

Criminalization and Judge's Consideration of Perpetrators Theft with Aggravation

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Abstract

Indonesia is a state of law, not a state of power, so legal status must be above all. In people's lives, there are always behaviors which possibly break the law, for example, theft by weighting. Cases of weighted thefts still dominates criminal acts that occurred in East Lampung regency with a total of 193 cases in 2020 and continue to increase to date. Economic problems are the main causes of weighted thefts. This research was an empirical juridical legal research, in which the procedures used were aimed at solving research problems. The research secondary data will first be utilized then conducting the next stage on getting the research primary data in the field. The empirical juridical method approach in this study, were guided by laws and regulations and also the results of data collection and interviews through field studies.

The results of this study gained that: 1. The provisions for the crime of theft by weighting according to a positive law perspective, in Article 363 of the Criminal Code (Book of Criminal Law) with a maximum penalty of seven years in prison and punishable by imprisonment for a maximum of 9 (nine years) if the theft fulfills point (3) accompanied by one of the things in point (4) and (5) of Article 363 of the Criminal Code. 2. The judge has various considerations in making a decision on the perpetrators of the crime of theft by weighting. Namely: suitability of the perpetrator's identity, the elements charged by the public prosecutor have been fulfilled, and considering aggravating and mitigating circumstances.

Keywords: Legal Responsibility, Judge Considerations, Perpetrators, Criminal Acts, Theft with Weighting

Introduction



Indonesia is a country of law, not a state of power, so the status of The law must be above all else. The law is not just a guide to read, see, or understand, but the law is enforced or obeyed. The law must be enforced by all components of the state of law. Every act must be in accordance with the rule of law without exception. without distinguishing from each other. Criminal Law is a part of public law that contains provisions on the general rules of criminal law and the prohibition of committing certain acts (active or positive or passive or negative) accompanied by the threat of sanctions in the form of criminal penalties for those who violate the prohibition, certain conditions that must be met for violators to be subject to criminal sanctions threatened in the prohibited violation, and actions, efforts made by the state through its law enforcement tools (e.g. police, prosecutors, judges) to protect and defend its rights from state actions in an effort to enforce the law.¹

In people's lives, there are always bad behaviors or behaviors that violate existing laws, regulations and norms. Any violation of existing laws and regulations will be sanctioned in reaction to violations of laws and regulations. The occurrence of various criminal acts in Indonesia varies in types and forms. We can see these crimes in our daily lives, including murder, robbery, theft, persecution, and others. Theft is defined as the act of stealthily taking someone else's property in bad faith, which means stealthily taking property without the owner's knowledge and without his will, such as taking goods from someone else's house while the occupant is sleeping.

Theft is a type of crime that has been rampant among the community. According to the Criminal Code, theft is taking an item that belongs to another person by going against the rights of others. More specifically, Article 362 of the Criminal Code explains the meaning of Theft. It reads: "Whoever takes an object that is partially or wholly owned by another person, with the intention of controlling the object unlawfully, because it is guilty of theft, is guilty of theft

¹ Topo Santoso, *Membumikan Hukum Pidana Islam; Penegakan Syari' at dalam Wacana dan Agenda* (Jakarta: Gema Insani Press, Cet. Ke-1, 2003), 28.



with a maximum prison sentence of five years or a maximum fine A lot of Nine hundred rupiah".²

Theft with aggravation is theft that is accompanied by certain methods and certain circumstances, so that they have a heavier nature, therefore the maximum punishment is heavier than ordinary theft or the crime of theft with the burden contained in Article 363 of the Criminal Code. Aggravated theft is an act of theft that has elements of the act of theft in its main form, and because it is added with other elements, the threat of punishment becomes heavier.³ Article 363 of the Criminal Code paragraph (1) explains that the maximum punishment for those who commit theft accompanied by the above is punishable by a maximum sentence of seven years in prison. Criminal law expert M. Sudrajat Bassar said that theft regulated in Article 363 of the Criminal Code is a special theft, meaning a theft in a certain way or under certain circumstances, so it is more severe.

