

# Penal and Social Aspects of Water Theft: A Case Study of Ternate City

*by* Yurispruden Journal

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**Submission date:** 20-Jun-2024 07:35PM (UTC+0530)

**Submission ID:** 2369626937

**File name:** 1\_Plagiasi\_Penal\_and\_Social\_Aspects\_of\_Water\_Theft.docx (139.75K)

**Word count:** 5500

**Character count:** 30624



Editorial Office : Faculty of Law, Universitas Islam Malang,  
Jl. Mayjen Haryono No.193, Dinoyo, Kec. Lowokwaru, Malang,  
Provinsi Jawa Timur, 65144.  
Phone : (0341) 551 932 / 551 822 / (0341) 552 249  
E-mail : [yurispruden@unisma.ac.id](mailto:yurispruden@unisma.ac.id)  
Website : <http://riset.unisma.ac.id/index.php/yur/index>

## Penal and Social Aspects of Water Theft: A Case Study of Ternate City

### Article

#### Article History

Received: Mar 15, 2024;

Reviewed: Apr 16, 2024;

Accepted: May 21, 2024;

Published: Jun 20, 2024;

#### DOI:

10.33474/yur.v7i2.21584

### Abstrak

Banyak kasus pencurian air Perusahaan Daerah Air Minum (PDAM), khususnya di Kota Ternate. Pasal 28 huruf h Peraturan Daerah Kota Ternate Nomor 28 Tahun 2011 tentang Pelayanan Air Minum Perusahaan Daerah Air Minum Kota Ternate melarang pengambilan air minum langsung dari pipa distribusi atau pipa dinas tanpa melalui meteran air. Penelitian ini bertujuan untuk menganalisis upaya hukum terhadap tindak pidana pencurian air PDAM Kota Ternate yang dilakukan oleh pelanggan dan non pelanggan melalui upaya pidana dan sosial. Penelitian ini merupakan penelitian empiris yang menggunakan pendekatan undang-undang dan pendekatan kasus. Hasil penelitian menunjukkan bahwa pencegahan hukum terhadap tindak pidana pencurian air dapat dilakukan melalui upaya penal yang menekankan pada upaya represif (penindasan/pemberantasan/pembasmian) dan upaya non-penal yang menekankan pada upaya sosial dan kemasyarakatan (pencegahan/antisipasi/pengendalian). Diharapkan bahwa gabungan antara sanksi pidana dan sanksi sosial diharapkan dapat menurunkan angka pencurian air.

**Kata Kunci:** Penal; Sosial; Perusahaan Daerah Air Minum; Ternate; Pencurian Air

### Abstract

There are many cases of water theft from the Regional Drinking Water Company, especially in Ternate City. Article 28 letter h Regional Government of Ternate City No. 28 of 2011 on the Drinking Water Service of the Ternate City Municipal Water Company prohibits taking drinking water directly from distribution pipes or service pipes without going through a water meter. This research aims to analyze legal efforts against criminal acts of theft of Drinking Water Company Ternate City water committed by customers and non-subscribers through criminal and social efforts. This empirical research uses a statutory approach and a case approach. The results showed that legal prevention of criminal acts of water theft can be done through penal efforts emphasizing repressive efforts (suppression/eradication/extermination) and non-penal efforts emphasizing

social and community efforts (prevention/anticipation/control). It is expected that the combination of criminal sanctions and social sanctions is expected to reduce the rate of water theft.

**Keywords:** Penal, Social; Municipal Water Company; Ternate; Water Theft

## INTRODUCTION

One of the natural resources that is crucial for human beings and other creatures is water,<sup>1</sup> as Indonesia re-enacted Law No. 11 of 1974 on Irrigation - after the Constitutional Court revoked Law No. 7 of 2004 on Water Resources. Law No. 7 of 2004 was revoked because it was deemed to still have many weaknesses, such as its incapability to holistically regulate water resources according to society's legal development and needs. Therefore, it was changed with Law No. 17 of 2019 on Water Resources. The Municipal Water Company (*Perusahaan Daerah Air Minum*) was created by the state. it has the main task of establishing drinking water quality management to increase and achieve social welfare. Unfortunately, there are many instances of Municipal Water Company water theft, especially in Ternate City, Indonesia.

