



Criminal Liability Against Recidivists Abroad Who Recommit Crimes Theft in Indonesia

Dimas Aditya Nugraha

Faculty of Law, University of Bangka Belitung, Indonesia. E-mail: dimasaditya@gmail.com

ARTICLE INFO

Keywords:

Criminal Liability, Theft, Recidivist.

How to cite:

Nugraha AD. Criminal Liability Against Recidivists Abroad Who Recommit Crimes Theft in Indonesia

ABSTRACT

The theft of broken glass that occurred in the Province of the Bangka Belitung Islands, precisely in Tempilang Bangka Barat, Pal 9 Merawang, Bangka Regency and in front of My Snack Pangkalpinang City. Suspect E was convicted as a recidivist in Singapore. The purpose of this study is to determine the recidivist arrangements between the State of Indonesia and the State of Singapore and to determine the criminal liability of foreign recidivist Indonesian citizens who commit the crime of theft in Indonesia. The research method used is normative juridical with a statutory approach, a case approach and a comparative approach. The results of this study are that the recidivist arrangement in Indonesia is regulated in the general resident Article 486 of the Criminal Code, the punishment is plus 1/3 (one third) of the maximum criminal threat.

1. Introduction

Recidivism in general understanding is understood as a broad term that refers to relapse of criminal behavior, including due to a re-arrest, reconviction, and reincarnation. A recidivist is also defined as a person who repeats a crime. Recidivism is defined as the tendency of an individual or group to repeat a disgraceful act even though he or she has been punished for committing the act (Hairi, 2018).

Recidive is one of the reasons that aggravates the punishment to be imposed. Psychologically it can be said that someone who always repeats criminal behavior will have a negative value in the eyes of society and in the eyes of criminal law. It is appropriate if the sentence imposed is heavier on the perpetrator who has been convicted and then commits another crime. The previous punishment is seen as not being able to provide a deterrent effect to the perpetrators of the crime so that the criminal law makes a rule that can aggravate the crime. It is hoped that the weighting of the crime can achieve the purpose of special prevention for the perpetrators not to repeat the third time and so on (Sofyan & Azisa, 2016).

Law Number 1 of 1946 concerning the Criminal Code (KUHP) does not provide a specific definition of recidivism, nor does it specifically regulate it in the General Rules in book I of the Criminal Code. Recidivism, which in terms of the Criminal Code is referred to as the repetition of a crime, is regulated widely in Book II and Book III of the Criminal Code. There are even regulations regarding the repetition of criminal acts which are regulated separately *lex specialis* in several laws outside the Criminal Code, such as those contained in Law Number 35 of 2009 concerning Narcotics (Narcotics Law), Law Number 5 of 1997 concerning Psychotropics.

(Psychotropic Law), as well as in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law) (Hairi, 2018).

The various rules regarding the repetition of criminal acts with different weighting systems make the current recidivism system quite complicated. This concept in its application in the field also sometimes creates confusion for law enforcement officials themselves (ERYANSYAH, 2021).

In terms of implementation, recidivist systems should ideally rely on a good national crime database. The problem is, data on crime (criminal records) in Indonesia are still not connected to each other. This is also one of the obstacles in the application of the punishment for recidivism (Hairi, 2018).

Judges in giving heavy sentences due to repetition of offenses so far generally rely on the foresight of investigators and prosecutors. Sometimes the judge only finds out that a person is a recidivist when the case is examined in court, but in this way sometimes the accused can, of course, dodge to lighten the sentence he may receive.

It is also undeniable that criminal acts can be committed by Indonesian citizens in foreign countries as well as repetition of crimes (recidive), both in the general and special residue classifications and committing the crime again in Indonesia. In this case, it is certain that there are differences in rules regarding actions, responsibilities and sanctions against recidivists between the Indonesian state and foreign countries where Indonesian citizens commit the crime (Prakoso, 2017).

In the case of a criminal case of theft with a broken glass mode that occurred in the Province of the Bangka Belitung Islands, among the three suspects in the gang of broken glass thieves who were arrested by the joint team on Bangka Island, it turned out to be a glass shattering recidivist in Singapore. One of the perpetrators who was declared a recidivist in Singapore had committed the crime more than 1 (one) time in Singapore and even re-committed the crime after it was decided by the Singapore court (recidive), that the perpetrator was already a recidivist in Singapore, and re-does the crime he committed. the same in Indonesia.

In accordance with the chronology of the case above, there is no article in the Indonesian criminal law that regulates in detail and with certainty the status of recidivists as in the case example above, it's just that Indonesian law is inherent to every Indonesian citizen wherever an Indonesian citizen is. According to Article 5 paragraph (1) 2 of the Criminal Code which states that "criminal rules in Indonesian legislation apply to citizens outside Indonesia who commit one of the acts which a criminal law in Indonesian legislation considers a crime, whereas according to the law of the country where the act was committed, is punishable by a criminal offense".

Residents abroad who are Indonesian citizens commit criminal acts in Indonesia, then they must see whether the crime committed is a crime or not between Indonesian criminal law and criminal law in the country where the previous crime was committed (Singapore) in this case the crime of theft with the mode of breaking glass is a crime in Indonesia and in Singapore because its recidivist status is determined by Singapore. The crime is regulated in the Indonesian Criminal Code article 363 paragraph 1 point 4. In Singapore, it is regulated in the Penal Code (chapter 224) theft in dwelling-house, etc. 380.

2. Method

According to Sugiyono, research methods are scientific ways to obtain valid data, with the aim of discovering, developing, and proving certain knowledge, so that in turn it can be used to understand, solve, and anticipate problems (Efendi & Ibrahim, 2018).