The crime of theft is still a serious problem and requires countermeasures and prevention, therefore good efforts are needed from all parties, both law enforcement and the community. In this case, all parties must work together in actualizing religious, cultural and legal values and take firm action against the perpetrators of theft in order to suppress the pace of their development as much as possible. Cases of theft crimes with aggravated crimes do not only occur on a national scale, but also occur on a local scale, including in the Labuhan Ratu area, East Lampung. Theft with aggravation is an act of criminality that greatly disturbs the comfort of the community in Labuhan Ratu.

This theft problem is a crime that always causes disturbance and public security and order. Therefore, the role of the police is needed to overcome the crime of theft with aggravation. The National Police of the Republic of Indonesia (Polri) is one of the government institutions engaged in the field of security and public order.⁴ Criminal acts, especially theft cases with fixed charges

² Sriyanti Amir, "Tindak Pidana Pencurian Dalam Sistem Hukum Indonesia," *Jurnal Center for open science* (2020), 2.

³ P.A.F. Lamintan dan Jisman Samosir, *Delik-delik Khusus Kejahatan yang Ditujukan terhadap Hak Milik dan Lain-Lain Hak yang Timbul dari Hak Milik* (Bandung: Nuansa Aulia, 2010), 67.

⁴ Nurroffiqoh, Herry Liyus & Aga Anum Prayudi, "Penanggulangan Tindak Pidana Pencurian dengan Pemberatan," *vol. 3 nomor 1, PAMPAS: Journal Of criminal* (2022), 89.



dominating in East Lampung with a total of 193 cases in 2020 and continued to increase to 373 cases in 2021. Based on the number of incidents of theft with aggravated theft that occurred in the East Lampung area and continued to increase, the author sees the importance of studying Legal Liability for Perpetrators of Theft Crimes with Aggravation.

Theft With Aggravation

In the positive law of theft, it is explained in Article 362, namely: "Whoever takes something, which belongs in whole or in part to another person, with the intention of unlawfully possessing, is threatened with theft, with imprisonment for a maximum of five years or a maximum fine of nine hundred rupiah".⁵ The crime of theft is a formally formulated offense where what is prohibited and threatened with punishment is in this case the act of "taking". In the sense of the word "take" (*wegnamen*) in a narrow sense it is limited to moving the hands and fingers, holding the goods, and transferring them to another place.

Theft with aggravation is usually referred to as theft qualified. This qualified thief refers to a theft committed in certain ways or under certain circumstances, so that it will be more severe, therefore it will be punished or penalized more severely than the ordinary theft penalty. Such as theft committed by damage, cutting, or climbing, or wearing fake keys, or fake office clothes, this is one of the burdens in the theft sanction. As stated in Article 363 of the Criminal Code paragraph (1) letter (e) explains that the maximum punishment for those who commit theft accompanied by the above is punishable by a maximum sentence of seven years in prison. Criminal law expert M. Sudrajat Bassar said that theft regulated in Article 363 of the Criminal Code includes special theft, meaning a theft in a certain way or under certain circumstances, so that it is heavier.⁶

Theft with aggravation is formulated in Article 363 of the Criminal Code that is:

⁵ *KUHAP dan KUHP* (Jakarta: Sinar Grafika, 2017), 121.

⁶ M. Sudrajat Bassar, *Tindak Pidana Tertentu di Dalam KUHP* (Bandung: Remadja Karya, Cetakan Kedua, 1986), 70.



