

Legal Review of the Crime of Theft Based on the Criminal Code

Nurul 'Aini, Sumarno, Suci Ramadani

Abstract

The crime of theft is a form of crime against property that still frequently occurs in society and has the potential to disrupt and disrupt the sense of security. In the Indonesian criminal law system, the crime of theft is regulated in the Criminal Code (KUHP), specifically in Articles 362 to 367. This study aims to determine and analyze the provisions of the crime of theft in the Criminal Code and how criminal sanctions are applied to criminal acts. The research method used is normative legal research with a regulatory approach and a contextual approach. The data used are primary, secondary, and tertiary legal materials obtained through literature studies. The research results show that the Criminal Code systematically regulates the crime of theft, ranging from basic theft, aggravated theft, theft with violence, to theft within the family, with varying penalties depending on the nature and severity of the offense. The application of criminal sanctions to perpetrators of theft in judicial practice is based on the fulfillment of the elements of the offense and the judge's consideration of the defendant's aggravating and mitigating circumstances. Therefore, it can be concluded that the regulation and application of criminal sanctions for the crime of theft in the Criminal Code aim to provide a deterrent effect, protect property rights, and maintain order and justice in society.

Keywords: Crime; Theft; Criminal Code; Criminal Sanctions.

Nurul 'Aini¹

¹Master of Law Study Program, Universitas Pembangunan Panca Budi, Indonesia
e-mail: nurulaini9684@gmail.com¹

Sumarno², Suci Ramadani³

^{2,3}Master of Law, Universitas Pembangunan Panca Budi, Indonesia
e-mail: sumarno@dosen.pancabudi.ac.id², suciramadani@pancabudi.ac.id³

2nd International Conference on Islamic Community Studies (ICICS)

Theme: History of Malay Civilisation and Islamic Human Capacity and Halal Hub in the Globalization Era

<https://proceeding.pancabudi.ac.id/index.php/ICIE/index>

Introduction

Theft is a crime frequently encountered in society and has a significant impact in the form of material losses for the injured party. This act not only disrupts the sense of security but also undermines social order. Within the framework of Indonesian criminal law, theft is systematically and strictly regulated in the Indonesian Criminal Code, which is contained in Book Two, Chapter XXII, which covers provisions ranging from Articles 362 to 367 [1]. These provisions outline the elements of theft, along with variations and legal aggravations. The Criminal Code, as a legal product influenced by the civil law system, provides a normative foundation for the state to enforce the law, protect citizens' property rights, and maintain and uphold justice in society. Furthermore, the Elucidation of Article 476 of Law Number 1 of 2023 emphasizes that the meaning of "taking" is not limited to the act of directly or physically controlling property. The term also encompasses various other forms of functional and intangible acts. This regulation is expected to create legal certainty and protect the property rights of every individual.

According to Moeljatno, as quoted by Rian Prayudi Saputra, criminal acts only include actions, as he stated that criminal acts only refer to the nature of the act, namely the nature of the prohibited act with a penalty if violated [2]. Strictly speaking, Article 362 of the Criminal Code contains provisions regarding the crime of theft in its basic form. This article emphasizes that theft occurs when someone takes an item belonging to another person with the aim of unlawfully controlling it [3]. This provision is seen as the basic formulation of the crime of theft which is the main reference in enforcing criminal law. For this act, the perpetrator can be held criminally responsible and subject to sanctions in the form of imprisonment or a fine in accordance with applicable provisions. Article 362 reads:

"Anyone who takes something, wholly or partially belonging to another person, with the intent to appropriate it unlawfully, shall be guilty of theft, subject to a maximum imprisonment of five years or a maximum fine of nine hundred rupiah."

The elements of the crime according to Article 362 of the Criminal Code are [4]:

- a. Any person (the subject who commits the act)
- b. Takes something (the act of taking)
- c. Something, wholly or partially belonging to another person
- d. With the intent to appropriate it unlawfully

These four elements illustrate the legal content of the basic definition of theft in the Criminal Code. The prohibited act and subject to criminal sanctions in the crime of theft is the act of taking, that is, taking possession of an object in a tangible and complete manner under the perpetrator's control. With the development of law and judicial practice, the definition of an object has been expanded to include not only tangible objects but also intangible objects as objects of the crime of theft. A person's understanding of deviant actions starts from the closest environment, namely the family environment [5].

