

## **Legal Analysis of Criminal Responsibility of Joint Theft Perpetrators in Indonesian Criminal Law from the Perspective of Retributive Justice**

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**Abstract.** This research is entitled "A Juridical Analysis of Criminal Liability of Perpetrators of Joint Theft in Indonesian Criminal Law from the Perspective of Retributive Justice (Case Study of Verdict Number 146/Pid.B/2025/PN.Ptk)." The study aims to analyze the criminal liability of perpetrators of theft committed jointly under Indonesian criminal law and to assess the extent to which the court's verdict reflects the principles of retributive justice. The research method used is normative juridical research, which involves examining relevant legislation, legal doctrines, and court decisions. The results indicate that, first, criminal liability for joint theft is regulated under Article 363 paragraph (1) point 4 of the Indonesian Criminal Code (KUHP), which stipulates that every participant, whether as a principal actor or an accomplice, can be held criminally responsible. This is reflected in Verdict Number 146/Pid.B/2025/PN.Ptk, where the judges found Ardiansyah and Arik Saputra guilty of aggravated theft committed jointly, and both were sentenced to imprisonment. Second, the court's decision reflects normative retributive justice because the punishment serves as a proportional response to the offenders' wrongdoing. However, from the perspective of proportional retributive justice, the verdict is not entirely fair, as it does not differentiate the roles and degrees of culpability of each perpetrator. Third, an ideal application of criminal liability should be based on the principle of individualized sentencing, which imposes punishment according to each defendant's contribution and role. Accordingly, Ardiansyah, as the main executor who broke the glass and took the electronic items, should receive a harsher sentence than Arik Saputra, who only guarded outside and facilitated the escape.

**Keywords:** Criminal Liability; Joint Theft; Retributive Justice.

## 1. Introduction

Indonesia, as a nation based on the rule of law, places law as the primary foundation for regulating social life, including combating crime. Law plays a central role in guiding citizen behavior, creating social order and ensuring fair legal protection for all elements of society. In the context of criminal law enforcement, imposing sanctions on perpetrators of crimes is a crucial instrument for creating a deterrent effect and preventing the recurrence of similar crimes<sup>1</sup>.

In the Indonesian criminal law system, the principle of legality (*nullum delictum, nulla poena sine praevia lege poenali*) as stated in Article 1 paragraph (1) of the Criminal Code (KUHP) is a fundamental principle that guarantees that no act can be punished without there being a legal provision that regulates it first<sup>2</sup>. This principle provides legal certainty and limits the state's power to impose punishment. Therefore, all forms of crime, including theft, must comply with the normative provisions set out in the Criminal Code and other relevant regulations.

Modern criminal law functions not solely as a repressive tool, but also as a preventive instrument in maintaining social stability and public order<sup>3</sup>. In the context of the crime of joint theft, the urgency of implementing criminal law is increasingly prominent because this act not only results in material losses to the victim, but also has the potential to cause public unrest<sup>4</sup>. Therefore, the criminal justice system is required to uphold substantive justice by considering moral, social, and collective justice aspects.

Furthermore, the approach to assessing collective crimes such as theft cannot rely solely on the legal-formal paradigm but must also consider the values of justice that exist within society. In practice, perpetrators of collective crimes often have complex social backgrounds, such as economic pressures, limited education, and environmental influences<sup>5</sup>. Therefore, a humanistic approach to criminal law is very important to ensure that the sanctions imposed are not only punitive in nature, but also have educational and rehabilitative power.

## 2. Research Methods

The approach method used in this study is normative juridical research, namely a research method that is based on analysis of applicable legal norms<sup>6</sup>. In legal research, the approach used greatly determines the researcher's perspective in analyzing a problem. According to Pieter Mahmud Marzuki, normative legal research is essentially research that relies on

<sup>1</sup> Simons, K. W. (2018). The expressive function of punishment. *Journal of Legal Studies*, 47(1), 109–135.

<sup>2</sup> Moeljatno. (2008). *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta.

<sup>3</sup> Muladi & Arief, B. N. (1992). *Teori-teori dan Kebijakan Pidana*. Bandung: Alumni.

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<sup>5</sup> Latif, H. (2019). Faktor-faktor Sosiologis dalam Tindak Pidana. *Jurnal Hukum dan Keadilan*, 11(2), 105–122.

<sup>6</sup> Ibrahim, J. (2006). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia.

