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## Right To Be Forgotten as an Effort to Suppress Recidivism Rate of Theft Crime

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**Abstract:** *This research's background is from the thievery recidivist cases that appear frequently. The recidivist case itself, as the general public has known for a long time, is caused by various factors, one of them being an economic factor. This differs from state officials' corruption cases that did not have any correlation with the economic condition of the defendants. The aim of this research is to prove that the Right to Be Forgotten can be a solution for decreasing the number of thievery recidivist criminal acts in In the current digital era, there is a close connection with digital footprints, making job opportunities for theft ex-convicts limited. This aspect is then one of the main focuses of the study. This article uses the normative juridical as a research method by utilizing relevant literature from other journal articles, books, and related documents. The results of the research's is that to support the new penal system where the rehabilitative and the humanism aspects are being highlighted, the act of "clearing name" for ex-convicts is needed to support them to have more job options after they get out of the prison other than owning a Small and Medium Enterprise (SMEs) with the skills they got when they were in the prison. The reason for that is with the development of technology, one of the indicators for hiring someone is to watch out for their record, both on the internet and social media.*

**Keywords:** *Ex-convicts; Recidivist; Right to Be Forgotten.*

**Abstrak:** Penelitian ini dilatarbelakangi oleh kasus residivis tindak pidana pencurian yang tidak kunjung usai, pada dasarnya tentu hal ini disadari oleh seluruh kalangan bahwa residivis memiliki banyak faktor, dan salah satu faktor yang sering sekali muncul adalah faktor ekonomi. Berbeda halnya dengan korupsi yang dilakukan oleh pejabat Negara yang tidak ada sangkut pautnya dengan faktor ekonomi. Tujuan daripada penelitian ini adalah guna membuktikan bahwa sejatinya Right to Be Forgotten bisa menjadi solusi dalam menekan angka residivis tindak pidana pencurian, sebab era digital saat ini sangat erat kaitannya dengan jejak digital, sehingga peluang mencari kerja bagi mantan narapidana pencurian menjadi sedikit, hal itulah yang kemudian menjadi salah satu fokus utama. Artikel

ini menggunakan metode yuridis normatif, dengan memanfaatkan literatur yang relevan baik itu artikel jurnal, buku, dan dokumen terkait. Hasil daripada penelitian ini adalah bahwa untuk mendukung sistem pemidanaan baru dimana yang ditonjolkan adalah sifat rehabilitatif dan pengembalian derajat manusia, maka pemberlakuan *right to be forgotten* bagi mantan narapidana pencurian dinilai perlu dengan memperhatikan faktor seseorang melakukan pencurian. Sebab implikasinya adalah selepas keluar dari penjara mereka dimungkinkan untuk memiliki opsi lain yaitu bekerja dengan orang lain maupun di sebuah perusahaan selain daripada memiliki usaha UMKM dengan bermodalkan skill yang didapatkan semasa di dalam penjara. Sebab melihat perkembangan teknologi saat ini bahwa salah satu indikator seseorang dapat diterima kerja adalah *track record* seseorang dalam internet maupun sosial media.

**Kata kunci:** Mantan Narapidana; Residivis; Right to Be Forgotten.

## INTRODUCTION

Socio-cultural development in society is something that cannot be avoided, because over time it is a necessity. This can then become a problem if the law is also not responsive in following the developments and changes arising from society. The current legal demand aims to make laws that can guide and meet legal needs in accordance with the legal awareness of a society that is developing towards modernization, with the aim of ensuring legal certainty and public order.<sup>1</sup> This is one of the reasons why there has been a shift in the view of punishment in the National Criminal Code. Law Number 1 Year 2023, also known as the National Criminal Code, contains several new concepts in punishment. Currently, the criminal justice system in Indonesia is experiencing a change in concept from a retributive approach to a restorative-rehabilitative approach, also known as *daad-dader-strafrecht* or balance of interest model.<sup>2</sup> This is also supported by a statement from the Deputy Minister of Law and Human Rights Prof. Eddy Hiariej, namely that the National Criminal Code brings modern paradigms, including corrective justice, restorative justice, and rehabilitative justice.<sup>3</sup>

Crime, as a social manifestation, is a common challenge faced by many global societies. In Indonesia, an example of a crime that often occurs is theft. Therefore, the law is present as a means to provide justice and ensure public security through legal procedures and appropriate efforts.<sup>4</sup> But then of course it must also be accompanied by prevention efforts so that there are no recidivists in the future. In the rehabilitation point, basically it is carried out as an effort so that in the future the same criminal act does not occur again, because the public's concern about the recurrence of the criminal act will certainly always

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<sup>1</sup> Abd. Rahman and Heriyanto, "MEMASYARAKATKAN HUKUM: PEMBAHARUAN HUKUM YANG DINAMIS GUNA MEWUJUDKAN EFEKTIVITAS PENEGAKAN HUKUM YANG BERKEADILAN," *HUKMY* 1, no. 1 (2021): 2.