Previous relevant research was carried out by Muhammad Irham Yusuf,<sup>2</sup> which was entitled "*Pertanggungjawaban Pidana*

*Pemalsuan Meteran Air Yang Dilakukan Oleh Konsumen PDAM Di Bandung* (Criminal Accountability of Counterfeiting Water Meters by Drinking Water Company Consumers in Bandung)" It studied cases of water theft in Bandung, West Java, Indonesia. Another research was conducted by Wulandari, Ardi and Rizqia, under the title of "*Law Enforcement Towards Water Theft Of Regional Water Supply Company In The City Of Balikpapan By Customers And Non-Customers*".<sup>3</sup> It discussed the methods of creating societal awareness of water resources. Therefore, this research fills the gap by studying the case of water theft in Ternate City through the criminal and social aspects.

The law enforcing apparatus should act upon the cases of water theft in Ternate City. Since 2011, the Regional Government of Ternate City has issued Regional Government of Ternate City No. 28 of 2011 on the Drinking Water Service of the Ternate City

<sup>1</sup> N Sutrisno dan A Hamdani, "Optimalisasi Pemanfaatan Sumber Daya Air Untuk Meningkatkan Produksi Pertanian," *Jurnal Sumberdaya Lahan* 13, no. 2 (2020): 73, <https://doi.org/10.21082/jsdl.v13n2.2019.73-88>.

<sup>2</sup> Muhammad Irham Yusuf, "Pertanggung Jawaban Pidana Pemalsuan Meteran Air Yang Dilakukan Oleh Oknum Konsumen PDAM Di Bandung," *Bandung Conference Series: Law Studies* 2, no. 1 (22 Januari 2022): 653, <https://doi.org/10.29313/bcsls.v2i1.1082>.

<sup>3</sup> Cinthia Tri Wulandari, "Penegakan Hukum Terhadap Pencurian Air Perusahaan Daerah Air Minum Di Kota Balikpapan Oleh Pelanggan dan Non Pelanggan," *Lex Suprema: Jurnal Ilmu hukum* 1, no. 2 (28 September 2019): 1.

Municipal Water Company. Article 28 letter h of this Regulation contains an explicit stipulation on the prohibition to tap drinking water directly from distribution pipes or service pipes without going through the water meter. Further, Article 33 contains penal sanctions. In reality, such regulations are ineffective as there are still rampant cases of Municipal Water Company water theft by customers and non-customers.<sup>4</sup>

This paper is urgent as there needs to be a solution to the many theft cases of Municipal Water Companies' water in Indonesia. Just like electricity theft, the illegal event of water theft is a criminal action that may be imposed with sanctions if it is deliberately carried out. The Criminal Code states that theft is divided into three main categories, namely common theft (Article 362 of the Criminal Code), theft with aggravation (Article 363 of the Criminal Code), and theft with violence (Article 365 of the Criminal Code).<sup>5</sup>

This was empirical research which employed the statute approach and the case approach. In the process of perfecting this study, the author carried out direct

observation and interviews in the field to obtain accurate truth.<sup>6</sup> To collect data, the researchers used the literary study method and the field study method by undergoing interviews.<sup>7</sup> Authors use in depth interview, which is carried to limited respondent with specific role, example officials from the PDAM, or other specific respondent. The data of this research was qualitatively analyzed and systematically arranged. From the results of the research, the authors drew a conclusion.<sup>8</sup>

The purpose of this paper is to analyze legal countermeasures against the criminal act of theft of water from the Regional Drinking Water Company (PDAM) of Ternate City committed by customers and non-customers through penal and social efforts.

## RESULT AND DISCUSSION

### Legal Countermeasures Against The Crime of Water Theft of The Ternate City Municipal Water Company by Customers and Non-Customers Through Penal and Social Efforts

The countermeasures for handling water theft in the Municipal Waterworks of Ternate City are not only penal but also through non-

<sup>4</sup> Khudzaifah Dimiyati dkk., "Indonesia as a Legal Welfare State: A Prophetic-Transcendental Basis," *Heliyon* 7, no. 8 (1 Agustus 2021): 4, <https://doi.org/10.1016/j.heliyon.2021.e07865>.

<sup>5</sup> Ahmad Arifin dkk., "Pertanggungjawaban Pidana Terhadap Pelaku Penyertaan Tindak Pidana Pencurian Motor Ditinjau Dari Hukum Pidana Positif dan Fiqh Jinayah," *Jurnal Hukum dan HAM Wara Sains* 2, no. 12 (30 Desember 2023): 1112, <https://doi.org/10.58812/jhhws.v2i12.836>.