The method used in this research can be described as follows:

- a. Types of research

Based on the title and problem formulation, the type of research used by the author in this study is a juridical-normative type of research. Normative legal research can also be referred to as doctrinal legal research. In this study, often the law is conceptualized as what is written in the legislation (law in the book) or the law is conceptualized as a rule or norm that is a benchmark for community behavior towards what is considered appropriate (Wagiran, 2013). Therefore, in this study, we will examine juridically-normatively regarding Legal Analysis of Recidivists Who Commit Crimes Outside Indonesia.

b. Nature of Research

This research is descriptive. Descriptive research is research that is directed at describing symptoms, facts, or events systematically and accurately, recognizing the characteristics of a particular population or area. In descriptive research, there is no need to find or explain the relationship between variables and test hypotheses. This is to find out about the legal analysis of recidivists who commit crimes outside Indonesia.

c. Research Approach

In this study using the following research approach:

1). Legislative Approach (Statute Approach) The statute approach is carried out by reviewing all laws and regulations related to the legal issues being handled (Marzuki, 2019). Legal research at the legal dogmatic level or research for the purposes of legal practice cannot be separated from the statutory approach. The statutory and regulatory approach is an approach to legislation and regulation (Khair, 2018). The laws and regulations used to study and research in this research are Law Number 1 of 1946 concerning the Criminal Code (KUHP), the Singapore Penal Code and the Norwegian Penal Code.

2). Case Approach

A case study is a method for collecting and analyzing data regarding a case. Something is usually made a case because there are problems, difficulties, obstacles, deviations, but something can also be made a case even though there are no problems, instead it is made a case because of its excellence and success (Hardani, 2020).

The case approach in normative research aims to study the application of legal norms or rules in legal practice. Especially regarding cases that have been decided as can be seen in the jurisprudence of cases that are the focus of research (Suhaimi, 2018).

The case approach in this research is aimed at imposing legal rules, norms and rules to perpetrators who commit criminal acts abroad, namely in Singapore who commit crimes again in Indonesia in order to achieve legal objectives, namely: certainty, justice, and expediency.

3). Comparative Approach

The comparative approach is carried out by conducting a comparative study of law. Comparative law study is an activity to compare the law of one country with the law of another country or the law of a certain time with the law of another time.

Comparative criminal law or comparative law can be interpreted that the main starting point is the comparison, or comparative. The term comparative gives properties to the law being compared. Thus, the term comparative law focuses more on comparing legal systems (Marzuki & SH, 2020).

Comparative law is a study that does not only look at the substance of the law, but also wants to understand it more from the point of view of reality and even from the philosophical point of view of the law itself (Anwar, 2008).

According to Satjipto Rahardjo, if a person begins to conduct comparative studies of positive legal systems or certain areas of positive law, or he departs from certain

positive laws, the person has already carried out a legal comparison. Comparative law cannot be done by simply collecting foreign legal materials (Anwar, 2008). Use this concept to compare Indonesian criminal law with the laws of other countries. Clearly, the elements that surround this comparison of criminal law are only at the normative level. The comparative approach used in this comparative approach is Indonesian criminal law and Singapore criminal law in the case of repetition of a crime.

d. Source of Legal Material

There are 2 (two) sources of research data, namely primary data sources and secondary data sources. Primary data refers to data that has been collected directly. On the other hand, secondary data are previously available data collected from indirect or second-hand sources for example from written sources belonging to the government or the literature (Hardani, 2020).

In this legal research, secondary data sources consist of primary legal materials, secondary materials, and tertiary legal materials.

1). Primary Legal Material

Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions (Hardani, 2020). Which in this study used, among others: Law Number 1 of 1946 concerning the Indonesian Criminal Code (KUHP), the Singapore Penal Code and the Norwegian Penal Code.

2). Secondary Legal Material

Secondary Legal Materials are mainly law books including theses, theses and dissertations of law and legal journals. Legal dictionaries and commentaries on court decisions. The use of secondary legal materials is to provide researchers with some kind of guidance in the direction the researcher is going (Marzuki, 2005).

3). Tertiary Law Material

Tertiary legal materials are those that provide instructions or explanations for primary legal materials and secondary legal materials, such as legal dictionaries, encyclopedias, and the internet. In this study using the internet (Effendi & Ibrahim, 2020).

e. Data collection technique

Data collection techniques used in normative legal research are as follows:

1). Literature Study

Literature study is an activity to collect information relevant to the topic or problem that is the object of research. This information can be obtained from books, scientific works, theses, dissertations, legal journals, encyclopedias, internet, and other sources.

2). Interview Techniques

Interview is a data collection technique that is obtained directly. An interview is a question and answer session with someone (official, etc.) that is needed to be asked for information or opinions on a matter. In this research, interviews will be conducted with the Merawang Police, Bangka Regency, Bangka Belitung Islands Province, namely with Mr. Wahyu Tri Martanto as PS Kanit Reskrim Polsek.

3. Analysis and Results

3.1. Case Chronology

On Tuesday, August 25, 2020 at around 10.30 WIB, the suspect of the theft of broken glass carried out his action in Simpang Yul Village, Tempilang District, West Bangka Regency. Two perpetrators of breaking glass from OKI Regency, South Sumatra Province, who did not know the conditions on Bangka Island, used Pangkal Pinang City residents to act. MT, 36, a resident of Kayu Agung, South Sumatra Province, was the brains of the plot and E, 46, a resident of OKI, South Sumatra, used A, 42, a resident of Jalan Muntok Pangkal Pinang, whom they knew as a guide.

