

# PHONE CABLE STEELING TO DAMAGE THE TELECOMMUNICATION NETWORK ASSESSED FROM LAW NUMBER 36 YEAR 1999

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## *Abstrak*

Tujuan Penulisan jurnal ilmiah ini adalah untuk dapat mengetahui Apakah tindakan HS, AW dan EM yang melakukan perbuatan mengambil barang milik orang lain tanpa hak berupa kabel telepon sehingga mengakibatkan kerusakan jaringan telekomunikasi dapat dikualifikasi melanggar ketentuan Pasal 55 jo Pasal 38 dari Undang-Undang Nomor 36 Tahun 1999 Tentang Telekomunikasi.

**Kata Kunci:** Pencurian, Kabel Telepon, Telekomunikasi

## 1. INTRODUCTION

The crime of taking telecommunications facilities occurred on May 30, 2014, HS, AW and EM, worked as Telkom Partners in charge of improving Telkom's network / cable. While doing their job, HS and AW committed the act of taking other people's belongings without rights in the form of a + 100 meter long telephone cable by climbing a telephone pole using 2 (two) bamboo ladders, then cutting the cable hanging above the telephone pole using hacksaw as well as cutting pliers. After being cut, HS, AW and EM rolled up the cut telephone cables, then loaded them into the pick-up car which was used as Telkom's daily operation.

HS, AW and EM cut the Telkom cable for sale. The cable was then carried by HS and AW to the AD house in Dsn. Gumukmas, Ds. Nogosari, Kec. Rambipuji, Kab. Jember. For the sale, HS, AW and EM received Rp. 2,700,000, - (two million seven hundred thousand rupiah). As a result of the actions of the defendants, PT. Telkom suffered a loss of Rp. 12,000,000, - (twelve million rupiah), besides that the telecommunication network was damaged and could not function and in accordance with the judge's consideration in his decision that the actions of the defendants had damaged public facilities.

Based on the description above, what is at issue is: Whether the actions of HS, AW and EM which take the property of other people without rights in the form of telephone cables resulting in damage to telecommunications networks can be qualified to violate the provisions of Article 55 in conjunction with Article 38 of Law Number 36 of 1999 concerning Telecommunications?

## 2. RESEARCH METHOD

The type of research used in this thesis is normative juridical legal research, which is a literature research, namely research on primary and secondary legal materials, which consists of statutory regulations and literature.

## 3. RESULTS AND DISCUSSION

HS, AW and EM were charged by the public prosecutor of committing a criminal act of violating the provisions of Article 363 paragraph (1) 4th, and 5th, Criminal Code, which means that the HS, AW and EM actions are prohibited actions. , in accordance with the principle of legality regulated in Article 1 paragraph (1) of the Criminal Code which states that: "No act can be punished except for the strength of the criminal rules in existing legislation, before the act is committed". This means that the legality principle is a fundamental principle in criminal law because to determine whether an act is a criminal act or not has been fulfilled. In the above case that HS, AW and EM committed the crime of taking goods in the form of telecommunication cables that did not belong to PT Telkom as a criminal act of theft violating Article 363 paragraph (1) 4th, and 5th, Criminal Code, fulfilling the legality principle because it has been regulated in the Criminal Code.

HS, AW and EM were legally and convincingly proven to have committed the crime of theft and the object of theft was a telephone cable of + 100 meters belonging to PT Telkom.

Telecommunications is regulated in Law no. 36 of 1999, which was promulgated with the consideration that the operation of telecommunications has a strategic meaning in the effort to strengthen national unity and integrity, expedite government activities, support the creation of the goal of equitable development and its results, and improve relations between nations. Operation according to the Indonesian Dictionary is a person or body that organizes such as entrepreneurs, administrators, executors. Telecommunications according to Article 1 number 1 Law no. 36 of 1999 is every transmission, transmission and or reception of any information in the form of signs, signals, writing, pictures, sound and sound through a wire, optical, radio or other electromagnetic system. Telecommunications has an important

meaning, namely because it has the function of strengthening national unity and integrity, expediting government activities, supporting the creation of the goal of equitable development and its results, and improving relations between nations.

The importance of the telecommunications function, so not all people or corporations can act as telecommunications operators. According to Article 1 letter d Law no. 36/1999 are individuals, cooperatives, Regional Owned Enterprises (BUMD), State Owned Enterprises (BUMN), private enterprises, government agencies, and state defense and security agencies. PT. Telkom is a company in the form of a state-owned company (PT. Telkom Tersero), thus meeting the requirements as a operator telecommunications.