<sup>6</sup> Kornelius Benuf dan Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (1 April 2020): 27–28, <https://doi.org/10.14710/gk.2020.7504>.

<sup>7</sup> Benuf dan Azhar, 27–28.

<sup>8</sup> David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (28 Desember 2021): 2469, <https://doi.org/10.31604/jips.v8i8.2021.2463-2478>.

penal means. According to Barda Nawawi Arief,<sup>9</sup> efforts to countermeasure crimes through the penal method can be said to do so in the criminal law method. This effort emphasizes the repressive characteristics, i.e., actions carried out after a crime has occurred with law enforcement and the imposition of punishments towards the crime perpetrator.

Apart from that, this penal method aims to handle crimes. In essence, criminal law policies (penal policy, criminal policy, or strafrechtspolitik) are a total or holistic process of penal law enforcement. The criminal law policies are actions related to:<sup>10</sup>

- a. How the government undergoes efforts to handle crimes using the criminal law;
- b. How to formulate the criminal law so that it is according to society's condition; and
- c. How the government's policies regulate society with the criminal law.

Penal policies are repressive, but they also contain preventive elements, as there are threats and penal impositions towards offenses. Such things are hoped to create a deterrent effect. Apart from that, penal policies are still crucial in handling crimes, as criminal law is one of the instruments of social

policy to channel social dislike or social disapproval/social abhorrence.

It is simultaneously hoped to become a facility of "social defence". Therefore, it is often said that "penal policy" is an integral part of "social defence policy".<sup>11</sup> A similar thing was expressed by Roeslan Saleh, who explained three rather long descriptions of the necessity of punishments and the penal law. According to Barda Nawawi Arief, as Quoted by Sukardi and Purnama, the core of his description was that punishments and the penal law do not only have effects on the perpetrator, but also influence non-criminals or people in general to comply with the norms in society.<sup>12</sup>

Based on what Barda Nawawi Arief and Roeslan Saleh explained, it can be concluded that in this era, it is crucial to use criminal law in handling crimes. Apart from having a repressive side, criminal law also has a preventive side. This preventive side functions to prevent complying citizens from committing crimes or encourage them to think twice before committing a crime.

According to Barda Nawawi Arief, as quoted by Muhaimin,<sup>13</sup> the effectiveness of

<sup>9</sup> Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan Dan Pengembangan Hukum Pidana* (Bandung: Pustaka Aksara, 2019), 44.

<sup>10</sup> Lilik Mulyadi, *Bunga Rampai Hukum Pidana: Perspektif, Teoritis, dan Praktik* (Bandung: Alumni, 2003), 93.

<sup>11</sup> Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan* (Jakarta: Kencana Media Group, 2020), 19.

<sup>12</sup> Sukardi Sukardi dan Hadi Rahmat Purnama, "Restorative Justice Principles in Law Enforcement and Democracy in Indonesia," *Journal of Indonesian Legal Studies* 7, no. 1 (1 Juni 2022): 174, <https://doi.org/10.15294/jils.v7i1.53057>.

<sup>13</sup> Muhaimin Muhaimin, "Restoratif Justice dalam Penyelesaian Tindak Pidana Ringan," *Jurnal Penelitian Hukum De Jure* 19, no. 2 (26 Juni 2019): 189, <https://doi.org/10.30641/dejure.2019.V19.185-206>.

imprisonment punishment can be perceived from the two main aspects of the goal in imposing punishments, namely the aspect of societal protection and the aspect of creating a deterrence in society. The aspect of societal protection includes the aim to prevent, decrease, or control criminal actions. It also recovers balance in society, such as by resolving conflicts, bringing a sense of security, fixing damage/harm, and restrengthening the values that live in society.<sup>14</sup>

Meanwhile, the aspect of creating a deterrence in society includes various goals, including making society rethink before committing the crime of water theft. In the aspect of societal protection/interest, a punishment is deemed effective when measured by how far it can prevent and decrease crimes. Therefore, the criteria of effectiveness are perceived from how far the frequencies of crimes can be lowered.

