

LEGAL REVIEW THE CRIMINAL ACT OF THEFT BY CHILDREN IN THE FAMILY AS A COMPLAINT OFFENSE (Analysis of Decision Number 65/Pid.B/2024/PN.Tbt)

Amri ¹, M. Ridwan Lubis ²

^{1,2} Fakultas Hukum Universitas Muslim Nusantara Al Washliyah Medan

Email : amri.sari74@gmail.com ¹, muhammadridwanlubis76@gmail.com ²

ARTICLE INFO

History of the article:

Received: 05/10/2025

Corrected: 10/10/2025

Accepted : 30/10/2025

Published: 30/10/2025

Keywords:

Crime, Theft, Children,
Family

ABSTRACT

Theft has become rampant in society. The current state of society makes it very easy for people to seek shortcuts by stealing. Print and electronic media show the frequent occurrence of various types of theft, motivated by insufficient living expenses, and the perpetrators often involve family members. Legal arrangements the crime of theft in the family based on the position of the case and decision number 65 / Pid.B / 2024 / Pn.Tbt is regulated in Article 367 of the Criminal Code, In principle theft is an ordinary crime, but in several types of theft such as theft in the family as regulated in Article 367 of the Criminal Code, the legislators determine theft as a criminal complaint, namely theft that can only be prosecuted if there is a complaint from the injured party. The type of complaint contained in Article 367 of the Criminal Code is a relative complaint, namely a complaint against the person who committed the theft

1. Introduction

Crime in society is a complex and complex phenomenon, constantly engaging in discussion. This is understandable, as it involves harmful actions and directly impacts human life. Therefore, efforts are needed to prevent and eradicate these crimes, even though murder has recently shown a significant increase.

Based on sociology, crime is caused by the same social conditions and processes, which produce other social behaviors. Analysis of these conditions and processes produces two conclusions, namely there is a relationship between variations in crime rates and variations in social organizations where the crime occurs. The high and low crime rates are closely related to the forms and social organizations where the crime occurs.

Universally, humans have needs that must always be met, including food and clothing, whether as a means to sustain life, or simply to fulfill a desire for possessions or even to improve social status (standard of living). Through work,

it is hoped that fulfilling these needs will be legal, even considered an act of worship in religion. However, this hope is not always fulfilled due to the diverse nature and methods of fulfilling human needs for food and clothing, which sometimes justify any means, including committing the crime of theft.

A person commits the crime of theft certainly has different reasons, including economic reasons/economic factors, with economic factors can push people to do any action including the crime of theft. The crime of theft until now is still a dilemma and is a fairly serious problem and requires a solution, therefore it is necessary to take action to overcome or at least prevent it well from all parties, both law enforcement and the community that must be identified so that it can run in an orderly, directed, and planned manner.

Universally, humans have needs that must always be met, including clothing and food, whether as a means to sustain life or simply to fulfill a desire for possessions or even to improve social status. Fulfilling these needs can be legal and a form of religious worship. However, this expectation is not always met due to the diverse nature and methods of fulfilling these needs, often involving criminal activity.

Theft crimes can be prosecuted through law enforcement. Law enforcement against theft, particularly theft within the family, is regulated by Article 367 of the Criminal Code. Enforcing the crime of theft within the family is not solely the responsibility of law enforcement officials; it also requires participation from within the family. This can be minimized, among other things, by providing legal education to family members

2. Research Method

The nature of this research is descriptive analytical which leads to normative juridical research, namely research that starts from the problem by looking at the reality that occurs in the field, then connecting it with the applicable laws and regulations. The purpose of descriptive research is to produce an accurate picture of a group, describe a process or relationship, use basic information from a technical relationship with the definition of this research and try to describe completely, namely about the enforcement of criminal law against the crime of theft in the family.

The type of research used in this study is normative juridical, namely an approach that uses statutory regulations as the basis for solving the problems presented.

Normative legal research is an approach carried out based on primary raw materials, examining theoretical matters concerning legal principles, legal

concepts, legal views and doctrines, regulations and legal systems using secondary data, including: principles, rules, norms and legal rules contained in laws and regulations and other regulations, by studying books, laws and regulations and other documents that are closely related to the research

3. Results And Discussion

Theft is a type of crime against property regulated in Chapter XXII of Book Two of the Criminal Code and is a never-ending problem. Theft in its basic form is regulated in Article 362 of the Criminal Code which states: "Whoever takes an object, which is wholly or partly owned by another person, with the intention of unlawfully controlling the object, shall be punished for theft with a maximum prison sentence of five years or a maximum fine of nine hundred rupiah."

