

## The Application of Principle of Mistake as Legal Liability on the Criminal Theft

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### Abstract.

*This study aims to determine the application of the principle of error as legal responsibility for the crime of theft in the Tanjungpinang District Court Decision. By using a normative juridical approach that is descriptive analytical. The results of the study showed that the application of the principle of guilt as absolute liability in criminal law as the basis for imposing a crime, the defendant was proven unlawfully against the law in violating the material elements of Article 363 paragraph (1) 3 and 4 of the Criminal Code. So the form of error committed by the defendant if qualified is intentional. Deliberately can mean deliberately to do something and deliberately not to do something that should be done.*

*Keywords: Application Error; Justice; Law; Principle.*

### 1. Introduction

The 1945 Constitution of the Republic of Indonesia, the 4th amendment of Article 1 paragraph (3) confirms that, "*Indonesia is a State of Law*". So that the law cannot be separated from social life. Because all individual behavior is regulated by law, whether applicable in an area or customary law or applicable law in Indonesia. Law is not just to create order, more than that the law must provide a sense of justice for the community.<sup>1</sup>

The existence of law includes a pluralistic social reality, has many aspects, dimensions, and phases.<sup>2</sup> With the existence of legal knowledge, theoretically good law must meet sociological, juridical, and philosophical elements. So that the application legal theory applies that a person's fault is seen from the actual incident factor.<sup>3</sup> Because Severy violation of existing legal regulations, will be subject to sanctions in the form of punishment as a reaction to actions that violate the legal regulations carried out.<sup>4</sup> Sanctions are given in the presence of criminal acts committed by criminals because they are encouraged or motivated by the urge to fulfill the necessities of life or other factors. So to tackle such crimes and crimes, a comprehensive policy of action and anticipation is needed. There are two important things in criminal law that need attention in the process of giving criminal sanctions, namely regarding the matter of committing a criminal act (*Actus Reus*) related to the

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<sup>1</sup> Edi Sutomo. Law Enforcement on Merger of Indemnity Claims in Criminal Case Persecution. *Law Development Journal Volume 2 No 2, June (2020)*.URLs: <http://jurnal.unissula.ac.id/index.php/ldj/article/view/11521/4560> accessed 22 March 2022.

<sup>2</sup> Imam Syaukani, Ahsin Thohari. (2006). *Pengetahuan Dasar Hukum*. Jakarta: PT RajaGrafindo Persada, p.11

<sup>3</sup> Mujahid and Sri Kusriyah. Implementation of Restorative Justice in Criminal Cases at Investigation Level. *Law Development Journal Volume 2 No 2, June (2020)*.URLs: <http://jurnal.unissula.ac.id/index.php/ldj/article/view/11516/4556> accessed 22 March 2022.

<sup>4</sup> Adam Chazawi. (2002). *Pelajaran Hukum Pidana I*. Jakarta: Raja Grafindo Persada, p.2

subject or perpetrator of a criminal act, and regarding mistakes (in Latin this teaching is known as *mens-rea*) relating to criminal liability issues.<sup>5</sup>

The imposition of criminal law in the crime of theft is regulated in the Criminal Code (KUHP), which is divided into five types of theft, namely: Ordinary theft (Article 362 of the Criminal Code)

- Theft by weight (Article 363 of the Criminal Code)
- Minor theft (Article 364 of the Criminal Code)
- Theft with violence (Article 365 of the Criminal Code)
- Theft in the family (Article 367 of the Criminal Code).<sup>6</sup>

The criminal act of theft is fully formulated in the Criminal Code Article 362 of the Criminal Code which reads: "Anyone who takes something, wholly or partly belonging to another person, with the intention of being owned against the law, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of 5 years or a lot of sixty rupiah."

The type of theft crime above is called the crime of theft in its principal form or the crime of ordinary theft. While the other crimes of theft are ordinary theft accompanied by special circumstances.<sup>7</sup> In this case, the crime of "theft or extortion" as referred to in the formulation of Article 363 paragraph (1) 3rd and 4th of the Criminal Code or Article 368 of the Criminal Code in conjunction with Article 55 paragraph (1) of the 1st Criminal Code which reads: "Theft on at night in a closed house or yard where the house is carried out by the person who is there without his consent or against the will of the entitled person" and "Theft committed by two or more people jointly" or "Anyone with the intention of wants to benefit oneself or another person by going against the right to force people with violence or threats of violence so that that person gives goods, which wholly or partly belongs to the person himself belongs to another person so that that person makes a debt or writes off a debt, is threatened with extortion with a maximum imprisonment of nine months" Jo "Anyone who commits, orders to do or participate in doing the act"