In other words, the criteria are placed on how far the effect of imprisonment punishment's general prevention can prevent society in general from committing crimes. From the aspect of perpetrators' improvement, the measure of effectiveness is placed in the aspect of special prevention from

crimes. Thus, the measure is placed on how far the penalty (imprisonment) influences the perpetrator/offender.<sup>15</sup>

Apart from the criminal law aspect, the social aspect must also be taken as one of the forms of social planning. It includes rational efforts to handle crimes such as water theft in the Ternate City Municipal Water Company. This can be called socio-criminal. Its end goal is to achieve social protection.

Therefore, socio-criminal is part of the plan to protect society. It is part of social policies. The efforts to handle crimes of Ternate City Municipal Water Company water theft should be carried out through the policy approach, in the sense that:<sup>16</sup>

1. There is an integration between socio-criminal and social politics; and
2. There is an integration between penal and non-penal efforts in handling crimes.

The efforts to handle crimes through the "penal" method emphasize the repressive efforts (oppression/eradication/elimination) after the crime occurred. Meanwhile, the non-penal method emphasizes eventive efforts (prevention/anticipation/control) before such crimes happen. This can be said as a crude difference because, in essence, repressive

<sup>14</sup> Arief Budiono dkk., "Legal Conscience and the Pressure of the Formal Law System," *Wisdom* 22, no. 2 (26 Juni 2022): 224, <https://doi.org/10.24234/wisdom.v22i2.790>.

<sup>15</sup> Barda Nawawi Arief, *Kebijakan Hukum Pidana (Criminal Law Policies)* (Semarang: Ilmu Hukum Universitas Diponegoro, 2015), 85.

<sup>16</sup> Widayati dkk., "An Efforts to Prevent Juvenile Delinquency to Prepare the Nation's Successful Generation," *International Journal of Law Society Services* 2, no. 2 (2022): 67.



actions can be seen as preventive efforts in a broader sense.<sup>17</sup>

According to G.P. Hoefnagels who was quoted by Barda Nawawi Arief, countermeasure efforts against crimes may be carried out through:<sup>18</sup>

1. Criminal law application;
2. Prevention without punishment; and
3. Influencing views of society through social efforts.

According to Marc Ancel, as quoted by Widayati et al., crime prevention efforts or what is commonly called criminal policies, rational efforts to prevent crimes. This crime policy can generally be carried out through two methods, namely:<sup>19</sup>

1. Penal Efforts are efforts in handling crimes that emphasize repressive efforts (oppression/eradication/elimination) by using penal facilities (the criminal law);
2. Non-Penal Efforts are efforts in handling crimes that emphasize preventive efforts (prevention/anticipation/control) before such crimes happen. They tend to be social efforts and its main target is to handle the conducive factors causing crimes.

The scope of the penal policies above is a form of criminal law application for the act of water theft in the Ternate City Municipal Water Company. It is one of the efforts to handle crimes. Countermeasures against crimes that are carried out using criminal law are not a new method. On the contrary, it is the oldest method that is as ancient as human civilization. Even some take it to the extremes by calling it the older philosophy of crime control.<sup>20</sup>

Therefore, apart from the penal effort of imprisonment, the efforts to prevent crimes need to be carried out through socially nuanced policy approaches.<sup>21</sup> This means that there is an integration between criminal politics and social politics as well as the integration between “penal” and “social” efforts of crime prevention.<sup>22</sup>

In this case, Muladi stated that the use of criminal law as an effort to counter crimes should be perceived in the holistic relationship of criminal politics or social defense planning

<sup>17</sup> M Sadi dan F Mursid, *Kapita Selekta Hukum Pidana Indonesia* (Jakarta: Prenada Media, 2020), 57.

<sup>18</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana (Anthology of Criminal Law Policy)* (Jakarta: Kencana, 2017), 59.

<sup>19</sup> Widayati dkk., “An Efforts to Prevent Juvenile Delinquency to Prepare the Nation’s Successful Generation,” 67.

<sup>20</sup> Emaliawati Emaliawati, Bonarsius Saragih, dan Aji Mulyana, “Effectiveness of Social Work Sanction as a Substitute for Imprisonment in The Perspective of Sentencing Purposes,” *Jurnal Penelitian Hukum De Jure* 22, no. 3 (30 September 2022): 332, <https://doi.org/10.30641/dejure.2022.V22.325-336>.

<sup>21</sup> Emaliawati, Saragih, dan Mulyana, 332.

