

Criminal Acts of Banging and Assault in Positive Law in Aceh Tamiang (Analysis of Decision Number: 216/PID.B/2021/PN.KSP)

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Abstract

The criminal acts of assault and ganging up have become prevalent in many communities, including Aceh Tamiang, where such acts often result in serious injury or even death. This research analyzes case number 216/Pid.B/2021/PN KSP, in which the defendant, Riski Efendi, along with other perpetrators, committed violent assault. The defendant was sentenced to 1 year and 6 months in prison under Article 170 of the Indonesian Criminal Code for collective violence. The legal analysis highlights the regulations surrounding such offenses, including Articles 170 and 358 of the Criminal Code, which regulate collective violence and the role of joint action in violent crimes. The decision of the court was based on legal evidence that clearly supported the guilt of the defendant, considering the physical injuries inflicted on the victim. This study also reflects on the limitations of current legal enforcement, suggesting that restorative justice approaches might have been more appropriate in resolving the dispute. The research underscores the importance of adequate law enforcement to deter mob violence and ensure justice.

Keywords: criminal acts, assault, collective violence, restorative justice.

INTRODUCTION

Nowadays, there are many forms of crime that occur. One form of crime that is often found in every level of society is violence. The violence that is carried out is in the form of beatings, whether the beatings are carried out by one person on one person or by many people. This is because the emotional level of people who often carry out beatings tends to be unstable and at a high emotional level.¹

Mob action is a phenomenon that is difficult to eliminate in community life. Various acts of mob action that often occur such as beatings and physical violence carried out together against other people. Mob action is an unlawful act regardless of the motive. Carrying out mob action that harms others, even to the point of causing injury, or taking the life of another person, is an unlawful act.

In many cases, not a few people or groups of people plan to gang up on others due to several factors such as revenge, defamation, feelings of betrayal or loss, feeling their self-esteem and dignity are being violated, and other motives. In addition, not a few people are also involved in disagreements, fights, or arguments that drive them to gang up unintentionally.²

The mob violence that occurred in the community was reported in various media, both print, online and television, because it is unavoidable that the crime of mob violence itself has become a trend in society in various regions, especially in big cities in Indonesia. Cases

¹ Adiyatma Putra, MW "Judge's Consideration Regarding the Assault of Parking Attendants by Online Motorcycle Taxi Drivers". Jurnal Pleno Jure, 2020, p. 110

² Muhammad Abdy Rusadi. Dadin Eka Saputra. Fathan Ansori. "Legal Analysis of the Crime of Ganging Up in Public Based on the Indonesian Criminal Justice System". Uniska Repository. 2022, page 1

like this are often processed legally according to applicable provisions, but not a few are simply released due to lack of evidence.

In handling cases of criminal acts of mob violence, maximum efforts are needed from law enforcement officers so that mob violence does not become a culture in society and become a problem in the life of the nation and state. If a country in social life no longer believes in the law enforcement process and is more dominant in using the law of the jungle rather than the normative law that applies in a country, then social life in a country will deviate and only benefit certain groups so that it is not in accordance with the justice that is desired to be achieved. Reality shows that community groups tend to make physical contact as anticipation in resolving each problem rather than using legal or non-legal processes as a means of resolution.

The principle of criminal law is, whoever does it is responsible. But because it involves many people, it is very difficult to determine who is the most responsible perpetrator. To determine who is responsible, of course, requires a proper legal basis and in accordance with the elements of the crime of assault itself as stated in Article 170 of the Criminal Code and Article 358 of the Criminal Code in conjunction with Articles 55 and 56 of the Criminal Code.³

According to Kadek, the factors that cause the crime of ganging up can generally be divided into 2 (two) factors, namely:⁴

a. Internal Factors

Internal factors are factors that come from within the individual themselves. Among them:

1. Intelligence Factor

The intelligence factor is a factor in forming a person's personality because the intelligence factor is one of the factors that influences someone to become a perpetrator of a crime of gang violence.

2. Age Factor

Age is also a factor causing the crime of ganging up because the perpetrators of ganging up are generally children to teenagers with an age range of 13 to 20 years.