However, theft does not always have the same form and level of culpability. Therefore, the Criminal Code distinguishes several types of theft based on the method, time, and specific accompanying circumstances. One form of theft that is considered more serious is aggravated theft, as regulated in Article 363 of the Criminal Code. Aggravated theft encompasses specific circumstances, such as the act being committed at night, in a closed place or yard, by two or more people together, or being committed in a manner that increases the risk of loss and disruption to public safety [6]. These circumstances indicate a greater level of intentionality and potential danger than theft in its usual form. Therefore, the lawmakers stipulate heavier criminal threats in Article 363 of the Criminal Code as a form of stronger legal protection against property rights and public order. This distinction also reflects the principle of justice, where criminal sanctions are adjusted to the severity of the act committed. Legal policy plays a major role in designing the legal system, including laws and regulations governing criminal acts [7].

The imposition of criminal sanctions by the court must be carried out by considering the fulfillment of the elements of the crime, the strength of the evidence presented, and the objective and subjective conditions of the perpetrator of the crime. Furthermore, the judge is also obliged to assess the existence of mitigating and aggravating factors as a basis for determining the severity of the sentence. In the practice of legal research and in court decisions, differences in judges' perspectives and interpretations of theft cases are often found. These varying interpretations indicate that the application of criminal law on theft is not simple, but rather contains a high degree of complexity in criminal justice practice.

In the practice of criminal law enforcement, imposing sanctions on perpetrators of theft does not always proceed smoothly. Various obstacles often arise, including difficulties in proving elements of the crime, the quality and completeness of the investigative process, and the judge's considerations in issuing a verdict that includes mitigating and aggravating factors for the defendant. These conditions demonstrate that the application of the law depends not only on written norms but also on the processes and assessments of law enforcement officials. Therefore, an in-depth legal study is needed to understand the application of theft legal provisions in the Indonesian criminal justice system and assess their suitability for the objectives of law enforcement, legal certainty, and a sense of justice. The application of criminal sanctions to a theft conflict also allows all parties to resolve and restore the resulting crime through restorative justice. This allows law enforcement to be resolved not only through litigation but also through non-litigation means [8]. The resolution process provides both parties with the opportunity to reach a consensus through deliberation, thereby discovering the true nature of justice within each individual.

Based on the above description, this background emphasizes the need for legal research on the regulation of the crime of theft in the Criminal Code and the application of sanctions to the perpetrators, as formulated in the following two main issues of the problem formulation. How is the regulation of the crime of theft in the Criminal Code? How are criminal sanctions applied to perpetrators of the crime of theft? This research is expected to provide a deeper understanding of the factors causing the crime of theft. This research is also expected to be a consideration for law enforcement officers and the community in efforts to prevent and overcome the crime of theft.

Research Methodology

The research method applied in this paper is normative legal research, namely a type of research that focuses on the study of the rules, principles, and legal norms applicable in the positive legal system. This research places law as a written norm that is analyzed through library materials. The approach used includes a statutory approach, which is carried out by examining various legal provisions related to the crime of theft as regulated in the Criminal Code (KUHP), specifically Articles 362 to 367. In addition, a conceptual approach is also used by examining the concepts, principles, and views of criminal law experts relevant to the research problem. The legal materials used consist of primary legal materials in the form of laws and regulations, secondary legal materials including textbooks, scientific journals, and previous research results, as well as tertiary legal materials such as legal dictionaries and encyclopedias. The collection of legal materials is carried out through library studies, while the analysis is carried out qualitatively with descriptive-analytical methods to obtain conclusions that are able to answer the research problem formulation systematically and comprehensively.

Results

The Criminal Act of Theft is Provisioned in the Indonesian Criminal Code.

The crime of theft is a crime regulated in Book II of the Indonesian Criminal Code (KUHP), which originated from the Dutch criminal law system and remains in force in Indonesia today. The KUHP specifically regulates this crime in Articles 362 through 367, which outline various forms of theft, each with its own elements and penalties. As a crime against

property, theft is seen as the unlawful taking of another person's property with the intention of possessing it permanently or temporarily without the owner's consent.