<sup>2</sup> Hariman Satria, "Restorative Justice: Paradigma Baru Peradilan Pidana," *Jurnal Media Hukum* 25, no. 1 (2018): 111.

<sup>3</sup> Humas Kementerian Hukum dan Ham, "KUHP BARU MENGGUNAKAN PARADIGMA HUKUM PIDANA MODERN," Kementerian Hukum dan Hak Asasi Manusia RI, 2023.

<sup>4</sup> Indra Prayoga Hermanto and Arinto Nurcahyono, "Tinjauan Sosiologi Hukum Terhadap Residivis Tindak Pidana Pencurian Sepeda Motor Di Kabupaten Banggai," *Jurnal Riset Ilmu Hukum (JRIH)* 2, no. 2 (2022): 89.

frighten them.<sup>5</sup> Therefore, this is in line with the purpose of the new Criminal Code in punishment that basically today the emphasis is on humanizing humans, which its implementation will focus on the education provided to criminal offenders, be it education related to spirituality or education related to soft skills and hard skills to support their lives after being released from prison.

Indeed, the concept of rehabilitation itself is one of the efforts to reduce recidivism, but in reality, there are still many former prisoners who return to commit criminal acts. Recidivism by former theft convicts is actually caused by many factors such as insufficient economy, then low education which has implications for the difficulty of getting a job.<sup>6</sup> However, of all the factors that exist, it cannot be denied that one of them is economic factors. Until now, the criminal law system has focused more on handling criminal cases that have occurred, without focusing on prevention efforts so that these crimes do not recur. As a result, the number of theft recidivism cases is still quite high.<sup>7</sup>

From the explanation above, it seems that a new breakthrough is needed in the punishment system so that the recidivism rate can be reduced because, in fact, rehabilitation alone is not enough to be able to make someone stop the criminal acts that have been committed. So, of course special and comprehensive attention is needed to be able to find the root causes of the recidivist actions of former theft convicts. If you look at a concept called Right to Be Forgotten, it is currently listed in Law No. 19 of 2016 or familiarly called the Electronic Information and Transaction Law. In fact, there are points that need to be examined in the provisions of the Law, especially in Article 26 paragraphs (3) and (4) because the system implemented in Indonesia does not impose restrictions on the parties entitled to apply for this right, including those who have been convicted.<sup>8</sup> However, in practice, Right to Be Forgotten here is usually focused on restoring the names of victims who are generally victims of revenge porn.

Right to Be Forgotten has sparked a lot of debate among academics, because they think that this can be used by ex-convicts as a momentum to clear their names of the crimes they have committed, such as deleting articles that have no relevance because as former prisoners, they feel they have carried out their responsibilities. Actually, if the concept of Right to Be Forgotten is applied with certain limitations, then of course this will not be a problem and can even answer the problems that have been debated so far. One of the

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<sup>5</sup> Guruh Tio Ibipurwo, Yusuf Adi Wibowo, and Joko Setiawan, "Pencegahan Pengulangan Kekerasan Seksual Melalui Rehabilitasi Pelaku Dalam Perspektif Keadilan Restoratif," *Jurnal Hukum Respublica* 21, no. 2 (2022): 156.

<sup>6</sup> K.H. Andre, "Peran Kejaksaan Dalam Penuntutan Tindak Pidana Pencurian Dengan Kekerasan" (Universitas Lampung, 2019), 3.

<sup>7</sup> Yola Karelina and Muh. Endriyo Susila, "Faktor Kriminologi Narapidana Residivis Pencurian Di Lembaga Pemasyarakatan Kelas II B Kota Tasikmalaya," *Indonesian Journal of Criminal Law and Criminology* 2, no. 2 (2021): 116.

<sup>8</sup> Dhea Natalie Simarmata, Mukhlis R, and Tengku Arif Hidayat, "BATASAN PENGGUNAAN HAK UNTUK DILUPAKAN BERDASARKAN PASAL 26 UNDANG-UNDANG NOMOR 19 TAHUN 2016 TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 11 TAHUN 2008 TENTANG INFORMASI DAN TRANSAKSI ELEKTRONIK TERHADAP MANTAN NARAPIDANA DI INDONESIA," *Jurnal Online Mahasiswa* 10, no. 1 (2023): 2.

limitations is to determine which crimes can be considered for Right to Be Forgotten, of course with various rationalizations.