3. Gender Factor

Gender factor is also a factor causing the occurrence of gang rape. However, generally gang rape is committed by male teenagers and it is rare to find gang rape committed by female teenagers.

b. External Factors

External factors are factors that come from outside the individual himself. Among them:

1. Economic Factors

Economic factors are one of the factors causing the occurrence of gang crimes. When someone is economically sufficient, the desire to commit a crime will also decrease.

³ Andrian Yoga Prastyanto. Heni Hendrawati. "Criminal Accountability for Perpetrators of Gang Attacks". *Varia Justicia Journal* Vol 11 No. 1 March 2015, p.32

⁴Kadek Velantika Adi Putra, GM "Overcoming Criminal Acts of Assault Committed by Minors in the Jurisdiction of the Denpasar Police". *Kertha Wicara Journal: Journal of Legal Science* 2018, page 8

Likewise, when the economic condition is not good, then over time it can trigger someone to commit a crime.

2. Environmental Factors

Environmental factors are one of the factors causing criminal acts, one of which is the crime of ganging up. Environmental factors can influence someone in doing something, especially when the environment supports committing crimes, it is possible for criminal acts to occur. If the environment is mostly bad-tempered, ganging up can occur.

3. Social Factors

The social factor is almost the same as the environmental factor. This influence is quite a crucial influence because the root of this crime can provoke people just by establishing a relationship with others without saying the intention of establishing the relationship.

4. Mass Media Factors

The mass media factor today is an important factor in a crime. The many cases of violence shown in the mass media, both printed and information technology-based, have a great influence on the psychology of society.

One of the cases of assault and abuse that has been decided by the Kuala Simpang District Court is case number:216/Pid.B/2021/Pn Ksp, where the defendant Riski Efendi alias Riski Batat Bin Beni Subarjo (20 years old) a resident of Buntu Hamlet, Upah Village, Bendahara District, Aceh Tamiang Regency was sentenced to 1 (one) year and 6 (six) months in prison on charges of violating Article 170 paragraph (1) of the Criminal Code subsidiary to Article 351 paragraph (1) Jo. Article 65 paragraph (1) Jo. Article 55 paragraph (1) ke-1 of the Criminal Code. The defendant committed the act of assault and assault together with his friends

M. Nur Kholik (DPO), Ipan (DPO), Kamal (DPO) and Diki (DPO) against the victim Hendra Wijaya alias Hendra Bin Sulaiman.

Based on the legal facts that correspond to the defendant's statement, witness statements, and evidence presented in the trial, the panel of judges declared that the defendant was legally and convincingly proven guilty of committing the crime of assault and assault, as in the first and second cumulative primary charges and sentenced him to imprisonment for 1 (one) year and 6 (six) months.

Pay attention to the consequences of a crime that has occurred. In this case, the perpetrators of the crime of ganging up should receive sanctions according to their actions or in other words, the perpetrators of the crime of ganging up can be held accountable for their actions, according to their respective roles. Based on the background above, the author chose the title of this research, namely **"Criminal Acts of Assault and Abuse in Positive Law in Aceh Tamiang (Analysis of Decision Number: 216/Pid.B/2021/Pn Ksp)"**.

Formulation of the problem

The main problems in this research are:

1. How are the legal regulations regarding criminal acts of ganging up and assault in positive law??
2. How is the Law Enforced Against Criminal Acts of Assault and Abuse in Case Number:216/Pid.B/2021/Pn Ksp)?

Research purposes

The objectives of this research are:

1. To find out and study the legal regulations regarding criminal acts of ganging up and assault in positive law.
2. To find out and study the law enforcement against criminal acts of assault and assault in case number:216/Pid.B/2021/Pn Ksp.

LITERATURE REVIEW

Definition of the Crime of Gang Attack

Ganging up is a process, method, act of ganging up on people, which means that it is a legal violation that involves people together committing violence against people or property or something else.⁵The crime of ganging up is a crime that can be classified as collective violence, because in carrying out the violence in a group. Usually collective crimes have several characteristics such as, transferring individual identity and responsibility into group identity and responsibility, the relationship between individuals and the masses becomes very impersonal, suggestive and contagious.⁶

According to experts, the criminal act of ganging up on someone that results in physical or non-physical damage is said to be violence that is against the law. Violence in this case can be in the form of threats only or is already a real action and has consequences for damage to property or physical/causing death to someone.