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primary, secondary, and tertiary legal materials, by examining the norms contained in legislation, court decisions, and legal doctrine.<sup>7</sup>

### **3. Results and Discussion**

#### **3.1. Criminal Liability of Joint Theft Perpetrators in Decision Number 146/Pid.B/2025/PN.Ptk According to Indonesian Criminal Law**

##### **1. Description of Decision Number 146/Pid.B/2025/PN.Ptk**

The aggravated theft case involving Defendant Ardiansyah, also known as Ipon bin Ahmad, and Defendant Arik Saputra, also known as Arik bin Badar, began on Tuesday, December 18, 2024, at approximately 12:00 PM WIB on Jalan Selat Sumba, RT 02 RW 23, Siantan Tengah Village, North Pontianak District, Pontianak City. At that time, the two defendants were walking past the house of the victim, Salmanal Farisi, and saw a metal cart parked in the victim's yard. Seizing this opportunity, Defendant Ardiansyah invited Arik Saputra to take the cart without the owner's permission and knowledge. The two agreed to the offer, and they entered the victim's yard and together pushed the iron cart to Ardiansyah's house on Jalan Parit Pangeran, Siantan Hulu.

Upon arriving at Ardiansyah's house in the early hours of December 19, 2024, at approximately 1:00 a.m. Western Indonesian Time (WIB), the cart was parked next to the house while Arik Saputra returned to his wife's house. That evening, at approximately 8:30 p.m. Western Indonesian Time (WIB), Arik went to Ardiansyah's house to ask him to sell the cart. However, while the two were pushing the cart to sell, several officers from the North Pontianak Police Department arrived, immediately arrested the defendants, and took the defendants and the evidence to the police station for further processing.

The defendants' actions resulted in the victim suffering material losses of Rp2,700,000. Based on the victim's report, and based on the results of the investigation and evidence presented at trial, the Public Prosecutor charged the two defendants with Article 363 paragraph (1) point 4 of the Criminal Code, which stipulates the crime of theft committed by two or more people jointly.

During the trial, the Prosecutor presented witnesses, Salmanal Farisi and his wife, Adelia Putri, who testified that the iron cart was initially stored in their yard and was discovered missing on the morning of December 18, 2024. The defendants did not dispute the witnesses' testimony and admitted their entire actions under oath, including their intention to take and then sell the cart.

The Panel of Judges at the Pontianak District Court, after considering the evidence, witness testimony, the defendants' confessions, and the evidence in the form of an iron cart, declared that all elements of Article 363 paragraph (1) point 4 of the Criminal Code had been met. The

<sup>7</sup> Pieter Mahmud Marzuki. (2005). *Penelitian Hukum*. Jakarta: Kencana, p. 35.

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elements of "whoever," the element of "taking goods that wholly or partially belong to another person," and the element of "carried out by two or more people in collusion" were legally and convincingly proven based on the facts of the trial.

Based on this, the Panel of Judges sentenced both defendants to one year in prison, deducting the entire period of arrest and detention from the sentence, and ordering the iron cart to be returned to the victim. The defendants were also ordered to pay court costs of Rp5,000 jointly and severally.

## 2. Basis for Responsibility

The criminal liability of the defendants in Decision Number 146/Pid.B/2025/PN.Ptk is based on the fulfillment of the elements in Article 363 paragraph (1) 4 of the Criminal Code, which regulates aggravated theft. This norm provides a special character for the crime of theft committed by two or more people in collaboration, thus carrying a heavier penalty than ordinary theft under Article 362 of the Criminal Code. The elements are outlined as follows:

This aggravating element is intended to increase the potential danger of a crime committed collectively compared to ordinary theft. Criminal liability in joint theft is based on the existence of a consensus among the perpetrators. This agreement does not have to be in writing, but can be proven through evidence of planning, communication, and division of tasks. In Decision Number 146/Pid.B/2025/PN.Ptk, the element "together" indicates the existence of psychological cooperation between the perpetrators. This means that both perpetrators were aware of, understood, and intended the theft to occur. This agreement can take the form of:

- 1) Invitation from one perpetrator,
- 2) Approval from the other perpetrator,
- 3) Active involvement in the commission of the crime,
- 4) Involvement in carrying, concealing, or controlling the proceeds of crime.

In Decision Number 146/Pid.B/2025/PN.Ptk, this element is clearly visible through the chronology of the defendants' actions.

### **3.2. The Judge's Decision in Decision Number 146/Pid.B/2025/PN.Ptk Reflects Retributive Justice**

Analysis of criminal decisions should not only focus on proving the elements of the crime but also examine the factors influencing the judge in imposing criminal sanctions. In the context of Decision Number 146/Pid.B/2025/PN.Ptk, where Ardiansyah and Arik Saputra were convicted of jointly committing theft as stipulated in Article 363 paragraph (1) 4 of the Criminal Code, several factors can serve as the basis for analysis. These factors are closely

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related to the perpetrator's role, the degree of intent, the extent of the loss, the defendant's condition, and the intended purpose of the sentence. These factors can stem from both legal and non-legal aspects, ultimately determining the severity of the sentence imposed on each defendant. The following are the influencing factors:

- a. The role of each perpetrator in the crime significantly determines the level of criminal responsibility. Normatively, this difference in role should influence the severity of the sentence. However, the judge in this decision failed to provide a clear distinction, giving the impression that all perpetrators received the same treatment despite their differing contributions to the crime.
- b. The factor of intent (dolus) was a significant factor influencing the judge's conviction. In this case, the panel of judges found that both defendants consciously planned the theft and each understood their respective roles. Thus, their collective awareness of committing the crime strengthened the legal basis for imposing a strict sentence.
- c. The victim's loss was also an important consideration. Economically, the crime resulted in significant material losses. The magnitude of the losses incurred by the defendants' actions was one reason the judge considered their actions to be severe, and therefore, the sentence imposed must have a deterrent effect on both the perpetrators and the community.
- d. The defendant's social and personal background also influenced the judge's considerations. In judicial practice, the perpetrator's economic situation, educational level, and prior criminal history typically determine whether the sentence imposed will be lighter or heavier. If the defendant is young, has no prior convictions, or has family members, the judge may consider imposing a lighter sentence. However, if the defendant is a repeat offender, the sentence may be harsher.
- e. The judge's objective of sentencing also influences the sentence. In this decision, the judge appears to have placed greater emphasis on general prevention, conveying the message to the public that joint theft will be dealt with firmly. However, from a special prevention perspective, the lack of differential punishment for Ardiansyah and Arik Saputra could be considered less than substantive justice because it fails to consider the individual roles of each defendant.

Therefore, the author concludes that, even considering these factors, the application of Article 363 of the Criminal Code in Decision Number 146/Pid.B/2025/PN.Ptk fulfills the legal elements of joint theft, but from a justice perspective, issues remain. The principle of individualization of punishment, which should place each perpetrator according to their role and level of culpability, was not clearly evident, leading to criticism of the verdict's conformity with the principles of justice in Indonesian criminal law. However, the main issue that emerged was the absence of role differentiation in the verdict, creating a dilemma between legal certainty and proportional justice, as there was no differentiation of roles in sentencing. The judge had indeed determined that the elements of Article 363 paragraph (1) 4 of the Criminal Code were met, namely that the theft was committed jointly with planning and a

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division of tasks. However, in his verdict, the judge imposed the same sentence on both defendants without distinguishing the severity of their respective roles. However, in modern criminal responsibility theory, each perpetrator must be treated according to their contribution to the crime.

This lack of role differentiation creates a dilemma between legal certainty and substantive justice. From a legal certainty perspective, the judge consistently applied the provisions of Article 363 of the Criminal Code normatively because all elements were met, allowing both defendants to be subject to the same sentence. However, from a justice perspective, this situation is problematic. Ardiansyah, as the main executor, played a dominant role because he directly entered the store, broke the window, and took the stolen goods. In contrast, Arik Saputra was only responsible for guarding the store and preparing a means of escape. If both were given the same sentence, the principle of proportionality in sentencing would be violated.

The principle of individualization of punishment requires that punishment be tailored to the degree of culpability (schuld) and role (rol) of each perpetrator. In criminal law literature, punishment is not only about proving the crime (legal certainty), but also about balancing society's sense of justice with the rights of the accused. By not distinguishing roles, this ruling emphasizes a collective approach to criminals, ignoring the level of individual participation.

Consequently, this ruling has the potential to create the perception that criminal law only emphasizes normative retribution and ignores proportional justice. In the context of social justice and the objectives of Indonesian criminal law, this could lead to dissatisfaction both from defendants who feel they have been treated unfairly, and from the public who expect sentencing to better reflect a sense of justice.

### **3.3. Future Application of the Law to Collaborative Theft Perpetrators**

In the future, it is hoped that the application of the law to collective theft perpetrators will not only focus on proving the formal elements in Article 363 paragraph (1) 4 of the Criminal Code, but will also emphasize the application of the proportional retributive principle. This means that each perpetrator is punished according to the degree of their culpability, so that the punishment truly represents a commensurate response to each individual's actions.

Future application of criminal law needs to emphasize the differentiation of perpetrator roles. The primary perpetrator who directly carries out the theft deserves a heavier sentence than those who merely act as guards or providers of means. This aligns with the principle of individualization of punishment, so that not all perpetrators are viewed as having the same level of culpability. By differentiating punishment based on role, the court can demonstrate that punishment is not imposed haphazardly, but rather truly reflects the level of culpability and social danger posed by each perpetrator.

Future application of the law must avoid collective punishment, which tends to equate all perpetrators. Collective punishment often leads to injustice because it ignores the nuances of

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different roles in a crime. Therefore, the court needs to conduct a proportional analysis by considering the extent of each defendant's contribution to the crime. This way, sentencing will be more objective, fair, and in accordance with the principle of equality before the law guaranteed in the Indonesian legal system.

