

## **Legal Analysis of Criminal Responsibility of Perpetrators of Theft Criminal Act (Study of Decision Number: 662/Pid.B/2024/Pn Jkt.Pst)**

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**Abstract.** *This study entitled "Legal Analysis of Criminal Liability of Perpetrators of Theft Crimes (Study of Decision Number: 662/Pid.B/2024/PN Jkt.Pst)" aims to analyze how criminal liability of perpetrators of theft crimes is determined in the Indonesian legal system and to determine the judge's considerations in identifying criminal acts based on the decision. The research method used in this study is the normative legal method, namely research that starts from applicable legal norms, with a case study approach to Decision Number 662/Pid.B/2024/PN Jkt.Pst as the object of study. The results of the study indicate that criminal liability is regulated through stages of proving the elements of a crime according to the Criminal Code, with a focus on proving unlawful acts, elements of error, and causality. In addition, the panel of judges considers strong evidence as well as social and moral aspects in making a decision. This study provides an overview of the importance of complete proof and consideration of moral values in enforcing criminal law on theft in Indonesia.*

**Keywords:** *Criminal Responsibility; Criminal Act of Theft; Legal Analysis.*

### **1. Introduction**

The Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Within this framework, the state has the responsibility to guarantee legal certainty, integrity, and legal protection that focuses on truth and justice. This is clearly manifested in the Preamble to the 1945 Constitution, especially in the fourth paragraph, which explicitly states the main purpose of establishing the Indonesian government.

The fourth paragraph of the 1945 Constitution affirms the commitment to protect the entire Indonesian nation and all its territory. This shows that the state is present to provide protection to every individual and community within it. In addition, this goal also includes efforts to advance public welfare and educate the nation's life. Thus, the government is expected to create conditions that are beneficial to the growth and development of society as a whole.

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Basically, the law aims to create order and security in order to realize a harmonious, peaceful and serene society. This peace and tranquility will be realized if all components in this universe obey and comply with the applicable laws. Therefore, the entire universe is bound by law so that harmony, peace and tranquility are well maintained.<sup>1</sup>

Criminal law as a part of law does not show any difference with other laws, namely that all of these laws contain a number of provisions to ensure that the norms recognized in the law will truly be obeyed by everyone. This is because basically all laws aim to create a condition in social interaction, both in small and larger environments, so that there is harmony, order, legal certainty, and so on.

Behavior that is not in accordance with norms or can be called a deviation from agreed norms turns out to cause disruption to the order and tranquility of human life. Such deviations are usually labeled by society as a violation or even a crime. Crime in community life is a social phenomenon that will always be faced by every human being, society, and even the state.<sup>2</sup>

Criminal acts are a form of "deviant behavior in society" that will always exist and be inherent in every element of society. So that there is no social environment without criminal acts. Deviant behavior is a real threat to social norms and rules because norms are the foundation of life in society in creating social order, because if left unchecked it can cause individual shocks or social shocks and is a concrete or potential threat to the continuation of social order. In this framework, Marc Ancel argues that criminal acts are "a human and social problem". This means that criminal acts are not only a social problem, but also a humanitarian problem.<sup>3</sup>

Theft is a crime that is directed against property and often occurs in society. The elements are subjective unlawfulness, circumstances that accompany the act, additional circumstances that aggravate the crime, and there is also an objective unlawfulness element.<sup>4</sup> This act can disrupt security stability, not only against property but also against the souls of society as a whole. Therefore, both in the Criminal Code (KUHP) and in religious texts such as the Quran and Sunnah, the act of theft is strictly prohibited and is threatened with severe punishment.

This prohibition reflects the seriousness of the law in dealing with the crime of theft, which can be seen from the form and threat of punishment imposed on violators. In this context, the law not only functions as a law enforcement tool, but also as a means to protect individual rights and maintain public security.

Therefore, strict law enforcement against the crime of theft is very important to create a sense of security in society. Through consistent and fair law enforcement, the crime of theft

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<sup>1</sup>Barda Nawawi Arief, 2001, Problems of Law Enforcement and Crime Prevention Policy, Bandung, Citra Aditya Bakti, p. 56.

<sup>2</sup>Bambang Waloyu, 2008, Crime and Criminal Procedure, Jakarta, Sinar Grafika, p. 1.

<sup>3</sup>Supriyadi, Determination of Criminal Acts as Crimes and Violations in Special Criminal Law. Mimbar Hukum, Vol 27, No 3, October 2015, p. 10

<sup>4</sup>I Gusti Ayu Jatiana Manik Wedanti, Unlawful Elements in Article 362 of the Criminal Code Concerning the Crime of Theft. Kertha Semaya Journal, Vol. 01, No. 03, May 2013.

is expected to be minimized, so that society can live in a safer and more harmonious environment.