The existence of the Criminal Code (KUHP) is one of the main sources of Indonesian material criminal law, which contains general principles of criminal law, the most basic criminal provisions are legal regulations that contain prohibitions and orders that must be obeyed by everyone.<sup>8</sup> In Article 363 paragraph (1) 3 of the Criminal Code states that the perpetrator of theft with a weight is threatened with a maximum imprisonment of 7 (seven) years, according to the judge there is only one aggravating conditions that are met, namely in the third item fulfilled the above defendant's actions.<sup>9</sup>

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<sup>5</sup> Hanafi. (2000). *Kejahatan Korporasi*, Yogyakarta: Fakultas Hukum Universitas Islam Indonesia, p.27

<sup>6</sup> PAF Lamintan and Jisman Samosir. (2010). *Delik-delik Khusus Kejahatan yang Ditujukan terhadap Hak Milik dan Lain-Lain Hak yang Timbul dari Hak Milik*. Bandung: Nuansa Aulia, p.67

<sup>7</sup> Wild and Auliya and Jawade Hafidz. Law Enforcement against Criminal Action with Fingerprint Evidence. *Law Development Journal* Volume 2 Issue 3, September (2020) URL: <http://jurnal.unissula.ac.id/index.php/ldj/article/view/11928/4950> accessed 22 March 2022.

<sup>8</sup> Andi Hamza. (2008). *Asas-asas Hukum Pidana*. Jakarta: Rineke Cipta, p.5

<sup>9</sup> Yusril Ilza Amri, Bambang Tri Bawono and Ira Alia Maerani. Criminal Investigation of Motorcycle Stealing Goods. *Law Development Journal* Volume 3 Issue 1, March (2021). URLs: <http://jurnal.unissula.ac.id/index.php/ldj/article/view/14866/5481> accessed 22 March 2022.

The purpose of the study was to determine and analyze the application of the principle of error as legal responsibility for the crime of theft.

## 2. Research Methods

The writing method used was a normative legal research approach. The object of the study was the document of legislation and library materials. Reviewing the Tanjungpinang Court Decision. Research specifications used analytical descriptive<sup>10</sup> with an effort to describe the application of the principle of error as legal responsibility for the crime of theft in the Tanjungpinang District Court Decision. The data used in this study include; Primary Data and Secondary Data.<sup>11</sup> Data Retrieval Method. This research was conducted by using statutory documents and library materials.<sup>12</sup> Data analysis used descriptive analysis of qualitative approach to primary and secondary data using a deductive mindset to analyze the application of the principle of error as legal responsibility for the crime of theft in the Tanjungpinang District Court Decision.

## 3. Results and Discussion

### 3.1. Application of the principle of error as legal responsibility for the crime of theft in the Tanjungpinang District Court Decision

A criminal act does not only point to being prohibited and threatened with a criminal act. However, whether a person who commits an act is then sentenced to a criminal offense, as has been threatened, all depends on whether in committing the act he has made a mistake. Because the principle of accountability in criminal law is not to be punished if there is no mistake (*geen straf zonder schuld, actus non facit reum nisi mens sist rea*).<sup>13</sup> Because the principle of no crime without error or the principle of error is a fundamental principle in criminal law and becomes one of the elements of criminal liability of a subject of criminal law.

Criminal Liability is actually not only a matter of law alone, but also concerning the question of moral values or general decency adopted by the community or community groups.<sup>14</sup> So that the basis for the existence of a criminal act is the principle of legality, while the basis for being convicted of a criminal act is the principle of error. This means that the perpetrator of a crime will not only be punished if he has a mistake in committing a crime. But when someone is said to have made a mistake is a matter of criminal liability.<sup>15</sup>

Based on the criminal case with the decision of the Tanjungpinang court Number: 116/Pid.B/2021/PN Tpg who is the subject of law is everyone, namely Rusli Chandra Witardjo als Rusli, which is abbreviated as RCW (Building Shop

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<sup>10</sup>Soekanto Soerjono, (1986), *Pengantar Penulisan Hukum*, Jakarta : UI Press. p.10