In the process of arresting the West Bangka Police Criminal Investigation Unit and the Tempilang Police Criminal Investigation Unit, they conducted isolation in Puding Besar Village and Mentok Harbor, West Bangka Regency. Two perpetrators MT and E were arrested when they were about to cross to Palembang at Tanjung Kalian Port, Muntok. Furthermore, the Opsnal team of the Jatanras Sub-Directorate of Crime of the Bangka Belitung Islands Police together with the Opsnal Team of the Bangka Police succeeded in arresting A.

With used spark plugs, they took action at Tempilang Bangka Barat, Pal 9 Merawang, Bangka Regency and in front of My Snack Pangkalpinang City. Besides that, it also stole 1 HP and a watch at Pasir Padi Beach on the car

which is not locked. They also stole at Simpang Yul in the form of 1 cellphone. In their action, they used 1 red Toyota Yaris with the police number BG 1596 KJ, 3 cellphones and 2 bags.

Among the three suspects in the gang of broken glass thieves who were arrested by the joint team on Bangka Island, it turned out to be a recidivist who broke glass in Singapore. Suspect E has often committed the crime as far as Singapore. This was revealed by the Head of Sub-Directorate for Jatanras Polda Bangka Belitung Islands AKBP Wahyudi. Suspect E has been convicted in Singapore and was declared a recidivist in Singapore, committing the same crime again in Indonesia.

3.2 Comparison of Recidivist Rules Between Indonesia and Singapore

The theft of broken glass is one of the recidivist cases that occurred in the Province of the Bangka Belitung Islands, precisely in Tempilang, West Bangka, Pal 9 Merawang, Bangka Regency and in front of My Snack, Pangkalpinang City. Among the three suspects in the gang of broken glass thieves who were arrested by the joint team on Bangka Island, it turned out that one of the perpetrators was declared a glass shattering recidivist in Singapore. This was revealed by the Head of Sub-Directorate for Jatanras Polda Bangka Belitung Islands AKBP Wahyudi.

In the Indonesian Criminal Code, regarding residiv is placed in a special chapter in Book II of the Criminal Code, namely Chapter XXXI (Dwijayanti, 2017). The concept of recidivism in the Indonesian Criminal Code must be recognized, the concept of recidivism in Indonesian criminal law is quite complicated. The Criminal Code regulates differently the residiv system in it, namely between residiv for similar crimes and residiv for types of group crimes, as well as residiv for violations. It is also different for the residiv regulation system for several criminal acts outside the Criminal Code (Hairi, 2018).

Recidive for similar crimes is regulated in Articles 137 (2), 144 (2), 155 (2), 157 (2), 161 (2), 163 (2), 208 (2), 216 (3), 321 (2), 393 (2) and 303 bis (2) of the Criminal Code. Generally, these articles require: Repeated crimes must be the same/similar to previous crimes, There has been a judge's decision with permanent legal force, Committing crimes as a livelihood (except for offenses Article 216, 303 bis and 393 of the Criminal Code). It is carried out within a certain period of time in accordance with the provisions of the article, including:

1. 2 years since the final judge's decision (Articles 137, 144, 208, 216, 303 bis and 321); or

2. 5 years since the final judge's decision (Articles 155, 157, 161, 163 and 393 of the Criminal Code).

In recidives against similar crimes in the Criminal Code, the forms of criminal aggravation are also different, namely: a crime plus a third (Article 216 of the Criminal Code), or a prison sentence of 2 times (Article 393 of the Criminal Code). For recidives against crimes in "similar groups", it is regulated in Article 486, Article 487 and Article 488 of the Criminal Code. Generally, these articles require: Repeated crimes must be in one type group, there has been a judge's decision that has permanent legal force, It is carried out within a certain period of time, namely (Hairi, 2018):

- a. 5 years have not passed since serving all or part of the previous prison sentence, or since the prison sentence was abolished altogether.
- b. The authority to carry out a crime has not yet expired.

In recidives against crimes in similar groups in the Criminal Code, the forms of criminal weighting are also different, namely: the maximum penalty is added 1/3, specifically for Article 486 and Article 487 of the Criminal Code, the weight is only for imprisonment, specifically for Article 488 of the Criminal Code can be against all types of crimes . Then for recidive offenses, it is regulated in Articles 489, 492, 495, 501, 512, 516, 517, 530, 536, 540, 541, 544, 545, and 549 of the Criminal Code. Generally, these articles require: Repeated violations must be the same/similar, already exists a judge's decision which has permanent legal force, is carried out within a certain period of time, namely (Hairi, 2018):

- a. 1 year for Articles 501, 512, 516, 517, and 530 of the Criminal Code.
- b. 2 years for Articles 501, 512, 516, 517, and 530 of the Criminal Code.

There are differences between the recidivist rules in Indonesia compared to other countries, as well as the recidivist rules in Singapore and Norway, which are as follows:

- a. Recidivists in Singapore under the Singapore Narcotics Act Article 33 a (Monalisa, Rahayu, & Wahyudhi, 2020).

Residive in Singapore only on one condition, namely repeating the same crime and in determining sanctions if it is not included in the written legal basis then based on the judge's interpretation because Singapore adheres to the common law legal system, even Singapore criminal judges often refer to British legal issues regarding issues common law, Singapore also tends to use natural or customary law.

It is emphasized in the Penal Code Chapter XIV in Article 291 which reads "Anyone who repeats a crime that disturbs public peace by an officer authorized to issue a decision not to repeat or continue, shall be punished with imprisonment extended to six months, or a fine or with both (Monalisa et al., 2020).