According to Soenarto Soerodibroto, assault is an intentional act that causes pain or injury, this intention must be accompanied by an accusation in the form of an indictment.⁷Gang violence or collective criminal acts have several types, including:⁸

a. Primitive mass violence

Primitive mass violence is mass violence that is non-political in nature or whose scope is limited to a certain community, for example, ganging up on school children, school brawls.

a. Reactionary mass violence

⁵Dody Eko Wijayanto. "Legal Review of Criminal Acts of Assault Committed by Minors According to Law Number 23 of 2002 Concerning Child Protection and Law Number 3 of 1997 Concerning Juvenile Justice". *Jurnal Independent* Volume 2 of 2019, p.39

⁶Adhi Wibowo, *Legal Protection for Victims of Mob Violence*, Yogyakarta, Thafa Media, 2013, p. 16.

⁷Soenarto Soerodibroto, *Criminal Code and Criminal Procedure Code Complete with Supreme Court and Hoge Raad Jurisprudence*, Jakarta, Raja Grafindo Persada, 2007, p. 87

⁸Regi Mediyanto, "Criminology Review of Inter-Group Fights Among Teenagers in Palu City", *Jurnal Hukum Ilegal Opinion*, Edition 6, Volume 3. 2015, p. 6

Reactionary mass violence is generally a reaction to the authorities. The perpetrators and supporters do not come solely from one community but anyone who feels an interest in the collective goal that opposes a policy that is considered unfair and unfair.

c. Modern collective

It is a tool to achieve the economic and political goals of a well-structured organization.

Criminal acts committed by gangs fall into the category of collective violence. Usually, these criminal acts of gangs are accompanied/marked by the following characteristics:⁹

1. Anonymity is the transfer of individual identity and responsibility to group identity and responsibility;
2. Impersonality is the relationship between individuals outside the mass and within the mass becoming very impersonal;
3. Suggestibility is its suggestive and infectious nature

Definition of Persecution

In general, criminal acts against the body in the Criminal Code are called Abuse. The Criminal Code itself does not provide an explanation of what is meant by the term abuse. In the Indonesian dictionary, abuse is defined as arbitrary treatment (torture, oppression, and so on).¹⁰ According to jurisprudence, it is intentionally causing unpleasant feelings, feelings sick or injured. Abuse also includes intentionally damaging someone's health, causing unpleasant feelings. Elements of abuse according to the doctrine/science of criminal law itself include:¹¹

1. There is intent
2. There is an act
3. There are consequences from the (intended) actions, namely:
 - a. body aches
 - b. wounds on the body.

The crime of assault, when viewed from the basis of the elements of the crime, consists of 2 types of crimes against the body, namely:

1. Crimes against the body committed intentionally. The crime referred to is qualified as persecution, contained in Chapter XX Book II Articles 351-358 of the Criminal Code
 - a. Ordinary ill-treatment (Article 351 of the Criminal Code)
Ordinary abuse which can also be called basic abuse or a standard form of abuse against the provisions of Article 351 of the Criminal Code
 - b. Minor abuse (Article 352 of the Criminal Code)

This is regulated in Article 352 of the Criminal Code. According to this article, this minor assault exists and is threatened with a prison sentence of three months or a fine

⁹Nandyar Astari Putri. "Overcoming Criminal Acts of Assault Committed by Children in the Jurisdiction of the Magelang City Police". Faculty of Law, Muhammadiyah University of Magelang. 2020, page 45

¹⁰WJS Poerwadaminta. The Great Dictionary of the Indonesian Language. Jakarta. Balai Pustaka. 1994, p. 48.

