragraph (1) pertaining to destruction of property, Article 482 about light enforcement, and article 315 concerning mild insults. Of the nine forms of Light Crimes, six of them seemed to be "suspended animation." Because the case is difficult to find lately. "The criminal offenses referred to are Article 364 about minor theft, Article 373 concerning light embezzlement, Article 379 on minor fraud, Article 384 in respect of fraud in sales, Article 407 paragraph (1) as for damage to goods, and article 482 concerning light enforcement (Angraini, 2014: 53).

In General Explanation of Alinea, 4 PERMA Number 2 of 2012 stated that:

> "The main reason for the difficulty of applying the articles of light crime is because of the object worth of the case stipulated in these articles. All of these articles contain elements of the value of goods which are subject to cases of IDR 250.00 (two hundred fifty rupiah). This value is certainly unsuitable at this time because it is hardly to find items that value below IDR 250.00 (two hundred fifty rupiah). "

The further General Explanation of Alinea 6 PERMA Number 2 In 2012, it was told that:

> "Articles of minor criminal offenses that appear to be" suspended animation" are attempted to be revived through this PERMA. To adjust the value of rupiah, the Supreme Court was guided by the price of gold which was in effect around 1960. As for on information obtained from the Museum of Bank Indonesia, information was obtained that in 1959 the price of pure gold per 1 Kilogram = IDR 50,510.80 (fifty thousand five hundred and ten points eighty rupiahs), equivalent to IDR 50.51 (fifty points fifty-one rupiah) per gram. While the price of gold as of February 3, 2012, on that date, the price of pure gold was IDR 509,000.00 (five hundred nine thousand rupiahs) per gram. Based on this, the comparison between the value of gold in 1960 and 2012 was 10,077 (ten thousand seven hundred seventy-seven) times. Whereas accordingly, the limitation of the value of goods regulated in the articles of light criminal law above needs to be adjusted to the increase. To simplify the calculation, the Supreme Court has determined that the increase in rupiah value will not be multiplied by 10,077 but is sufficient for 10,000 times. "

In tone with these calculations, the value of the goods regulated in the articles of light criminal offense is IDR 2,500,000.00 (two million five hundred

thousand rupiah). The reason for the Supreme Court to use the gold price benchmark is because there is no other calculation data that is clearer than the calculation using the calculation of the gold price.

**Second: Reducing Case Stacking at the Indonesian Supreme Court**

Judicial power is an independent power to conduct justice in order to enforce law and justice. This is an affirmation given by Indonesian's Constitutional of 1945 in Article 24 paragraph (1). The power of the judiciary was held by a Supreme Court of Indonesia and the judicial bodies below it in the general justice, religious justice, military, and state administrative courts.

These provisions are confirmed in Article 24 paragraph (2) of Indonesian's Constitutional of 1945 after the third amendment. As for the article, the Supreme Court becomes the highest judicial institution. This is similar to what is stated in Article 2 of Law Number 14 of 1985, that is, "The Supreme Court is the Supreme State Judiciary of all Judicial Environments which in carrying out their duties regardless of the influence of the government and other influences (Angraini, 2014: 54).

Supreme Court according to Article 31 paragraph (1) of Law Number 14 of 1985 as amended by Law Number 5 of 2004 and the second amendment to Law Number 3 of 2009 has the authority to examine and decide upon a cassation application, dispute the authority to try, and request a review of decisions that have permanent legal force.

Consequently, there are many cases of cassation are handled by the Supreme Court, both from the first level courts and appeals and reviews. In 2012, the Supreme Court received 13,412 cases, there was an increase of 3.24% from 2011 which received 12,990 cases. While the cases which were the burden of examination by the Supreme Court in 2012 accounted for 21,107 cases. This amount is an accumulation of the remainder of 2011. The total of this cost decreased by 1.43% compared to the previous year which amounted to 21,414 cases. The increasing number of cases received by the Supreme Court in 2012 reinforces the upward trend from year to year (Annual Report of the Supreme Court of the Republic of Indonesia, 2012: 12). The case of the Supreme Court in 2012 and the comparison are as follows:

**Table 1**
**The Case Situation of Indonesian's Supreme Court in 2012**

| No. | Type of Authority | Remains 2011 | Enter 2012 | Total Load | Off | Leftover |
|---|---|---|---|---|---|---|
| A. | Cases | | | | | |
| | Cassation | 5,847 | 10,753 | 16,600 | 8,816 | 7,784 |
| | Judicial Review | 1,827 | 2,570 | 4,397 | 2,136 | 2,261 |
| | Clemency | 17 | 37 | 54 | 11 | 43 |
| | Material Test Right | 4 | 52 | 56 | 28 | 28 |
| | Total of 2012 | 7,695 | 13,412 | 21,107 | 10,991 | 10,116 |
| | Total of 2011 | 8,424 | 12,990 | 21,414 | 13,719 | 7,695 |
| | Comparison | | 3.25% | -1.43% | -19.88% | 31.46% |
| | | | | | | |
| B. | Non-Cases | | | | | |
| | Request for Fatwa | 0 | 22 | 22 | 22 | 0 |
| | Authority Dispute | 0 | 0 | 0 | 0 | 0 |
| | Total | 0 | 22 | 22 | 22 | 0 |

**Third, Reducing an Overcapacity of Penitentiary**

The final benefit of the issuance of the Supreme Court Regulation is that it can be found in a general explanation, which is related to the overcapacity of prisons. So far the criminal offender whose actions are related to the value of goods under IDR 2,500,000.00 (two million five hundred thousand rupiahs) are examined and tried using ordinary articles. So that the inspection is carried out with regular events. Whereas if this PERMA can be enforced, then the suspect/defendant commits a criminal act and deals with the value of goods under IDR 2,500,000.00 can be examined quickly, because his actions are included in the form of a minor crime based on Article 1 PERMA (Angraini, 2014: 69). The sound of Article 1 is "the words of two hundred and fifty rupiah in Article 364, 373, 379, 384, 407 and Article 482 of the Criminal Code are read to be IDR 2,500,000.00. "

With the enactment of the article to suspect of crimes with a value of goods below IDR 2,500,000.00, then the investigation is carried out based on Article 205-210 KUHAP. So that it can reduce the burden of Correctional Institutions (Lapas) that accommodate the number of prisoners. The following are data on prisons/detentions in three (3) major cities in Indonesia, those are, DKI Jakarta, East Java Province and North Sumatra Province on February 20, 2014 (Website http://smslap.ditjenpas.go.id).

**Table 3: Prison / Detentions at DKI Jakarta**

| No | REGIONAL OFFICE OF DKI JAKARTA | Total Amount | Capacity | % Capacity |
|---|---|---|---|---|
| 1 | Prison Class I Cipinang | 2954 | 880 | 336 |
| 2 | Prison Class II A Narkotika Cipinang | 3109 | 1084 | 287 |
| 3 | Prison Class II A Salemba | 1892 | 572 | 331 |

| | | | | |
|---|---|---|---|---|
| 4 | Prison Class II B Terbuka Jakarta | 36 | 100 | 36 |
| 5 | Detention Class I Cipinang | 3506 | 1136 | 309 |
| 6 | Detention Class I Central Jakarta | 3580 | 1500 | 239 |
| 7 | Detention Class II A East Jakarta | 990 | 619 | 160 |

**Table 4: Prison / Jail at East Java**

| No | REGIONAL OFFICE OF EAST JAVA | Total | Capacity | % Capacity |
|---|---|---|---|---|
| 1. | Prison Class I Madiun | 1384 | 536 | 258 |
| 2. | Prison Class I Malang | 1879 | 936 | 201 |
| 3. | Prison Class I Surabaya | 1153 | 1038 | 111 |
| 4. | Prison Class II A Anak Blitar | 169 | 400 | 42 |
| 5. | Prison Class II A Bojonegoro | 278 | 250 | 111 |
| 6. | Prison Class II-A Jember | 501 | 390 | 128 |
| 7. | Prison Class II-A Kediri | 721 | 354 | 204 |
| 8. | Prison Class II A Pamekasan | 952 | 670 | 142 |
| 9. | Prison Class II A Sidoarjo | 816 | 343 | 238 |
| 10. | Prison Class II-A Wanita Malang | 356 | 164 | 217 |
| 11. | Detention Class I Surabaya | 1655 | 504 | 328 |

