

## Legal Responsibility for Perpetrators of Theft at Night (Study of Decision Number 17/Pid.B/2025/PN Tpg)

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**Abstract.** *The crime of theft at night is a form of aggravated theft as regulated in Article 363 paragraph (1) 3 of the Criminal Code, because it is committed when the victim is in a vulnerable condition. This study aims to analyze the construction of the crime of theft at night from the perspective of legal certainty and the legal responsibility of the perpetrator in Decision Number 17/Pid.B/2025/PN Tpg. The method used is normative juridical with a statutory and case approach. The results of the study show that legal certainty is reflected in clear aggravating elements, consistent evidentiary procedures, and substantive considerations related to justice. The court's decision emphasizes the principles of legality and culpability, and imposes penalties by taking into account aggravating and mitigating factors, thus providing a balance between legal certainty, justice, and expediency.*

**Keywords:** *Criminal; Decision; District; Law.*

### 1. Introduction

Indonesia is the largest archipelagic country in the world with more than 17,000 islands, which is rich in cultural diversity, religions, and legal systems.<sup>1</sup>The history of Indonesian law cannot be separated from the influence of Western (European) law brought by the Dutch, but still accommodates local and religious values.<sup>2</sup>The Indonesian legal system is pluralistic, combining national law, customary law, and Islamic law as the basis for regulating social life.<sup>3</sup>

Geographical diversity and socioeconomic conditions influence crime rates in each region. Areas with weak policing and high poverty rates tend to have higher crime rates.<sup>4</sup>In addition, Indonesian society consists of more than 1,300 ethnic groups,

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<sup>1</sup>Barda Nawawi Arief, "Anthology of Criminal Law Policy on the Development of the Drafting of the New Criminal Code"

<sup>2</sup>Mahfud MD, "Legal Politics in Indonesia."

<sup>3</sup>Anis Mashdurohatun, "Customary Law from a National Legal Perspective"

<sup>4</sup>Magnum Opus Law Journal, "The Development of Crime in the Digital Age," accessed September 3, 2025

each with its own local wisdom, including in resolving criminal disputes.

Modern developments bring new criminal challenges, both conventional and modern, such as cybercrime. Therefore, criminal law must be adaptive to provide effective protection to the public. In this context, the Criminal Code (KUHP) serves as the primary reference, although customary law and Islamic law continue to influence law enforcement practices.<sup>5</sup>

Islamic law, with the principle of *maqāṣid al-sharī'ah*, emphasizes the protection of five main things: religion, soul, mind, lineage and property.<sup>6</sup> Therefore, moral and religious values are often considered by judges when handing down sentences in criminal cases, including theft. However, the effectiveness of criminal law in Indonesia is often questioned, necessitating reform of the Criminal Code to address social dynamics and the development of crime.<sup>7</sup>

Aggravated theft, such as theft committed at night, is a crime that is still rampant in Indonesia.<sup>8</sup> The aggravating elements in Article 363 paragraph (1) 3 of the Criminal Code are intended to provide greater protection to victims because nighttime situations increase vulnerability to crime.<sup>9</sup> Therefore, the punishment for this crime tends to be heavier than for ordinary theft.

However, there is discourse regarding the need for a restorative justice approach to replace conventional sentencing, especially for perpetrators with certain conditions.<sup>10</sup> This approach is expected to restore social relations, reduce recidivism, and prevent the problem of overcapacity in correctional institutions.

In the case study of Tanjung Pinang District Court Decision Number 17/Pid.B/2025/PN Tpg, the defendant was found guilty of committing theft at night according to Article 363 paragraph (1) 3 of the Criminal Code.<sup>11</sup> This research will analyze how judges interpret the “nighttime” element in the evidence and how legal considerations are used in imposing criminal sanctions.

Analysis of this case is crucial for assessing whether the application of criminal law adheres to the principles of legal certainty, justice, and expediency. Furthermore, this study examines the potential application of restorative justice principles in nighttime theft cases, ensuring that the law not only enforces formal norms but

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<sup>5</sup>Sri Endah Wahyuningsih, “Principles of Criminal Law”

<sup>6</sup>Khaira Ummah Law Journal, “Implementation of *Maqāṣid al-sharī'ah* in Criminal Law,” Vol. 4 accessed September 3, 2025

<sup>7</sup>Barda Nawawi Arief, “Law Enforcement Issues and Criminal Law Policy”

<sup>8</sup>Criminal Code

<sup>9</sup>Magnum Opus Law Journal, “Analysis of Aggravating Elements in Theft,” Vol. 3, accessed September 3, 2025

<sup>10</sup>Anis Mashdurohatun, “Restorative Justice in the Criminal Justice System”

<sup>11</sup>Decision of the Tanjung Pinang District Court “Number 17/Pid.B/2025/PN Tpg”

also provides substantive benefits and justice for society.<sup>12</sup>

## **2. Research Methods**

The research method used in this study is a normative juridical approach with a case study method. The choice of this approach is based on the aim of analyzing legal provisions normatively and connecting them to judicial practice through an in-depth study of Decision Number 17/Pid.B/2025/PN Tpg. With this approach, researchers can understand how Article 363 paragraph (1) 3 of the Criminal Code is applied in cases of theft at night, while also assessing its compliance with the principle of legal certainty.