Regarding the threat of punishment for the crime of theft in positive criminal law in Indonesia, it is regulated in the Criminal Code (KUHP) Book Two Chapter XXII concerning crimes against property from Article 362 to Article 367 of the Criminal Code. Theft is an act of taking an object, either tangible or intangible, belonging to another person illegally and against the law. The punishment governing theft is contained in Article 362 of the Criminal Code.<sup>5</sup>

*"Anyone who takes something, which wholly or partly belongs to another person, with the intention of possessing it unlawfully, is liable for theft, with a maximum imprisonment of five years or a maximum fine of sixty rupiah."*

In this article, it is stated "whoever" so that it can be interpreted as anyone or everyone who commits a criminal act, and violates the act which has been determined by law where by Lamintang. The word "taking" can be interpreted as taking an object in whole or in part owned by another person, where there is an intention to control it unlawfully. In accordance with the development of the era, this element has been interpreted several times.

Initially it was interpreted as moving something from its original place to another place. This means bringing the item under its real control. So that the item is in its control. The sentence of taking action means that the item is not in the hands of the rightful owner. It starts from when someone tries to remove an object from the owner, then the action is completed when an object has moved from its original place. It can be concluded that taking is taking from the place where the object was originally located or taking an object from the control of another person.<sup>6</sup>

According to Adami Chazawi, the elements that constitute the crime of theft can be explained as follows.<sup>7</sup>:

1. Taking action: The first action that must occur is taking the goods. This includes physical actions taken by the perpetrator directly taking goods owned by another person.
2. Items Taken: Items taken must belong to another person, either in whole or in part. In this context, it is important that the item has a legal owner; ownerless items cannot be the object of theft.
3. Intent to Possess: The perpetrator must have the intention to take possession of the goods unlawfully. This means that the act of taking is carried out with the awareness and intention of possessing the goods without the owner's permission.
4. Unlawful: The act of theft must be carried out unlawfully, that is, contrary to applicable legal provisions. The perpetrators are aware that their actions are illegal and violate the rights of others.

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<sup>5</sup>R. Soesilo, 1998, Principles of Criminal Law, General Regulations and Special Offences, Bogor, Politeia, p. 120.

<sup>6</sup>PAF Lamintang., 1989, Special Offenses, Crimes Against Property, First Edition, Bandung, Sinar Baru, p. 11.

<sup>7</sup>Adami Chazawi, 2003, Crimes Against Property, Bayu Media, Malang, p. 5.

5. Additional Conditions: In some cases, there are additional circumstances that may constitute a crime, such as the use of violence or threats when committing theft.

By understanding these elements, we can more clearly analyze and assess the crime of theft in accordance with the legal provisions in force in Indonesia, especially those contained in Article 362 of the Criminal Code.

The modus operandi of criminals is indeed closely related to the typology of criminals, including the nature, behavior, and character of the perpetrators. Many factors can influence someone to act evil, one of which is psychological conflict. Psychological conflicts that can trigger evil behavior include:

1. Internal conflict within the family can cause strong disappointment. A “broken home” can make a person feel without emotional and spiritual support, making them more vulnerable to committing illegal acts as a form of compensation or release from stress.
2. Alexander and Staub state that some people choose to become criminals because they want to get what they want the easy way. They may feel that living as a criminal provides freedom and satisfaction that cannot be achieved through legitimate means.
3. Criminals often have a particular typology that makes them more susceptible to committing crimes. This typology can include psychological, social, and cultural factors. For example, some criminals may have pre-existing mental disorders or antisocial behavior.

Usually perpetrators like this will commit crimes repeatedly because being a criminal has become their way of life.<sup>8</sup>.

Such as the crime of theft that occurred in the Istiqlal Mosque on Jalan Taman Wijaya Kusuma, Pasar Baru Subdistrict, Sawah Besar District, Central Jakarta, on Friday, July 19, 2024 at around 11.55 WIB or at least at some time in 2024, located in the Istiqlal Mosque on Jalan Taman Wijaya Kusuma, Pasar Baru Subdistrict, Sawah Besar District, Central Jakarta or at least at a place that is still included in the jurisdiction of the Central Jakarta District Court, taking something, or all or part of it belonging to another person, with the intention of being owned unlawfully.