The operation of telecommunications has a strategic meaning, according to Article 2 of Law no. 36 of 1999, held based on the principles of benefit, fairness and equality, legal certainty, security, partnership, ethics, and self-confidence. Among these principles, namely the principle of partnership according to the explanation of Article 2 of Law no. 36 of 1999 means that the operation of telecommunications must be able to develop a climate of harmony, reciprocity, and synergy in telecommunications operations. PT Telkom in organizing telecommunications builds cooperation with Telkom's Partners where among the employees are HS, AW and EM.

The purpose of telecommunications operations as stipulated in Article 3 of Law no. 36 of 1999, that "Telecommunications is carried out with the aim of supporting the unity and integrity of the nation, increasing the welfare and prosperity of the people in a just and equitable manner, supporting economic life and government activities, and improving relations between nations". Explained further by the explanation of Article 3 of Law no. 36 of 1999, as follows: The

objectives of telecommunications operations in this provision can be achieved, among others, through telecommunications reforms to improve the performance of telecommunications operations in facing globalization, prepare the telecommunications sector to enter healthy and professional business competition with transparent regulations, and open more many business opportunities for small and medium entrepreneurs.

Telecommunications operators use the frequency spectrum *radio* and satellite orbit. frequency *Radio* is the number of vibrations *electromagnetic* for 1 (one) period, while the frequency spectrum *radio* is a collection of frequencies *radio*. The use of frequency is *radio* based on space, number of vibrations, and bandwidth, which can only be used by 1 (one)

party. Simultaneous use of space, number of vibrations and the same width or coincide will interfere with each other. Frequency in telecommunication is used to carry or distribute information. frequency *Radio* as quoted from <https://www.waveselectromagnetic-https://www.google.co.id> is the number of vibrations *electromagnetic* for 1 (one) period, waves *electromagnetic* are waves that radiate without propagation media that carry electric and magnetic (energy charges *electromagnetic*), unlike waves on generally those that require propagation media, waves *electromagnetic* do not require propagation media (the same as radiation). Because it does not require a propagation medium, waves *electromagnetic* are often referred to as radiation. The differences in the wavelengths of different types of waves *electromagnetic* are very important. As we know, the behavior of waves is very dependent on the relative size of the wavelengths. Due to differences in wavelengths that cause differences in the behavior of each type of wave, waves *electromagnetic* are widely used for different purposes depending on the type of wave. In addition, wavelength and frequency are also important in determining the type of interaction between waves *electromagnetic* and matter.

Telecommunication is moved through wire, optical, radio, or other electromagnetic systems, the existence of which cannot be separated from the cable as a link, so that if the cable connects or drives the electromagnetic system, telecommunications will not function. Regarding the function *electromagnetic* in telecommunications has an important meaning, Article 38 of Law no. 36 of 1999 stipulates that, "Every person is prohibited from committing an act that may cause physical and interference *electromagnetic* to the operation of telecommunications". The provisions of Article 38 of Law no. 36 of 1999 emphasizes the emergence of physical and electromagnetic disturbances in the operation of telecommunications", according to the explanation of Article 38 of Law no. 36 of 1999, as follows:

Actions that may cause disruption to telecommunications operations can be in the form of:

- a. physical action causing damage to a telecommunications network so that the network cannot function properly;
- b. physical actions which result in telecommunication links not working properly;
- c. the use of telecommunication equipment which is not in accordance with the applicable requirements technical;
- d. the improper use of telecommunication tools that work with radio waves causing interference to other telecommunications operations; or

e. the improper use of non-telecommunication tools which may cause undesirable technical effects for a telecommunications operator.

Acts that cause disruption to the operation of the telecommunication that the perpetrators are subject to criminal sanctions violate Article 55 of Law no. 36 of 1999, which determines that "Anyone who violates the provisions referred to in Article 38, shall be sentenced to imprisonment of up to 6 (six) years and / or a maximum fine of 600,000,000.00 Rp.(six hundred million rupiah)".

The provisions of Article 55 of Law no. 36 of 1999 begins with the sentence ".

1) Whoever is the subject of a criminal act according to Roni Wiyanto (2012, pp. 166-168) is an element that comes from within the criminal offender (*dader*). These subjective elements are basically things or states that can be found in the doer. This category falls into the state of the soul or mind of the doer. Perpetrators who are sentenced to criminal sanctions, the penalty or sanction is addressed to the perpetrator who commits a criminal act which is usually referred to as "whoever" is the perpetrator of a criminal act as a legal subject, namely supporters of rights and obligations in the field of law. The subject of the perpetrator of the telecommunications crime has no explanation, which means that generally the perpetrator of the criminal act is an individual, a business entity in the form of a legal entity or non-legal entity. The public prosecutor charged HS, AW and EM as the perpetrators of the crime of theft of telecommunication cables belonging to PT Telkom, so that the "whoever" element was fulfilled.