<sup>22</sup> Agung Mas Triwulandari, “Problematika Pemberian Bantuan Hukum Struktural dan Non Struktural Kaitannya dengan Asas Equality Before The Law,” *Jurnal Ilmiah Kebijakan Hukum* 14, no. 3 (2 November 2020): 549, <https://doi.org/10.30641/kebijakan.2020.V14.539-552>.

that is part of national development.<sup>23</sup> This is because it must be considered that the goals that criminal law aims to achieve are generally manifested in social interests that contain certain values that must be protected. Then, the aforementioned social interests are as follows:<sup>24</sup>

- a. Maintaining order in society;
- b. Protecting society from crimes, losses or unjustifiable crimes perpetrated by other people;
- c. Resocializing law violators; and
- d. Maintaining or keeping the integrity of certain basic perspectives on social justice, human dignity, and individual justice.

The goals that criminal law aims to achieve are generally manifested in social interests that contain values that must be protected. One of its goals is carrying out legal measures and protection towards the Municipal Water Company which is a regional government-owned business enterprise. This company carries out the service function to fulfill society's need for drinking water/tap water. The criminal law protects this company by reducing the criminal act of water theft.

The Municipal Water Company exists as an element of public service that emphasizes the social aspect. This is reflected in the determination of the product price, which considers society's capability. But beyond its function as an element of public service, it cannot be separated from the economic dimension, namely, the pursuit of profit, as it is part of the source of Original Regional Income (ORI).<sup>25</sup>

Based on the description above, it can be said that the state's presence through the Central and/or Regional Governments in the form of Regional Government-Owned Business Enterprises aims to protect society's interests in obtain water. Criminal law, as a public law, aims to protect the interests of individuals and society to obtain clean water. The criminal law protects the interests of a society and state with a consideration that is in line with indecent actions.

Therefore, a criminal law is deemed effective when seeing how far it can prevent and handle the occurrence of the crime of water theft. Therefore, the criterion of effectiveness is seen from how far the frequency of crimes can be prevented. In other words, it is placed on how far the effects of

<sup>23</sup> Faisal Faisal dan Yandri Radhi Anadi, "Prosecutorial Power: Ending Prosecutions Through Restorative Justice Principles:," *Indonesian Journal of Innovation Studies* 25, no. 1 (25 Januari 2024): 6, <https://doi.org/10.21070/ijins.v25i.1037>.

<sup>24</sup> Dewi Bunga, "Politik Hukum Pidana Terhadap Penanggulangan Cybercrime (Criminal Law Politics: Terrorism Eradication)," *Jurnal Legislasi Indonesia* 16, no. 1 (22 April 2019): 12, <https://doi.org/10.54629/jli.v16i1.456>.

<sup>25</sup> Verawaty Manurung, "Efektivitas Pelaksanaan Peraturan Pemerintah Nomor 122 Tahun 2015 Tentang Sistem Penyediaan Air Minum (Studi Pelayanan PDAM Tirta Raya Kabupaten Kubu Raya)," *Jurnal Fatwa Hukum* 5, no. 2 (30 Mei 2022): 33.



general prevention work in preventing the general public from committing crimes.<sup>26</sup>

The crime of theft is a type of crime against human wealth that is regulated in Chapter XXII Book II of the Criminal Code. It is a never-ending issue. Theft has rampantly happened in society. According to the Criminal Code, theft is defined as taking goods owned by other people in ways that violate their rights. Its definition is more clearly stated in Article 362 of the Criminal Code. This Article states:

"Whoever takes an item that is totally or partly owned by other people with the aim of owning that item in ways that violate other people's rights is punished with theft with imprisonment for a maximum of five years and fines with the maximum amount of Rp. 900,- (Nine hundred IDR)."

Based on the text of Article 362 of the Criminal Code, the elements of theft can be identified as follows:

1. The taking of an item;
2. What is taken must be an item;
3. Other people must totally or partly own the item;
4. The taking must be carried out with the aim of owning that item in illegal ways (that violate other people's rights).

