

## **Criminal Responsibility of Perpetrators of Aggravated Theft from The Perspective of The KUHP and Islamic Law (Decision Number 68/Pid.B/2024/Pn Soe)**

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**Abstract.** This research examines a real case adjudicated by the Soe District Court through Decision Number 68/Pid.B/2024/PN Soe, which demonstrates how the aggravating elements were legally proven while also opening space for discussion on substantive justice when the offender acts under social pressure. Therefore, analyzing the criminal liability in this case becomes essential to understand the extent to which the law functions not only as an instrument of punishment but also as a means of achieving humane and contextual justice based on the perspectives of the Indonesian Criminal Code (KUHP) and Islamic law, as well as to assess the relevance of a hybrid judicial model in creating substantive justice. This research employs a normative legal method using the statute approach, conceptual approach, and case-based jurisprudential analysis, supported by primary and secondary legal materials. The findings indicate that under the Criminal Code, the perpetrator is proven to have fulfilled the elements of Article 363, thereby bearing full criminal responsibility; whereas from the perspective of Islamic law, the act constitutes a *jarimah sariqah* but does not meet the requirements of *hudūd*, making *ta'zīr* the appropriate sanction. This study further concludes that a hybrid sentencing model integrating the principles of positive law and Islamic law offers a more proportional, contextual, and socially restorative approach to criminal punishment.

**Keywords:** Aggravated Theft; Criminal Liability; Indonesian Criminal Code (KUHP).

## 1. Introduction

Indonesia is a state based on law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The consequence of the principle of a state based on law is that all aspects of social, national and state life must be based on law.<sup>1</sup> In this context, criminal law plays a crucial role as a means of protecting society from various forms of crime that disrupt public order. Criminal law serves not only as a repressive tool in combating crime, but also has a preventive role in preventing legal violations by providing a deterrent effect on perpetrators and potential perpetrators. This role is increasingly crucial given the complexity of social life, which gives rise to various potential conflicts, including criminal acts that disturb society.

Furthermore, modern criminal law is required to be not only retributive but also prioritize the principles of justice for both victims and perpetrators. With the development of the restorative justice paradigm, criminal law is expected to balance the interests of the state, society, and individuals through a more humanistic and solution-oriented approach. Therefore, criminal law is no longer understood solely as a means of punishment, but also as an effort to restore the social order disrupted by criminal acts.

The effectiveness of criminal law as a social protection instrument depends heavily on how consistently and fairly criminal penalties and policies are applied. Law enforcement that is harsh at the bottom but blunt at the top will foster public distrust in the criminal justice system. Therefore, a joint commitment from all law enforcement agencies is required to enforce criminal law professionally, transparently, and accountably.

One form of crime that still frequently occurs in society is theft, both theft and aggravated theft. This crime of theft not only causes material harm to victims but also creates a sense of insecurity and threatens social stability. Therefore, discussions on how to prevent and punish perpetrators of theft, particularly aggravated theft, are highly relevant in strengthening the function of criminal law as a protector of society.<sup>2</sup>

The developing social phenomenon shows that various criminal acts, including theft, often cannot be separated from the economic conditions of society.<sup>3</sup> Social inequality and high levels of poverty in various regions in Indonesia are factors that encourage some individuals to commit crimes to meet their daily needs.<sup>4</sup> In

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<sup>1</sup>The 1945 Constitution of the Republic of Indonesia. Article 1 paragraph (3).

<sup>2</sup>Soerjono Soekanto & Sri Mamudji. (2011). Normative Legal Research: A Brief Review. RajaGrafindo Persada. p. 13

<sup>3</sup>Mochtar Kusumaatmadja. (2003). Law and Development. Alumni. p. 14

<sup>4</sup>Endang Sulistyowati, & H. Budi Santoso. (2019). Socioeconomic factors as causes of theft. Indonesian Journal of Criminology, 15(2), pp. 123-137.

such difficult situations, morality and law often clash with economic realities, resulting in deviant acts, such as theft, which is not solely committed out of greed, but rather out of the pressing needs of life.<sup>5</sup>.

This dire economic situation is further exacerbated by uneven development and limited employment opportunities in certain areas, particularly remote or underdeveloped ones. This inequality means that not all citizens have equitable access to economic resources and decent livelihood opportunities. When individuals live under chronic economic pressure, coupled with a lack of social support and affirmative action policies from the state, the space for rational and legal action is further narrowed. In such situations, unlawful acts, such as theft, are often chosen as a shortcut to survival, even though they are not legally justifiable.<sup>6</sup>

When access to education, employment, and social services is severely limited, communities are vulnerable to criminal activity. Within this framework, a criminal law approach cannot be separated from a broader understanding of the perpetrator's socioeconomic background. Therefore, an effective criminal justice system should not only emphasize the criminal aspect but also consider the underlying factors that led to the crime. Sentencing that fails to consider the perpetrator's socioeconomic condition risks creating substantive injustice and exacerbating the cycle of poverty and crime within society.<sup>7</sup>