¹¹R. Soesilo. Criminal Code (KUHP) and its comments complete with articles. Bogor. Politea, 2015, page 245

of three hundred rupiah if it does not fall within the formulation of Articles 353 and 356 of the Criminal Code and does not cause illness or obstacles to carrying out a position or work. This punishment can be increased by one third for people who commit this minor assault against people who work for them or who are under their orders.

c. Premeditated Assault (Article 353 of the Criminal Code)

For this planning element, there does not need to be a long time gap between the planning time and the execution time. On the contrary, even though there is a time gap, which is not so short, it is not necessarily possible to say that there is a plan in advance calmly. This all depends on the concrete circumstances of each event.

d. Serious Assault (Article 354 of the Criminal Code)

Serious abuse is regulated in Article 354 of the Criminal Code. The definition of serious here is that the act of abuse causes serious conditions to the body of another person and the perpetrator himself intentionally injures the victim.

e. Premeditated Serious Assault (Article 355 of the Criminal Code).

Serious abuse is a combination of serious abuse and premeditated assault (Articles 353 & 354 of the Criminal Code)³⁹. In the regulation regarding premeditated serious assault in Article 355 of the Criminal Code, both elements of assault must occur together in order to be called joint assault.

2. Crimes against the body due to negligence are contained in Article 360 Chapter XXI of the Criminal Code, which is known as the qualification for negligence causing injury to another person.

Overview of Participation

The regulation on participation or *deelneming* is contained in Articles 55 and 56 of the Criminal Code. Participation itself is taken from the Dutch word *deelneming* which can be interpreted as participation. While in the Big Indonesian Dictionary, the word participation comes from the word *serta* which means to follow, participate, with, accompany, accompany, to help, interfere, accompany. Meanwhile, according to Van Hammel, participation is defined as a teaching of responsibility in a criminal act which according to the law can be carried out by a perpetrator with his own actions.¹²

There are several forms of participation according to Articles 55 and 56 of the Criminal Code, namely:

1. *Don't worry* ordered to do something or what in doctrine is often referred to as *middeljik daderschap*

Lamintang said that a person who orders another person to commit a crime is usually called a *middeljik dader* or a *mettelbare tater*, which means an indirect perpetrator. He is called an indirect perpetrator because he does not directly commit the crime himself, but through the intermediary of another person. According to the criminal

¹²“Legal Analysis of Judge's Considerations in Using Article 351 Paragraph (1) in conjunction with Article 55 Paragraph (1) of the Criminal Code in Criminal Acts of Assault Committed Together (Decision Number: 446/PID.B/2018/PN Dpk)”. Faculty of Law. University of Jember, 2020, p.12

provisions in Article 55 of the Criminal Code, a middle father or an indirect perpetrator can be given the same punishment. the severity of the punishment that can be imposed on the perpetrator himself, and in this case, namely the punishment that can be imposed on the material perpetrator himself¹³

The conditions for the existence of a *doen plegen* as referred to in Article 55 paragraph (1) 1 of the Criminal Code states that the person ordered to do this must fulfill certain conditions, namely:¹⁴

- a. If the person who is ordered to commit a criminal act is: a person who is *ontoerekeningsvatbaar* (has mental problems such as mental disorders or the like) as referred to in Article 44 of the Criminal Code
 - b. If the person who is ordered to commit a crime has a doubt or a misunderstanding regarding one of the elements of the crime in question
 - c. If the person ordered to commit a criminal act does not have any element of *schuld* (fault), either *dolus* or *culpa*, or if the person does not fulfill the *opzet* element as required by law for the criminal act
 - d. If the person who is ordered to commit a crime fulfills the *oogmerk* element (intent or desire to commit the crime), even though this element has been stipulated in the formulation of the law regarding the crime mentioned above.
 - e. If the person who is ordered to commit a criminal act has done so under the influence of *overmacht* or under the influence of a coercive condition, and against which coercion the person is unable to provide any resistance
 - f. If a person is ordered to commit a criminal act with good faith in carrying out a job order, even though the job order was given by a superior who did not have the authority to give such an order
 - g. If the person who is ordered to commit a crime does not have a certain *hoedanigheid* or certain characteristic, as required by law, namely a characteristic that must be possessed by the perpetrator himself.
2. *Medeplegen* or participate in doing
Medeplegen besides being a form of *deelneming*, it is also a form of *daderschap*. If someone commits a crime, then he is usually called a *dader* or a perpetrator. If several people together commit a crime, then each participant in the crime is seen as a *mededader* of the other participants or participants. form of Participation in *medeplegen* can be divided into 3 forms:¹⁵
- a. They all individually fulfill all the elements in the formulation of the crime.
 - b. One person fulfills all the elements of the crime, while the other does not.
 - c. No one person fulfills the elements of a crime, however, together they constitute a crime.
3. *Unblocking* or move others