The provisions of the crime of theft are regulated sequentially from Article 362 to Article 367 of the Criminal Code, as a single unit in the Criminal Code [9]. Classification of theft according to the Criminal Code, where in the legal literature it is explained that the Criminal Code regulates several forms of theft [10]; (a) Article 362 of the Criminal Code regulates ordinary theft as the basic form of the crime of theft, namely the act of taking another person's property with the intention of possessing it unlawfully; (b) Article 363 regulates aggravated theft because it is carried out in certain circumstances that are more dangerous; (c) Article 364 regulates minor theft of small value items; (d) Article 365 regulates theft accompanied by violence or threats of violence (robbery); (e) Article 366 contains further provisions related to the application of criminal penalties; (f) Article 367 regulates theft within the family environment which under certain conditions cannot be prosecuted.

The basic provisions of the crime of theft are contained in Article 362 of the Criminal Code, which formulates a general definition of the crime of theft. This article stipulates that "anyone who takes something that belongs wholly or partially to another person with the intent to possess it unlawfully" is an act punishable by imprisonment and/or a fine. The elements that must be fulfilled in theft are the act of taking the item, the item must belong to another person, and the perpetrator's intention to possess the item unlawfully.

Furthermore, the Criminal Code also regulates a more serious form of theft, namely theft with violence as stipulated in Article 365 of the Criminal Code. This crime occurs when the act of theft is accompanied by the use of violence or the threat of violence against people or property [11]. This element of violence can be committed before, during, or after the taking of the property with the aim of facilitating the theft or escape. Therefore, the criminal threat imposed on the perpetrator is more severe than for ordinary theft. From a legal perspective, theft with violence not only emphasizes the unlawful taking of another person's property, but also the violation of the victim's safety and security. The presence of this element of violence or threat makes this crime considered more dangerous and serious under criminal law.

In addition to ordinary theft and theft with violence, the Criminal Code also regulates special forms of theft, namely petty theft and theft within the family. Petty theft, as stipulated in Article 364 of the Criminal Code, is an act of theft that meets the elements of Article 362, but is committed against items of relatively small value, thus imposing a lighter penalty, as stipulated in Article 367 of the Criminal Code [12]. This regulation reflects the principle of proportionality in sentencing. Meanwhile, theft within the family, as regulated in Article 367 of the Criminal Code, has its own characteristics because it is classified as a complaint-based offense. This means that the prosecution process can only be carried out if there is a complaint from the aggrieved family member. This provision places family relationships as a key consideration in enforcing criminal law, with the aim of maintaining family harmony and preventing excessive criminalization in the private sphere.

In general, the provisions regarding the crime of theft in the Criminal Code indicate a classification of theft offenses based on the form of the act, the accompanying elements, and the circumstances and conditions of its implementation. Each type of theft has its own characteristics and legal elements that must be proven through the judicial process, so that the law can be applied appropriately and fairly. These differences in elements also have implications for varying criminal penalties, adjusted to the level of seriousness and impact of the theft. This is intended to provide a deterrent effect on perpetrators while guaranteeing legal protection for community property rights. With this regulatory system, the Criminal Code strives to adapt criminal law enforcement to evolving social dynamics and realities, while adhering to the principles of legality and legal certainty as the primary foundations of Indonesian criminal law.

Implementation of Criminal Sanctions for Perpetrators of Theft.

Criminal sanctions against perpetrators of theft are not only repressive but also serve preventive and retributive purposes. The purpose of punishment is to provide a deterrent effect on the perpetrator and prevent similar acts in the future, while also upholding a sense of justice in society [13]. The prison sentences imposed by judges reflect the principle that every violation of criminal law must receive a proportionate response. This demonstrates that the Criminal Code explicitly provides a legal basis for criminalizing perpetrators of theft for the protection of property rights and public safety.

The crime of theft in Indonesian positive law is regulated in the Criminal Code (KUHP), specifically Articles 362 to 367, which regulate various forms of theft such as ordinary theft, aggravated theft, violent theft and petty theft. Theft itself according to Article 362 of the Criminal Code emphasizes that the act of taking another person's property unlawfully with the intention of possessing it is a crime that is punishable by a maximum of five years' imprisonment or a certain fine.

In law enforcement practice, the imposition of criminal sanctions on perpetrators of theft is reflected in various court decisions. One example can be seen in the study of the Binjai District Court decision, where the panel of judges sentenced the defendant to 2 years and 6 months in prison after being found guilty of aggravated theft as stipulated in Article 363 paragraph (2) of the Criminal Code [14]. In issuing this decision, the judge not only assessed the fulfillment of the elements of the crime and aggravating circumstances, but also took into account mitigating factors, such as the defendant's polite and cooperative attitude during the trial process. This consideration shows that sentencing is not merely mechanical, but also takes into account aspects of the defendant's behavior and personality in order to achieve a fair and proportional decision.