It is common for a person to be deemed as stealing if he steals liquid objects such as water from the Municipal Water Companies by connecting the Municipal Water Company's pipes without authorization for a certain instrument.<sup>27</sup> Therefore, based on that description, we can conclude that an act is deemed as stealing if an item is taken by a person who has no rights over that object.<sup>28</sup>

It is commonly known that the characteristic of the crime of theft is that it brings economic losses to victims. In this case, it is the state (because the Ternate City Municipal Water Company's is a Regional Government-Owned Business Enterprise). Apart from that, the debit of water flow will decrease for society in general.<sup>29</sup>

The offense of theft in this case, means that an action must occur due to the perpetrator's desire to illegally own a certain object. The act of law violation lies in owning another person's item through theft or taking another person's goods without the acknowledgement of the owner.<sup>30</sup>

Based on the description above, it can be understood that theft is a crime that happens very often. People who steal water from the Municipal Water Company are not limited to

<sup>26</sup> I. Nyoman Bangkit Sugiarta, I. Nyoman Putu Budiarta, dan Ni Made Puspasutari Ujjanti, "Perlindungan Hukum Terhadap Kerugian Konsumen Sebagai Akibat Kelalaian Perusahaan Daerah Air Minum," *Jurnal Konstruksi Hukum* 4, no. 1 (31 Januari 2023): 62, <https://doi.org/10.55637/jkh.4.1.6028.59-66>.

<sup>27</sup> Arifa, "Penanggulangan Tindak Pidana Pencurian Air Bersih Oleh Pelanggan Suatu Penelitian Pada Perusahaan Daerah Air Minum Tirta Mountala Kabupaten Aceh Besar," 37.

<sup>28</sup> Ali Zaidan, *Menuju Pembaruan Hukum Pidana*, 5 ed. (Jakarta: Sinar Grafika, 2019), 39.

<sup>29</sup> Zaidan, 39.

<sup>30</sup> Zaidan, 39.

those with a lower economic background who do not have money to pay for the water flowing into their houses. There are also water theft perpetrators who have higher economic backgrounds but are unwilling to pay more than they should.

This greedy desire mostly came from outside municipal water companies, which came from customers or citizens who didn't want to pay the fees they should. Water theft is mostly from the external and with various methods; thus, the customer or citizen who didn't pay what they should have becomes an external factor.

From the internal factor is incompetency or greedy desire from the officials at municipal water company. Incompetencies lead to ignorance or inability to detect water theft case and the officials greedy desire usually with cooperation with customer or citizen (usually fraudulent citizen or customer paid bribes).

In an interview, Fadli Mahda, S.E., the Head of the Customer Relations Sector of the Municipal Water Company of Ternate City stated:<sup>31</sup>

“The issue of the water theft criminal act in Ternate City is one of the most common crimes, especially the crime of water theft from the Municipal Water Company's pipes, based on results of the findings in 2021-2022. The crime of stealing water from the Municipal Water Company is

perpetrated by some individuals from the category of non-subscribers that originate from groups of entrepreneurs, hotels, or café owners”.

Water theft, especially in Ternate City, is one of the cases that bring losses because the bill for used water goes unpaid. This does not only affect society, but it also affects the regional government. Further, in an interview, Muhammad Syafei Baay, the General Manager of the Municipal Water Company of Ternate, stated:

“Some cases of the criminal act of water theft are indicated to involve individuals working in the Municipal Water Company. [One of] the impacts of these actions is that in 2022, people in some sub-districts such as the Maliaro and Sango sub-districts had difficulties obtaining water. Such a crime brings losses to the company, society and customers”.<sup>32</sup>

Even though the vocabulary of the name Municipal Water Company of Ternate City Ake Malako into the Municipal Water Company of Ake Gale, it does not mean that society as legal subjects can violate legal regulations. Complying with legal regulations is a logical consequence of becoming a citizen of a legal state. It must be considered that the failure to implement one's obligations to the state will lead to sanctions. Such sanctions are a coercive act of legal regulations that aim to

<sup>31</sup> Fadli Mahda, The Head of the Customer Relations Sector of the Municipal Water Company of Ternate City, personal communication, 23 Mei 2023.