¹³PAF Lamintang. Basics of Indonesian Criminal Law. PT Citra Aditya Bakti, 2013, p. 609

¹⁴Ibid, p. 610

¹⁵YA Triana Ohoiwutun, Trial and Inclusion in Criminal Law. Bandung. Alumni, 2017, p. 31

Unblocking or those who move to do an action with certain power - efforts, is a form of involvement of the mover whose initiative lies with the mover. for there to be a uitlokking there are 2 objective conditions that must be met, namely:¹⁶

- a. That the act which has been motivated to be carried out by another person must result in a voltioid delict or a completed delict, or result in a strafbare poging or an attempt which can be punished, and
 - b. That the criminal act committed by a person was caused by that person being moved by a plot carried out by another person using one of the methods mentioned in Article 55 paragraph (1) number (2) of the Criminal Code.
4. Medeplichtigheid or Assisting in Committing a Criminal Act

The form of participation contained in Article 56 of the Criminal Code is referred to as medeplichtigheid which literally also means medeschuldig or co-guilt. because what is regulated in Article 56 of the Criminal Code actually also concerns acts of assisting in committing crimes and assisting in committing crimes. There are two types of helping actions, namely:¹⁷

- a. Intentional helping committing a crime. Thus, every act that has been done by a person with the intention of helping another person commit a crime can result in the person being prosecuted and punished for intentionally helping another person.
- b. Intentionally providing assistance to another person to make it easier for that other person to commit a crime. Assistance that can be provided in the form of medeplichtigheid can be material, for example handing over weapons or tools to the perpetrator, and can also be intellectual, for example by giving another person the opportunity to steal goods under his/her control.

METHOD

Types of research

This type of research is normative legal research, the specification of this research is analytical descriptive. Research using analytical descriptive method is a research conducted by conducting scientific work systematically, factually, and accurately on an object that is determined to find the properties, characteristics and certain factors, starting from the regulations and general theories published on the data obtained to answer the problem.¹⁸. This research is a scientific work and analyzes the criminal responsibility of perpetrators of criminal acts of assault and assault.

¹⁶ PAF Lamintang, Op.Cit, page 638

¹⁷ R. Soesilo. Op.Cit, p.76

¹⁸ Soerjono Soekanto, Legal Research Methods. Jakarta: PT Raja Grafindo Persada, 2012, page

Problem Approach

The approach used in this study is the statute approach and the case approach in analyzing the case (case study). The case approach is carried out by reviewing case number: 216/Pid.B/2021/Pn Ksp.

Source of Legal Material

Primary legal materials consisting of laws and government regulations, court decisions that have permanent legal force, other related regulations such as the Criminal Code, Case Decision Number: 216/Pid.B/2021/Pn Ksp. Secondary legal materials, namely materials that provide explanations regarding primary legal materials such as research, proceedings related to research. Tertiary legal materials, namely materials that provide instructions or explanations for primary legal materials and secondary materials such as dictionaries, encyclopedias (wikipedia) and tables related to the object of research.

RESULT AND DISCUSSION

The use of violence by one person or together against another person is prohibited in criminal law because the use of violence results in injury or death. For this reason, the Criminal Code has formulated and threatened criminal penalties for various methods and consequences of acts that use violence. The Criminal Code threatens perpetrators of criminal acts against the use of violence, including murder, assault, starting from murder and assault which are attacks by one person against another, fights where two people consciously start a one-on-one duel, to the use of violence by a number of people together in various forms (ganging up)¹⁹

According to Thomas Susanto, there are types of violence which are divided into 4 (four) forms, namely:²⁰

- a. Open Violence is violence carried out by one or several people that can be seen by the public with the naked eye, such as fights between students.
- b. Covert Violence, is violence that is carried out secretly or not done physically. The public is not aware of this type of violence. This violence is more aimed at the victim's psychology such as threatening behavior.
- c. Aggressive violence is violence that is carried out not for protection but to get something.
- d. Defensive Violence is violence carried out as an act of self-protection. Both aggressive and defensive violence can be open or closed.