Criminal sanctions in Singapore

- 1) Imprisonment increased with caning
- 2) Life imprisonment is a constructive alternative to imprisonment
- 3) The death penalty is set without replacement as the sole sanction
- 4) Imprisonment is an alternative plus a fine

Sanctions for residiv are imprisonment and caning. Criminal sanctions in Singapore are in the form of imprisonment for a maximum of 7 (seven) years while a maximum fine of \$100,000. In Singapore's criminal system, there is no capital punishment and in Singapore, there is a cumulative system (Hariadi & Wicaksono, 2013).

- b. Residential rules in Norway are based on the Norwegian Criminal Code.
 - 1). Article 61 of the Norwegian Penal Code: "The provisions concerning the severity of the sentence in the case of recidivists only apply to people who are 18 years of age at the time of committing the previous offense".
 - 2). Article 79 concerning the imposition of weighting sanctions from the maximum penalty (multiple offences, repeated offences, organized crime).

In Article 79 of the Norwegian Criminal Code, sanctions can be increased up to two times the maximum sentence for the crime committed.

3). Article 79 letter b

If the convict has previously re-committed a crime similar to the one previously convicted at home or abroad, except for other provisions by the criminal provisions themselves. The increase in the maximum penalty according to this provision is only relevant in relation to the statutory provisions that stipulate that the increase in the maximum penalty must be given legal force.

The first part of the provisions of this letter only applies if the convict is at least 18 years old at the time of committing the previous crime, and has committed a new act after the sentence for the previous crime has been carried out in whole or in part. If the new crime is punishable by a criminal offense of more than 1 (one) year, the first part of the provisions of this letter does not apply if the new crime is committed more than 6 (six) years after the execution of the previous crime is completed, unless otherwise specified. If the new crime is punishable by a sentence of 1 (one) year or less, it may not be more than 2 (two) years after the execution is completed.

Another interesting provision of the Norwegian Criminal Code Article 61 is the provision which states that: the court allows the previous sentence handed down in another country to be used as a basis for increasing the sentence the same as the sentence handed down in one's own country (Kaimuddin, 2019).

From the explanation of the comparison of existing recidivist rules in Indonesia, Singapore and Norway. Rules for recidivists in Indonesia are not clearly written in the Indonesian Criminal Code regarding criminal offenses or are regulated in a special chapter on residiv, but are regulated widely in the Criminal Code and rules outside the Criminal Code. The penalty for repeating a crime in Indonesia depends on the category of resident and the article that regulates it, there is a maximum penalty plus 1/3 there is also an aggravated sentence up to 2 (two) times the maximum sentence as well as the provisions on the expiration date of the resident depending on the category of the resident. Sanctions for repeating a crime in Singapore are different from Indonesia, namely looking at the crime,

The residiv rules in Norway are different from those in Indonesia and Singapore because Norway clearly stipulates in the Criminal Code regarding the repetition of criminal acts and related to sanctions, which are different from Indonesia, in Norway the sanctions for repeating criminal acts are aggravated up to 2 (two) times the maximum sentence. The very clear difference between Indonesia and Singapore and Norway, the rules for repeating criminal acts in Indonesia are very complicated, which have several categories of residents, in contrast to Singapore and Norway which only emphasize the repetition of criminal acts and decisions that have been handed down against the same perpetrator.

The results of an interview with Mr. Wahyu Tri Martanto as PS Kanit Reskrim Polsek Merawang said that the recidivist case of glass shattering theft that had been carried out by suspect E in Singapore was true before he took action in Indonesia. The lapse of time he committed a crime in Bangka Belitung Province approximately 2 years after being released from prison in Singapore, the confession of the suspect during interrogation. Not all criminal acts can be subject to a resident article, there is a category of crime that is subject to a resident article. In this case, it is clear that criminal penalties are imposed for the repetition of the crime committed by the perpetrator because the actions of the perpetrator are subject to Article 363, namely theft in aggravating circumstances which this article is clearly stated in the residiv article in the Indonesian Criminal Code in Article 486 of the Criminal Code.

The theory of criminal repetition, essentially repeating the crime occurs in the case of a person who commits a crime and has been sentenced to a sentence by a judge that has permanent legal force and then commits another crime (Afrijal & Hadi, 2019). Based on the theory of repetition

of criminal acts and the results of the interview above, the suspect is declared a recidivist, because he fulfills the elements of a resident described in the theory of criminal repetition, namely:

- a. Suspect E committed the crime of theft of broken glass in Singapore;
- b. The crime committed by suspect E is sentenced to permanent legal force in Singapore, then repeats the same crime in Singapore and is declared a recidivist in Singapore;
- c. In Indonesia, suspect E committed the same crime of theft of broken glass after being released from punishment as a recidivist in Singapore.

According to Indonesian rules, suspect E is included in the general resident category, because the repetition of the crime committed has not passed five years since he was released from punishment in Singapore, he is subject to an additional sentence of 1/3, the crime committed by E is included in the category of criminal offense. serious crimes, namely crimes committed by E are subject to Article 363 of the Criminal Code for theft in aggravating circumstances which Article 363 is included in the general residiv in the Criminal Code in accordance with Article 486 of the Criminal Code, namely "*The prison sentence specified in Articles 127, 204 first paragraph, 244-248, 253-260 bis, 263, 264, 266-268, 274, 362, 363, 365 first, second and third paragraphs, 368 first and second paragraphs throughout it refers to the second and third paragraphs of Articles 365, 369, 372, 374, 375, 378, 380, 381-383, 385-388, 397, 399, 400, 402, 415, 417, 425, 432 last verse, 452, 466, 480 and 481, as well as imprisonment for a certain period of time imposed according to Article 204 paragraph two, 365 paragraph four and paragraph 368 second as long as they are referred to in paragraph four Article 365, may be added by one third, if the guilty party commits a crime, five years has not passed since serving in whole or in part the prison sentence imposed on him, whether for one of the crimes described in those articles, or because of one of the crimes referred to in one of Articles 140-143, 145 and 149, the Army Criminal Code, or since the crime has been completely abolished for him (kwijtgeschode) or if at the time of committing the crime, the authority to exercise the sentence has not expired.*"