It started on Friday, July 19, 2024 at around 11.55 WIB, he came to the Istiqlal Mosque and upon arriving at the Istiqlal Mosque on Jalan Taman Wijaya Kusuma, Pasar Baru Subdistrict, Sawah Besar District, Central Jakarta, he saw 1 (one) Samsung Fold 4 brand cellphone with IME Number: 35183267404489 and IME 2: 352898477404488 hanging on the back of witness RASMIN KAMIL, S.SOS M.AP who was performing ablution, then the defendant had the intention to own it and without the owner's permission, the defendant immediately took it by opening the zipper of the bag while climbing the stairs after completing the ablution, after successfully taking the cellphone, the defendant immediately went to meet Mr. LUKMAN (DPO) in the Senen Station area and sold it for IDR 3,000,000 (Three Million Rupiah), then on Friday, July 26, 2024 at around 11.30 WIB when witness RASMIN KAMIL, S.SOS M.AP was in the Istiqlal Mosque on Jalan Taman Wijaya Kusuma, Kel. Pasar Baru, Kec. Sawah Besar Central Jakarta saw 1 (One) defendant on CCTV footage precisely on Friday, July 19, 2024 returning to the Istiqlal Mosque, then witness RASMIN KAMIL, S.SOS M.AP

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<sup>8</sup>Agus Suharsoyo, Characteristics of Theft Criminals in the Theft Crime Typology in the Sukoharjo Region, Jurisprudence, Vol. 5 No. 1 March 2015, p. 67.

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approached him and immediately invited him to the Security Post, then when the interrogation was carried out at the Security Post by showing the CCTV footage and asking the defendant "DID YOU TAKE THE CELL PHONE ON JULY 19, 2024" and the defendant answered "NO" but when witness RASMIN KAMIL, S.SOS M.AP showed the CCTV footage on July 19, 2024, the defendant finally admitted it and finally the defendant was taken to the Sawah Besar Metro Police for further investigation.

As a result of the incident, witness RASMIN KAMIL, S.SOS M.AP suffered a loss of approximately Rp. 29,000,000,- (twenty nine million rupiah).

The defendant's actions as regulated and threatened with criminal penalties in Article 362 of the Criminal Code. In this case, the judge tried the defendant by sentencing the defendant YUSRIZAL therefore to a prison sentence of 1 (one) year and 6 (six) months; and determining that the period of arrest and detention that has been served by the defendant is deducted entirely from the sentence imposed; the judge also determined that the defendant remain in detention;

Criminal law is known as ultimum remedium as a last resort when other efforts cannot be made, this is because the nature of the crime that causes misery and suffering, Sudarto said to the perpetrators of the crime, so that as much as possible the use of punishment as a means of preventing crime should be avoided. However, not everyone thinks that punishment causes suffering, at least Roeslan Saleh said that punishment contains thoughts of protecting and improving the perpetrators of the crime.

To impose a criminal penalty, the elements of a crime contained in an article must be fulfilled. One of the elements in an article is the unlawful nature (*wederrechtelijke*) either explicitly or implicitly in an article. Although the existence of an implicit and explicit unlawful nature in an article is still under debate, there is no doubt that the elements of a crime so that the perpetrator or defendant can be prosecuted and proven in court<sup>9</sup>.

In the *ratio decidendi* decision number 662/Pid.B/2024/PN Jkt.Pst, the panel of judges considered based on witness statements and evidence that the perpetrator had fulfilled the elements of Article 362 of the Criminal Code, the elements of which are as follows:

#### 1. Element of whoever

That what is meant by whoever is a person or human being and a legal entity as a legal subject who is accused of being a perpetrator of a crime from which criminal responsibility can be demanded. The judge considered that the defendant had the ability to be responsible both physically and mentally.

#### 2. The element of taking something that is wholly or partly owned by another person with the intention of possessing it unlawfully.

That the meaning of the second element is that there has been a transfer of an item or object that is not the will of the owner of the item itself but rather the intervention of the person taking the item, so there is awareness of the person taking the item in carrying out his actions that have been completed, namely taking an item that does not belong to him

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<sup>9</sup>Teguh Prasetyo, Criminal Law, PT. Raja Grafindo Persada, Jakarta, 6th ed. 2015, p. 69



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but belongs to the victim or someone else, this matter violates or is against the law because in the process he did not get permission from the owner of the item. That the defendant stole 1 (one) unit of Samsung Fold 4 brand cellphone with IME Number: 35183267404489 and IME 2: 352898477404488; alone without using tools;

That the Defendant's method of committing the theft was by approaching and then cornering the victim from behind, when the victim was climbing the stairs of the mosque and the Defendant slowly opened the zipper of the victim's bag while climbing the stairs after completing ablution and after successfully opening it, the Defendant's left hand quickly took the victim's cellphone from the victim's bag and after that the Defendant ran down the stairs out of the mosque;

