

A Legal Study of The Crimes of Theft, Extortion, and Theft With Aggravals in Criminal Responsibility

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Abstract: This study examines the legal construction and elements of the crimes of theft, extortion, and aggravated theft as stipulated in the New Criminal Code (Law No. 1 of 2023). The updated formulation of offenses in the New Criminal Code brings significant changes to the structure of the elements of the offenses, adjustments to terminology, and the emphasis on objective and subjective elements in relation to criminal liability. This study emphasizes the urgency of analyzing the consistency of normative interpretation and its relevance to criminal justice practice. Using a normative legal approach, this study outlines the regulatory framework, criminal law doctrine, and the characteristics of the differences between theft, extortion, and aggravated theft. The results show that the New Criminal Code retains the core elements of classical doctrine but clarifies the aggravating circumstances and the mode of occurrence of the offenses. The study concludes that the construction of offenses in the New Criminal Code provides stronger legal certainty and results in a more systematic and proportional law enforcement framework.

Keywords: Criminal Liability; Theft; Extortion; Aggravated Theft; New Criminal Code.

INTRODUCTION

Indonesia has firmly established itself as a rechtsstaat or state based on the rule of law, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "The State of Indonesia is a state based on the rule of law." (1945 Constitution Article 1 Paragraph (3), 1945). This provision confirms that Indonesia is not a state based solely on power, but rather a state that upholds the law as the basis for governance. This means that all state activities, from the government and law enforcement agencies to citizens, are bound by applicable laws. This principle is the main foundation for maintaining order, justice, and legal certainty in the life of the state.

Criminal law plays a fundamental role in maintaining public order and security by imposing sanctions on any acts that violate legal norms. One of the most common crimes in society is theft. Theft itself is regulated in Article 362 of the Criminal Code (KUHP), while a more serious form, namely aggravated theft, is regulated in Article 363 of the Criminal Code. Aggravated theft has certain elements that cause the perpetrator to be subject to a heavier punishment than ordinary theft, for example, because it was

committed at night, committed jointly, or accompanied by destruction and climbing.¹

The phenomenon of aggravated theft often has adverse social and economic impacts on society, both directly and indirectly. Therefore, law enforcement against this crime requires a deep understanding of the legal aspects and criminal liability of the perpetrator. In the context of criminal law, criminal liability is an important indicator in determining the extent to which a person can be punished for their actions.² The elements of guilt (mens rea) and action (actus reus) must be proven in order for a perpetrator to be held criminally liable in a lawful and fair manner.³ A legal study of aggravated theft and the criminal liability of perpetrators is highly relevant for assessing the consistency of law enforcement in Indonesian courts.

Normatively, these three crimes are highly relevant to the Indonesian penal system. Crimes against property not only cause material losses, but also affect social stability, environmental security, and public confidence in the effectiveness of the legal system.⁴ Therefore, an analysis of the elements of crime, legal characteristics, and criminal liability for theft, extortion, and aggravated theft is necessary to provide a comprehensive understanding of the implementation of the New Criminal Code in the context of modern law enforcement.

Based on these various descriptions, this study focuses on a juridical analysis of the regulation of criminal acts of theft, extortion, and aggravated theft in the New Criminal Code, particularly in relation to the construction and application of criminal liability. The transition from the old Criminal Code to the New Criminal Code has brought about a number of fundamental changes to the structure of offenses and the normative characteristics of each type of criminal act against property. However, to date, there is still limited literature that comprehensively compares these new constructions, especially in the field of property offenses. This situation creates the potential for inconsistencies in law enforcement practices, particularly in relation to the consistency of judicial interpretations, certainty for perpetrators, and protection for victims.

The limitations of these studies indicate the need for purely normative research that analyzes how the New Criminal Code reformulates the elements of theft, extortion, and aggravated theft, as well as how criminal liability is constructed to ensure certainty, fairness, and usefulness in its application. Thus, this study aims to fill this gap through a systematic legal analysis of the new provisions and their implications for the Indonesian criminal justice system.

METHODOLOGY

This study uses a normative juridical approach, which is legal research based on applicable positive legal norms.⁵ This approach is used to examine the provisions of legislation, legal principles, and doctrines in

¹ Ardiansyah, Hendra. "Penerapan Pasal 363 KUHP dalam Perkara Pencurian dengan Pemberatan." *Jurnal Hukum dan Pembangunan*, Vol. 50, No. 3 (2020): 425–439.