<sup>32</sup> Syafei Muhammad Baay, The General Manager of the Municipal Water Company of Ternate, personal communication, 23 Mei 2023.

encourage legal subjects to carry out their obligations.<sup>33</sup>

Article 28 of the Regional Regulations of Ternate City No. 28 of 2011 on the Drinking Water Service of the Municipal Water Company of Ternate City states that the forms of water theft are:

- a. Hoarding or constructing buildings above the water meter;
- b. Distributing drinking water from public taps or water terminals using any type of pipes and or pipelines to houses or other parties;
- c. Moving the location of water meters/hydrants without an approval from the Municipal Water Company;
- d. Destroying the pipe network, taking off, damaging, and losing the seal, reversing the direction of the water meter or damaging the water meter and its instruments thus preventing the measurement of water usage;
- e. Tapping drinking water directly from distribution pipes or service pipes without going through the water meter or taking drinking water before the water meter;
- f. Selling drinking water from public taps and using tank cars without approval from the Municipal Water Company;
- g. Using pipes suckers directly on pipes and or other methods that deviate from the stipulations of the Municipal Water Company.

Apart from that, the legal liability of water theft mentioned in Article 3 Decision of the Director of the Ternate City Municipal Water Company No. 690/126 of 2018 on the Administrative Fees and Sanctions to the

Customers of Ternate City Municipal Water Company, as follows:

1. Customers are prohibited from carrying out the following actions:
  - a. Releasing/reversing the direction of the water meter;
  - b. Damaging service pipes/water meter/water spring seal;
  - c. Sucking water using machines/pumps;
  - d. Connecting water pumps with Municipal Water Company installations; and
  - e. Distributing water outside of the customer's parcel.
2. Customers' actions as stated in clause (1) are deemed as violations or after illegal usage for a minimum of 12 months, the perpetrators are imposed with sanctions based on the measurement of the highest water usage in those years or at least 50 m<sup>3</sup>/month;
3. In the case of illegal installation or connection of the water flow without the approval or acknowledgement from the Municipal Water Company, the indicated installation will coercively be de-installed and the perpetrator will be sued according to the applicable legal regulations.

The factors causing water theft and its penal and social preventions are as follows:

#### **The Lack of Monitoring by The Municipal Water Company of Ternate City Ake Gale**

The lack of monitoring by the Municipal Water Company of Ternate City Ake Gale as the distributor as well as the supervisor makes it easy for society to commit clean water theft which brings losses to the Municipal Water Company. If we see the number of Municipal

<sup>33</sup> Agus Budianto, "Legal Research Methodology Reposition in Research on Social Science," *International Journal of Criminology and Sociology* 9 (2020): 1340, <https://doi.org/10.6000/1929-4409.2020.09.154>.

Water Company of Ternate City Ake Gale employees, it is highly impossible for them to monitor all water customers in Ternate City. Therefore, it is not effective if the number of employees does not balance the number of users, as almost 75% of the Ternate City population subscribes to clean water from the Municipal Water Company.

This condition can be legally handled by creating a synergy between the Municipal Water Company and the police force in supervising society. This is to prevent the crime of Municipal Water Company clean water theft. This synergy also allows priority in the criminal case of water theft. From the social aspect, it can be carried out by adding employees who have the special task of monitoring the Municipal Water Company water theft. There should be special rewards for society members who have the courage to anonymously report water theft

#### **The Factor of The Municipal Water Company Individual Employees**

In an interview with Muhammad Syafei Baay the General Manager of the Municipal Water Company of Ternate City,<sup>34</sup> he stated that the Municipal Water Company has checked some points in the sub-districts that have trouble obtaining access to water. However, some individual employees from the Municipal Water Company still tend to leave such a condition, especially if those

individuals have obtained rewards from society. Thus, these individuals do not report the situation to the head of the region.

This situation is even worse if some regard it as a way of obtaining additional income. This clearly violates the stipulations of the Regional Government of Ternate City issued a Regional Regulation of Ternate City No. 28 of 2011 on the Tap Water Service of the Municipal Water Company of Ternate City.

The Municipal Water Company of Ternate City have not carried out any penal solutions. Every case of theft is internally resolved through a mechanism of discipline sanctions, such as demotion, decreasing wages, and suspension. Therefore, the Municipal Water Company of Ternate City should be stricter in acting upon individuals who commit theft by processing them through the litigation method. To create a deterrent effect, these perpetrators should be given an additional sanction in the form of work termination. From the social aspect, a performance monitoring system and an increase in welfare for the Municipal Water Company employees should balance the penal sanctions.

#### **The Environmental Factor**

The environment is one of the factors that causes perpetrators to commit the crime of clean water theft. If a person lives in a bad

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<sup>34</sup> Baay, The General Manager of the Municipal Water Company of Ternate, personal communication,.

environment, he is more likely to commit deviant actions.