Some of the previous studies are the first with the title "LIMITATIONS ON USING THE RIGHT TO FORGET BASED ON ARTICLE 26 OF THE UNDERGOING NUMBER 19 YEAR 2016 ON AMENDING THE UNDERGOING NUMBER 11 YEAR 2008 ON INFORMATION AND ELECTRONIC TRANSACTIONS ON FORMER NARAPIDANA IN INDONESIA", it has been found that the opportunity for ex-convicts to re-offend makes the restriction of the right to be forgotten against them as a measure to prevent repeat crimes, incompatible with the purpose of punishment.<sup>9</sup> What distinguishes this research is that it supports the Right to Be Forgotten being applied to ex-convicts but with restrictions only on ex-convicts of theft.

Former theft convicts should have the right to have their names cleared, because one of the dominant factors is economic factors. This should help realize the success of the purpose of punishment, especially in the National Criminal Code, which in principle prioritizes the restoration of human dignity, one of which is through education in prison. The researcher assumes that the application of Right to Be Forgotten will help the implementation of the objectives of punishment, one of which is so that former convicts of theft do not repeat their actions in the future, as well as so that the community is willing to accept the former convict again. This has implications for the future related to how the prisoners will support themselves after leaving prison, of course if their names are not cleared, their ways to survive are very limited. This certainly requires cleaning the name first so that the community can trust.

This article aims to find the urgency of enforcing the Right To Be Forgotten for former theft convicts in order to reduce the recidivism rate. This discussion is important because theft recidivism is a problem that never ends, especially when viewed from the data of the Central Bureau of Criminal Statistics in 2022, theft recidivism is in second place after narcotics which has experienced a consistent increase in percentage of 36-45%. The new sentencing paradigm in Indonesia provides a conception that leans towards rehabilitation in the hope that the recidivism rate will decrease. However, this requires support, because rehabilitation is an effort that has not taken root and still has weaknesses. This article will discuss that the concept of Right to Be Forgotten can actually be a solution in reducing the number of recidivists as a support for rehabilitation efforts.

## **RESEARCH METHOD**

The method used in this research is normative juridical. Furthermore, the materials used in this research are primary and secondary materials. The primary materials are from the Electronic Information and Transaction Law and the Personal Data Protection Law. The

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<sup>9</sup> Simarmata, R, and Hidayat, "BATASAN PENGGUNAAN HAK UNTUK DILUPAKAN BERDASARKAN PASAL 26 UNDANG-UNDANG NOMOR 19 TAHUN 2016 TENTANG PERUBAHAN ATAS UNDANG-UNDANG NOMOR 11 TAHUN 2008 TENTANG INFORMASI DAN TRANSAKSI ELEKTRONIK TERHADAP MANTAN NARAPIDANA DI INDONESIA."

secondary materials used are journal articles, law books relevant to the research. The approach used is a conceptual approach which is to assess whether the Electronic Information and Transaction Law and the Personal Data Protection Law have fully guaranteed the implementation of the right to be forgotten which is fair and in accordance with the ideals of law in Indonesia. In the process, the researcher pays attention to outstanding legal issues, then looks for various kinds of literature or legal materials such as laws, journal articles, and books that have a connection with the theme written so that the researcher can bring up arguments based on accurate and credible references.

## **DISCUSSION**

### **1. Changes in the Meaning of the Word “Criminalization” in Indonesia**

Law No. 1 of 2023 on the Criminal Code and Law No. 22 of 2022 on Corrections have been passed by the Government of the Republic of Indonesia. This shows the beginning of a new era in the criminal justice system in Indonesia. There is certainly a change in the philosophy of criminal law from an emphasis on imprisonment to a corrective and restorative approach. The most fundamental change is the existence of guidelines and objectives that are set as guidelines in the implementation of punishment. These guidelines provide direction to judges in imposing and determining sentences.<sup>10</sup>

Of course, the new punishment system emerges to provide solutions to problems that live in society, including of course overcrowded prisoners and also recidivists are certainly the main focus in making changes in the new punishment system. The new sentencing system has a corrective and rehabilitative philosophy, which aims to develop and guide prisoners with the aim of making them realize their mistakes, reducing the risk of their return to crime (recidivism), and preparing them to become better and more useful individuals. The result is to provide protection to society from reoffending.