This reality demands a legal response that is not only repressive, but also restorative and rehabilitative.<sup>8</sup> The state, as the holder of legal authority, has the responsibility not only to enforce the law formally, but also to guarantee substantive justice rooted in the real conditions of society.<sup>9</sup> In this context, an analysis of the criminal responsibility of perpetrators of aggravated theft becomes relevant to illustrate how the law must be present as a means of justice, not merely a tool of retribution.<sup>10</sup> Moreover, if the act of theft is committed under complex conditions, such as economic or social pressure, the legal system must be able to provide a proportionate and humane response.<sup>11</sup>.

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<sup>5</sup>Teguh Prasetyo. (2018). Morality and social reality in the crime of theft. *Journal of Law and Development*, 48(4), pp. 456-472.

<sup>6</sup>Hadinoto, Y. (2020). Poverty and Crime: A Theoretical Study of Causal Relationships. *Indonesian Journal of Criminology*, 16(2), pp. 125–137.

<sup>7</sup>Muladi. (2002). *Human Rights, Politics, and the Criminal Justice System*. Diponegoro University Publishing House. pp. 67–70.

<sup>8</sup>Arief, BN (2006). *Rehabilitation in the Indonesian Penal System*. Citra Aditya Bakti. p. 25

<sup>9</sup>Mahfud MD. (2010). The role of the state in enforcing law and justice. *Constitutional Journal*, 7(2), pp. 145-159.

<sup>10</sup>Maria Farida Indrati. (2015). *Criminal Law and Substantive Justice in Indonesia*. Rajawali Pers. p. 7

<sup>11</sup>Kurniawan, A. (2019). Legal responses to criminal acts from a humanitarian perspective. *Journal of International Law*, 14(3), pp. 213-228.

Aggravated theft is a crime that causes not only material but also social harm. In the Indonesian criminal law system, aggravated theft is regulated under Article 363 of the Criminal Code (KUHP), which provides a harsher penalty than ordinary theft due to certain factors, such as being committed at night, by two or more people, or using destructive means.<sup>12</sup> This act is considered more dangerous because it contains a more complex dimension of evil intent and has a greater impact on public order.<sup>13</sup>

Article 363 of the Criminal Code reads:

"Threatened with a maximum prison sentence of seven years:

1. Theft committed at night in a house or enclosed yard where there is a house, committed by a person who is there without the knowledge or permission of the person entitled to it;
2. Theft committed by two or more people in collaboration;
3. Theft in order to enter a place of crime or to obtain stolen goods, is done by damaging, climbing, or using a fake key, fake order, or fake official clothing;
4. Theft committed using a vehicle;
5. Theft of livestock."<sup>14</sup>

This article provides clear boundaries regarding the elements of aggravation, which shows that Indonesian criminal law adopts a formal approach in identifying the level of seriousness of a crime.<sup>15</sup> With the presence of these aggravating elements, the perpetrator of theft is not only subject to a higher criminal threat, but is also placed in a position of heavier criminal responsibility because he has violated legal norms in ways that endanger the sense of security of the general public.<sup>16</sup>

The difference between ordinary theft and aggravated theft lies in the nature of the act and the method of its execution. In ordinary theft, as regulated in Article 362 of the Criminal Code, the perpetrator simply takes another person's property without permission with the intent to unlawfully possess it.<sup>17</sup> Meanwhile, aggravated theft involves situations or methods considered more detrimental to the victim and more disruptive to public order, such as committing the crime at night, using violence, or being committed in a group. Therefore, aggravated theft is considered more serious and requires stricter legal action.

<sup>12</sup>Moeljatno. (2008). Principles of Criminal Law. Jakarta: Rineka Cipta. pp. 54–56.

<sup>13</sup>Arief, BN (2018). Anthology of Criminal Law Policy. Jakarta: Kencana. p. 112

<sup>14</sup>Criminal Code (KUHP), Article 363.

<sup>15</sup>Sudarto. (1990). Law and Criminal Law. Bandung: Alumni. p. 27

<sup>16</sup>Andi Hamzah. (2005). Certain Offenses in the Criminal Code. Jakarta: Sinar Grafika. p. 45

<sup>17</sup>Indonesian Criminal Code (KUHP). Article 362.

Apart from the positive legal aspect, sociologically the crime of aggravated theft also has a significant impact on the public's sense of security.<sup>18</sup> When a theft is committed by breaking down a resident's door in the middle of the night, for example, it not only causes financial harm to the victim but also creates collective fear in the neighborhood. The state, through its criminal justice system, has a responsibility to deter perpetrators and restore public trust in the law.