The judge is of the opinion that based on the description and all elements of Article 362 of the Criminal Code have been fulfilled, the defendant is declared legally and proven guilty. Legally and philosophically, Indonesian judges have the obligation or right to interpret the law or make legal discoveries so that the decisions they make are in accordance with the law and the sense of justice of the community. The interpretation of the law by judges in the trial process must be carried out on certain principles and principles, which are the basis and guidelines for judges in implementing their freedom to find and create law. In an effort to interpret law, then a judge knows the principles of justice contained in the laws and regulations. invitation relating to the world of justice, in this case the 1945 Constitution of the Republic of Indonesia, Law Number 48 of 2009 concerning Judicial Power.<sup>10</sup>

Based on the description above, the existence of the phenomenon of theft crime is a special attraction for the author to study this matter in more depth by conducting research. The reason the author chose this case as the object of research is because there are a number of special characteristics that distinguish this case from other theft cases such as:

1. First, the theft was committed in a place of worship, namely the Istiqlal Mosque, which is a symbol of religion and a holy place for Muslims. The act of taking someone else's belongings in a place of worship not only causes material losses, but also creates deep social and moral wounds in society, because the violation was committed in a space that should be respected and its sanctity maintained. The perpetrator's courage to commit a crime in a place of worship indicates a level of moral degradation and value crisis that deserves serious attention.
2. Second, this case shows a fairly well-planned *modus operandi* and was carried out secretly while the victim was performing his religious duties, namely when he was performing ablution. This shows the use of sacred situations to commit crimes, which sociologically reflects the misuse of religious public spaces for criminal acts, which is not found in ordinary theft cases in public places such as markets, shops, or highways.
3. Third, the value of the loss caused by this crime is relatively high, which is Rp29,000,000, -, which reflects that the object of the theft has a high economic value. The fact that the perpetrator sold it at a price far below its original value also shows that there is an indication of a network of receivers (DPO), so that this case has the potential to be an entry point to uncover other criminal networks, even though the verdict only tried one defendant.

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<sup>10</sup> <http://mh.uma.ac.id/penafsiran-hukum/> accessed on December 3, 2022

4. Fourth, the success of the perpetrator identification comes from the use of CCTV recording technology, which strengthens visual evidence in the criminal evidence system. This is interesting to study in the context of modern evidence and the fulfillment of the principle of due process of law, where electronic devices such as CCTV now play an important role in the law enforcement process.

5. Fifth, from the judicial side, this case was decided with a prison sentence of 1 year and 6 months, which can be further analyzed whether it reflects substantive justice for both the victim and the perpetrator, especially in the context of Indonesian criminal law which emphasizes corrective and retributive justice. In addition, it is also interesting to see how the judge considered the elements of the crime and made a decision based on Article 362 of the Criminal Code, and whether there was an attempt at legal interpretation by the judge that reflects the philosophical values of justice.

Considering the aspects of the scene, moral and social values, technological evidence, and law enforcement applied, this case has its own uniqueness that is not always found in other theft crimes, so it is worthy of being an object of criminal law research to analyze the perpetrator's legal responsibility. This study is entitled "Legal Analysis of Criminal Responsibility of Perpetrators of Theft Crimes (Study of Decision Number: 662/Pid.B/2024/PN Jkt.Pst)."

## **2. Research Methods**

The approach method used in this study is the normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as basic materials for research by conducting a search for regulations and literature related to the problems being studied.<sup>11</sup>

## **3. Results and Discussion**

### **3.1. Criminal Liability of Perpetrators of Theft Crimes Determined in the Indonesian Legal System**

There are stages that must be passed to determine whether a person can truly be held criminally responsible. These stages reflect the principles of justice and caution in imposing criminal sanctions. The following are the stages:

#### **1. Stages of Action (Actus Retus)**

The first stage is an act prohibited by law. It must be proven that the perpetrator has committed an act that fulfills the elements of a crime as regulated by law. For example, in theft, the perpetrator must be proven to have "taken someone else's property with the intention of possessing it unlawfully" (Article 362 of the Criminal Code). Normatively, the Criminal Code clearly regulates the elements of a criminal act, such as in Article 362 concerning theft. In the investigation and prosecution process, the police and prosecutors try to prove the elements of this act through evidence and witness statements.

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<sup>11</sup>Soerjono Soekanto & Sri Mamudji, Normative Legal Research (A Brief Review), Rajawali Pers, Depok, 2019, pp. 13-14.

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However, in practice, there are still cases where this proof is less than optimal, for example, difficulty in collecting valid evidence or witness statements.