The paradigm shift of punishment is also seen in Article 51 of the National Criminal Code, which provides the objectives of punishment itself such as first, preventing criminal acts by enforcing legal norms to protect and provide welfare to the community. The second is to socialize convicts through coaching and guidance efforts so that they become positive and useful individuals. The third is to resolve conflicts arising from criminal offenses, restore balance, and provide a feeling of security and peace in society. And the last one fosters feelings of remorse and helps convicts to release guilt.<sup>11</sup>

Actually, the paradigm shift of punishment in the National Criminal Code is a form and concrete action that is codified which actually when observed, the principles contained in the National Criminal Code have existed since the Correctional Service Conference held on April 27, 1964, with several main principles, namely: first, as a citizen who is then expected to

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<sup>10</sup> Noveria Devy Irmawanti and Barda Nawawi Arief, “Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana,” *Jurnal Pembangunan Hukum Indonesia* 3, no. 2 (2021): 217.

<sup>11</sup> Mubarok and Yulianti, “Peluang Dan Tantangan Era Baru Sistem Pemidanaan Indonesia.”

become a helper, the missing person must be protected by providing life supplies. Secondly, in terms of determining punishment, it is not intended to take revenge. Third, in terms of encouraging prisoners to repent, guidance should be prioritized, not punishment. Fourth, the State must not make prisoners worse off than they were before they entered the prison. Fifth, a prisoner should be introduced into society during the time he or she is deprived of freedom of movement. Sixth, the work given to prisoners should not consume their time only for the benefit of the institution or the state; instead, the work should help build the state. Seventh, in educating and providing guidance to prisoners, Pancasila should be the guideline. Eighth, every individual has human rights, even if they have done wrong. There should be no assumption that prisoners are perpetrators of violence. Ninth, what is imposed on prisoners is only the loss of freedom. Finally, Provide and improve facilities in the correctional system that can achieve the goals of rehabilitation, correction, and education<sup>12</sup>.

All of this is done in order to endeavor the prisoners to be accepted back into the community, so that after leaving the coaching center, they can live a normal life and be accepted in the community as it should be. In the event of the enactment of the National Criminal Code, all of the above points will be the main focus in all development centers.

So that the function of punishment is no longer as a means of revenge or providing mourning as stated by Prof. Sudarto that conventionally, punishment can be interpreted as a sanction imposed by the government on individuals who violate legal regulations with the deliberate aim of providing unpleasant experiences (mourning)<sup>13</sup>, instead, they provide a form of guidance, education, and even facilitate all facilities and infrastructure that support the rehabilitation goals.

Moreover, the concept of rehabilitation is put forward even during the imposition of the death penalty. According to Article 100 in Law Number 1 Year 2023, the death penalty for convicts can be revoked if the convict shows good behavior during the ongoing waiting period of 10 years. Thus, juridically, the focus on rehabilitation in the National Criminal Code is reflected in the articles listed therein. The existence of death penalty as the most feared punishment is still ruled out even though the judge has decided. This shows that there is a new breakthrough which of course this is solely to find a way out of all criminal and punishment problems, prioritize humanism, and is a hope for the future of Indonesian Criminal Law.

## **2. Right to be Forgotten Overview**

Right to Be Forgotten is the right that individuals have to request the deletion of their personal data that has been collected and stored by the party that controls the data. However, there are certain exceptions that apply to protect other rights and interests.<sup>14</sup> In a theoretical context, the concept of "Right to Be Forgotten" is defined as the personal right of

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<sup>12</sup> Wahab Aznul Hidayat, "The Role of Witness and Victim Protection Agency for Imekko Tribe in Criminal Justice System in Sorong" 8, no. 2 (2023): 176–91, <https://doi.org/10.23917/laj.v8i2.2363>.

<sup>13</sup> Sudarto, *Kapita Selekta Hukum Pidana* (Bandung: Alumni, 1996), 109–10.

<sup>14</sup> Meg Leta Jones, *Ctrl Z: The Right to Be Forgotten* (New York: New York University Press, 2016).



an individual to independently determine when, how, and to what extent information about him or her can be conveyed to others. It also includes an individual's right to control information that is directly related to his or her privacy. Although rooted in the right to privacy, the "right to be forgotten" applies to information that has, to some degree, become part of the public domain.<sup>15</sup>