**Table 5: Penitentiary/Jail North Sumatera**

| No | REGIONAL OFFICE OF NORTH SUMATERA | Total | Capacity | % Capacity |
|---|---|---|---|---|
| 1. | Prison Class I Medan | 2040 | 1054 | 194 |
| 2. | Prison Class II A Anak Medan | 573 | 250 | 229 |
| 3. | Prison Class II A Binjai | 859 | 274 | 314 |
| 4. | Prison Class II A Labuhan Ruku | 536 | 300 | 179 |
| 5. | Prison Class II A P. Siantar | 1082 | 500 | 216 |
| 6. | Prison Class II A Rantau Prapat | 944 | 375 | 252 |
| 7. | Prison Class II A Sibolga | 540 | 332 | 163 |
| 8. | Prison Class II A Wanita Medan | 513 | 150 | 342 |
| 9. | Prison Class II B Lubuk Pakam | 1132 | 350 | 323 |
| 10. | Prison Class II B Tanjung Balai Asahan | 878 | 198 | 443 |
| 11. | Prison Class II B Tebing Tinggi Deli | 889 | 310 | 287 |
| 12. | Detention Class I Medan | 3161 | 700 | 452 |

From tables 4, 5 and 6, the total capacity of occupants in Prisons and Detention Centers is on average overloaded by residents. The overload of residents can cause problems, related to the formation of prisoners in prisons and treatment in detention centers as stipulated in law Number 12 of 1995 concerning Corrections and Implementation Regulations.

The concept of coaching specified in Law Number 12 of 1995 concerning Correctional means: "so that convicts realize mistakes, improve themselves, and do not repeat criminal acts, so that they can be accepted back in the community, play an active role in development, and live naturally as a good and responsible society (Suhariyono, 2012: 323).

Because of that, looking at these problems generally in Indonesia today requires various ways to overcome the problem of overcapacity of correctional institutions, then with the publication of PERMA it can help to reduce the number of prisoners and prisoners in prisons.

**The Implementation of Supreme Court Regulation Number 2 of 2012**

So far, the Criminal Code has been used as a guideline and parameter for determining the criteria for minor theft, it has applied about 126 years old (usually in Indonesia in 1886, then through Law Number 1 of 1946 regulated as the Indonesian Criminal Code) still used by law enforcers until now (Latumaerissa, 2012: 123). Then it will become a big question, is the value still relevant with the times that have led to the advancement of technology, the economy, inflation, which is used to ensnare minor criminal offenders?

According to the explanation above, logically and justice, it can be said that it is very irrelevant to be used as a benchmark for the value of losses of goods stolen below IDR 250, - as a limitation of minor theft crimes that are accommodated in Article 364 of the Criminal Code. This then has implications for the implementation of law enforcement in the field, that now there are no more minor theft crimes included in the crime statistics in the police. As stated above, Article 364 is a "sleeping" article (Latumaerissa, 2012: 123). So then, if there are cases of stealing that appear in the community, then the main choice of law enforcers to punish the perpetrators of this crime is to reconstruct with Article 362 of the Criminal Code (ordinary theft) as a juridical consequence of a criminal act.

In relation to these problems, the following cases will be raised which are normatively thievery (Article 362). However, if it has viewed from the aspect of justice in the community, it is a minor theft, because actions carried out are solely based on social factors such as poverty.