2) The objective elements in a criminal act according to Lamintang (2003, p. 194) are elements that come from outside the perpetrator's self, as well as the subjective elements, some experts also describe the elements that are outside the perpetrator. . The objective elements consist of:

a) Element of committing acts against the law. Actions against the law are distinguished between the nature of being against the formal law and the nature of being against the law which is material. The nature of being against the formal law, if the act matches the statutory prohibition, then there is an error. Schaffmeister (2011, p. 37) further explains that the nature of against the formal law, this term means that all the written parts of the offense formulation have been fulfilled. The nature of violating the formal law occurs because it fulfills the offense formulation of the law. The nature of violating the formal law is a condition for being convicted of an act based on the principle of legality. The location of the act against the law is obvious, from the nature of the violation of

the provisions of the law, unless it includes exceptions that have been determined by law as well. For them, this is against the law according to Schaffmeister (2011, p. 37), which means against the law, because law is a law, while the material nature of against the law argues that it is not certain that all acts that match the statutory prohibition are against the law. . For them, what is called law is not just a law, in addition to laws (written law) there are also unwritten laws, namely norms or realities that apply in society. HS, AW and EM take goods by cutting the telecommunication cables belonging to PT Telkom without rights, the act of taking things that do not belong to them illegally, by moving the goods, the illegal acts of a formal nature have been fulfilled. Actions are carried out because of the perpetrator's fault, regarding the error can be distinguished between intentional and due to negligence. Deliberate is an act of humans having mistakes, there are two characteristics in terms of carrying out these actions, namely deliberate (*dolus*) and negligence (*culpa*). Actions done on purpose are actions that are willed and done with full awareness. The form of deliberation according to Moeljatno (2000, p. 177) consists of three features, namely:

1. Deliberate means that the maker wants a result that is prohibited from his actions.
  2. Deliberate as certainty, that is, the maker can only achieve the goal by doing another action and that action is also a prohibited act.
  3. Deliberate as a possibility, that is, the maker knows the intent of the maker to do the action.
- HS, AW and EM as Telkom Partners whose daily tasks are to make improvements to Telkom's network, if the existing equipment is for the maintenance of the telephone network, including 2 (two) bamboo ladders, then cut the cable hanging above the telephone poles legally by using a hacksaw and also cutting pliers to cut telephone cables belonging to PT Telkom, the actions of HS, AW and EM are carried out deliberately and including deliberately as certainty, that is, the maker can only achieve the goal by committing other actions and these actions are also acts that prohibited, resulting in PT. Telkom has suffered losses, so the element of committing an illegal act has been fulfilled.
- b) Elements can cause physical and electromagnetic interference. Physical disturbance related to the body, if the body is connected to a telecommunication facility, the removal of a 100 meter long cable in an arbitrary manner, results in physical disturbance to the telecommunication network, because the cable is cut as a connecting network of electromagnetic waves, i.e. waves occur due to a combination of electric and magnetic fields

propagating. in space. An electric field is generated from a cable, so that if the cable is cut 100 meters long, there will be physical and electromagnetic disturbances, so that the elements that can cause physical and electromagnetic disturbances have been fulfilled.

- c) Elements of the operation of telecommunications, according to Article 1 letter h of Law no. 36 of 1999 is the activity of providing and providing telecommunications services to enable the operation of telecommunications. HS, AW and EM which cut the telecommunication cable belonging to PT Telkom for a length of 100 meters, made the activities of providing and providing telecommunications services to enable the operation of telecommunications, so that the elements of telecommunications operation have been met.

Based on the description and discussion as mentioned above, it can be explained that the actions of HS, AW and EM which cut the telecommunication cable owned by PT Telkom, the act of cutting the cable against the right to then sell the cable cut jointly, so that each act as the perpetrator of the act. criminal law as referred to in Article 55 paragraph (1) of the Criminal Code. The action against rights, namely cutting the 100 meter long cable, which was carried out by HS, AW and EM caused a physical disturbance which caused damage to a telecommunications network so that the network could not function properly. The HS, AW and EM actions fulfill all the elements of Article 55 in conjunction with Article 38 of Law no. 36 of 1999, so that HS, AW and EM can be sentenced to imprisonment for a maximum of 6 (six) years and / or a maximum fine of Rp. 600,000,000.00 (six hundred million rupiah) ".