Historically, the right to be forgotten dates back to a fundamental rights request in the European Union, which in turn allowed individuals to delete personal data on the Internet.<sup>16</sup> Right to Be Forgotten originated from a 2014 incident involving Google Spain SL, Google Inc, Agencia Española de Protección de Datos (AEPD), and Mario Costeja González. At the time, Mario Costeja González applied to AEPD to remove a news article written by Vanguardia Ediciones SL, a newspaper publisher in Spain. A search using the keywords "Mario Costeja" on the Google search engine resulted in a news story about Costeja's bankruptcy and auction of his house in 1998 published in La Vanguardia newspaper. The article appears in the search results of Google Spain and Google Inc. Mario Costeja González argues that the news is no longer relevant as his property debt problem has been resolved. This is because even though the article was published more than two decades ago, information about Mario Costeja's bankruptcy can still be easily found through search engines, which has a negative impact on his reputation. The consequences of the negative image received by Mario Costeja include difficulties in qualifying for bank loans as it is considered dubious to repay the loans.<sup>17</sup> The end of the case was the issuance of a court decision ordering the multinational internet search company to remove information that included the personal data of Mario Costeja González from their pages or links. The decision was taken with the aim of ensuring the implementation of the protection of the rights guaranteed in Article 7 (right to respect for private life) and Article 8 (protection of personal data) of the European Convention on the Protection of Human Rights and Fundamental Freedoms.

In Indonesia, the application of Right to Be Forgotten is found in Law No. 19 of 2016. What is unique is that this law is the result of a revision of Law No. 11 of 2008, which is the point of revision is the inclusion of the concept of Right to Be Forgotten. The provision is detailed in a regulation that requires electronic system organizers to carry out the process of deleting Electronic Information and / or Electronic Documents that have no relevance, this is in accordance with Article 26 paragraph (3) and (4) of the Electronic Information and Transaction Law. Apart from that, a new law has recently been passed which contains and strengthens the details of the Right to Be Forgotten, namely Law No. 27 of 2022 concerning Personal Data Protection.

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<sup>15</sup> Elena S. Chub, "The Right to Be Forgotten: A New Human Right?," *Digital Law Journal* 3, no. 4 (2022): 92.

<sup>16</sup> Rolf H. Weber, "The Right to Be Forgotten: More than a Pandora's Box?," *Journal of Intellectual Property, Information Technology and E-Commerce (JIPITEC)*, 2011.

<sup>17</sup> Aliya Ilysia Irfana Ampri and Muhammad Deckri Algamar, "Hak Untuk Dilupakan: Penghapusan Jejak Digital Sebagai Perlindungan Selebriti Anak Dari Bahaya Deepfake," *Jurnal YUSTIKA Media Hukum Dan Keadilan* 25, no. 1 (2022): 26.

One of the differences between the application of Right to Be Forgotten in Indonesia and the European Union lies in its application. In the European Union, the application is by removing a content on a search engine and actually the content is still available in the directory owned by the electronic system provider. In Indonesia, the content that is requested to be deleted must be deleted in its entirety (not stored by the electronic system provider), and must be based on a court decision.

In reality, the conception of the Right to Be Forgotten in Indonesia itself still raises a lot of debate among academics. This is because Article 26 paragraphs (3) and (4) of the Electronic Information and Transaction Law does not provide detailed limitations regarding who can qualify for the article, as well as the Personal Data Protection Law does not provide confirmation that whether or not former prisoners are entitled to have their criminal records expunged. Thus, ex-convicts of all types of crimes have the opportunity to have their names cleared. This can cause the public to forget what heinous behaviors the perpetrators have committed such as human trafficking and sexual crimes. The researcher assumes that the right to be forgotten is a concept that must be protected and must be expanded, not only limited to the Electronic Information and Transaction Law and the Personal Data Protection Law and the protection of victims, but ex-convicts of theft must also be given the right to request that all irrelevant data related to themselves be deleted.

### **3. Right to be Forgotten as an Effort to Suppress Recidivism Rates**

Recidivist behavior is the act of an individual who repeats a criminal act, whether it is in the form of a similar or different crime, with or without a connection to the type of crime. In this context, there is a judge's decision that is inclusive of the criminal acts that have been committed previously.<sup>18</sup> The definition of recidivism is not explicitly provided in the Criminal Code, and is not specifically regulated in the General Rules in Book I of the Criminal Code. The concept of recidivism, which the Criminal Code refers to as "repetition of a criminal offense," is fragmented in Book II and Book III of the Criminal Code.<sup>19</sup> Recidivism is generally defined as a concept that refers to the return of criminal behavior, which includes various aspects such as re-arrest, re-conviction, and re-imprisonment.<sup>20</sup>

There are several factors that have the potential to make a person a recidivist, especially in relation to the crime of theft, which can be viewed from internal and external factors. The first internal factor is weak conviction. This usually stems from low education, and also weak religious knowledge. Then the second is the habit factor. Habit can lead everyone to what they believe is comfortable because they have been doing it for a long time. Furthermore, external factors refer to factors that come from outside the individual, such as environment, family, and economy. One of the main factors that often arise is

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<sup>18</sup> Hermanto and Nurcahyono, "Tinjauan Sosiologi Hukum Terhadap Residivis Tindak Pidana Pencurian Sepeda Motor Di Kabupaten Banggai."