**Firstly; Theft Case of 1 Mobile phone with K-Touch Brand type H-711**

This case starts on Saturday 26th November 2011 at around 03.00 WIB or at least still included in November 2011, located in the parking lot of Café Frendy By Pas Kota Solok Street or somewhere that is still included in the legal area of the Solok District Court. Martin called by Tin aka Kaliang, has taken an item, wholly or partly belonging to another person with the intention of

possessing the item in an unlawful manner, in which the act was carried out by the defendant in the following ways:

That was initially when the witness of the victim Depi Agusman Putra called by Depi was driving a black Toyota Avanza arrived and stopped at the courtyard of Café Frendy By Solok City Street Pass together with witness Eko called by Moko, the defendant then approached the victim's witness, then immediately entered the car and sat next to witness Eko, then witness Eko got out of the car and went into the Café Frendy. So that the defendant and the victim witness lived in the car, then the victim's testifier came out of the car to enter the Café Frendy. Then after the victim's witness was inside the café for about 5 minutes, then the victim's testifier remembered to take the cellphone belonging to the victim's witness brand K-Touch type H 711 black color which had previously placed on the victim's car dashboard.

But the victim's witness did not find the mobile phone on the dashboard of the car, then he told the defendant to get out of the car and then ask for the cellphone. However the defendant did not know it, then the victim's witness suspected the defendant, and then witness Andi came to examine the defendant, and it turned out that the cellphone was found in the back pocket on the left of the jeans worn by the defendant, when the defendant was inside the victim's witness car without permission or the knowledge of the victim's witness, then the defendant was immediately taken to Solok City Police Station to be examined and as a result of the defendant's actions the victim's witness suffered a loss of around IDR 475,000 (four hundred seventy-five thousand rupiah).

Based on the above case, the Solok District Court, through its ruling, stated that Martin aka Tin was guilty of theft which is regulated in Article 362 of the Criminal Code whose elements are as follows: 1). The action taken is taking; 2). The items taken are goods; 3). The status of the item is partially or wholly owned by another person; 4). 4. The purpose of the action is to have the property against the law.

In his verdict, the Judge stated that Defendant Martin was proven guilty of criminal acts of theft, regulated and threatened with a crime in Article 362 of the Criminal Code and Imposing Crime against him with imprisonment for 10 (ten) months as long as the defendant went through detention.

If it looked at the case according to the author, the Judge did not pay attention to PERMA Number 2 of 2012 in deciding the case. Before the trial, the Chairperson of the Court must see the value of the stolen goods first as stated in

Article 2 (1 and 2) PERMA Number 2 of 2012, that is, "in accepting the delegation of cases of theft, fraud, embezzlement, fencing from the public prosecutor, the head of the court must pay attention to the value of goods or money that are the object of the case. If the value of the item or money is worth no more than IDR 2,500,000.00 (two million five hundred thousand rupiah) The Chairperson of the Court immediately determines the Single Judge to examine, hear and decide on the case with the Quick Examination Program stipulated in Article 205-210 of the Criminal Procedure Code. "

In this case there was a dissenting opinion, that is judge member I said that it was not proven to violate article 362 of the Criminal Code with the consideration that in the provisions of Article 5 of Law Number 48 of 2009 concerning Judicial Power it was an obligation for judges to explore, follow and understand values the legal value and sense of justice that lives in society. Therefore, it is inappropriate for a judge to turn a blind eye to the values of justice that develop from the community, because the judge actually does not work in an empty space, but they are in a social space where the judge works in and for the community. In addition, according to judge I member, this case is a minor crime as regulated in PERMA Number 2 of 2012 (Decision: 11/Pid.B/2012/PN.SLK dated March 22, 2012).

Build upon the author, the panel of judges should base the consideration of the Judge Member I to decide on the case above, but only as a note. Furthermore, according to the author, the judge should not only see the sound of the text of the law. Moreover, if the regulation hurts the sense of justice of the community. The enforced justice is not merely procedural justice and formal justice, but must refer to substantive justice and material justice. So that the indictment of Article 362 of the Criminal Code must be considered to cover the charges of Article 364 of the Criminal Code.