The crime of theft committed with aggravating elements or accompanied by violence is further regulated in the additional provisions of the Criminal Code. Article 365 of the Criminal Code explains that the crime of theft with violence is similar to the crime of murder, which is committed with another act that precedes, accompanies, or follows a crime. This similarity lies in the relationship between the main act and the element of violence carried out to achieve a specific goal. In the context of theft with violence, the use of violence or the threat of violence is carried out to facilitate the execution of the theft, retain the proceeds of crime, or escape from legal action. Article 365 of the Criminal Code stipulates a much harsher penalty than ordinary theft due to the element of violence. In general, perpetrators of theft with violence are threatened with a maximum of 9 years' imprisonment. However, the penalty can be increased if the theft is committed under certain circumstances, such as at night, by two or more people, or if it causes serious injury to the victim, which can increase the penalty to up to 12 years in prison. If the theft with violence results in the victim's death, the perpetrator can be sentenced to a maximum of 15 years in prison or life imprisonment.

Thus, theft with violence is not only seen as the unlawful taking of property, but also as a crime with a higher level of complexity because it involves other interrelated acts. In judicial practice, judges often impose prison sentences of several years on perpetrators of theft with violence if all elements of the crime, including the element of violence and aggravating circumstances, are legally and convincingly proven. The application of this harsher penalty reflects the legal consideration that theft committed in a way that endangers the safety of others has a more serious social impact. Therefore, the increased criminal penalties are intended as a form of legal protection and an effort to prevent similar crimes.

Although the Criminal Code stipulates criminal sanctions for perpetrators of theft, its implementation still raises several issues that have drawn attention. Many people are reluctant to report petty theft due to the low value of the items, the perceived complexity and time-consuming legal process, and the perception that the penalties imposed are lenient and therefore lack a deterrent effect [15]. One frequently discussed issue is the existence of court decisions that impose relatively light sentences on perpetrators of petty theft or petty theft. This situation

is often considered by the public to be insufficient to provide an adequate deterrent effect. Several studies examining petty theft cases indicate that the sentences imposed by judges in some cases are considered disproportionate to the penalties stipulated in the Criminal Code. Consequently, the perception arises that the implementation of criminal law does not fully reflect a sense of justice and the objectives of punishment. This perception demonstrates the need for consistency and more proportional considerations in imposing criminal sanctions to ensure optimal law enforcement.

Imposing criminal sanctions on perpetrators of theft plays a crucial role in providing legal protection to the public and affirming legal certainty within Indonesia's criminal justice system. In addition to imprisonment as the primary sanction, criminal law also allows for the imposition of additional penalties, such as fines or revocation of certain rights in accordance with applicable provisions. Various criminal law studies explain that punishment is not merely intended as a form of retribution, but also aims to foster and improve the perpetrator's behavior so that they do not repeat their actions. Furthermore, criminal sanctions also serve to provide a sense of security and protection for victims and the wider community. Therefore, the application of criminal sanctions is expected to be an effective means of reducing the number of theft crimes and maintain' Aining social order and stability.

Conclusion

Based on the discussion regarding the regulation of the crime of theft in the Criminal Code (KUHP) and the application of criminal sanctions against perpetrators of theft, it can be concluded that the crime of theft has been regulated clearly and systematically in the Criminal Code, specifically in Articles 362 to 367 of the Criminal Code. These regulations include the elements of the crime of theft, types of theft, as well as aggravating and mitigating circumstances of the perpetrator's actions. In addition, the application of criminal sanctions against perpetrators of theft is adjusted to the form and level of culpability of the act committed, ranging from ordinary theft to aggravated theft or petty theft. With these regulations and criminal sanctions, the Criminal Code aims to provide legal certainty, create a deterrent effect for perpetrators, and protect the property rights of the community, so that it is expected to be able to reduce the number of theft crimes and maintain order and security in community life.