<sup>19</sup> Rahmi Dwi Sutanti, "Kebijakan Aplikatif Pemberatan Pidana Bagi Pelaku Pengulangan Tindak Pidana," *Indonesian Journal Of Criminal Law Studies IJCLS II Universitas Negeri Semarang* 2, no. 1 (2017): 41–42.

<sup>20</sup> Seena Fazel and Achim Wolf, "A Systematic Review of Criminal Recidivism Rates Worldwide: Current Difficulties and Recommendations for Best Practice," *PLoS ONE* 10, no. 6 (2015): 1–8.



economic factors, where inadequate economic circumstances can lead to frustration and lack of opportunities to improve economic status, encouraging a person to engage in crime. An unsupportive environment and lack of optimal attention and upbringing from the family can also be a trigger for crime by a prisoner.<sup>21</sup> This is in line with the opinion of Prof. Hibnu Nugroho, that the actions of prisoners who re-offend create discomfort in the community. Furthermore, he emphasized that uncertainty in economic conditions, high levels of unemployment, and life difficulties significantly increase the potential for crime. Therefore, it is not surprising that people feel afraid.<sup>22</sup>

There are many incidents that are often highlighted in media coverage, such as the incident of a house robbery in Bangka Belitung by a perpetrator who has served 8 times in prison. Furthermore, there was a case of gold theft in a luxury house committed by four groups of recidivist perpetrators. The four individuals had previously been involved in similar crimes and they collaborated to carry out criminal acts after being released from prison.<sup>23</sup>

The researcher believes that the Right to be Forgotten has a positive role when applied to former theft convicts. If it is observed together that several cases that have been described in several previous statements, after everything is finished or in the sense that when the guilty person has fulfilled what is his obligation and responsibility, the information and articles that appear on the internet have the right to be deleted if the guilty party has fulfilled his obligations and feels uncomfortable with the information that is still spreading about him.

When it comes to the media's freedom to produce articles and news, the implementation of Right to Be Forgotten may be contentious. From one point of view, it is recognized as an achievement in supporting the right to privacy, but from another, it is highlighted as a restriction on freedom of speech.<sup>24</sup> In Indonesia itself, the Right to be Forgotten still only focuses on victims, there is no indication of the development that former prisoners have the right to clear their names. But of course, the media crew must also have their own intensity indicators in writing and covering news. Because of course it is not fair if the case of a small community is then covered plus on the other hand, the resulting loss is not that fantastic. This is what then makes it difficult for them after leaving the house of correction (correctional institution).

Moreover, the researcher assumes that the new conception of punishment in Indonesia is currently very focused on how to restore behavior and raise human dignity. This

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<sup>21</sup> Oktaviani Wulansari and Puti Priyana, "FAKTOR PENYEBAB SEORANG MENJADI RESIDIVIS ATAS PENGULANGAN TINDAK PIDANA PENCURIAN KENDARAAN SEPEDA BERMOTOR ( CURANMOR )," *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora* 9, no. 3 (2022): 1272.

<sup>22</sup> Ahmad Rizky Fauzan Harahap, "IDENTIFIKASI TINGKAT RESIDIVISME NARAPIDANA TERHADAP PROGRAM ASIMILASI DAN INTEGRASI COVID-19 DI INDONESIA," *JUSTITIA: Jurnal Ilmu Hukum Dan Humaniora* 8, no. 4 (2021): 757.

<sup>23</sup> Nabila Athifa Wediana and Ira Darmawanti, "Modeling Pada Residivis Pencurian Ditinjau Dari Perspektif Bandura Modeling in the Theft Recidivists from the Perspective of Bandura," *Jurnal Penelitian Psikologi* 10, no. 1 (2023): 77.