Similarly, at the police level, in this case, the investigator should make a breakthrough to mediate between the defendant (Martin called Tin or Kaliang) and the victim, Putra Depi Agusman called Depi, because the victim stated that basically the Defendant's actions were legally processed, especially the victim forgave the Defendant. Therefore, it would be wise if cases of minor criminal offenses like this at the investigation level were sought to be resolved through reasoning mediation or outside the criminal justice system (restorative justice).

**Second; Theft Case of 1 Helmet INK Brand**

Cases of theft of one (1) Helmet INK Brand have been decided by the Salatiga District Court with the number of decision: 17/Pid.B/2014/PN.Sal. The

chronology of the case was Defendant Beny Setyawan Bin Alm Nursanto on Thursday 2nd January 2014 at around 14.00 West Indonesia Time or other time in January 2014, located in the parking area of 'the Toserba Ada Baru' in Salatiga City or at least somewhere else still including the legal area of the Salatiga District Court. The victim's loss is the amount IDR 320,000 (three hundred twenty thousand rupiahs).

Based on the facts at the panel of judges at the Salatiga District Court, through the ruling, the verdict stated that the defendant was found guilty of thievery. As for Article 362 of the Criminal Code and after obtaining legal facts and the Panel of Judges has considered the elements of a criminal act indicted by the Public Prosecutor for the defendant. The defendant's actions according to the Panel of Judges have fulfilled the elements in Article 362 of the Criminal Code. Therefore, in the last trial of the Panel of Judges of the Salatiga District Court on March 27, 2014, with the number of verdict 17 / Pid.B / 2014 / PN.Sal stated that Defendant Beny Setyawan Bin Alm Nursanto had been legally proven and convicted of committing a criminal act theft. Imposing the criminal to the defendant with imprisonment for 5 (five) months.

Based on the case, pertaining to the author, the Chairperson of the Salatiga District Court Judge or Assembly did not make PERMA Number 2 of 2012 as material for consideration in the case. It can be summed up that in accepting the delegation of cases from the prosecutor's office, the Chairperson of the Salatiga District Court should pay attention to the value of goods or money that are the object of the case (PERMA Number 2 of 2012, Article 2 paragraph (1)).

Further stated in PERMA in Article 2 paragraph (2) it is stated that the goods value or money is worth no more than IDR 2,500,000.00 (two million five hundred thousand rupiah) The Chairperson of the Court immediately determines the Single Judge to examine, hear and decide on the case with the Quick Examination as enacted in Article 205-210 of the Criminal Procedure Code. Then in Article 2 paragraph (3), it is stated that if the defendant was previously subject to detention, then the Chair of the Court does not stipulate detention or it's an extension.

Supposedly, the enforcers of criminal law, both at the level of investigation, prosecution, examination in the courts and in prisons should not only pursue legal certainty, without regard to a sense of justice. So that if an act is in violation of formal law, the perpetrator will definitely be processed through investigation, prosecution, examination in court and finally executed in

a correctional institution. This act that violates formal law is not only a criminal act with a severe sentence but also a criminal act with a mild penalty.

**Third; Attempted Theft Case of 1 (one) Donation Box owned by Saffal Amin Mosque**

Attempted Theft Case of 1 (one) Endowments Box of Sabilal Amin Mosque originated from Defendant Heru Suhardi aka Gabul Bin Katijan on Sunday, October 27, 2013 at around 14.00 local time, or at least in October 2013 or at least in 2013 located at Sabilal Amin Mosque, Berlian Street, Amaco Residence, North Loktabat, North Banjarbaru, Banjarbaru City, or at least in a certain place which is still included in the legal area of the Banjarbaru District Court.

In respect of the case, the Banjarbaru District Court in its consideration stated that the defendant had violated Article 362 of Jo. Article 53 (1) Criminal Code. Therefore, based on the facts of the trial of the Banjarbaru District Court through its decision on February 25, 2014, number 285 / Pid.B / 2013 / PN.Bjb stated Defendant Heru had been proven legally and convincingly guilty of committing a criminal act attempted theft. Imposing a criminal against the defendant with imprisonment for 1 (one) year and 6 (six) months.