## 2. Error Stages (Schuld)

After the act is proven, it is necessary to prove that the perpetrator has an element of fault. This fault can be intentional (*dolus*) or negligence (*culpa*). Indonesian law also recognizes the element of fault, especially intentional (*dolus*), as the basis for criminal responsibility. In a trial, the judge usually assesses whether the defendant committed the crime consciously and intentionally.

However, the testing of these elements of guilt is sometimes lacking in depth, especially in simple cases or those involving less well-off defendants. Some decisions tend to focus only on the facts of the act without reviewing the motive or intention of the perpetrator in its entirety.

## 3. Subjective Accountability Stages

This stage assesses whether the perpetrator can be held criminally responsible individually. This means whether the perpetrator has the capacity to be responsible (*toerekeningsvatbaarheid*), namely being of sufficient age, not insane, and aware of his actions. Legally, only legally competent people can be held accountable. For example, minors or people with mental disorders receive special treatment according to the Child Protection Act and the Criminal Code.

However, in reality, the enforcement of this rule has not been entirely consistent. There are many cases where children or people with mental disorders are still processed like adults without special treatment. This shows the gap between theory and practice.

## 4. Stages of Causal Relationship

There must be a causal relationship between the perpetrator's actions and the legal consequences that occur. In doctrine, this is referred to as causality. If there is no direct relationship between the action and the consequences, then criminal liability can be dropped. Causality is an important element in connecting the perpetrator's actions with the legal consequences. Theoretically, judges and investigators always try to prove this relationship, for example whether the act of theft causes material losses.

However, in practice, proving causality is often complex and requires special expertise (for example in complex criminal cases). It is not uncommon for the aspect of causality to be the subject of lengthy debates in court.

### **3.2. Judge's Considerations in Identifying a Criminal Act According to Decision Study Number: 662/Pid.B/2024/PN Jkt.Pst)**

#### 1. Chronology of Decision Number: 662/Pid.B/2024/PN Jkt.Pst

That the defendant YUSRIZAL on Friday, July 19, 2024 at around 11.55 WIB or at least at some time in 2024, located in the Istiqlal Mosque, Jalan Taman Wijaya Kusuma, Pasar Baru Village, Sawah Besar District, Central Jakarta or at least at a place that is still included in the jurisdiction of the Central Jakarta District Court, took something, or all or part of it belonging to another person, with the intention of possessing it unlawfully. The act was carried out by the defendant in the following manner:



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witness RASMIN KAMIL, S.SOS M.AP who was doing ablution, then the defendant had the intention to own it and without the owner's permission the defendant immediately took it by opening the zipper, after successfully taking the cellphone the defendant immediately went to meet Mr. LUKMAN (DPO) in the Senen Station area and sold it for Rp. 3,000,000, - (Three Million Rupiah), then on Friday, July 26, 2024 at around

11.30 WIB when witness RASMIN KAMIL, S.SOS M.AP was in the Istiqlal Mosque on Jalan Taman Wijaya Kusuma, Pasar Baru Village, Sawah Besar District, Central Jakarta, saw 1 (one) defendant on CCTV footage, precisely on Friday, July 19, 2024, returning to the Istiqlal Mosque, then witness RASMIN KAMIL, S.SOS M.AP approached him and immediately invited him to the Security Post, then when the interrogation was carried out at the Security Post by showing the CCTV footage and asking the defendant "DID YOU TAKE THE CELL PHONE ON JULY 19, 2024" and the defendant answered "NO" but when witness RASMIN KAMIL, S.SOS M.AP showed the CCTV footage on July 19, 2024, the defendant finally admitted it and finally the defendant was taken to the Sawah Besar Metro Police for further investigation.

As a result of the incident, witness RASMIN KAMIL, S.SOS M.AP suffered a loss of approximately Rp. 29,000,000,- (twenty nine million rupiah). The defendant's actions as regulated and threatened with criminal penalties in Article 362 of the Criminal Code. Regarding the witness's statement, the Defendant stated that he had no objection and confirmed it;

Considering, that the Defendant did not present a mitigating witness (a de charge); Considering, that the Defendant at the trial has provided information which in essence is as follows:

- a. That the Defendant has provided information to the Police Investigator and the Defendant's information in the examination report is true;
- b. That it is true that the Defendant committed the crime of theft on Friday, July 19, 2024 at around 11.55 WIB inside the Istiqlal Mosque, Jalan Taman Wijaya Kusuma, Pasar Baru Village, Sawah Besar District, Central Jakarta;
- c. That the Defendant did not know the owner of the goods that the Defendant had taken;
- d. That the Defendant took the property of witness RASMIN KAMIL, S.SOS M.AP, namely 1 (one) Samsung Fold 4 brand cellphone with IME Number: 35183267404489 and IME 2: 352898477404488;

## 2. Legal Facts Revealed in Decision Number: 662/Pid.B/2024/PN Jkt.Pst

Legal facts are legal realities proven through valid evidence according to criminal procedure law, namely witness statements, defendant statements, documentary evidence, clues, and expert statements as regulated in Article 184 of the Criminal Procedure Code. In this case, the legal facts revealed through the evidentiary process in court indicate that the defendant Yusrizal has been proven legally and convincingly to have committed the crime of theft.