The application of criminal law to joint theft must also consider the function of public protection (deterrence). Punishment for the main perpetrator who plays a significant role in posing a threat to public security must be stricter, thus creating a deterrent effect both individually (special deterrence) and in general (general deterrence). Meanwhile, perpetrators with minor roles can be given lighter sentences to prevent excessive punishment (overcriminalization). In this way, criminal law will continue to function as a crime deterrent, without losing the humanity of the sentencing process.

Future law enforcement should also align with the objectives of sentencing in the Indonesian legal system, namely legal certainty, expediency, and justice. Legal certainty is achieved by continuing to apply Article 363 of the Criminal Code as the normative basis. Benefit is realized by making criminal punishment a means of protecting society from the threat of theft, while justice is achieved by differentiating the severity of punishment according to the role of each perpetrator. Thus, punishing perpetrators of theft together is not merely a legal formality, but truly reflects social justice in accordance with the values of Pancasila.

In the future, legal enforcement should also consider the aspect of social reconstruction. This means that criminal punishment should not merely be an act of retribution, but should also be directed towards restoring the social order disrupted by the crime. In this regard, the application of proportional retributive principles remains relevant, but can be combined with other mechanisms such as alternative punishments, social rehabilitation programs, or community service. In this way, punishment continues to function as retribution for wrongdoing, but does not preclude the perpetrator from rehabilitating and returning to a constructive role in society.

The future application of criminal law also requires consistency in the judiciary. In many decisions, judges often apply the same punishment to both the main perpetrator and those with minor roles. To ensure consistent implementation of the retributive principle, more detailed sentencing guidelines are needed, providing judges with a clear reference point for distinguishing the severity of punishment based on the role and culpability of each defendant. This will prevent disparities in sentencing and strengthen the legitimacy of criminal law in the eyes of the public.

Therefore, with this model of application, future criminal law will be better able to meet the needs of public justice, strengthen the legitimacy of criminal justice, and prevent the appearance of discrimination in sentencing.

#### **4. Conclusion**

Criminal Liability of Joint Theft Perpetrators in Indonesian Criminal Law Based on Decision Number 146/Pid.B/2025/PN.Ptk. Criminal liability for joint theft perpetrators as regulated in Article 363 paragraph (1) 4 of the Criminal Code emphasizes that anyone who participates in theft can be held criminally responsible, without distinguishing whether he acts as the main perpetrator or assists. In Decision Number 146/Pid.B/2025/PN.Ptk, the panel of judges declared Ardiansyah and Arik Saputra both guilty of committing the crime of joint aggravated theft, and both were sentenced to equivalent prison sentences. This shows that the Indonesian criminal law system adheres to the principle of collective responsibility in criminal acts of participation, so that the role of the main perpetrator and supporters is still considered significant for the realization of the crime. The Judge's Decision in Decision Number 146/Pid.B/2025/PN.Ptk Already Reflects Retributive Justice. Decision Number 146/Pid.B/2025/PN.Ptk has basically fulfilled the aspect of legal certainty because the panel of judges succeeded in proving all elements of Article 363 paragraph (1) 4 of the Criminal Code regarding joint theft with planning and division of roles. The judge emphasized that both defendants, Ardiansyah and Arik Saputra, are equally criminally responsible, so that imprisonment is imposed to provide retribution for the mistakes they have made. From this perspective, the decision reflects retributive justice in the form of normative retribution, namely imposing a sentence as a logical consequence of a crime proven to have been committed together. However, from the perspective of proportional retributive justice, this decision still leaves problems because it does not differentiate the weight of the fault of each defendant. Defendant Ardiansyah played a role in helping lift the cart, while Defendant Arik took a position to monitor the surrounding conditions. By imposing the same sentence without role differentiation, the judge tends to ignore the principle of individualization of punishment which demands proportionality between guilt and punishment. Application of the Law on Joint Theft Perpetrators in the Future. In the future, the application of the law to perpetrators of collective theft should be guided by the principle of proportional retributive justice, where punishment is imposed according to the level of culpability and the role of each perpetrator. The main perpetrator who carried out the theft should be given a heavier sentence than perpetrators with minor roles, such as guards or providers of escape. This differentiation of punishment is important to avoid collective punishment that equates all perpetrators, so that court decisions better reflect the principles of individualization of punishment and substantive justice. Furthermore, future law enforcement needs to balance the three main objectives of punishment in the Indonesian legal system: legal certainty, benefit, and justice. Legal certainty is achieved through the application of Article 363 of the Criminal Code, benefit is realized through the preventive function to protect society from crime, and justice is realized through appropriate retribution for each perpetrator. Thus, punishment for perpetrators of collective theft is not merely a formal sanction, but also a form of community protection based on social justice in accordance with the values of Pancasila.

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