In contrast to the resident rules in Singapore, a resident in Singapore can be declared a resident if someone repeats a crime in which a criminal offense has previously been sentenced to permanent legal force that distinguishes it from Indonesia in Singapore there is no division or determination of specific and general residents, only looking at the category of offense Residiv punishment is imposed on the category of serious crimes. In conclusion, the resident system adopted in Singapore is the general resident system, while in Indonesia the special resident system is. Sanctions for resident offenders in Singapore are sentenced to an increased sentence not exceeding a prison term of 7 (seven) years, while a fine not exceeding \$100,000 (approximately 1,000,000,000.00) and caning in Singapore does not recognize the death penalty. Penalties can be imposed on all perpetrators because the system used in Singapore is a cumulative system. In terms of determining the sanctions, it is in the judge's decision, just don't violate the provisions of the law that regulates repetition of crimes because the legal system adopted by Singapore is the common law legal system.

The repetition of the crime committed by E in the Province of the Bangka Belitung Islands according to the provisions of the Norwegian criminal law. Based on Article 79 and Article 61 of the Norwegian Criminal Code, E is declared a resident in the country even though he has committed a crime abroad. The criminal sanction is increased up to 2 (two) times the maximum sentence because the punishment for the crime of theft committed is a maximum of 2 (two) years based on Article 321 of the Norwegian Penal Code on Theft. The expiry time for the theft resident committed by suspect E is 6 (six) years from the end of the sentence for the previous crime. E, including resident in Norway, is also seen from the age since he committed the crime based on Article 79, the minimum age of the resident is 18 years, while the age of suspect E is more than 18 years, to be precise, based on the chronology of the case 46 years.

3.3 Criminal Accountability of Indonesian Citizens Overseas Recidivists Who Re-commit the Crime of Theft in Indonesia

The theft of broken glass that occurred in the Province of the Bangka Belitung Islands, precisely in Tempilang Bangka Barat, Pal 9 Merawang, Bangka Regency and in front of My Snack Pangkalpinang City. Among the three suspects in the gang of broken glass thieves who were arrested by the joint team on Bangka Island, one of them was convicted of being a glass shattering recidivist in Singapore. This was revealed by the Head of Sub-Directorate for Jatanras Polda Bangka Belitung Islands AKBP Wahyudi.

Based on the case above, to determine the status of the resident and the sanctions carried out by suspect E, it must be seen from his crime and criminal responsibility. According to Chairul Huda, in general, there are three basic problems in criminal law. He identified by citing several expert opinions, namely Sauer, that it was related to *onrecht*, *schuld*, and *strafe*. Meanwhile, Packer said the three problems were related to crime, responsibility, and punishment. According to Sudarto, these problems relate to the prohibited acts, the person who commits the prohibited acts, and the penalties for violating the prohibition. In other words, the basic problem relates to the issue of criminal acts, criminal liability, and sentencing (Faisal, 2020).

In terms of criminal liability, there are 2 (two) different things from criminal acts. A person who commits a criminal act may not necessarily be convicted because it remains to be proven whether the act or mistake can be accounted for. Chairul Huda provides a definition of criminal responsibility as a mechanism constructed by criminal law as a reaction to a violation of an agreement in rejecting a certain act (Hani, 2020).

Meanwhile, Sudarto in Mahrus Ali provides an explanation of criminal responsibility as follows: it is not enough to punish a person if that person has committed an act that is against the law or is against the law. So even though the act fulfills the formulation of the offense in the law and is not justified, it does not meet the requirements for a criminal sentence. For sentencing, it is necessary to have conditions for imposing a crime, namely the person who commits the act has an error or is guilty (Hani, 2020).

The person who will be sentenced must meet the requirements of guilt or *culpa* (subjective *culpa*) in which the person must be accountable for his actions or if viewed from the point of view of the new act he can be held accountable for the person. The principle of no crime without guilt (*Keine Strafe Ohne Schuld* or *Geen Straf Zonder Schuld* or *nulla Poena sine culpa*), *culpa* in the broadest sense includes intentional (Krismen, 2014).

Errors are considered to exist, if intentionally or due to negligence, they have committed acts that cause conditions or consequences that are prohibited by criminal law and are carried out responsibly in criminal law, according to Moeljatno, a person's mistakes and omissions can be measured by whether the perpetrator of the crime is capable of being responsible, namely: if the action contains 4 (four) elements, namely (LUKA & ASRI, n.d.):

- a. Committing a criminal act (against the law);
- b. Above a certain age capable of being responsible;
- c. Has a form of error in the form of intentional (*dolus*) and negligence (*culpa*);
- d. There is no excuse for forgiveness.

Errors are always directed at inappropriate actions, namely doing something that should not be done or not doing something that should be done (LUKA & ASRI, n.d.).

Intentional is will and know, which means that someone who does something intentionally must want what he is doing and must also know what he did and its consequences (Sofyan, n.d.).

There are 3 forms or levels of intentionality, namely (Sofyan, n.d.):

- a. Deliberately as a goal or intent
Means if the action taken or the result is indeed the goal of the maker.
- b. Deliberately aware of certainty

This means that if the action performed or the occurrence of an effect is not the intended one to achieve the intended action or result, it is certain or must perform the action or the occurrence of certain consequences.

c. Deliberately aware of the possibility

This means that if an action is carried out or a result is intended, it is realized that there may be other consequences.