First, from the trial facts it was revealed that the theft occurred on Friday, July 19, 2024 at around 11.55 WIB, in the Istiqlal Mosque area, Central Jakarta. At that time, the victim Rasmin Kamil, S.Sos., M.AP. was performing ablution, and put down his sling bag containing a Samsung Fold 4 brand cellphone. The defendant who saw the opportunity, secretly opened the zipper of the victim's bag and took the cellphone without permission.

Second, from the defendant's confession in court, after taking the item, the defendant immediately went to the Senen Station area and met someone named Lukman (DPO), who then helped sell the stolen cellphone for Rp3,000,000. The money from the sale was then used by the defendant for personal needs.

Third, the next legal fact reveals that on Friday, July 26, 2024 at around 11.30 WIB, the victim who returned to worship at the Istiqlal Mosque saw the defendant and recognized him from CCTV footage at the time of the theft. The victim immediately approached and took the defendant to the Mosque Security Post, and when questioned, the defendant initially denied it, but after being shown evidence of CCTV footage, he finally admitted his actions.

Fourth, during the police investigation and then in court, the defendant admitted to all of his actions. The defendant also did not present mitigating witnesses (a de charge) and stated that he did not object to all of the witness statements presented by the Public Prosecutor, including his admission that he did not know the victim and took the victim's belongings intentionally.

Fifth, based on the revealed legal facts, the criminal act committed by the defendant resulted in material losses for the victim of Rp29,000,000,-, according to the price of the stolen Samsung Fold 4 cellphone. Evidence in the form of CCTV footage and the defendant's confession strengthened the panel of judges' belief regarding the proven elements in Article 362 of the Criminal Code.

Another important legal fact is that the defendant committed theft in a place of worship, which according to social considerations has sacred value and public trust. Although the act was carried out without violence or physical aggravation, the act shows bad faith and serious violations of legal and social norms.

All of these legal facts have been believed by the panel of judges to be sufficient evidence that the defendant is guilty of committing the crime of theft as referred to in Article 362 of the Criminal Code, namely: "Anyone who takes something, which in whole or in part belongs to another person, with the intention of possessing the item unlawfully."

Thus, based on valid evidence and the defendant's own confession, the legal facts revealed at trial form the basis for the court's decision to declare the defendant legally and convincingly proven guilty of committing the crime of theft.

a. Evidence submitted:

- 1) 1 black Samsung Fold brand cellphone box (IMEI: 35183267404489 and IMEI 2: 352898477404488).
- 2) 1 flash disk containing CCTV recording.
- 3) The losses suffered by the victim were estimated at IDR 29,000,000.00.

b. Witness testimony Rasmin Kamil:

- 1) Admitting that the cellphone was his and was in his bag when he performed ablution.
- 2) After realizing the loss, check the CCTV and report it to the police.
- 3) Met the defendant again a week later at the same location.

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c. Testimony from witnesses from police and security officers (Roni P. Panjaitan and Yuli Setiawan):

- 1) Received information from Istiqlal Mosque security officers about the whereabouts of the perpetrator.
- 2) Arrest the accused and interrogate him.
- 3) The defendant admitted to stealing the cellphone and selling it.

d. Defendant's confession:

- 1) The defendant admitted his actions after being shown CCTV footage.
- 2) The defendant expressed regret and promised not to repeat his actions.

3. Judge's Consideration in Decision Number: 662/Pid.B/2024/PN Jkt.Pst

The judge's consideration is a crucial stage in the criminal justice process because it is the basis for determining whether or not the elements of the crime charged to the defendant are proven. In Decision Number: 662/Pid.B/2024/PN Jkt.Pst, the panel of judges prioritized a normative approach and legal logic based on formal and material evidence as regulated in the Criminal Procedure Code and the principles of criminal law.

The panel of judges in this case identified that the defendant Yusrizal was charged with committing the crime of theft as regulated in Article 362 of the Criminal Code, the elements of which include:

- a. The act of taking something;
- b. The goods are wholly or partly owned by another person;
- c. The act was carried out with the intention of possessing it unlawfully.