Mob action in its development gave birth to other problems such as terror with psychological or physical targets, or other methods such as intimidation, character assassination. In the stage of building society will be aware and submit to the law. The government's steps are to immediately restore public trust in the law enforcement process by building moral strength (moral force) starting from law enforcers with an explanation of how

¹⁹ Dennis Kurniawan. Afif Khalid. Faris Ali Sidqi, "Legal Analysis of Criminal Sanctions Against Perpetrators of Assault That Caused Loss of Life", Repository of the Islamic University of Kalimantan (Uniska). 2021, page 4

²⁰Thomas Susanto, Theories of Violence. Jakarta: Ghalia Indonesia, 2012. p. 13

necessary the law must be obeyed by the community accompanied by taking action without discrimination for every perpetrator of community groups in carrying out mob action.

Legal regulations regarding criminal acts of ganging up and assault in positive law

The law governing assault is regulated in Article 170 of the Criminal Code, which reads:

- (1) *Anyone who openly and with joint force uses violence against people or property is threatened with a maximum prison sentence of five years and six months.*
- (2) *The guilty are threatened with:*
 - a. *With a maximum prison sentence of seven years, if intentionally destroying goods or if the violence results in injury.*
 - b. *With a maximum prison sentence of nine years if it results in serious injury*
 - c. *With a maximum prison sentence of 12 years if the violence results in death.*
- (3) *Article 89 does not apply*

The crime of assault in its basic form as regulated in Article 170 of the Criminal Code consists of the following elements:²¹

1) Subjective Elements:

a. Whoever

This shows the person or individual as the perpetrator.

b. in public

The act was committed in a place where the public could see it.

c. Together

This means that it is done by at least two or more people. The meaning of the word together shows that the act was done intentionally (delik dolus) or had a definite purpose, so it is not an accident (delik culpa).

d. Committing Violence

Means using power or strength that is not small and not legal. Violence in this article usually consists of damaging goods or assault

e. against people or things

This violence must be directed at people or objects as victims.

2) Objective Element: Deliberately.

That in order to say that someone has committed assault together or in other words committed an act of ganging up on another person, that person must have the intention to:

a. Inflicting pain on others.

b. Causing injury to another person's body.

c. Harming the health of others

According to R. Soesilo, what is prohibited in Article 170 of the Criminal Code is:²²

1. Committing violence

²¹Dody Eko Wijayanto. Op.Cit, p.40

²²R. Soesilo. Loc. Op. Cit., p. 285

Regarding violence, it is contained in Article 89 of the Criminal Code, namely that what is equated with committing violence is making people faint or helpless (weak). However, it can also be less than that, it is enough for example if people throw stones or houses, or throw merchandise so that it is scattered, even though there is no definite intention to hurt people or damage goods.

2. Violence must be done together

This means by at least two or more people. People who only follow and do not actually participate in committing violence cannot be charged under this article.

3. The violence must be directed at people or objects.

Animals or beasts are also included in the definition of goods

4. The violence must be carried out in public

Because this crime is included in the category of public order crimes.

Thus, each participant in a group is only responsible for what he himself has done. The actions of other members of the group, and their consequences, cannot be held responsible for those who did not commit the act. Thus, participation is closely related to events in which several people together commit acts of violence.

Violence committed collectively is also regulated in Article 358 of the Criminal Code. Article 358 of the Criminal Code is one of the articles in book II chapter X on Abuse. Article 358 states:

Those who intentionally participate in an attack or fight in which several people are involved, in addition to their individual responsibility for what they have specifically done, are threatened with:

1. *with a maximum prison sentence of two years and eight months, if the attack or fight results in serious injuries;*
2. *with a maximum prison sentence of four years, if the result is someone's death.*

The elements of a criminal act in Article 358 of the Criminal Code are as follows:²³

1. They

They said this clearly shows that the perpetrators of this crime were more than one person.