<sup>11</sup> Moleong, Lexy J, (2005), , *Metode Penelitian Kualitatif*, Bandung : PT Pemuda Roadkarya. p.144

<sup>12</sup>Ali, Zainudin, (2009), *Metodologi Penelitian Hukum*, Jakarta : Sinar Grafika.p.107

<sup>13</sup> Moeljatno. (2008). *Asas-Asas Hukum Pidana*. Bandung: Rineka Cipta, p.165

<sup>14</sup> Muhammad Baharuddin and Akhmad Khisni. Effectiveness of Pleidooi by The Supreme Of Criminal Murder. *Law Development Journal Volume 2 No 2, June (2020)*.URLs: <http://jurnal.unissula.ac.id/index.php/ldj/article/view/11515/4552> accessed 20 March 2022.

<sup>15</sup> Roni Wiyanto. (2012). *Asas-Asas Hukum Pidana Indonesia*. Bandung : Mandar Maju, p.180

Entrepreneurs) able to firmly and responsively answer questions which was submitted to him in the ongoing trial process, besides that he is also in good physical and mental health so that he is able and can be held accountable for his actions with a chronology of events that initially occurred in 2018 Br. YJS built a hotel called Hotel HS which is located at Jl. Dabo dawn aisle singkep. When building the hotel, he took the building materials at the defendant's shop (RCW) until the hotel construction was completed at the end of 2018. YJS while taking through other people Br. A who is a subordinate of Mr. YJS, when ordering materials for the construction of the Hotel HS, Br. A ordered to the defendant (RCW). Material tools are directly delivered to the HS Hotel, and the payment is Br. YJS transferred via account number to the suspect until the total number of defendants forgot how much because the suspect had not recap, but Mr. YJS has not yet paid the defendant around IDR 65,726,900 (Sixty Five Million Seven Hundred Twenty Six Thousand Nine Hundred Rupiah) since 2018. YJS transferred via account number to the suspect until the total number of defendants forgot how much because the suspect had not recap, but Mr. YJS has not yet paid the defendant around IDR 65,726,900 (Sixty Five Million Seven Hundred Twenty Six Thousand Nine Hundred Rupiah) since 2018. YJS transferred via account number to the suspect until the total number of defendants forgot how much because the suspect had not recap, but Mr. YJS has not yet paid the defendant around IDR 65,726,900 (Sixty Five Million Seven Hundred Twenty Six Thousand Nine Hundred Rupiah) since 2018.

The defendant once charged Mr YJS but Mr YJS had no good faith to pay the defendant until now. The defendant contacted Mr. YJS couldn't either, until finally on Thursday, January 7, 2021, at around 17.00 WIT, the defendant and Mrs. LT's wife saw the child of Mr. YJS at a BNI ATM. Then at 18.30 WIT the defendant's wife went to Mr A's house to invite Mr A to go to Mr YJS's house to meet Mr YJS's son. The defendant and the defendant's wife along with Mr A went to Mr YJS's house after arriving at his house, went straight to the back door of Mr YJS's house and looked for Mr YJS's son. Then the defendant took the motorbike belonging to YJS's child as collateral so that YJS would meet with the defendant RCW. After that, the defendant was asked by the defendant's wife to take the pick up car at home. After that go home to pick up the car. After the defendant took the pick up car, then the defendant went back to Mr YJS's house, before the defendant arrived at Mr YJS's house the defendant walked to the street to see Mr JK, then the defendant asked Mr JK for help to ask for help lifting the goods, Mr JK immediately got into the defendant's pick up car. The defendant and Mr. JK went to the house of Mr. YJS after arriving at the house of Mr. YJS the defendant (RCW) the wife of Mr. LT, Mr. A, and Mr. JK immediately lifted the motorbike belonging to Mr. YJS's son into the defendant's pick-up car after the motorbike was on top of the pick-up car. Then the defendant and his wife immediately took the motorbike away using a pick-up car to the defendant's house.

Article 363 paragraph (1) 3 and 4 of the Criminal Code in conjunction with Article 363 paragraph (1) of the Criminal Code and violated Article 368 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code.

The demands of the Public Prosecutor (JPU) which states as follows: That the defendant RCW has been legally and convincingly proven guilty of committing the crime of theft at night in a house or a closed yard with a house, committed by a

person who was there without his knowledge or against the will of the rightful person which is carried out by two or more people jointly. As regulated and threatened with punishment in the indictment of Article 363 paragraph (1) to the 3rd and 4th of the Criminal Code. Sentencing RCW in the form of imprisonment for 6 (six) months reduced as long as the Defendant RCW is in detention.