In his considerations, the judge considered that the first element, namely "taking goods", had been fulfilled through CCTV footage evidence and the defendant's confession at the trial stating that he opened the victim's bag without permission and took a Samsung Fold 4 brand cellphone. This evidence was strengthened by the statement of the victim Rasmin Kamil, S.Sos., M.AP., who witnessed the recording of the incident directly and recognized the defendant.

Furthermore, the defendant did not deny the element of someone else's property. The cellphone that was taken belonged to the victim, who was putting it in her bag while performing ablution at the Istiqlal Mosque. During the trial, the defendant himself stated that he did not know the victim, thus making it clear that the item taken was not his.

The third element, namely "with the intention to be owned unlawfully," was assessed by the judge from the fact that the defendant did not return the goods, but sold them to someone named Lukman (DPO) for Rp 3,000,000. The proceeds from the sale were used for personal interests. This act shows the existence of evil intent (*mens rea*) and real action (*actus reus*) in order to own someone else's goods unlawfully.

The judge also considered that the act was committed in a place of worship, namely the Istiqlal Mosque, which according to the judge showed not only a violation of criminal law, but also social norms and community morals. This is an aggravating factor in considering the sentence, although this case is not qualified as aggravated theft (Article 363 of the Criminal Code), because the charge remains in Article 362 of the Criminal Code.

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The judge stated that the evidence presented by the public prosecutor, in the form of statements from victim witnesses, CCTV footage, minutes of examination, and the defendant's confession, were valid evidence according to Article 184 of the Criminal Procedure Code and had sufficient evidentiary value. Thus, the elements of the crime of theft in Article 362 of the Criminal Code have been proven legally and convincingly.

The judge also noted that the defendant did not present a de charge witnesses and did not object to the statements of the prosecutor's witnesses. Therefore, there is no reason that can eliminate the unlawful nature of the defendant's actions (either justification or excusal). The panel of judges also did not find any significant mitigating circumstances from a substantive legal perspective.

In the decision, the panel of judges prioritized the principle of legality (*nullum delictum nulla poena sine lege*) as stated in Article 1 paragraph (1) of the Criminal Code, that no act can be punished except based on previously existing laws and regulations. Because all elements of the article were fulfilled and there was no excuse, the defendant was found guilty and sentenced to criminal punishment.

Finally, in imposing a sentence, the judge considers:

- a. The victim's loss was quite large, namely Rp. 29,000,000;
- b. No return of goods or good faith from the defendant;
- c. The scene of the incident was in the environment of a place of worship, which is considered to have higher moral values.

Thus, the judge's consideration in identifying the crime in this case has been based on the principle of caution, thoroughness of evidence, and interpretation of the law according to the principles of criminal law and the Criminal Code. This decision shows how criminal law is not only repressive, but also considers social aspects and substantive justice values in imposing punishment.

#### 4. Legal Analysis of the Implementation of Article 362 of the Criminal Code in Decision Number: 662/Pid.B/2024/PN Jkt.Pst

Article 362 of the Criminal Code (KUHP) states that:

*"Anyone who takes something, which in whole or in part belongs to another person, with the intention of possessing it unlawfully, is liable for theft with a maximum prison sentence of five years or a maximum fine of sixty rupiah."*

In the context of Decision Number 662/Pid.B/2024/PN Jkt.Pst, the elements of the article were tested and proven legally by the judge through a formal and material proof process.

The first element, namely "taking something" is proven by CCTV footage showing the defendant Yusrizal opening the bag belonging to the victim witness Rasmin Kamil inside the Istiqlal Mosque. The taking was done without permission and accompanied by the intention to own the item, namely a Samsung Fold 4 cellphone. This element has been legally fulfilled because the defendant has carried out a physical act to move the item from the victim's possession to the defendant's possession.

The second element, namely "the goods are wholly or partly owned by another person" was also proven. In the trial, the victim gave valid information that the cellphone was his and the defendant did not deny the victim's ownership of the goods. The cellphone was legally

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owned by the victim and was taken in a situation without the knowledge or consent of the victim, who was at that time performing ablution.

Furthermore, the third element, namely "with the intention to be owned unlawfully" is analyzed from the defendant's actions who immediately sold the stolen cellphone to a person named Lukman (DPO) for Rp 3,000,000. The act of selling goods without permission from the owner shows the intention to control and own unlawfully, which is the core of the crime of theft. In criminal law, the element of intent (*mens rea*) is an important indicator in determining the existence of criminal guilt (*schuld*).

The defendant's confession at the trial that justified his actions and did not object to the victim's witness statement, strengthened the position of the public prosecutor in proving the crime. The judge also stated that the evidence used, such as witness statements, the defendant's confession, and CCTV recordings, had met the provisions of Article 184 of the Criminal Procedure Code regarding valid evidence.