Looking at the formulation of the article, it can immediately be seen that the crime of theft is a formally formulated delict, where what is prohibited and threatened with punishment is an act, in this case the act of "taking." The crime of theft is regulated in Articles 362 to 367 of the Criminal Code. The crime of theft is the most common crime, listed in all Criminal Codes in the world. According to Cleiren, taking (wegnemen) means intentionally with intent. There is an intent to possess. The intent must be aimed at "controlling the object taken for oneself unlawfully." This means that it must be proven.

In relation to the above, once a complaint has been filed with the authorities, the complaint cannot be withdrawn. This is what differentiates complaint-based offenses from non-complaint-based offenses. In non-complaint-based offenses, a criminal case is processed by law enforcement officers in the criminal justice system, and it is the law enforcement authority to prosecute the case. Article 75 of the Criminal Code states this as "A person who files a complaint has the right to withdraw it within three months of filing the complaint."

The complaint offense referred to if the crime has been reported to the police by the victim, but the victim wants to withdraw the complaint, then the complaint can be withdrawn or revoked within 3 (three) months after the complaint was filed (in the case of the victim including the family circle as stated in Article 367 of the Criminal Code). Thus, for example, the parents of the perpetrator have the right to report their child to the police on charges of theft, but the parents can withdraw the complaint within 3 (three) months after the complaint was filed. In addition to the general provisions above, there are also special provisions as regulated in Article 75 (paragraph) 4 of the Criminal Code, that in the case of withdrawal of the complaint can be done at any time, as long as the examination in the court hearing has not begun.

The defendant in this case is Alwin Permana Sebayang Alias Banteng on Tuesday, November 21, 2023 at around 04.00 WIB or at another time in November 2023 or

at least in 2023 at Jalan Thamrin Gg. Turi No. 05 Lk. I, Mandailing Village, Tebing Tinggi District, Tebing Tinggi City, precisely at the house of the Victim Witness or at least at another place which is still included in the jurisdiction of the Tebing Tinggi District Court, Anyone who takes something, which is wholly or partly owned by another person, with the intention of unlawfully possessing it at a time when he is a blood relative or in-law either in a straight line or a second deviant line.

The defendant committed theft by starting on Tuesday, November 21, 2023 at approximately 02.00 WIB at the Defendant's parents' house while the Defendant's parents were asleep, the Defendant used 1 (one) iron wheel wrench with a length of 25 cm by taking one by one the items starting from 2 shelves, 1 gas cylinder, 1 unit of Nokia N 105 brand mobile phone in black, 5 cooking pots, 1 iron ladder with a length of $\pm$ 3 meters and 1 one blue Dap machine and finally the Defendant took a 32 Inc Toshiba brand TV in black and the Defendant took the items to be sold. The Defendant sold 1 (one) unit of 32 Inc TOSHIBA brand black TV and 1 (one) unit of Nokia type N105 black mobile phone to the Tao Toba car driver when the Defendant was riding the car to Siantar and paid for it at a price of Rp. 870,000,- , 1 (one) 3 kg green gas cylinder, 5 (five) cooking pots, 1 (one) iron ladder with a length of $\pm$ 3 meters and 1 (one) blue water tap machine unit. The defendant sold it to a traveling botot seller who came to the villages for Rp. 550,000 and 2 (two) large red and brown shelves that the defendant still kept in an empty house near the defendant's house. The proceeds from the sale of these items amounted to Rp. 1,420,000,- used to play slot gambling at the internet cafe.

As a result of the Defendant's actions, the victim witness suffered a loss of approximately Rp. 7,000,000 (seven million rupiah) consisting of: - 1 (one) 32-inch Toshiba brand black TV; - 1 (one) 3 kg green gas cylinder; - 1 (one) black Nokia type N 105 cellphone; - 5 (five) cooking pots; - 1 (one) iron ladder approximately 3 meters long; - 2 (two) large red and brown shelves.

As per decision Number 65/Pid.B/2024/Pn.Tbt, considering the aggravating and mitigating factors for the defendant, the judge sentenced the defendant to 2 years in prison, which is considered an appropriate sentence for the defendant because in progressive legal theory, the judge should not play a role in identifying truth and justice with the formulation of legislation. The judge's considerations emphasize the victim and the defendant for a just and prosperous life. This means that the law is for humans, this basis does not see the law as something central, but rather humans who are at the center of the legal cycle. Therefore, in this decision, the judge, by looking at the trial facts and the application of progressive legal theory, is used as the basis for imposing a minimum sentence.