<sup>24</sup> Rolf H. Weber, "The Digital Future: A Challenge for Privacy?," *Computer Law & Security Review* 31 (2015).

is because in essence, punishment is not designed to cause suffering to criminals and should not be used to degrade human dignity.<sup>25</sup>

Therefore, law enforcement officials such as judges should also be able to compare the various factors of people committing criminal acts so that they can judge wisely and appropriately in relation to their decisions. When viewed from various factors of theft, we can judge that it is usually based on urgent economic needs, even if there is an opportunity and other supporting things are actually still based on economic needs, because this is theft in the context of small communities, not theft in the form of corruption committed by regional or state officials. Historically, since 1964, the principles of the correctional system have been promoted in the Lembang Conference where Dr. Sahardjo stated that there are at least ten main principles of the correctional system, one of which is that as the only form of suffering or misery, prisoners are only subject to punishment which takes away their right to freedom, so it is necessary to maintain their honor. Therefore, for those who have served their sentence, the stigma of being an ex-prisoner must be removed. It is important to make efforts to enable them to find work to support their families or to provide adequate education to the younger generation.<sup>26</sup>

In line with this, if you reflect on the government in America, most companies have investigated prospective workers through social media.<sup>27</sup> At the hiring stage, recruiters often conduct background checks by checking digital footprints or searching for information about an individual's identity through the Google search engine, to assess the individual's reputation and appearance on social media platforms.<sup>28</sup>

It is common knowledge that nowadays looking for a job must have a good track record. The track record referred to here is not limited to experience and expertise, but the actions they have taken in the past that can be reached through social media or the internet. This is in line with the words of the Director of Public Media Management of the Ministry of Communication and Information, Sunaryo, that many people are not aware of using social media unwisely even though their track record on social media will be tracked by companies as one of the screening steps. So that it can be seen that the applicant has been using social media wisely or not, such as for example being used to blaspheme or spread hoax information, all of which can be detected. Therefore, it can be imagined that if in the future these ex-convicts are free, if information that is irrelevant to them is still clearly exposed on the Internet even though they have carried out their obligations to serve their sentences, it is conceivable that they will choose to steal again instead of looking for work.

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<sup>25</sup> Gunadi and Oci Senjaya, *PENOLOGI DAN PEMASYARAKATAN*, ed. Dina Widayanti and Siti Lazmi Latifah (Yogyakarta: Deepublish, 2020), 30.

<sup>26</sup> Mompang L. Panggabean, *Pokok-Pokok Hukum Penitensier Di Indonesia* (Jakarta: UKI Press, 2005), 115.

<sup>27</sup> Mutiara Nur Hayati, "Praktik Self-Tracking Di Media Sosial Pemuda Pada Transisi Menuju Dunia Kerja," *Jurnal Studi Pemuda* 11, no. 2 (2022): 103.

<sup>28</sup> Brenda L. Berkelaar and Patrice M. Buzzanell, "Online Employment Screening and Digital Career Capital: Exploring Employers' Use of Online Information for Personnel Selection," *Management Communication Quarterly* 29, no. 1 (2015): 89.

In fact, the current punishment system and when the National Criminal Code is passed, one of the focuses that will be held in prisons is soft skills and hard skills training. This is certainly done to support the skills of former prisoners so that they can survive after being released from prison or correctional institutions and of course it is one way to reduce the recidivism rate as well. However, if you think about it, there are components that are lacking in this matter, because the fulfillment of skills that are not supported by sufficient capital certainly cannot guarantee the success of their careers after release from prison. If they have the capital to run a business then it certainly still has hope for them to survive, but not for those who even feel confused about where to go after leaving prison because they have nothing including money.

Seeing this phenomenon, the Right to Be Forgotten should be reconsidered in terms of its application to former convicts of theft crimes. The tight competition in finding work is certainly one of the obstacles for those who have just been released from prison.<sup>29</sup> By enforcing the right to be forgotten for former theft convicts, in the future they will not only focus on MSME businesses with the capital skills provided while in prison, but it does not rule out the possibility that those who cannot start their own business can work with others or even in a company. And if they have started a business but it turns out to be out of business in the future, then they still have the opportunity to work so that the desire to steal again based on a sense of economic urgency and not having the opportunity to work is very likely to be suppressed<sup>30</sup>. This can happen because they will have a variety of choices to maintain their lives and not rely on just one option.

From a philosophical aspect, the enforcement of the right to be forgotten for former convicts of theft means that everyone has the potential to change for the better, and also reflects human values. This is certainly based on the enactment of this can eliminate the negative stigma of the community, so that they can accept the ex-convict again as well as encourage ex-convicts to build a life with new hopes. Furthermore, from a sociological point of view, this will have an impact on social reintegration, where former prisoners become easier to mingle with the community in order to restore the social situation to its original condition (peace) after social disintegration.<sup>31</sup> Then the enactment of the right to be forgotten can also keep the social stigma of former theft convicts good in the community so that it is expected to make it easier to build a new life as well as find work like people in general so that it has an impact on reducing the possibility of former theft convicts recidivating. Juridically, the Electronic Information and Transaction Law and the Personal Data Protection Law have not provided a comprehensive description and affirmation

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<sup>29</sup> Wahab Aznul Hidayat, Hadi Tuasikal, and Siti Afiyah, "GREEN RESTORATIVE JUSTICE: ENVIRONMENTAL ENFORCEMENT AND a Deni Setiyawan , b Wahab Aznul Hidayat , c Hadi Tuasikal , d Siti Afiyah," 2024, 1–24.