Normatively, there is no justification or excuse that can eliminate the defendant's criminal responsibility, as regulated in Articles 44 to 51 of the Criminal Code. The defendant was conscious, not under duress, and freely committed the crime of theft. Thus, the elements of criminal responsibility are complete.

The application of Article 362 of the Criminal Code in this decision shows that the judge prioritizes a doctrinal or normative approach, namely interpreting the elements of the crime according to the text of the article and the facts revealed in court. There is no application of other articles such as Article 363 of the Criminal Code concerning aggravated theft, even though the act was committed in a house of worship, which in some conditions can be an aggravating factor. However, perhaps because the prosecutor did not charge the article, the judge was limited to the single charge of Article 362 of the Criminal Code.

From the perspective of criminal law dogmatics, the defendant's actions meet the requirements to be declared guilty, because:

- a. There is a criminal act (*actus reus*),
- b. There is an error (*mens rea*),
- c. There is no reason to erase the criminal record,
- d. And actions are regulated by law (principle of legality).

The judge's decision in this case also reflects the principle of legal certainty and the principle of proportionality, where the verdict is imposed based on the suitability between the act of violation and the criminal threat in the relevant article. The judge imposed a proportional sentence on the defendant by considering the facts, consequences, and level of the defendant's guilt.

In addition, although not explicitly stated in the verdict, the values of substantive justice also appear to be considered in imposing the sentence. This can be seen from the assessment of the scene of the crime (mosque), the amount of the victim's loss (Rp 29,000,000), and the absence of good faith from the defendant.

Thus, the legal analysis of Decision Number 662/Pid.B/2024/PN Jkt.Pst shows that the application of Article 362 of the Criminal Code has been carried out appropriately and in accordance with positive criminal law principles. The elements of the crime have been



proven legally and convincingly, and no procedural or substantive violations were found in the trial process against the defendant.

#### **4. Conclusion**

After conducting an in-depth analysis of the elements and application of the law related to the crime of aggravated theft, it can be concluded that aggravated theft has special characteristics that distinguish it from ordinary theft. Circumstances such as being committed at night, involving more than one perpetrator, or using certain methods that aggravate the crime, are important factors that influence the level of seriousness of the violation and the legal threat imposed. Proving the aggravating elements in the judicial process is crucial to uphold justice appropriately and provide a deterrent effect for the perpetrators. Therefore, consistent and comprehensive law enforcement is needed to protect the interests of the community and prevent the occurrence of repeated aggravated theft.

1. Accountability Criminal Penalties for Theft Crimes Determined in the Indonesian Legal System: The criminal penalty for theft in the Indonesian legal system is determined through several important stages that reflect the principles of justice and caution in imposing criminal sanctions. These stages include: proof of the unlawful act (*actus reus*), proof of the element of fault (*schuld*) either in the form of intent or negligence, assessment of the perpetrator's ability to be legally responsible (subjective responsibility), and proof of the existence of a causal relationship (causality) between the act and the resulting legal consequences. Normatively, these stages have been regulated in the Criminal Code and other supporting regulations. However, in practice, various obstacles are still found, such as difficulty in providing evidence, lack of in-depth understanding of the element of fault, inconsistency in the treatment of vulnerable defendants, and the complexity of proving causality. Therefore, although the legal framework is adequate, optimal and consistent implementation still requires improvement in order to ensure substantive justice in enforcing criminal law in Indonesia.

2. Judge's Considerations in Identifying a Criminal Act According to Decision Study Number: 662/Pid.B/2024/PN Jkt.Pst): In Decision Number 662/Pid.B/2024/PN Jkt.Pst, the panel of judges carefully identified the criminal act of theft committed by the defendant Yusrizal based on legal facts that were proven legally and convincingly. The defendant's actions fulfill the elements of Article 362 of the Criminal Code, namely taking someone else's property with the intention of possessing it unlawfully, as evidenced by CCTV footage, the defendant's confession, and the victim's witness statement. The panel of judges also considered the social and moral values of the defendant's actions because the act was committed in a place of worship, the Istiqlal Mosque, which was an aggravating factor in sentencing even though it was not qualified as aggravated theft. The defendant did not present a defense or mitigating witnesses, and did not show good faith such as returning the goods. Based on the principle of legality and sufficient evidence, the panel of judges declared the defendant guilty and imposed a criminal sentence by considering the victim's material losses of Rp 29 million, as well as the moral aspects of the scene. This decision emphasizes the importance of complete evidence and moral values in enforcing criminal law.

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