² Djanggih, Hardianto, Elvi Susanti Syam, and Syahrul Gunawan. "The Prosecutor's Legal Policy In Enacting Restorative Justice On Criminal Case." *Russian Law Journal* 11.3 (2023): 1349-1357.

³ Rahayu, Siti. "Analisis Pertanggungjawaban Pidana dalam Tindak Pidana Pencurian." *Jurnal Ilmiah Hukum*, Vol. 15, No. 2 (2019): 210–223.

⁴ Arief, M. & B. N. Muladi & Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana*. Alumni.2010

⁵ Mawardi, Adv, et.all. *Metodologi Penelitian Hukum*. Harfa Creative. Bandung 2025

legal science relating to aggravated theft and criminal liability, namely by analyzing the laws and regulations governing theft, particularly Articles 362 and 363 of the Criminal Code. In addition, it also examines the concept of criminal liability as contained in criminal law doctrines and relevant jurisprudential studies.

The data collection technique was conducted through library research by searching, reading, and analyzing legal materials related to the research focus. The data obtained was then analyzed using qualitative analysis, namely by interpreting legal provisions and legal theories to obtain an overview of the application of the law to aggravated theft and the forms of criminal liability.

The results of the analysis in this study are expected to provide a comprehensive explanation of the application of criminal law norms in upholding justice and determining the appropriate criminal liability of perpetrators of aggravated theft.

RESULTS AND DISCUSSION

One thing that must be acknowledged is that the current order and peace campaign are aimed at achieving peace and strengthening the community's ability to prevent and overcome all forms of lawlessness and other disturbances that affect society.⁶ This includes rampant crimes such as theft, extortion, and aggravated theft. Relevant regulations have been enacted to deter such crimes, and improvements will continue to be made through legal research and analysis..

1. Legal Construction of Criminal Acts of Theft, Extortion, and Aggravated Theft

The legal construction of the criminal acts of theft, extortion, and aggravated theft in the New Criminal Code is not only based on the formulation of the law, but also relies on a theoretical framework that supports the interpretation of the elements of the offense and the relationship between the perpetrator's criminal liability. A purely normative approach places the law as a written norm that forms the basis for the analysis of criminal acts, so that the focus of research is directed at the study of principles, doctrines, and provisions of legislation.

Criminal liability serves as the fundamental basis for determining whether or not an act warrants criminal sanctions against the perpetrator. In the context of theft, extortion, and aggravated theft, the construction of criminal liability is based on the fulfillment of the elements of a criminal act (*actus reus*) and the element of fault (*mens rea*).

In R. Soesilo's doctrine, criminal liability occurs when the "objective condemnation" of an act that is contrary to the law is passed on to the perpetrator who subjectively meets the conditions for condemnation through intent or negligence. It is this unity between the objective and subjective elements that determines that the perpetrator has the capacity to be held responsible and can therefore be punished.

The legal construction of the criminal acts of theft, extortion, and aggravated theft in the New Criminal Code is not only based on the formulation of the law, but also relies on a theoretical framework that supports the interpretation of the elements of the offense and the relationship between the perpetrator's criminal liability. A purely normative approach places the law as a written norm that forms the basis for the analysis

⁶Jumadil , Ahmad, et al. "Upaya Penegakan Ketentraman Dan Ketertiban Umum Masyarakat Oleh Satuan Polisi Pamong Praja Kabupaten Bone: The Enforcement of Public Peace and Order by the Bone District Civil Service Police Unit". *Reformasi Hukum*, vol. 26, no. 2, Dec. 2022, pp. 116-31,

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These elements are objective and subjective elements

- a. Objective elements include the act of taking or coercing, the object in the form of goods, causality, and the nature of the act being against the law. In criminal acts:
 - Theft, the objective element is the act of taking goods that are wholly or partly owned by another person.
 - Extortion, the objective element is the act of forcing someone with threats to give something or make a statement that benefits the perpetrator.
 - Aggravated theft, the objective element is expanded with special circumstances such as being committed at night, committed together, or committed by means of destruction.
- b. The subjective element is intent, deliberation, economic motive, and the goal of obtaining unlawful gain. In theft and extortion, mens rea plays an important role because these offenses are intentional offenses, so without deliberation, the act cannot be classified as a criminal offense.

Extortion is a criminal offense against property committed by using threats or violence to obtain gain. In doctrine, extortion differs from theft because the transfer of goods occurs as a result of pressure on the victim, not because of secretive taking.