Negligence or negligence, Criminal law science and jurisprudence interpret negligence as not taking precautions or not being careful.

The forms of negligence, namely (Sofyan, n.d.):

a. The light weight angle consists of:

- 1). Serious negligence, crimes due to negligence in Book II of the Criminal Code
- 2). Minor negligence, a violation in Book III of the Criminal Code

b. The maker's angle of consciousness, consisting of:

1). Negligence realized

Occurs when the maker can imagine or predict the possibility of a consequence that accompanies his actions.

2). Unconscious negligence

Occurs when the maker does not imagine or predict the possibility of an effect that accompanies his actions, but he should be able to imagine or estimate the possibility of an effect.

Based on the results of an interview with Mr. Wahyu Tri Martanto as PS Kanit Reskrim Polsek Merawang stated, that in terms of criminal liability seen from the mistakes made by the perpetrators of criminal acts, a person committing a crime does not necessarily mean he is guilty, let alone responsible for the actions that the perpetrator did because in determining accountability There must be an error, whether intentional or negligent or negligence, after that we will see the condition of the perpetrator being able to take responsibility for his actions or be physically and mentally healthy, mature and there is no reason to erase other crimes such as expiration.

Based on the explanation of the results of the interview and the theory of criminal responsibility above, if it is related to the case of the theft of broken glass committed by E in Bangka Belitung, the perpetrator can be held accountable for fulfilling the elements of error.

Suspect E already knows that his actions are against the law because this is not the first time he has committed a crime, but it has been done many times, even the crime of theft of broken glass that has been committed before has been punished and has also been punished more than once, even though it was not in Indonesia. but in Singapore.

The criminal liability of suspect E, judging from his age, can be said to be an adult or he has been able to account for the actions taken based on the chronology of the case, when E was 46 years old when he committed a crime, in which the overall rule of law in Indonesia is that suspect E is an adult.

The perpetrator really wants the action and the consequences of the criminal act he has committed or the perpetrator can already imagine the consequences of what he has done, it can be seen from the chronology of the case that he did that the perpetrator before carrying out the action had prepared the tools to carry out the action, namely in the form of spark plugs, bags. and a car and can already imagine the consequences of causing harm to the victim, it is emphasized again because the perpetrator has already been punished, even though it was in Singapore. In this case, it can be concluded that suspect E deliberately committed the crime of stealing broken glass.

Acts committed must be accounted for because there is no reason to erase the crime, both seen from the physical appearance of the perpetrator and from the condition that the perpetrator committed a crime not in an emergency (overmacht) according to Article 48 of the Criminal Code, not under threat that requires taking such action for forced defense that exceeds the limit.

as regulated in Article 49 paragraph (2) of the Criminal Code, and does not carry out an unauthorized position order but is considered valid as stipulated in Article 51 paragraph (2) of the Criminal Code.

Criminal liability for criminal acts committed by suspect E in the case of theft of glass shattering where he has previously been sentenced in Singapore and declared a recidivist in Singapore for that suspect E is not only responsible for the theft of broken glass in Indonesia but also for the criminal acts he committed in Singapore. Singapore too.

Based on the results of an interview with Mr. Wahyu Tri Martanto as PS Kanit Reskrim Polsek Merawang stated that suspect E before committing the crime of theft of glass shattering in Indonesia he had committed the same act in Singapore between the time he was acquitted as a recidivist in Singapore about 2 (two)) years after committing the same crime again in Indonesia. Indonesian criminal law does not explicitly regulate regulations regarding Indonesian citizens as foreign recidivists who commit Indonesian criminal acts again, but in dealing with this case Indonesian criminal law recognizes locus and tempus delicti theories as well as active national principles in order to determine the enactment of Indonesian criminal law. based on the place and time when an Indonesian citizen commits a crime abroad.

From the results of the interview above, to be able to determine whether the act of breaking glass theft committed by the suspect E recidivist or not according to Indonesian criminal law, it is necessary to first look at the applicability of Indonesian criminal law based on time and place. The application of criminal law according to time is related to when the criminal law applies, and the application of criminal law according to the place determines who the Indonesian criminal law applies to and where the Indonesian criminal law applies.

Based on the theory of locus delicty in the previous chapter. According to the locus delicty theory, to determine the enactment of Indonesian criminal law based on 3 (three) things, namely: the place where the act was committed, where the tool that causes the effect works, and where the result of the act arises.

The resident case of the theft of shattered glass by E is aware of the place where the act was carried out, the act that E previously committed in Singapore and then declared a recidivist in Singapore to commit the crime again in Indonesia, precisely in the Province of the Bangka Belitung Islands. In Bangka Belitung, suspect E carried out his actions in Tempilang, West Bangka Regency, in Pal 9, Bangka Regency, and in Pangkal Pinang City. In this case, the operation of the tool and the consequences that arise following the place where the act is carried out are only in determining the competent court to see which of the 3 (three) things is mostly done, namely in Tempilang, West Bangka Regency and suspect E was also arrested in Mentok, West Bangka Regency for that The court authorized to hear this case is the Mentok District Court.

Indonesian criminal law has the authority to determine the resident committed by suspect E abroad. According to the provisions of Article 5 paragraph (1) of the Criminal Code (active national principle) which states:

- a. Criminal provisions in Indonesian legislation are applied to citizens outside Indonesia who commit:
 - 1). One of these crimes is in Chapters I and II of the Second Book and Articles 160, 161, 240, 279, 450, and 451.
 - 2). One of the acts which by a criminal provision in Indonesian legislation is seen as a crime, whereas according to the laws of the country where the act is committed, it is punishable by a crime.