2. That was deliberate

The participation of a person in the attack or fight is indeed intentional by the person concerned. By mentioning the element of intention, it means that the form of intention here includes three forms of intention known in doctrine and jurisprudence, namely:

- a. Intentionally as an intention
- b. intentionally with awareness of the need
- c. intentionally with an awareness of the possibilities.

3. Participate

the will of the people that must be proven is the will to join (participate in a broad sense, not only as intended in Article 55 etc.) in the attack/fight. The motive for joining is assessed separately, in the sense that if the joining is while committing another crime, for

²³Soterio EM Maudoma. "Joint Use of Violence in Article 170 and Article 358 of the Criminal Code". Jurnal Lex Crimen Vol. IV. No. 6. Aug 2015. p.71

example seizing the jewelry/goods of the opposing party, etc., then the crime becomes the sole responsibility of the person who committed it.

4. In an attack or fight in which several people are involved

The difference between an attack (aanval) and a fight (vechterij) is that in a fight, the will (dolus) to fight is seen as being in both parties, including those who join in (take part), whereas in an attack, the will is in the attacking party, and usually the party who is attacked will try to defend themselves.

5. If as a result of the attack or fight someone is seriously injured or someone dies.

The enforcement of this article is by looking at the consequences of the attack or fight: whether anyone is seriously injured or dead. If anyone is seriously injured or dead, then all those involved in the attack or fight are threatened with the criminal penalties stipulated in Article 358 of the Criminal Code. Meanwhile, a person whose actions result in someone being seriously injured or dead is responsible for those consequences. Thus, he/she is prosecuted based on the articles on assault that causes someone to be seriously injured or dead, or with the article on murder.

Law Enforcement Against Criminal Acts of Assault and Abuse in Case Number:216/Pid.B/2021/Pn Ksp.

Law enforcement is the most fundamental thing that must be enforced and applied firmly. This is done so that all levels of society can obey and understand the law and the applicable criminal threats in order to increase legal awareness in society.

Proving whether or not the defendant committed the act charged is the most important part of criminal procedure. In this case, human rights are at stake, so what are the consequences if someone who is accused is found guilty of committing the act charged but it is not true. For this reason, criminal procedure law seeks to find material truth. Proof is also the central point of criminal procedure law. Proof is the provisions that contain outlines and guidelines on the methods that are permitted by law to prove the guilt of the accused. Proof is also a provision that regulates the evidence that is permitted by law that may be used by the judge to prove the guilt of the accused. The court hearing may not arbitrarily and arbitrarily prove the guilt of the accused.²⁴

By achieving material truth, the ultimate goal of criminal procedure law will also be achieved, namely to achieve order, peace, justice, and welfare in society. A judge may not sentence someone to a penalty unless with at least two valid pieces of evidence he obtains the conviction that a crime actually occurred and that the defendant is guilty of committing it..

That the legal basis for determining the criminal responsibility of the perpetrators of the crime of ganging up can be seen from the provisions of the articles that regulate the crime of ganging up in the Criminal Code, namely Article 170 and Article 358 of the Criminal Code, by taking into account its elements such as committing violence together and causing

²⁴M. Yahya Harahap, Discussion of Problems and Implementation of Criminal Procedure Code. Jakarta: Sinar Grafika. 2012, page 273

harm to people or property and not ignoring the ability of the perpetrators to be responsible for their actions, such as being able to think normally about the consequences of the actions they have committed.²⁵

In case number:216/Pid.B/2021/Pn Ksp, where the defendant Riski Efendi alias Riski Batat Bin Beni Subarjo (20 years old) a resident of Buntu Hamlet, Upah Village, Bendahara District, Aceh Tamiang Regency was sentenced to 1 (one) year and 6 (six) months in prison on charges of violating Article 170 paragraph (1) of the Criminal Code subsidiary Article 351 paragraph (1) Jo. Article 65 paragraph (1) Jo. Article 55 paragraph (1) point 1 of the Criminal Code. The defendant committed acts of assault and assault together with his friends M. Nur Kholik (DPO), Ipan (DPO), Kamal (DPO) and Diki (DPO) against the victims Witness Hendra Wijaya alias Hendra Bin Sulaiman and Witness Irfansyah alias Irfan Bin Sulaiman.