A factor that causes perpetrators to steal water is copying their neighbors, who also commit such an action with the aim of benefitting themselves. This is in line with the differential association theory. This theory is influenced by three other theories, namely ecological and cultural transmission theory, symbolic interactionism, as well as cultural conflict theory. From the influences above, it can be concluded that the occurrence of this theory is based on the fact that every person will accept and acknowledge the behavioral patterns that can be carried out.<sup>35</sup>

The solution of law enforcement can be carried out for individual consumers of Municipal Water Company. The crime of water theft with a method of fraud is a crime that contains a system of wrongdoing or fraud towards a certain thing that seems to be rightful from the outside. But the reality is different from how it appears. In the concept of water meter fraud, perpetrators manipulate the measuring instrument or change the water meter, making them different from the determined standard. As a consequence, the water that enters from the tap through the

water meter is not accurately detected. This brings profits for the perpetrators as the amount of water used is not according to the water bill.<sup>36</sup>

The Municipal Water Company of Ternate City has never resolved the crime of water theft through litigation. However, it is carried out through the imposition of fines and the disconnection of the network. The solution through the penal method or the criminal law process should be imposed as a strict action for water theft crimes that cause great losses. Solutions through the social method are used because the prevention of crime can only effectively be achieved through society's extensive participation, which includes real awareness and order.

The perpetrators of water theft need to be announced to the public to create a deterrent effect. Apart from that, it is hoped that if the identity is open to the public, it will make the perpetrators feel ashamed and therefore learn a lesson.<sup>37</sup> According to the writers, the law prevention of the crime of water theft in Municipal Water Company of Ternate City by customers and non-customers may be carried out by anticipating such crimes. There are two types of law prevention efforts, namely the

<sup>35</sup> Indriati Amarini, Nikmah Fitriah, dan Rizky Aulia Cahyadi, "Integrated Legal Protection of Women in Conflict with the Law in the Criminal Judicial Process (Decision Case Number 677/Pis.Sus/2018/PN Cbi)," *Jurnal Jurisprudence* 12, no. 2 (Desember 2022): 270, <https://doi.org/10.23917/jurisprudence.v12i2.1329>.

<sup>36</sup> Andi Kartini Sari, "Studi Kehilangan Air PDAM Tirta Bukae Luwu Utara (Studi Kasus Kec. Masamba) Tahun 2017 – 2018," *Journal Dynamic Saint* 4, no. 1 (30 Juni 2019): 727, <https://doi.org/10.47178/dynamicsaint.v4i1.684>.

<sup>37</sup> Achmad Aris Mugiandono, Enggar Dian Ruhuri, dan Mutiara Girindra Pratiwi, "Challenges and the Overcoming Strategies in Implementation of Attorney General's Guidelines Number 18 of 2021," *Jurnal Dinamika Hukum* 22, no. 1 (11 Juli 2022): 75, <https://doi.org/10.20884/1.jdh.2022.22.1.3236>.

penal and non-penal efforts. Penal efforts are efforts to counter crimes that emphasize repressive efforts (oppression/eradication/elimination) after the crime has happened.

Meanwhile, Non-Penal Efforts are efforts to counter crimes that emphasize social and communal efforts (prevention/anticipation/control), which is different from criminal law. In this case, as efforts of crime prevention, the non-penal efforts can be imposed. Such efforts are carried out through preventive measures where steps are taken to prevent or hinder the chance for crimes to happen.

Apart from that, the policy approach needs to be taken as an effort of crime prevention, meaning that there should be harmony between criminal and social policies. criminal policies encompass penal policies (or the criminal law application) and non-penal policies (without the application of the criminal law).

## CONCLUSION

Based on the discussion of the research results, the law prevention of the crime of water theft in Municipal Water Company of Ternate City by customers and non-customers may be carried out by preventive and repressive measures for such crimes (water theft). There are two types of law efforts, namely the penal and non-penal efforts. Penal efforts are efforts to counter crimes that emphasize repressive efforts (oppression/eradication/elimination) after the crime has happened. Meanwhile, non-penal efforts are

efforts to counter crimes that emphasize social and communal efforts (preventive/anticipation/control), which is different from criminal law.

## SUGGESTION

It is hoped that the combination of criminal sanctions and social sanctions in preventing water theft may decrease the rate of this crime that currently happens in the Municipal Water Company of Ternate City.

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