The type of research used is normative juridical research, namely legal research that focuses on positive legal norms, whether in the form of statutory regulations, doctrines, or court decisions. The analysis is carried out to assess whether the application of these norms is in line with the theory of legal certainty and the principle of legal accountability. In addition, a case study approach is also used so that researchers can explore in depth the application of norms in concrete cases, namely by analyzing how judges interpret and apply the provisions of Article 363 paragraph (1) 3 of the Criminal Code in decisions that are the object of research.

This research is descriptive-analytical in nature. The descriptive approach is used to provide a clear, factual, and systematic picture of the application of criminal law in nighttime theft cases. Meanwhile, the analytical approach is used to assess the suitability of the application of legal norms with the principles of justice, legal certainty, and benefit, as stated by Prof. Dr. Soerjono Soekanto. With this specification, the research not only explains legal phenomena but also evaluates their application to provide practical input for law enforcement.

The data sources in this study come from secondary data, which consists of three types of legal materials. First, primary legal materials, namely binding materials, such as the Criminal Code (KUHP) and the official copy of Decision Number 17/Pid.B/2025/PN Tpg. Second, secondary legal materials, in the form of legal literature, scientific works by experts such as Moeljatno, Andi Hamzah, and Sudikno Mertokusumo, legal journals, and relevant previous research results. Third, tertiary legal materials, including legal dictionaries and encyclopedias to clarify the legal terms used.

Using this method, the research was conducted comprehensively to address the research questions and provide an in-depth analysis of the application of criminal law in judicial practice. The research findings are expected to provide theoretical benefits for the development of legal science, as well as practical benefits for improving law enforcement in Indonesia.

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<sup>12</sup>Barda Nawawi Arief, "Anthology of Criminal Law Policy"

### 3. Results and Discussion

Decision Number 17/Pid.B/2025/PN Tpg shows that the crime of nighttime theft is regulated in Article 363 paragraph (1) 3 of the Criminal Code as aggravated theft because it increases the risk and impact on the victim. The judge applied the principle of legality by proving all elements of the crime through witness statements, evidence, and the defendant's confession. The sentence was imposed by considering aggravating factors (loss and public unrest) and mitigating factors (the victim's confession, courtesy, and forgiveness), so that it is proportional and fulfills the principle of *geen straf zonder schuld*. Overall, this decision upholds legal certainty while paying attention to substantive justice, thus reflecting a balance between punishment, prevention, and community protection.

#### 3.1. Construction of the Criminal Act of Theft at Night in the Concept of Legal Certainty

The results of this study indicate that the construction of the crime of night theft is clearly regulated in Article 363 paragraph (1) 3 of the Criminal Code, which states that aggravated theft occurs when it is committed at night in a house or enclosed yard where there is a house. This provision provides normative legal certainty because it expressly stipulates certain conditions that are grounds for aggravation compared to ordinary theft as regulated in Article 362 of the Criminal Code. In the perspective of the principle of legality as regulated in Article 1 paragraph (1) of the Criminal Code, every form of criminal aggravation must have a basis in law, not based on subjective interpretations of law enforcement officers. Therefore, the element of "night" which is an aggravating factor has clear normative legitimacy and can be used as a definite guideline in sentencing.<sup>13</sup>

The increase in criminal penalties due to night time factors has strong social and legal rationality.<sup>14</sup> Criminals who operate at night take advantage of dark conditions and minimal surveillance, thereby increasing the potential for danger and creating a sense of security in the community.<sup>15</sup> The victims' generally resting conditions at night also place them in a vulnerable position. Based on social defense theory, the law must respond more decisively to crimes that increase social risk.<sup>16</sup> This view aligns with Van Bemmelen's thinking, which asserts that the aggravation of punishment reflects moral and social assessments of the seriousness of the crime. With the "nighttime" element clearly defined in the Criminal Code, the aggravation parameters become objective and can prevent

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<sup>13</sup>Barda Nawawi Arief, "Anthology of Criminal Law Policy"

<sup>14</sup>Mahfud MD, "Legal Politics in Indonesia"

<sup>15</sup>Magnum Opus Law Journal, "The Development of Crime in the Digital Age," accessed September 3, 2025

<sup>16</sup>Sri Endah Wahyuningsih, "Principles of Criminal Law"

misinterpretation by judges.