<sup>30</sup> Wahab Aznul Hidayat Yuliana Debora Kambu, "Peran Jaksa Dalam Penyelesaian Tindak Pidana Korupsi," *Journal of Law* 53, no. 9 (1981): 1689–99.

<sup>31</sup> Amar Ma'ruf and Zulharman, "REINTEGRASI SOSIAL BAGI WARGA BINAAN LEMBAGA PEMASYARAKATAN KELAS IIA WATAMPONE," *Jurnal Darussalam: Pemikiran Hukum Ketatanegaraan Dan Perbandingan Madzhab* 3, no. 1 (2023): 6.

regarding the right to be forgotten for ex-convicts and how they are categorized. So that this can certainly be a boomerang for law enforcers that all types of criminal acts can request to delete all data that is no longer relevant in this case including theft crimes. Therefore, there needs to be a reassessment of this matter and there needs to be further consideration from the drafter of the law regarding who is allowed to delete data from search engines.

The researcher assumes that the application of the right to be forgotten for former theft convicts can be effective, but of course with a note, namely **first**, that the deletion of irrelevant information must first be ensured that their responsibility with the law or to the injured party has been completely completed. **Second**, that the removal of irrelevant information certainly does not eliminate existing police records. This is also included in the context of making a Police Record Certificate which often hinders job seekers from being able to apply for jobs so that if these former theft convicts can prove what related to a series of obligations they must do and have carried out perfectly then there is no reason for the police not to make it easier to issue a Police Record Certificate. Still on the second point that in this case the police must still have a record of the history of the former convict's actions as an archive in case of recidivism, so that the judge has a reference to impose a heavier sentence because the Criminal Code that is still in effect today, includes four general grounds for aggravating punishment, including the first, status as a civil servant (as stipulated in Article 52). The second is repeated acts or recidivism (Article 486, Article 487, and Article 488). The third is the combination of criminal offenses (Book I Chapter IV), and the fourth is the use of the state flag in committing a crime.<sup>32</sup> **Third**, the government must then provide guarantees to the public that the perpetrators of theft who have been cleared of their names will not repeat their crimes or at least provide firmness such as doubled punishment which certainly distinguishes between perpetrators who have been cleared of their names and those who have not, then this is outlined in a normative rule (law).

## CONCLUSION

One factor that often emerges as a reason for former theft convicts to recidivate is economic factors, where inadequate economic conditions can lead to disappointment and lack of opportunities to improve financial position. This can encourage a person to engage in criminal behavior. In addition, an unsupportive environment and lack of optimal attention and education from the family can also be a trigger for criminal acts by a prisoner. The enactment of Right to Be Forgotten can be an option to reduce the recidivism rate of theft crimes. This is based on the fact that companies often look at the track record of prospective workers through social media and the Internet. So, of course they do not have free space to survive even after being released from prison. So that if there is no name clearance for them, then their space for survival becomes limited so that it is very possible to recidivate. The

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<sup>32</sup> Prianter Jaya Hairi, "Konsep Dan Pembaruan Residivisme Dalam Hukum Pidana Di Indonesia (Concept and Reform of Recidivism in Criminal Law in Indonesia)," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 9, no. 2 (2018): 205.

implementation of the right to be forgotten for former theft convicts can be carried out effectively with some important notes. First, the deletion of irrelevant information must ensure that they have fully settled their legal responsibilities to the injured party. Second, the deletion of irrelevant information should not eliminate existing police records. In this case, the police retain the record of the ex-convict's criminal history as a precautionary measure. The aim is that in the event of recidivism in the future, the judge has sufficient reference to impose a more severe punishment. So in fact that the statement that the implementation of the Right to Be Forgotten could be an opportunity for former theft convicts to repeat their actions does not need to be worried at all because this is in accordance with the purpose of the new punishment that the community is expected to be accepted in the community, furthermore that the police will still have a criminal track record. The police will only assist in administrative matters such as making a Police Record Certificate which is a requirement for finding a job, and not removing the criminal history archives that they keep. Then the last is to provide guarantees to the public that the perpetrators of theft who have had their names cleared will not repeat their criminal acts again such as doubled punishment, which is then written into the law.

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