The Public Prosecutor charged and charged HS, AW and EM for violating the provisions of Article 363 paragraph (1) 4th, and 5th, KUHP. The Jember District Court, in its decision Number: 523 / Pid.B / 2014 / PN Jmr, stated that the HS, AW and EM were legally proven and convinced that they were guilty of the criminal act: "Theft in Aggravating Circumstances"; Punish the defendants because of that, imprisonment for: 3 (three) months and 20 (twenty) days, respectively. This means that HS, AW and EM have committed an act of taking other people's belongings without rights in the form of a + 100 meter long telephone cable belonging to PT. Telkom violates two laws and regulations, namely violating Article 363 paragraph (1) 4th and 5th KUHP and violating the provisions of Article 55 of Law no. 36 of 1999.

HS, AW and EM have been proven to have committed criminal acts violating the provisions of Article 55 of Law no. 36 of 1999 with

a maximum imprisonment of 6 (six) years and or a maximum fine of Rp. 600,000,000.00 (six hundred million rupiah) and violates Article 363 paragraphs (1) 4th, and 5th, KUHP with sanctions a maximum imprisonment of seven years.

Application of Article 363 paragraph (1) 4th, and 5th, KUHP and Article 55 of Law no. 36 of 1999, in relation to the provisions of Article 65 of the Criminal Code stipulates that "In the case of concurrent actions that must be viewed as independent acts so that they constitute several crimes, which are punishable by the same basic criminal offense, only one punishment shall be imposed. The maximum sentence imposed is the maximum number of penalties that are punishable by said act, but may be more than the maximum sentence plus one third of the most serious punishment.

HS, AW and EM can be subject to imprisonment as long as they fulfill all elements of criminal responsibility. According to Moeljatno (2000, p. 164) to fulfill criminal responsibility a person must fulfill four elements of guilt:

1. Committing a criminal act (nature against the law).
2. Above a certain age can be responsible.
3. Has a form of error in the form of intentional or negligent.
4. There is no excuse for forgiveness.

The first element, the existence of a criminal act (nature against the law). According to Moeljatno (2000, p. 164), a criminal act only refers to prohibited and punishing an act with a crime. Actions here contain behaviors and events that result from the behavior and its consequences. In this case, a criminal act was committed HS, AW and EM have fulfilled the elements of a criminal act in Article 363 paragraph (1) 4th and 5th, KUHP and Article 55 of Law no. 36 of 1999, namely committing a criminal act of theft and the object of theft in the form of a telephone cable with a length of approximately 100 meters belonging to PT Telkom and then selling the proceeds divided equally. Therefore, the element of committing a criminal act (unlawful nature) has been fulfilled.

The second element is being able to be responsible. Regarding the second element, "able to be responsible". Someone who is able to be responsible, as has been explained by Moeljatno (2000, p. 165):

1. Ability to distinguish between good and bad deeds; those who are lawful and those who are against the law;
2. The ability to determine one's will according to the conviction of the merits of the action.

Furthermore, Moeljatno (2000, p. 165) adds:

The first is an *intellectual factor*, which is to differentiate between what is permissible and what is not. The second is the feeling or *choking (factor volitional factor)*, that is, being able



to adjust his behavior with the realization of what is permissible and what is not.

With regard to the cases discussed, HS, AW and EM are adults and are capable of committing legal actions at the time of committing the crime. Maturity and proficiency HS is 36 years old, AW is 33 years old and EM is 44 years old as seen from their age are adults. With the maturity and skills of HS, AW and EM, he has been able to distinguish between good and bad deeds, which ones are appropriate or not to do. Keinsyafan HS, AW and EM proved to be a worker who was entrusted by a Telkom Partner company to maintain telecommunication facilities and infrastructure, with full awareness taking action to take telephone cables whose maintenance was handed over to them, so that the element of being able to be responsible had been fulfilled.

The third element, has a form of error in the form of deliberation or negligence. The concept of deliberation according to Moeljatno (2000, p. 1774) can be divided into 3 types of intentionality, namely: deliberate as an intent, deliberate as certainty and also deliberate as a possibility.

When applied in a case, HS, AW and EM committed the crime on purpose and also understood the consequences of the act. The actions of HS, AW and EM that stole telephone cables belonging to PT Telkom for personal gain from the sale of cables. Therefore, the intentional element as an intention has been fulfilled.