Evidence in the form of 1 (one) unit two-wheeled motorcycle, Police Number : BP : 6161 JK, Brand/type : Kawasaki/ex250s, Color : green, Frame Number : MH4EX250JJP00172, Engine Number : EX250PEA00219, 1 (one) brand Flashdisk Sandisk black color combination red 8GB capacity in which there are 3 (three) video recording files at the time of the incident in mp4 format to be returned to witness HBK, 1 (one) unit of four-wheeled black pick-up vehicle used to transport the victim's motorbike, 1 (one) sheet of Vehicle Registration Certificate (STNK) in the name of Aryani Pick up type, black color, frame number : MHF31KF6010011600, engine number : 7K0422546, BP 8176 LA (owned by the defendant) to be returned to the defendant RCW.

The legal facts in the trial are that it is true that a theft crime has occurred on Thursday, January 7, 2021, at around 18.30 WIB on Jalan Bukit Abun, Kel. Old Dabo, Kec. Singkep, Kab. Lingga committed by the suspect RCW, Ms LT, Mr AP and Mr R against 1 (one) unit two-wheeled motorcycle, Police Number : BP : 6161 JK, Brand/type : Kawasaki/ex250s, Color : green, Order Number : MH4EX250JJP00172, Engine Number : EX250PEA00219 belonging to witness HBK. Based on the legal facts mentioned above, the Defendant can be declared to have committed the criminal act that he is accused of. Whereas the defendant was charged by the Public Prosecutor with the Alternative Charges, namely: First, violating Article 363 paragraph (1), 3rd and 4th of the Criminal Code or Second, violating Article 368 paragraph (1) Jo. Article 55 paragraph (1) 1 of the Criminal Code.

The principle of no crime without error or the principle of error implies that a person who has committed an act that is contrary to the applicable criminal law cannot be punished because of the absence of an error in his act.<sup>16</sup>This principle is manifested in Article 6 paragraph (2) of Act No. 4 of 2004 concerning Judicial Power, which stipulates that: "No one can be sentenced to a crime, except if the court, because of a valid evidence according to the law, is convinced that a person who is considered to be responsible has been guilty of the act that he is accused". So that the application of the principle of error is an absolute principle in criminal law, namely as a basis for imposing a sentence.<sup>17</sup>But how does this principle influence in convicting someone. Whereas the principle of guilt is the basis for accountability. While the error is the state of the soul of the maker and the inner relationship between the maker and his actions. If someone makes a mistake, that person can be blamed. Regarding the state of the soul of a person who commits an act is what is commonly referred to as the ability to be responsible. Thus, there were no reasons

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<sup>16</sup>Widya Hari Sutanto and Umar Ma'ruf. The Role of State Attorney Prosecutors to Restore State Financial Losses in Criminal Actions of Corruption to Make Justice. Law Development Journal Volume 3 Issue 1, March (2021). URLs: <http://jurnal.unissula.ac.id/index.php/ldj/article/view/14224/5406> accessed 21 March 2022.

<sup>17</sup> Muladi & Dwidja Priyatno. 2012). *Pertanggungjawaban Pidana Korporasi*. Jakarta: Kencana Prenada Media Group, p.105

for criminal exceptions that could eliminate the criminal responsibility of the Defendant. In its decision, the Panel of Judges concluded that the Defendant had been legally and convincingly proven guilty of committing a crime.

The defendant must be found guilty of that and punished in accordance with the criminal provisions governing the defendant's actions. Based on the decision of the panel of judges above, all the material elements of Article 363 paragraph (1) 3 and 4 of the Criminal Code as stated in the First Alternative indictment of the Public Prosecutor have been completely fulfilled. From the judge's consideration, the form of error committed by the defendant if qualified was intentional. In this case, intentionally can mean deliberately to do something and deliberately not to do something that should be done.

#### 4. Conclusion

The application of the principle of guilt as legal responsibility for the criminal act of theft in the Tanjungpinang District Court Decision is an absolute principle in criminal law as the basis for imposing a criminal sentence on the defendant RCW, which is proven against the law against Article 363 paragraph (1) 3 and 4 of the Criminal Code as stated in the indictment. First Alternative has been completely fulfilled. So the form of error committed by the defendant if qualified is intentional.

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