References

- [1] R. C. Auli, "Ini Bunyi Pasal 362 KUHP tentang Pencurian," *Hukum Online .com*, 2023. <https://www.hukumonline.com/klinik/a/ini-bunyi-pasal-362-kuhp-tentang-pencurian-lt65802c0e6e0f9/>
- [2] R. P. Saputra, "Perkembangan Tindak Pidana Pencurian di indonesia," *J. Pahlawan*, vol. 2, no. 2, 2019, doi: 10.31004/jp.v2i2.573.
- [3] A. G. Agustin, S. Hidayat, Y. Andriyani, and S. Akhmaddhian, "Implementasi Penegakan Hukum Terhadap Pencurian Kendaraan Bermotor Studi Di Kuningan," *Log. J. Penelit. Univ. Kuningan*, vol. 15, no. 2, pp. 162–185, 2024, doi: <https://doi.org/https://doi.org/10.25134/logika.v15i2.10411>.
- [4] R. A. Walandouw, P. D. R, and H. Pondaag, "Unsur Melawan Hukum Yang Subjektif Dalam Tindak Pidana Pencurian Pasal 362 KUHP," *Lex Crim.*, vol. 9, no. 3, pp. 249–257, 2020.
- [5] R. Nofianti, S. Sumarno, and H. Farisah, "Counseling; Increasing Understanding Of Deviant Behavior In The {Parenting} Family In Jati Sari Village, District Padang Tualang Langkat District," in *Journal of Proceedings*, 2023, pp. 285–288. doi: <https://doi.org/10.46576/spu.v3i0.146>.
- [6] D. Mulyati and U. Husba, "Tinjauan Yuridis Tindak Pidana Pencurian Dengan Pemberatan Berdasarkan Pasal 363 (1) KUHP," *J. Ilm. Cahaya Huk. J. Ilmu Huk.*, vol. 4, no. 1, pp. 1–16, 2025, doi: <https://doi.org/https://doi.org/10.14710/dlj.2016.12055>.
- [7] S. Ramadani, E. Danil, F. Sabri, and A. Zurnetti, "Criminal Law Politics on Regulation

- of Criminal Actions in Indonesia,” *Linguist. Cult. Rev.*, vol. 5, no. 1, pp. 1373–1378, 2021.
- [8] H. Hadijah, “Tinjauan Yuridis Peniadaan Pidana Dalam Perkara Tindak Pidana Pencurian Dalam Rangka Pencapaian Keadilan Restoratif,” *Jurnal Manajemen, Hukum dan Sosial (JMHS)*, vol. 1, no. 2, pp. 60–67, 2023, doi: <https://doi.org/https://doi.org/10.30596/jmhs.v1i2.20>.
- [9] A. H. Nabilla, “Tindak pidana pencurian dalam pasal 362 kitab undang-undang hukum pidana perspektif hukum pidana Islam,” Universitas Islam Negeri Sunan Gunung Djati, 2023. [Online]. Available: <https://digilib.uinsgd.ac.id/79831/>
- [10] A. P. M. Malaihollo, J. D. Pasalbessy, and M. G. Sopacua, “Pertimbangan Hukum Hakim Dalam Penjatuhan Pidana Perkara Pencurian Pemberatan (Vide Pasal 363 Ayat 1 Kuhpidana),” *TOTOHI J. Ilmu Huk.*, vol. 3, no. 10, pp. 1020–1030, 2023, doi: <https://doi.org/10.47268/tatohi.v3i10.1961>.
- [11] M. Insani and I. Ismawati, “Tindak Pidana Pencurian Dengan Kekerasan Dalam Kitab Undang-Undang Hukum Pidana,” *J. Pena Huk. (JPH)*, vol. 1, no. 3, pp. 1–18, 2022.
- [12] B. Tampi, “Tindak Pidana Pencurian Dalam Keluarga Berdasarkan Pasal 367 Kitab Undang-Undang Hukum Pidana No Title,” *Lex Crim.*, vol. 2, no. 3, pp. 80–96, 2013.
- [13] Ibnu Rahabie M, “Efektifitas Sanksi Pidana Terhadap Pelaku Pencurian Kendaraan Bermotor,” *J. Mhs. Huk.*, vol. 2, no. 2, pp. 65–70, 2025.
- [14] N. Harefa and M. A. B. Sitanggang, “Penerapan Sanksi Pidana Terhadap Pelaku Tindak Pidana Pencurian Dengan Pemberatan Yang Dilakukan Secara Bersama-Sama,” *J. Profil Huk.*, vol. 2, no. 1, pp. 70–78, 2024.
- [15] F. P. P. R, Y. Triana, and I. Afrita, “Penegakan Hukum Terhadap Pelaku Tindak Pidana Pencurian Ringan,” *Coll. Stud. J.*, vol. 7, no. 2, pp. 698–717, 2024, doi: <https://doi.org/https://doi.org/10.56301/cs.v7i2.1445>.