1. Punished with a maximum sentence of seven years:
 - a) Theft of livestock;
 - b) Theft at the time of fire, eruption, flood, earthquake or volcanic earthquake eruptions, shipwrecks, stranded ships, train accidents, riots, rebellions or danger of war;
 - c) Theft at night in a house or a closed yard in his house, committed by a person who is there unknown or not wanted by the rightful owner;
 - d) Theft committed by two or more persons in association;
 - e) Theft to enter the place of committing a crime, or to arrive at the goods taken, done by damage, cutting, or climbing, or wearing fake keys, or false office clothes.
2. If the theft described in point (3) is accompanied by one of the things in points (4) and (5), then it is threatened with imprisonment for a maximum of 9 (nine years).⁷

Furthermore, regarding the theft of this burden in the Criminal Code, we can find it in Article 365 of the Criminal Code which reads as follows:

- 1) With a maximum prison sentence of nine years theft that is preceded, accompanied or followed by the threat of violence against the person, with the intention of preparing or facilitating the theft if caught in the act so that there is an opportunity for himself or for his friend who is involved in the crime to flee or so that the stolen goods remain in his hands.
- 2) Imprisonment for a term of up to twelve years, imposed by:
 - a) If the act is committed at night in a house or enclosed yard where there is a house or on a public road or on a train or train that is running.
 - b) If the act is committed by two persons together or more.
 - c) If he is mistakenly entering the place of committing the crime by dismantling or climbing or by using a false key, a false order or false office clothes.

⁷ Solahuddin, *Kitab Undang-undang Hukum Pidana, Acara Pidana dan Perdata* (Jakarta: Visimedia, Cetakan. 1, 2008), 86.



- d) If the act causes someone to get hurt heavy.
- 3) Imprisonment for a term of fifteen years shall be imposed if Because of that deed, there are dead people.
- 4) The death penalty or life imprisonment or temporary imprisonment for a term of twenty years shall be imposed, if the act causes any person to be seriously injured or killed, committed by two persons together or more accompanied by one of the things described in numbers 1 and 3.⁸

So thus we can know that in the case of theft we know that there is a term of aggravation in terms of theft or in other words there is a term of aggravated theft.

Legal Accountability for the Perpetrators of Theft by Weighting

Chairul Huda defines criminal liability as "a mechanism constructed by criminal law as a reaction to a breach of an agreement in rejecting a certain act."⁹ The concept of criminal liability is a very *essential* thing in criminal law enforcement, known as the doctrine of error. In Latin, the doctrine of error is known as *mens rea*. This doctrine is based on an act that does not result in a person being guilty unless the person's mind is evil. In English, the doctrine is formulated with *an act does not make a person quality, unless the mind is legally blameworthy*. Based on this principle, there are two conditions that must be met to be able to punish someone, namely there is an outward act that is forbidden/criminal act (*actus reus*), and there is an evil / despicable mental attitude (*mens rea*).¹⁰ Criminal liability is a person's liability for the criminal acts that he has committed.

The occurrence of criminal liability because there has been an act criminal offence committed by a person. Thus, criminal liability is essentially a mechanism built by criminal law to react to violations of the

⁸ Penjelasan Pasal 365 KUHP (Kitab Undang-undang Hukum Pidana)

⁹ Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggung jawaban Pidana Tanpa Kesalahan* (Jakarta: Prenada Kencana Media Group, 2014), 68.

¹⁰ Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan*, 70.



"agreement to reject" a particular act.¹¹ Accountability Criminal means that every person who commits a criminal act or violates the law as formulated in the law. Therefore, the person should be held accountable for his actions in accordance with the mistakes contained in his actions.

The crime of theft as described in the previous chapter, is also an act that harms another party, with the intention of wanting to possess the goods in an unlawful way. Theft with aggravated burglary is usually referred to as "qualified theft". This qualified thief refers to a theft committed in certain ways or under certain circumstances, so that it will be more severe, therefore it will be punished or penalized more severely than the ordinary theft penalty. Theft in Article 363 of the Criminal Code is considered necessary to be distinguished, because there is a special circumstance that must be assessed as having a burdensome quality from ordinary theft in Article 362 of the Criminal Code and therefore also the maximum criminal threat is more severe. Therefore, this offense is also referred to as theft with aggravating circumstances or also theft that is qualified with the elements of Article 363.