The legal certainty inherent in the crime of night theft is reflected in three main dimensions, namely normative certainty, procedural certainty, and substantive certainty.<sup>17</sup> Normative certainty is evident from the clarity of the article's formulation, which does not open up to multiple interpretations. Procedural certainty is evident from the proof of aggravating factors, which is carried out in accordance with the provisions of the Criminal Procedure Code (KUHP) through two valid pieces of evidence plus the judge's conviction, as stipulated in Article 183 of the KUHP.<sup>18</sup> Meanwhile, substantive certainty is realized through consideration of the proportionality of the sentence by taking into account mitigating and aggravating factors in accordance with the principles of justice.

The application of the principle of legal certainty can be seen concretely in Decision Number 17/Pid.B/2025/PN Tpg. In this case, the judge applied Article 363 paragraph (1) 3 of the Criminal Code consistently with the legal facts revealed in court. The judge emphasized that the crime of theft committed at around 23.00 WIB in a fenced yard falls into the category of aggravated theft because it fulfills the elements of night time and a certain place as regulated in the article. All elements of the crime, such as the act of taking, another person's property, with the intention of unlawfully controlling it, and carried out at night, were legally proven through evidence and the judge's conviction.

This decision also shows how the judge balances legal certainty and substantive justice.<sup>19</sup> The judge sentenced the defendant to two years in prison, lower than the maximum sentence of seven years stipulated by law. This consideration was based on mitigating factors, such as the defendant's remorse and the victim's forgiveness, as well as the aggravating factor of the resulting social impact. Thus, although the judge complied with normative provisions, he still considered aspects of expediency and justice in issuing the verdict.

Analysis of the decision confirms that the principle of legality remains maintained, legal certainty is applied at the normative, procedural, and substantive levels, and the aggravation of the criminal sentence due to the nighttime factor has both legal legitimacy and social rationality.<sup>20</sup> This proves that the increased criminal penalties in Article 363 paragraph (1) 3 of the Criminal Code not only fulfill the needs of positive law, but are also in line with the principles of justice and protection of society.

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<sup>17</sup>Barda Nawawi Arief, "Law Enforcement Issues and Criminal Law Policy"

<sup>18</sup>Criminal Code

<sup>19</sup>Khaira Ummah Law Journal, "Implementation of Maqāṣid al-sharī'ah in Criminal Law," accessed September 3, 2024

<sup>20</sup>Magnum Opus Law Journal, accessed September 3, 2025

### **3.2. Legal Responsibility for Perpetrators of Nighttime Theft Crimes Decision Number 17/Pid.B/2025/PN Tpg**

Decision The results of the study show that the legal responsibility of perpetrators of criminal acts of theft at night as reflected in Decision Number 17/Pid.B/2025/PN Tpg is a concrete manifestation of the application of the principle of legal certainty in Indonesian criminal law.<sup>21</sup>This decision outlines how the law is applied consistently to defendants who commit aggravated theft, in accordance with Article 363 paragraph (1) 3 of the Criminal Code.<sup>22</sup>The emphasis on the nighttime element provides a normatively valid basis for criminal penalties, while also reflecting the social view that theft at night poses a greater danger because it is carried out in vulnerable situations.<sup>23</sup>

This case involved a defendant named JM, a 25-year-old student, who stole a motorbike in the victim's yard at around 23.00 WIB.<sup>24</sup>The defendant's actions were carried out secretly, exploiting the victim's negligence in not locking the handlebars of his motorcycle. After pushing the motorcycle out of the yard, the defendant managed to drive it home, where it was eventually found by the police, according to the victim's report. This entire series of events demonstrates an element of intent, as the defendant consciously planned and carried out his actions.<sup>25</sup>

During the trial, the prosecutor's charges were based on Article 363 paragraph (1) 3 of the Criminal Code, with a criminal sentence of two years in prison.<sup>26</sup>Evidence at trial revealed the fact that the elements of aggravated theft had been fulfilled.<sup>27</sup>Evidence in the form of the victim's motorcycle was found, and the defendant's confession strengthened the judge's belief that he took someone else's property with the intent to unlawfully possess it. The trial also revealed mitigating factors, such as the defendant's polite demeanor and the victim's forgiveness, despite the victim's losses reaching Rp5,600,000.00.