The fourth element, there is no excuse for forgiveness. Excuses are excuses that erase the defendant's guilt. The act committed by the defendant was still against the law so it was still a criminal act, but he was not convicted, because there was no mistake. The whole action HS, AW and EM are carried out deliberately and with full awareness, not because of coercion, forced defense, so that there is no excuse for forgiveness. In this case HS, AW and EM stole telephone cables belonging to PT Telkom and the proceeds from sales were used for other personal interests of HS, AW and EM, they did it consciously and voluntarily fulfilling the elements in Article 363 paragraph (1) 4th, and fifth, the Criminal Code and Article 55 of Law no. 36 of 1999.

Based on the description above, it can be explained that HS, AW and EM as the perpetrators of the crime of theft of telephone cables belonging to PT Telkom violate the provisions of Article 363 paragraph (1) 4th, and 5th, Criminal Code and Article 55 of Law No. . 36 of 1999.

The criminal offenses imposed on HS, AW and EM are in the form of the heaviest punishment plus one third, namely seven years +  $\frac{1}{3} \times 7$  years and / or a maximum fine of Rp. 600,000,000. The Jember District Court, in its decision Number: 523 / Pid.B / 2014 / PN Jmr, stated that the HS, AW

and EM were legally proven and convinced that they were guilty of the criminal act: "Theft in Aggravating Circumstances"; Punish the defendants because of that, imprisonment for: 3 (three) months and 20 (twenty) days, respectively.

Against the case HS, AW and EM, which were decided to have committed a criminal offense violating Article 363 paragraph (1) 4th, and 5th, Criminal Code, are not quite right even though all of its elements have been fulfilled, it is more appropriate to be subject to criminal sanctions violating Article 55 of Law No. . 36 of 1999, based on the provisions of Article 63 paragraph (1) of the Criminal Code, that "if an act falls under more than one criminal rule, only one of those rules will be imposed; if different, the one imposed which contains the heaviest principal penalty. The implementation of Article 55 of Law no. 36 of 1999 in conjunction with Article 63 paragraph (1) of the Criminal Code, with a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp. 600,000,000.00 (six hundred million rupiah).

Based on the description and discussion of the actions of HS, AW and EM who took the action of taking other people's belongings without the right in the form of telephone cables which resulted in damage to the telecommunication network it could be qualified to violate the provisions of Article 55 in conjunction with Article 38 of Law No. 36 of 1999. The object that was stolen was a telephone cable belonging to PT Telkom, with the stolen cable, what happened was that it experienced interference, because there was physical damage which resulted in the telecommunications connection not running properly as referred to in Article 38 letter b of Law No. 36 of 1999. HS, AW and EM who commit acts violating Article 38 of Law no. 36 of 1999, will be subject to criminal sanctions based on the provisions of Article 55 of Law no. 36 of 1999. This means that although the HS, AW and EM actions fulfill the elements in the provisions of Article 363 paragraph (1) 4th, and 5th, Criminal Code, as general rules as in Article 63 paragraph (1 ) KUHP, that if an act falls under more than one criminal rule, only one of those rules will be imposed; if different, the one imposed which contains the most serious basic criminal threat, then it is more appropriate for HS, AW and EM to be convicted based on the provisions of Article 55 in conjunction with Article 38 of Law No. 36 of 1999

#### 4. CONCLUSIONS

Based on the discussion as in the previous chapter, it can be concluded that HS, AW and EM actions took the property of PT. Telkom, causing damage to the telecommunications network can be punished under Law no. 36 of 1999, because:

- a. The perpetrators as Telkom Partners employees are tasked with making improvements to Telkom's network on a daily basis, using existing equipment to maintain telephone networks by cutting off the telephone cables belonging to PT Telkom without rights.
- b. The cable which is cut against the right along 100 meters, causes the telecommunication network to be physically disturbed, because the cable as a means of conducting electromagnetic waves is a combination of electric and magnetic fields that propagate in space, disconnection of the cable causes physical and electromagnetic interference.
- c. The 100-meter long Telkom cable cut without rights by the perpetrators jointly disrupted the activities of providing and providing telecommunications services by PT Telkom and unable to function as normal telecommunication services.
- d. The actions of the perpetrators by jointly cutting the cable belonging to PT Telkom and selling the cable cut for mutual interests, this action has fulfilled all elements of Article 55 of Law no. 36 of 1999 in conjunction with Article 55 of the Criminal Code.
- e. The perpetrators cut the cable belonging to PT Telkom as an act of violation of the law, the perpetrator employees of Telkom Partners were deemed competent to act according to the law, the perpetrator cut the cable for sale so it was done on purpose. The perpetrator when cutting the cable is then sold, meaning that it is done consciously. The actions of the perpetrators have fulfilled all elements of criminal responsibility.

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