The aggravation in this case is carried out by imposing a criminal penalty plus 1/3 of the main penalty. So based on the description mentioned above, it is clear that in the case of this theft there is known theft with aggravation as stipulated in article 363 of the Criminal Code. Such as theft that is committed by damage, cutting, or climbing, or wearing fake keys, or fake office clothes, this is one of the burdens in the theft sanction.¹²

Based on article 363 of the Criminal Code (Criminal Code)

Criminal), a person who commits theft with a charge (Curat) is threatened with imprisonment for a maximum of 7 (seven) years. This is none other than because in addition to fulfilling the elements of ordinary theft in article 362

The Criminal Code, is also accompanied by incriminating things, namely carried out under certain conditions or in a certain way. However, the punishment can be more severe, namely a maximum of 9 years in prison, if the theft is carried out at night against a house or yard that is

¹¹ Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan*, 71.

¹² Sudrajat Bassar, *Tindak Pidana Tertentu di Dalam KUHP*, 70.



closed house, as well as: 1) Carried out by 2 or more people in a together, or 2) Done by disassembling, breaking or climbing or by wearing a false key, a false order or false office clothes.

Factors Causing Theft With Aggravation

Over the last 5 (five) years, there have been 530 cases of crime, especially theft with aggravated assault in East Lampung. The number of cases shows a trend that varies from year to year, with a record of 30 cases in 2017, 152 cases in 2018, 193 cases in 2019, 15 cases in 2020, 45 cases in 2021, and 93 cases in 2022, as well as 2 rulings in early 2022. In 2020, there was a significant decrease of 92.2%, but the number of cases increased again in the following years. The cause of the crime of theft with aggravation can be analyzed through two factors, namely internal and external. Internal factors are related to the will of the perpetrator that comes from oneself, while external factors involve encouragement from the environment or external factors. Internal factors can include low levels of education, economic conditions, and individual characteristics. Meanwhile, external factors include environmental conditions, social factors of society, and global changes that affect the tendency of these crimes.¹³

1. Internal Factors

a. Educational factors

Education has an important role as a motivator for a person to commit a crime. This is due to their lack of understanding of the rules in social life due to their low level of education. Education level is considered one of the factors that affect a person's behavior in doing evil, such as committing theft. Education serves as a guide for a person to understand what is right and what is wrong, as well as to be aware of the good or bad consequences of an action. Low levels of education can make it difficult to get jobs with adequate incomes, so basic needs are not met, which in turn is a driver

¹³ Hasil wawancara oleh Kasat Reskrim Polres Lampung Timur IPTU Johannes EP Sihombing,, pada 27 desember 2022.



the occurrence of the crime of theft. Conditions like this demand the existence of

counseling about the purpose and importance of early childhood education in the community. The lower one's education, the less likely it is to get a decent job because the competition in the world of work is getting fiercer. The educational factor also affects the type of crime committed, especially the limited mindset and knowledge, which causes perpetrators to commit conventional crimes such as theft in simple ways. On the other hand, higher education will influence more sophisticated and complex modus operandi, using more advanced technology and knowledge, so that perpetrators can commit crimes on a larger scale and more sophisticated. ¹⁴ The Gospel of Jesus Christ

b. Economic Factors

The economy plays a central role in life community. One of the factors that cannot be ignored as the cause of criminal acts or crimes is poverty or economic problems which are the initial triggers in seeking the necessities of life. Living in limitations or shortages will be an obstacle for a person to meet his or her life needs. From an economic perspective, this factor has a big influence on the occurrence of crime, especially theft. Perpetrators often have no permanent jobs or even no jobs at all, due to economic pressures that weigh them down, such as the responsibility of providing for their families, buying clothing and food, or helping sick relatives. Therefore, a person can commit a crime recklessly without considering the consequences. Especially if this economic boost is exacerbated by feelings of anxiety, worry, and other things, especially when the elderly (especially widowed mothers), wives, or children are in a sick condition that requires treatment, but it is difficult to obtain money. In conditions like this, a person can be encouraged to commit acts of theft in an attempt to find a way out.

c. Factor individual,

Individual factors include a person's attitudes and behaviors that affect the occurrence of chaos or problems in society.