The elements of extortion emphasize coercion, threats, and the goal of obtaining profit. The New Criminal Code retains the basic structure of the crime of extortion as in the old Criminal Code, but clarifies the terminology to ensure legal certainty. From the perspective of criminal liability theory, extortion is a crime that clearly requires intent, because the perpetrator consciously directs threats at the victim to obtain economic benefits.

Extortion, as a crime against property, has a specific characteristic, namely the element of coercion, either through violence or the threat of violence, which causes the victim to surrender goods or benefits to the perpetrator. In the framework of criminal law, the fundamental difference between theft and extortion lies in the means of obtaining the goods: theft is carried out secretly, while extortion involves direct pressure on the victim.⁸

⁷ Moeljatno. *Asas-Asas Hukum Pidana*. Rineka Cipta. 2016

⁸ Soesilo, R. *Pokok-pokok Hukum Pidana Peraturan Umum dan Delik-delik Khusus*. Politeia. . (1991b)

The elements of extortion include: the existence of threats or violence; the existence of an intention for the victim to hand over goods or profits; the existence of the perpetrator's intention to obtain benefits unlawfully (Law Number 1 of 2023 concerning the Criminal Code, 2023).

This offense is a formal offense because it is considered complete when the victim surrenders goods as a result of pressure exerted by the perpetrator. From a criminal liability perspective, extortion requires intent, so it cannot be committed through culpa (negligence). The perpetrator must be aware that the threat he or she is making is intended to obtain profit, and this is sufficient to establish a causal link with the act.

Aggravated theft is a variation of the crime of theft accompanied by certain circumstances or methods that increase the seriousness of the act. The New Criminal Code regulates a number of circumstances that aggravate theft, such as being committed at night, by two or more people, by breaking and entering, climbing, or using a false key, and in certain circumstances such as a disaster⁹.

This aggravation indicates a higher criminal assessment of acts that are considered to have the potential to cause greater harm or insecurity than ordinary theft. Normatively, aggravated offenses do not eliminate the basic elements of theft, but add additional elements that must be proven in addition to the basic elements of the offense. Therefore, aggravated theft remains a material offense, but is qualified as an offense with more serious consequences.

In the context of criminal liability, aggravation can only be applied if the perpetrator is aware of or intends for the aggravating circumstances to exist, for example, deliberately committing theft with others or choosing nighttime to facilitate the crime.

Legally, the distinction between theft, extortion, and aggravated theft also shows how criminal law establishes boundaries for the protection of legal interests in the form of property. Theft focuses on unauthorized appropriation, while extortion places the perpetrator's actions in the context of coercion or threats so that the victim loses the freedom to defend their property rights. This difference in the structure of the elements shows that criminal law does not only focus on the loss of goods, but also considers the manner or process by which the rights are taken away. Thus, the moral aspect, the manner in which the act is committed, and the intensity of the offense are also distinguishing factors in the legal construction of each criminal act.

In addition, the legal construction of aggravated theft is a form of normative differentiation that emphasizes that perpetrators who commit theft under certain circumstances, such as at night, by two or more people, by means of destruction, or accompanied by minor violence, receive a heavier legal assessment. The affirmation of these aggravating circumstances is a form of preventive protection by lawmakers against patterns of crime that are considered to have the potential to pose a greater threat to public order and community safety. Through this regulation, there is a normative message that higher levels of danger and social risk must be met with more severe sanctions.

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⁹ Sudarto. *Hukum Pidana I*. Fakultas Hukum UNDIP. 1990

patterns of crime that are considered to have the potential to pose a greater threat to public order and the sense of security of the community. Through these regulations, there is a normative message that higher levels of danger and social risk must be met with more severe sanctions.¹⁰.

Furthermore, the legal construction of these three criminal acts also shows how the concept of unlawfulness (wederrechtelijkhed) plays a central role in determining the criminality of an act. In theft, unlawfulness is reflected in the taking of property contrary to the right of ownership. In extortion, unlawfulness is extended to include threats that are contrary to social and legal norms. Meanwhile, in aggravated theft, unlawfulness is not only found in the deprivation of rights, but also in additional actions (modus) that suggest a higher degree of intent and contempt for public order. Thus, the concept of wederrechtelijkhed provides a philosophical basis for distinguishing the severity of these crimes.