From the explanation of the article above, the repetition of a crime committed by suspect E in Singapore is also considered a recidivist in Indonesia, because in accordance with Article 5 paragraph (1) number 2 above which in Indonesia the theft in aggravating circumstances committed by E is clearly included in the category of a crime that regulated in Article 363 of the

Criminal Code. In Singapore, the case committed by E is punishable by criminal law under Singapore's criminal code in Article 379 of the Singapore Penal Code that "anyone who commits theft is threatened with imprisonment for a period that can be extended to 3 (three) years, or with a fine, or with both".

Considering that criminal law is very complex and requires accuracy in all aspects of its settlement, apart from understanding the competence regarding the enactment of the law based on place, we are also required to understand the enactment of criminal law based on time related to the principle of legality contained in Article 1 paragraph (1) of the Criminal Code that "No action can be punished except by the strength of the existing laws and regulations, before the act is committed. Based on the contents of the article, it is clear that the Indonesian criminal law does not apply retroactively to criminal acts that have been committed. Article 1 paragraph (1) of the Criminal Code is essentially *lex temporis delicti* which contains that the applicable law is the law that existed when the act was committed.

The importance of knowing the theory of the application of criminal law according to time apart from being based on the principle of legality is also to find out whether the perpetrator of a criminal act is old enough or not, which is regulated in Article 45, Article 47, Article 287 paragraph (2), Article 290 and Article 291 of the Criminal Code. The connection with the expiry of the right to prosecution and the right to carry out the sentence as regulated in Articles 78-85 of the Criminal Code. With regard to the repetition of committing a crime as regulated in Article 486-488 of the Criminal Code. With regard to conventional crimes such as theft with a criminal charge in Article 363 of the Criminal Code, whether the theft was carried out at night or not.

Based on the explanation of the validity of the criminal law based on the time above, if it is related to the case of suspect E as a recidivist of theft of broken glass in Singapore who commits the same crime again in Indonesia, Indonesian criminal law is also authorized to adjudicate the repetition of a crime committed by E in Singapore or suspect E. also considered a recidivist in Indonesia, because the repetition of the crime of theft in aggravating circumstances that he committed in Singapore was already regulated in the Indonesian Criminal Code before he did it, the right to sue for the repetition of a crime he committed in Singapore had not yet passed 5 (five) years based on Article 486 of the Criminal Code, suspect E at the time of repeating the crime is considered an adult, namely 46 years old.

After determining the authority of Indonesian criminal law to try suspect E, both according to the law based on the place and based on the validity of the law according to time, we can only determine the criminal responsibility in Indonesia for the resident committed by suspect E in Singapore.

The criminal liability of a recidivist in Singapore who re-dos the same crime in Indonesia as in the case of suspect E in the Province of the Bangka Belitung Islands where he was previously declared a recidivist in Singapore. Suspect E is not only responsible for the crimes he committed in Indonesia but also the crimes he previously committed in Singapore, because Indonesian criminal law has the authority to prosecute citizens who commit crimes outside Indonesia.

In determining criminal responsibility for the repetition of a crime committed by E, it must be proven that the suspect has an error in accordance with the principle of criminal law, namely there is no crime without error. Errors are divided into 2 (two) causes based on the theory of criminal responsibility above and in the previous chapter, namely errors due to intentional and errors due to negligence or negligence. Suspect E has a form of error, namely an error that is intentional because based on the chronology of the case above, suspect E is indeed the intention to commit a crime of theft of broken glass seen from the evidence found, namely a spark plug,

The consequences of what he did he knew before the act was committed, because in their action they had prepared a car to escape and it is impossible for suspect E to not know the consequences of what he did, which crime he committed in Indonesia is the same as what he

did previously in Singapore, which caused the surrounding community to become restless and harm the victims of their actions.

There is no reason to erase the crime against the repetition of the crime committed by suspect E based on Indonesian criminal law because suspect E really wants the crime he committed or in other words he is not insane. The repetition of the crime he committed in Singapore has not yet expired, that is, it has not passed 5 (five) years since he was released from punishment in Singapore based on the results of the interview above and the information in the chronology of the case above. more than 5 (five) years since the perpetrator is free from the punishment for the crime he committed previously.

In accordance with the elements of criminal responsibility and the application of criminal law to every Indonesian citizen wherever he is, suspect E must be held accountable for the repetition of a crime in Indonesia for the repetition of a crime he committed in Singapore. According to the provisions of Indonesian criminal law, suspect E is declared a resident of the type group crime in Article 486 of the Criminal Code because the crime of theft is in aggravating circumstances, namely Article 363 of the Criminal Code which is stated directly in Article 486 of the Criminal Code where the penalty for repeating a crime according to Article 486 of the Criminal Code can be subject to a penalty plus 1/3 (one third) of the maximum penalty for the crime committed. The crime committed by E is theft in aggravating circumstances according to Article 363 of the Criminal Code, which is subject to a maximum prison sentence of 7 (seven) years.