¹⁴ Suharsoyo, A., "Karakter pelaku tindak pidana pencurian dalam tipologi kejahatan pencurian di wilayah sukoharjo," *Jurnal Jurisprudence*, 5(1), 2017, 64.



Bad behavior from individuals can be a trigger crime, especially theft. There are still many people who use excessive jewelry or luxury vehicles, as well as the lack of public vigilance and prudence, can trigger the crime of theft with aggravation. In addition, the behavior of workers who come home at night or late at night, especially for women who go home alone on motorcycles, also encourages the development of theft crimes.

2. External Factors

a. Environmental factors,

Where the environment is not good and brings bad influences so that crime occurs. There are many things that make the environment a factor that causes a crime (theft). For example, the need to socialize with peers, control from a lack of environment and association with someone who has a job as a thief.¹⁵

b. Global development factors

Global development has a positive impact on the progress of a country, while for individuals global development is a means to show that he is someone who is able to meet his life needs in the period of global development. Judging from today's global developments, a person who is able to cause envy to someone who is less capable, so that there is a competition between each other to show that he is also capable, but they compete by using the wrong means without thinking about the consequences and causing a crime, one of which is theft with weight. This global development also triggers a person who initially had no intention of committing a crime, to want to commit a crime in order to fulfill the needs he wants.

c. Community factors

¹⁵ Oktaviani Wulansari, Puti Priyana, "Faktor Penyebab Seorang Menjadi Residivis atas Pengulangan Tindak Pidana Pencurian Kendaraan Sepeda Bermotor (Curanmor)", *JUSTITIA : Jurnal Ilmu Hukum dan Humaniora*, 2022, 9 (3).



Lack of awareness from the community itself about awareness law to comply and obey the applicable law and also lack concern for the security and order of the area and the lack of cooperation with the police. Culture, according to Soerjono Soekanto, has a very big function for humans and society, namely to regulate so that humans can understand how they should act, do, and determine their attitude when dealing with others. Basically, culture encompasses values. Actually, the cultural factor here is more or less the community factor. However, in the cultural factor, more emphasis is placed on the problems of values in the midst of society. In the community factor, it was explained that the level of compliance or public awareness of compliance with community rules is still low. This is due to the existence of a culture that often occurs, namely the lack of community in compromise or cooperation.

Judge's Considerations in Delivering a Decision

Judges in examining and deciding cases must always equip themselves with a broad understanding of legal science. To further sharpen the legal considerations in judges' decisions that theoretically contain the values of justice and truth, every judge needs to delve deeper into how the Continental European judicial system, commonly called the civil law system, is theoretically adopted in Indonesia. In the Continental European judicial system, judges are bound by law (written law) and legal certainty is guaranteed through the form and written nature of the law. The duties and responsibilities of judges in the Continental European judicial system are to directly examine the material of the case, determine whether the defendant or the litigant is guilty or not, and at the same time apply the law. The judge's method of thinking is carried out in a deductive manner, namely thinking from the general to the special.¹⁶

The examination of criminal cases at trial cannot be separated from the indictment made by the Public Prosecutor which contains a description of the criminal acts charged against the defendant. From the formulation of the indictment, it was then proven that the defendant was guilty.

¹⁶ Mas Marwan, "Penguatan Argumentasi Fakta-Fakta Persidangan dan Teori Hukum Dalam Putusan Hakim," *Jurnal yudisial*, 2012, 5(3), 283-297.