From the decision on the case of theft within the family as above, it is clear that the basis of the Panel of Judges at the Tebing Tinggi District Court in giving a decision against the defendant was by considering the facts in the trial along with the

evidence that was used as a reference by the public prosecutor so that the panel of judges could consider the decisions handed down to the defendant.

Furthermore, based on the considerations of the Panel of Judges at the Tebing Tinggi District Court, including the aggravating and mitigating circumstances, as well as considerations of what happened during the trial mentioned above, the Judge believes that the sentence imposed is commensurate, proper, and just according to the law. Therefore, the decision rendered can provide a sense of proper legal fulfillment according to the application of criminal law.

Therefore, the considerations of the Tebing Tinggi District Court judge in considering the case of theft in the family are closely related to the main duties of a judge, namely to receive, examine and try and resolve every case submitted to him, then the judge examines the case and finally tries which means giving the interested party their rights or law.

Thus, seen from the perspective of legal considerations and non-legal considerations with reference to the Tebing Tinggi District Court decision Number 65/Pid.B/2024/Pn.Tbt, the application of the panel of judges in the crime of theft in the family has referred to the implementation of criminal law, by providing a sense of justice and legal certainty for victims of criminal acts.

Considering the articles applied by the Tebing Tinggi District Court judge, it can be said to be in accordance with the rules and if seen from the sentence imposed. According to the author, the legal considerations handed down by the Tebing Tinggi District Court panel of judges are proven legal facts along with evidence obtained from examinations in court. The evidence submitted is witness testimony, defendant's testimony and evidence. The sentence sanction given by the Tebing Tinggi District Court to the defendant with a prison sentence of 2 (two) years is in accordance with what the defendant has done. The defendant violated Article 367 of the Criminal Code and was demanded by the Public Prosecutor to the defendant to be sentenced to imprisonment for 1 (one) year and 6 (six) months and by the panel of judges was sentenced to a heavier sentence of 2 (two) years imprisonment. The judge added another sentence that was heavier than the prosecutor's demands, so that the defendant would be deterred by his actions

4. Conclusion

Legal arrangements the crime of theft in the family based on the position of the case and decision number 65 / Pid.B / 2024 / Pn.Tbt is regulated in Article 367 of the Criminal Code, In principle theft is an ordinary crime, but in several types of theft such as theft in the family as regulated in Article 367 of the Criminal Code, the legislators determine theft as a criminal complaint, namely theft that can only be prosecuted if there is a complaint from the injured party. The type of



complaint contained in Article 367 of the Criminal Code is a relative complaint, namely a complaint against the person who committed the theft.

The enforcement of criminal law against children as perpetrators of the crime of theft in the family is because all the elements of Article 367 of the Criminal Code have been fulfilled and it has been proven that they have committed the crime of theft, so the judge sentenced the defendant to 2 (two) years in prison and this sentence is heavier than the demands of the Public Prosecutor who demanded that the defendant be sentenced to 1 (one) year and 6 (six) months in prison.

The judge's considerations in imposing a sentence on the perpetrator of the crime of theft in the family in case number: 65/Pid.B/2024/Pn.Tbt are in the form of legal considerations (witness testimony, defendant's testimony, instructions, and evidence) and non-legal considerations (background of the defendant's actions, consequences of the defendant's actions, the defendant's condition, aggravating and mitigating circumstances) and in the trial, the Panel of Judges did not find anything that could eliminate criminal responsibility either as a justification or excuse, so the defendant must be responsible for his actions

References

- Ali, Mahrus, 2016, Basics of Criminal Law, Jakarta, Sinar Grafika.
- Arief, Barda Nawawi, 2016, Problems of Law Enforcement and Criminal Law Policy in Crime Prevention, Jakarta, Kencana Prenada Media Group.
- ; 2015, Anthology of Criminal Law Policy. Jakarta, Kencana Prenada Media Group.
- Hamdan. M. 2015, *Crimes of Bribery and Money Politics*, Medan, Pustaka Bangsa Press.
- Hamzah, Andi. 2015. Certain Offenses (Speciale Delicten) in the Criminal Code, Jakarta, Sinar Grafika.
- Kansil, CST, 2014, Introduction to Indonesian Law and Legal System, Jakarta, Balai Pustaka District Court.
- Kartono, Kartini, 2016. Social Pathology. Jakarta, King Grafindo.
- Lamintang, PAF. 2014, Fundamentals of Indonesian Criminal Law, Bandung, Citra Aditya Bhakti