4. Conclusion

From the results of the research and discussion that the author has described in the previous chapter, the following conclusions can be drawn:

Criminal acts can not only occur within the country but can also occur outside Indonesia, even repeat crimes or recidivism, such as in the case of theft of broken glass in the Province of the Bangka Belitung Islands, where one of the perpetrators is a recidivist in Singapore. One of the causes of the many perpetrators of repeating crimes in the rule of law regarding repetition of crimes which in Indonesia itself the rules regarding residiv are so complicated. Residiv rules in the Indonesian Criminal Code are divided into 3 (three) groups, namely: special residiv (similar crimes), general residiv (similar group crimes), and offense residiv. Sanctions against repeat offenders in Indonesia are added 1/3 (one third) of the maximum sentence, which is different from the residiv arrangements in Norway and Singapore which adhere to the general residiv system. The perpetrator is declared a recidivist if he repeats the crime without any classification of the crime, unlike Indonesia, which has to look at the type of crime committed. Sanctions against residents in Norway can be increased up to 2 (two) times the maximum sentence, while in Singapore the penalty is added 6 (six) months to a maximum of 7 (seven) years plus caning.

Criminal liability for foreign recidivist Indonesian citizens who commit the crime of theft again under aggravating circumstances in Indonesia. determining criminal responsibility must see that Indonesian criminal law applies to perpetrators who commit criminal acts outside Indonesia based on active national principles in Article 5 of the Indonesian Criminal Code, Indonesian law applies to every Indonesian citizen. In the case of a criminal act, it must be seen that in Indonesia the act is considered a crime and in the country where the previous crime was committed, it is also punished, if it is fulfilled then Indonesian criminal law applies in this case, the perpetrator of repeating the crime is also considered a recidivist in Indonesia.

References

- Afrijal, A., & Hadi, A. (2019). Pengulangan Tindak Pidana Memiliki Bagian-Bagian Satwa Yang Dilindungi Dan Penerapan Hukumnya. *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana*, 3(2), 217-226.
- Anwar, Y. (2008). Adang, 2008, Pembaruan Hukum Pidana, Reformasi Hukum Pidana. *Jakarta: Grasindo*.
- Dwijayanti, M. (2017). Diversi Terhadap Recidive Anak. *Rechtidee*, 12(2), 223-244.

-
- Efendi, J., & Ibrahim, J. (2018). *Metode Penelitian Hukum: Normatif dan Empiris*.
- Effendi, J., & Ibrahim, J. (2020). *Metode Penelitian Hukum Normatif dan Empiris (Cetakan ke)*. Kencana.
- ERYANSYAH, A. (2021). HAKIKAT SISTEM PEMASYARAKATAN SEBAGAI UPAYA PEMULIHAN TERHADAP WARGA BINAAN PEMASYARAKATAN (Dalam Perspektif Hak Asasi Manusia)= THE ESSENCE OF THE CORRECTIONAL SYSTEM AS A RECOVERY EFFORT FOR THE ORRECTIONAL ASSISTED CITIZENS (In a Human Rights Perspecti. Universitas Hasanuddin.
- Faisal, S. H. (2020). *Politik Hukum Pidana*. Rangkang Education.
- Hairi, P. J. (2018). 'Konsep dan Pembaruan Residivisme dalam Hukum Pidana di Indonesia (Concept and Reform of Recidivism in Criminal Law in Indonesia). *Jurnal Negara Hukum*.
- Hani, A. (2020). PERTANGGUNGJAWABAN PIDANA TERHADAP TINDAK PIDANA PENCURIAN MENGGUNAKAN SISTEM ELEKTRONIK (Studi Putusan No. 132/Pid. B/2012/PN. PWK). *Jurnal Hukum Al-Hikmah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat*, 1(1), 94-107.
- Hardani, D. (2020). *Metode Penelitian Kualitatif Dan Kuantitatif*, Yogyakarta: CV. Pustaka Ilmu Group.
- Hariadi, T. M., & Wicaksono, H. L. (2013). Perbandingan Penanganan Tindak Pidana Korupsi Di Negara Singapura Dan Indonesia. *Jurnal Hukum Pidana Dan Penanggulangan Kejahatan*, 2(3).
- Kaimuddin, A. (2019). *Comparison of the Regulations on Recidivist Juveniles In Indonesia, Norway, And Thailand*.
- Khair, A. (2018). Dinamika Penataan Regulasi Ekonomi Syariah. *El-Mashlahah*, 8(2).
- Krismen, Y. (2014). Pertanggungjawaban Pidana Korporasi Dalam Kejahatan Ekonomi. *Jurnal Ilmu Hukum*, 5(1), 61-70.
- LUKA, K. A., & ASRI, S. (n.d.). TINJAUAN YURIDIS TERHADAP TINDAK PIDANA KELALAIAN YANG MENGAKIBATKAN.
- Marzuki, P. M. (2005). *Penelitian hukum*.
- Marzuki, P. M. (2019). *Penelitian Hukum*, rev. ed. cetakan ke-14. Prenadamedia Group, Jakarta.
- Marzuki, P. M., & SH, M. S. (2020). *Teori Hukum*. Prenada Media.
- Monalisa, M., Rahayu, S., & Wahyudhi, D. (2020). A Comparative Study on Criminal Sanction Against Drugs Offenders. *Jambe Law Journal*, 2(2), 181-206.
- Prakoso, G. R. (2017). Optimalisasi Penyelidikan Intelijen dalam Penanggulangan Tindak Pidana Pencurian dengan Pemberatan di Wilayah Hukum Polsek Purwokerto Timur. *Police Studies Review*, 1(1), 209-260.
- Sofyan, A. (n.d.). Nur Azisa. 2016. *Hukum Pidana*.
- Sofyan, A., & Azisa, N. (2016). *Hukum Pidana. Pustaka Pena, Makassar*.
- Suhaimi, S. (2018). Problem Hukum Dan Pendekatan Dalam Penelitian Hukum Normatif. *Jurnal Yustitia*, 19(2).
- Wagiran, W. (2013). Metodologi penelitian pendidikan: Teori dan implementasi. *Yogyakarta: Budi Utama*.