A letter of indictment has a position as a basis or foundation examination at the trial, so that all parties involved in the trial, be it the Judge, the Public Prosecutor, the defendant or the legal advisor who accompanies him must be bound in the formulation of the indictment. The indictment has a position as the basis or basis for examination at the trial, so that all parties involved in the trial, be it the Judge, the Public Prosecutor, the defendant or the legal advisor who accompanies him must be bound in the formulation of the indictment.¹⁷

The panel of judges in imposing a verdict against the Defendant, of course, has a basis for consideration as a strong reason in imposing a verdict against the Defendant. The judge's consideration in imposing a verdict is a condition that must be met. This is in accordance with the provisions of Article 6 Paragraph (1) of Law Number 48 2009 on Judicial Power, which states: "No person shall be convicted, unless the court, by a lawful means of evidence, is satisfied that a person who is deemed to be responsible, has been guilty of the acts charged against him".

The verdict must be based not only on legal considerations, but also on a sense of justice, but must be consistent with the facts at the trial. In handling a criminal act, the terms *modus operandi* are known as *locus delicti* and *tempus delicti*. Mode is the way of operation of individuals or groups of criminals in carrying out their crime plans. The definition of *locus delicti* is the place where a criminal act is committed. Meanwhile, *tempus delicti* comes from the word *tempus* which means tempo or time and *delicti* which means delicacy or criminal act.¹⁸ In every criminal act, there is a time and place where it occurs. Both are important things in handling a criminal act. Determining *the locus delicti* or or place of the crime is important because it is important to: determine which country's criminal law applies; determine the prosecutor's office and the court that is authorized to adjudicate the case (relative competence).

¹⁷ Alamsyah Wahyu, Ardinata Septian, Abintoro Prakoso, and Samosir Martua Saut Samuel, "Analisis Yuridis Putusan Hakim Yang Memutus Pasal Yang Tidak Didakwakan Dalam Surat Dakwaan Ditinjau Dari Segi Hak Terdakwa," Artikel Universitas Jember, 2013, 2.

¹⁸ Tamaka, B. R., "Pentingnya Tempat Kejadian Perkara Menurut Hukum Pidana Indonesia," *LEX ET SOCIETATIS*, 2014, 2(5).



In deciding a criminal case, the judge must consider it as the basis for the decision he issued. The judge must consider legal considerations before making a decision. The facts and circumstances must be clearly explained according to the results of the trial and the evidence obtained at the trial, which is the basis for determining the guilt of the defendant. The case of Article 363 regulates the category of theft with allies as stipulated in Article 363 paragraph (1) 4 for a criminal act, with a criminal threat 7 – 9 years¹⁹.

Conclusion

Theft with aggravation is a type of crime that is serious and detrimental to society. Theft with aggravation is regulated in Article 363 of the Criminal Code, which provides harsher punishments than ordinary theft. The factors that cause this crime to occur include internal factors (education, economy, and individual character) as well as external factors (environment, global development, and society). The judge in making a verdict must consider valid evidence and legal considerations, and must seek justice in each case. Handling the crime of theft with aggravation requires cooperation from all parties, including the community and police officers, to prevent and overcome these crimes.

With the increase in theft rates with aggravation, more effective measures are needed in dealing with this crime. Education and equitable economic development can be a potential preventive measure to reduce the incidence of theft by weighting. Increasing awareness of the legal consequences of criminal acts can also play a role in preventing potential perpetrators from committing such acts. In addition, cooperation between the public and police officers in sharing information and reporting suspicious activity can help increase the success rate in law enforcement. In sentencing a judge, the judge needs to consider various relevant aspects, including the background and current conditions of the offender, to determine a balanced and fair sanction. Thus, awareness, prevention,

¹⁹ Pasal 363 ayat (1) Kitab Undang-undang Hukum Pidana



Law enforcement, and collaboration are key in our efforts to address these serious problems in order to create a safer and more harmonious environment for the community.

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