The legal responsibility applied by the judge is based on the principle of *geen straf zonder schuld* (no crime without fault).<sup>28</sup>The judge ensures that the defendant committed deliberate wrongdoing, was not under duress, and is fully responsible

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<sup>21</sup>Barda Nawawi Arief, "Anthology of Criminal Law Policy on the Development of the Drafting of the New Criminal Code"

<sup>22</sup>Criminal Code

<sup>23</sup>Mahfud MD, "Legal Politics in Indonesia"

<sup>24</sup>Decision of the Tanjung Pinang District Court "Number 17/Pid.B/2025/PN Tpg."

<sup>25</sup>Sri Endah Wahyuningsih, "Principles of Criminal Law"

<sup>26</sup>Criminal Code

<sup>27</sup>Magnum Opus Law Journal, "Analysis of Aggravating Elements in Theft," accessed September 3, 2025

<sup>28</sup>Barda Nawawi Arief, "Law Enforcement Issues and Criminal Law Policy"

for his actions. Furthermore, the judge considers moral, social, and legal dimensions when handing down a verdict.<sup>29</sup>From a moral perspective, the defendant's actions violated moral norms by taking another person's property. From a social perspective, these actions caused unrest in the community.<sup>30</sup>From a legal perspective, the defendant's actions fulfill all the elements of the crime of aggravated theft as regulated by law.

The verdict, which was a three-year prison sentence, reflects the application of the principle of legal certainty as well as proportionality of punishment.<sup>31</sup>The judge emphasized that the defendant's actions met the "nighttime" element, which is an aggravating factor, and therefore the penalty imposed was more severe than for ordinary theft. However, the judge still took humanitarian considerations into account by imposing a sentence lower than the maximum sentence, in accordance with the sentencing guidelines in SEMA Number 1 of 2011.<sup>32</sup>This consideration shows the integration between legal certainty, justice, and legal utility as stated by Gustav Radbruch.<sup>33</sup>

An analysis of this verdict reveals that the trial proceeded according to the principle of due process of law, with consistency between the charges, the trial facts, and the verdict. The judge avoided over-interpreting the law, which could undermine its legitimacy, thus maintaining the principle of legality. This verdict also serves as an educational tool for the public that nighttime theft not only violates social norms but also carries strict criminal consequences.

Conceptually, the legal responsibility applied in this case demonstrates the principle of individualization of punishment. Punishment is imposed based on the level of culpability and the defendant's circumstances, not solely on the consequences. This demonstrates that the Indonesian criminal justice system emphasizes not only formal legal certainty but also considers substantive justice and social benefit.<sup>34</sup>

The results of this analysis confirm that Decision Number 17/Pid.B/2025/PN Tpg is an example of ideal criminal law implementation. Legal certainty is maintained through the application of appropriate articles, justice is achieved through consideration of proportionality, and the benefits of the law are realized by providing a deterrent effect and protecting the community. Thus, perpetrators of

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<sup>29</sup>Anis Mashdurohatun, "Customary Law from a National Legal Perspective"

<sup>30</sup>Khaira Ummah Law Journal, "Implementation of Maqāṣid al-sharī'ah in Criminal Law," accessed September 3, 2025

<sup>31</sup>Decision of the Tanjung Pinang District Court "Number 17/Pid.B/2025/PN Tpg."

<sup>32</sup>Supreme Court Circular Letter "Number 1 of 2011 concerning Sentencing Guidelines."

<sup>33</sup>Gustav Radbruch in Barda Nawawi Arief, "Anthology of Criminal Law Policy: Developments in the Drafting of the New Criminal Code"

<sup>34</sup>Anis Mashdurohatun, "Restorative Justice in the Criminal Justice System," Khaira Ummah Law Journal, accessed September 3, 2025

nighttime theft cannot avoid legal accountability, and the rule of law remains intact as an instrument for protecting citizens' rights.<sup>35</sup>

#### **4. Conclusion**

The construction of the crime of theft at night as regulated in Article 363 paragraph (1) 3 of the Criminal Code provides legal certainty by adding the aggravating element of "night in a closed house or yard." This aggravation has a legal basis through the principles of legality and social rationality because it increases the danger to the victim. Legal certainty is reflected in three dimensions: normative (clear formulation of the article), procedural (proof according to the Criminal Procedure Code), and substantive (proportionality of punishment). An analysis of Decision Number 17/Pid.B/2025/PN Tpg demonstrates the application of legal responsibility consistent with the elements of the crime being legally proven. The judge balanced legal certainty with justice by considering mitigating and aggravating factors in accordance with sentencing guidelines. Criminal responsibility encompasses moral, social, and legal dimensions, confirming that nighttime theft is not only a violation of the law but also a reprehensible act that carries criminal consequences. Thus, Indonesian criminal law not only guarantees formal certainty, but also seeks to realize justice and protect society.

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