Based on the case above, the author argues that the Banjarbaru District Court also has not implemented PERMA Number 2 of 2012 as a guideline or consideration in making decisions. This can be seen from the transfer of cases from the prosecutor's office to the court. If referring to PERMA Number 2 of 2012 concerning the Adjustment of Mild Criminal Actions and the Number of Fines in the Criminal Code concerning the Settlement of Mild Crimes, the defendants were not actually detained. This is based on Article 2 paragraph (1-3) which is stated in accepting the delegation of cases of theft, fraud, embezzlement, prosecution from the Public Prosecutor, then the Chair of the Court must pay attention to the value of goods or money that are the object of the case.

If the value of the item is less than IDR 2,500,000 (two million five hundred thousand rupiahs), then the Chair of the Court immediately determines a single judge to examine, hear and decide on the case with a Quick inspection event stipulated in Article 205-210 of the Criminal Procedure Code. Then if the defendant was previously subject to detention, then the Chair of the Court does not stipulate detention or extension of detention. But in the case at

all the Banjarbaru District Court did not pay attention to what was stated in the PERMA.

Based on the three (3) cases mentioned above, the author believes that the judge's decision has not fulfilled a sense of justice. Because the application of the third law (3) the case only has a principle of procedural justice rather than substantial justice. Procedural justice is justice which refers to the mere sound of the law, as long as the law is realized, formal justice is gained. Public saturation sees formal law dominated by the flow of positivism thought and cannot optimally accommodate a sense of justice because it emphasizes legal certainty.

Law is not just to create order, more than that the law must provide a sense of justice for the community. Law does not automatically bring about justice, but to achieve legal justice must be upheld. However, there is a false view that often the measure of the success of law enforcement is only marked by the success of bringing a suspect to court and then being sentenced. It should be a measure of the success of law enforcement by law enforcement officers achieving the values of justice in society.

In law enforcement Gustav Radbruch states that: "there are three (3) elements of legal ideals that must exist proportionally namely, legal certainty *(rechtssicherkeit),* justice *(gerechtigkeit)* and expediency *(zweckmasigkeit*). The ideals of the law are one entity, cannot be separated one by one all three must be tried to exist in every rule of law (Yunus, 2012: 66).

In implementing the three elements of the ideals of law, they need each other. The three elements of the legal ideal must be realized in society. Even though all three are always present and underlying in people's lives, it does not mean that all three are always in a harmonious situation and relationship. In enforcing the law there must be a compromise between the three elements, but in practice, it is not always easy to make a compromise proportionally balanced between the three elements.

But the problem is, often between legal certainty there is a conflict with justice or a clash between benefits and legal certainty. As an example of the three cases above, the judge considers his decision to be fair to the defendant (fair in the perceptions of the judge), but the decision is often detrimental to the benefit of the wider community. Therefore, Gustav Radbruch said there must be a priority principle, namely, "if in a decision until there is a conflict between justice and legal certainty and benefits, then justice must be prioritized, then legal benefits and certainty" (Wuntu, 2011: 7).

## Conclusion

The enforcement of Supreme Court Regulation Number 2 of 2012 pertaining to Adjustment of Mild Criminal Actions and the Amount of Fines in the Criminal Code has not yet been used as a Court / Judge as material for consideration or reference to decide criminal acts whose goods value is below IDR 2,500,000.00 (two million five hundred thousand rupiah) in the sense that PERMA Number 2 of 2012 is not effective in deciding cases of criminal offenses that are classified as mild.

Likewise, other law enforcers, those are the Police and the Attorney General's Office, also have not made PERMA Number 2 of 2012 as a reference for determining minor criminal offenses. This can be seen from the cases as explained in the previous chapter. Police/investigators and prosecutors in processing cases of minor criminal offenses such as minor theft, minor fraud, minor embezzlement still use ordinary criminal offenses. Even though there was a Memorandum of Understanding (MoU) between MAHKUMJAKPOL between the Supreme Court of the Republic of Indonesia, the Indonesian Ministry of Law and Human Rights, the Indonesian Attorney General and the Indonesian Police. which should bind the institution.

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