In addition, differences in the characteristics of the elements also affect how criminal liability is applied to the perpetrator. In theft and aggravated theft, the perpetrator's intent is directed at the goal of unlawfully possessing the goods. However, in extortion, the form of intent has a dual dimension, namely the intent to cause fear and to profit from the situation. This difference determines the form of dolus used by judges in assessing the perpetrator's guilt. Therefore, the construction of subjective elements in these three criminal acts shows a clear differentiation in terms of the quality of intent and the intensity of guilt..

At the level of law enforcement, the legal construction of these three criminal acts also reflects how the New Criminal Code continues to uphold the principle of legality and the fundamental principles of criminal law. Lawmakers sought to clarify the normative formulation to better align it with judicial practice and the dynamics of contemporary crime. Thus, the construction of theft, extortion, and aggravated theft is not merely a formulation of elements, but also a reflection of the development of the need for more comprehensive and adaptive legal protection.

2. Elements of Criminal Offenses of Theft, Extortion, and Aggravated Theft

The elements of a crime are fundamental elements that must be proven in every criminal act. The existence of the elements of a crime determines whether an act can be classified as a specific criminal act. In the context of theft, extortion, and aggravated theft, the formulation of the elements of the offense shows significant legal differences even though all three are classified as crimes against property. Analysis of the elements of the offense is important because it serves as a basis for law enforcement officials in determining the normative construction, the perpetrator's guilt, and the basis for criminal liability.

In the crime of theft, the elements of the offense classically consist of objective and subjective elements. The objective element includes the act of taking, the object being goods, the goods being partially or wholly owned by another person, and the existence of an unlawful nature. The subjective element lies in the intention to possess the goods unlawfully. The element of "taking" is understood as the act of transferring power over the goods from the owner to the perpetrator, while the element of "unlawful" emphasizes that the act is not based on rights or permission.¹¹ Thus, theft is not only seen as the loss of goods, but also as the deliberate act of unlawful possession.

¹⁰ Hamdan, H., Alwi Jaya, and Elvi Susanti Syam. "Batasan Perlindungan Hukum Bagi Anak yang Dapat Dipertanggungjawabkan sebagai Pelaku Kejahatan." *Al-Ishlah: Jurnal Ilmiah Hukum* 24.1 (2021): 53-67.

¹¹ Hamzah, A. *Hukum Pidana Indonesia*. Sinar Grafika.2020

Unlike theft, the crime of extortion has a distinctive character because its main element is coercion carried out with violence or the threat of violence. The objective elements of extortion include forcing someone to give up goods, incur debt, or write off debt. The subjective element is the intent to cause fear in order to gain profit.¹² In the construction of the crime of extortion, the surrender of goods is not the result of a physical transfer of power by the perpetrator, but rather the result of psychological pressure that deprives the victim of their freedom. This shows that the essence of the crime of extortion is not the goods themselves, but rather the method of obtaining them, which involves intimidation.

Meanwhile, aggravated theft (gequalificeerde diefstal) is an extension of the basic elements of theft. The elements of the crime remain the same as ordinary theft, but are compounded by certain aggravating circumstances, such as being committed at night in a house, being committed jointly, being committed by means of destruction, or being accompanied by certain acts of violence.⁵ The addition of these aggravating elements reflects that the perpetrator committed the act in a more dangerous manner and has the potential to cause wider public unrest. Therefore, the aggravating elements serve to indicate a higher degree of culpability (schuldgrad) on the part of the perpetrator, in line with the theory of criminal responsibility which assesses that the degree of culpability is proportional to the severity of the criminal penalty¹³.

Analysis of these three criminal acts shows that the construction of criminal elements serves as a systematic instrument to distinguish the character of each criminal act. In theft, the focus of the elements lies on the act of unlawfully taking property; in extortion, the main element is coercion that influences the victim's will; while in aggravated theft, the legal focus is on the manner or circumstances that worsen the quality of the act. Thus, the elements of the offense not only determine the form of the criminal act, but also influence the process of proving and applying criminal liability to the perpetrator.

To determine the existence of aggravated theft, all legal elements must be cumulatively fulfilled. The main elements of theft include:

- 1) the act of taking goods
- 2) the goods are wholly or partly owned by another person
- 3) the act is committed with the intention of unlawfully possessing the goods.

Meanwhile, aggravating factors are added based on circumstances that worsen the nature of the act or cause greater harm to the victim. In deciding cases of aggravated theft, judges are guided by the proof of these elements through valid evidence as stipulated in Article 184 of the Criminal Procedure Code, namely witness testimony, expert testimony, documents, evidence, and the defendant's testimony..