As a result of the defendant's actions, the victim suffered injuries and pain in the head based on Visum Et Repertum Number: VER/220/RM, dated August 13, 2021, which was made and signed by Dr. Linda Ariyani, as a doctor at the Aceh Tamiang District General Hospital, with the following examination results:

1. Hendra Wijaya alias Hendra Bin Sulaiman
 - a. Head and Neck Section: There is a wound on the left side of the head measuring approximately one centimeter and there is blood visible;
 - b. Upper Extremity Section: No point abnormalities were found;
 - c. Abdomen: No abnormalities were found at the point;
 - d. Genital area: No abnormalities were found at the point;
 - e. Lower Extremity Section: No abnormalities were found at the point of contact.
2. Irfansyah alias Irfan Bin Sulaiman
 - a. Head and Neck Section: There is a bruise on the nose measuring two centimeters in diameter and two centimeters in width;
 - b. Upper Extremity Section: No point abnormalities were found;
 - c. Abdomen: No abnormalities were found at the point;
 - d. Genital area: No point examination was performed;
 - e. Lower Extremity Section: No point abnormalities were found.

The defendant was charged by the Public Prosecutor with a combined charge in the form of a cumulative subsidiary combination charge. The Panel of Judges is of the opinion that the defendant's actions fulfill the elements in Article 170 paragraph (1) of the Criminal Code, the elements of which are as follows:

1. Element of Whomever
2. Elements that openly and jointly use violence against people or objects

The defendant's actions also fulfill the elements of Article 351 paragraph (1) of the Criminal Code, the elements of which are as follows:

1. Element of whoever
2. Elements of committing assault

²⁵Andrian Yoga Prastyanto. Heni Hendrawati. Op.Cit, page 35

In its decision, the panel of judges declared that the defendant Riski Efendi alias Riski Batat Bin Beni Subarjo was proven legally and convincingly guilty of committing the crime of assault and assault, as in the first and second cumulative primary charges and sentenced the defendant to imprisonment for 1 (one) year and 6 (six) months as demanded by the public prosecutor.

The researcher regrets the police and prosecutors who continued this case to the court, according to the researcher, the police in this case the investigator should have tried to resolve the dispute through penal mediation or restorative justice, considering the role of the police as the initial gate of the criminal justice system. Justice is not only seen from the aspect of the victim but must also be seen from the aspect of the perpetrator as well to determine the ability to take responsibility for the mistakes that have been made to the victim and be willing to admit it.

This is based on the development of the concept of law enforcement in the criminal law enforcement system in various countries that adopt the principle of restorative justice and other factors that are causal factors, namely the excessive capacity of the Correctional Institution, many cases that are pending to be resolved formally, limited law enforcers and operational costs in handling cases have an impact on the legal culture of the Community, especially the view of the criminal law enforcement process in Indonesia. In addition, to answer the development of the legal needs of the community and fulfill the sense of justice of all parties, the Indonesian National Police as an institution that is given the authority as an investigator and investigator must be able to accommodate the values of justice in the Community while providing legal certainty, especially the certainty of the law enforcement process.

According to the case researcher in case number: 216/Pid.B/2021/Pn Ksp, this is a criminal case that meets the requirements for out-of-court settlement in accordance with the circular of the Chief of Police Number: SE/8/VII/2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases. Where the criminal acts committed can be classified as juvenile delinquency cases that often occur in society.

CONCLUSION

The crime of ganging up and assault is regulated in Articles 170 and 358 of the Criminal Code, one of the elements of which requires the perpetrator to be deliberate and carried out by several people. The threat of punishment for the perpetrator is in accordance with the role and crime committed as regulated in Articles 55 and 56 of the Criminal Code concerning involvement in a crime.

Law enforcement against the perpetrator in case Number 216/Pid.B/2021/Pn Ksp is by implementing Article 170 paragraph (1) subsidiary to Article 351 paragraph (1) of the Criminal Code. Where in the trial legal facts were revealed that fulfilled the elements of the prosecutor's indictment so that the panel of judges sentenced him to 1 (one) year and 6 (six) years in prison.

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