3. Criminal Liability of Perpetrators of Aggravated Theft

Criminal liability is a form of legal consequence imposed on a person who has fulfilled the elements of a criminal offense and is at fault (mens rea). In the context of aggravated theft, the perpetrator can be held criminally liable if they are proven to have committed the act with full awareness and without any exculpatory or justifiable reasons.

The principle used in determining criminal liability is the principle of no crime without guilt (geen straf zonder schuld). This means that a person cannot be punished if they are not proven to have committed a

¹² Lamintang. *Lamintang, Dasar-Dasar Hukum Pidana Indonesia*. Citra Aditya Bakti. 2011

¹³ Tresna, R. *Komentar KUHP*. Alumni.2025

fault or negligence in their actions. When the element of intent has been proven, criminal sanctions can be imposed in accordance with the applicable level of aggravation.

In several court decisions, criminal liability for aggravated theft takes into account factors such as the age of the perpetrator, the motive for the crime, the losses incurred, and the attitude of the perpetrator after committing the crime. Judges play an important role in balancing legal certainty, justice, and expediency in handing down proportional sentences.

4. Analysis of Law Enforcement in Judicial Practice

Based on an analysis of several court decisions, the application of Article 363 of the Criminal Code has shown that courts tend to uphold justice by considering both aggravating and mitigating circumstances. Law enforcement is also aimed at deterring perpetrators, while still taking into account humanitarian values in imposing sanctions.

However, in practice, there is still inconsistency in sentencing perpetrators of aggravated theft. This is generally due to differences in interpretation of the elements of aggravation, the social background of the perpetrator, and the quality of evidence presented at trial. Therefore, harmonization of law enforcement is needed so that punishment for perpetrators of aggravated theft can be applied fairly and proportionally. By considering all aspects, justice for all parties can be realized.¹⁴

CONCLUSIONS

Aggravated theft is a form of crime that is specifically regulated in Article 363 of the Criminal Code, which contains aggravating factors because it is committed under certain circumstances, such as jointly, at night, by means of destruction, or using a false key. The existence of these aggravating factors indicates that the perpetrator has a higher degree of fault and malicious intent (mens rea) than the perpetrator of ordinary theft as regulated in Article 362 of the Criminal Code. From the perspective of criminal liability, a person can be held liable if they fulfill the elements of fault and have the ability to be responsible for their actions. The principle used is *geen straf zonder schuld* (no punishment without guilt). Thus, even if aggravating factors are proven, the judge still considers mitigating factors, such as the perpetrator's motive, age, and social circumstances, to ensure substantive justice in the application of the law.

The normative juridical approach in this study shows that the application of the law to aggravated theft crimes is still based on the principles of legality and justice. However, in judicial practice, there are often differences in interpretation of aggravating factors and criminal liability. Therefore, it is necessary to harmonize legal interpretations and improve the quality of law enforcement officials so that the resulting decisions reflect legal certainty and balanced justice. Normatively, the

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¹⁴ Irwanto, I., T. A. santosa, A. Ghoni, A. Jaya, and A. Hartawati. "Literature Review: The Effectiveness of the Implementation of Restorative Justice in the Criminal Justice System in Indonesia". RIGGS: Journal of Artificial Intelligence and Digital Business, vol. 4, no. 3, Sept. 2025, pp. 4718-23,

decisions reflect legal certainty and balanced justice. Normatively, the applicability of Article 363 of the Criminal Code is still relevant as a legal basis for prosecuting perpetrators of aggravated theft. However, in the context of modern law, it is necessary to update the national criminal law regulations in order to accommodate developments in crime modes and to clarify the limits of criminal liability of perpetrators.

Suggestion

For the Government and Policy Makers:

The Criminal Code (KUHP) needs to be updated so that provisions regarding aggravated theft are more adaptive to technological developments and the complexity of crime in the modern era, such as cyber theft or theft using digital tools.

For Law Enforcement Officials:

There is a need to improve understanding and consistency in applying aggravating factors and the principle of criminal responsibility so that there is no legal disparity between verdicts. Judges, prosecutors, and investigators are expected to interpret legal provisions proportionally based on the principles of justice and humanity.

For Legal Academics and Researchers:

Further research is needed to explore the legal and sociological aspects of aggravated theft cases, in order to provide input for the reform of national criminal law to achieve a balance between legal certainty, justice, and utility.

For the Community:

The community needs to receive legal education so that they understand the legal consequences of theft and the importance of upholding legal norms as a means of preventing crime and creating social order.

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