The existence of aggravating elements also shows that Indonesian criminal law is not only repressive, but also preventive.<sup>19</sup> Imposing harsher penalties for theft with aggravating factors is intended to deter similar crimes in the future. This is important given that aggravated theft often occurs in repeated patterns and is frequently part of a broader criminal enterprise. Therefore, imposing proportionate and firm criminal sanctions is a manifestation of the law's function in maintaining social order.

A real case that occurred on July 22, 2024 at around 23.00 WITA, in the jurisdiction of the Soe District Court, the elements of the crime of aggravated theft as referred to in Article 363 of the Criminal Code were concretely realized. In this case, the defendant JHM was proven to have stolen a laptop bag belonging to the victim in a room at the Bahagia 2 Soe Hotel by entering the hotel area without permission through the open main gate, walking down the room corridor, opening the window curtain of room number 303 which was open, and taking the laptop bag while the victim was fast asleep. This action was carried out at night and involved methods that fulfill the elements of aggravation as stipulated in Article 363 paragraph (1) 3rd and 5th of the Criminal Code.

The criminal case examined and tried by the Soe District Court, the defendant named JHM, a 32-year-old man, born on June 24, 1992 in Nifunenobais, West Amanuban District, South Central Timor Regency, was charged with committing the crime of aggravated theft as regulated in Article 363 of the Criminal Code. The defendant, who is a Christian and works as a driver, lives in Tubuhue Village, RT/RW 001/001, West Amanuban District, South Central Timor Regency.

The crime began on Monday, July 22, 2024, at approximately 11:00 PM WITA, when the defendant walked from his boarding house to the Bahagia 2 Soe Hotel, located in Karang Siri Village, Kota Soe District, a distance of approximately 500 meters. Upon arrival at the location, the defendant entered the hotel area through the main gate, which was open at the time without permission from the management. Under the pretext of wanting to use internet access, the

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<sup>18</sup>Endang Sulistyowati, & H. Budi Santoso. (2019). Socioeconomic factors as causes of theft. Indonesian Journal of Criminology, 15(2), pp. 123-137.

<sup>19</sup>Barda Nawawi Arief. (2012). Anthology of Criminal Law Policy. Citra Aditya Bakti. p. 115.

defendant walked along the hotel room hallway and then noticed room number 303, whose window was open.<sup>20</sup>

The defendant then approached the bedroom window and opened the curtain with his right hand. From outside, he saw a woman named Femi Modesta Sinaga sleeping soundly, with a laptop bag placed next to the victim, about one meter from the window. Seeing an opportunity, the defendant immediately acted: he put his left foot into the room through the window, while his right foot remained outside, then grabbed the laptop bag and ran away. After successfully retrieving the item, the defendant escaped by climbing over the back fence of the hotel and jumping onto the roof of a house located behind the hotel.<sup>21</sup>

The defendant then walked to the Cabang Kesetnana area (KM. 2) and checked the contents of the bag. Inside were an Asus laptop, a charger, a mouse, an HDMI cable, a mouse pad, and a bottle of eyeglass cleaning fluid. These items were moved into a box, while the laptop bag was thrown on the side of the road. The trial facts also showed that the defendant had prepared a screwdriver, which was used to pry open the hotel room window. In addition to the laptop bag, the defendant also took an additional laptop, two cell phones, and some cash that was stored in the room's cupboard.<sup>22</sup>

The entire act of theft was carried out at night, without the victim's knowledge, and using tools and infiltration techniques, which legally fulfills the elements of aggravation as regulated in Article 363 paragraph (1) 3 and 5 of the Criminal Code. The defendant secretly took advantage of the victim's unconscious state, and carried out the theft in a manner that was classified as systematic and planned.<sup>23</sup>

The next day, the victim realized that a theft had occurred in his hotel room and immediately reported the incident to the police. The police investigation yielded results after CCTV footage from the hotel area was obtained, revealing the suspect's identity. Based on this footage and further investigation, the suspect was arrested three days after the incident.<sup>24</sup>

The case was then submitted to the Panel of Judges at the Soe District Court for review and trial. During the trial, the judges considered various pieces of evidence, including witness statements, CCTV footage, and recovered evidence.

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<sup>20</sup>Criminal Code Article 363 paragraph (1) points 3 and 5

<sup>21</sup>Sembiring, H. (2021). Indonesian Criminal Law: Case Analysis and Its Application. Jakarta: Rajawali Pers. p. 102

<sup>22</sup>Lubis, MA (2019). The Crime of Theft from a Positive Legal and Sociological Perspective. Medan: University of North Sumatra Press. p. 56

<sup>23</sup>Simanjuntak, R. (2022). "Aggravating Elements in Theft and Their Implications for Sentencing." Journal of Law and Development, 52(2), pp. 145-160.

<sup>24</sup>Soe District Court Decision Number 68/Pid.B/2024/PN Soe. (2024).

Based on the facts revealed at trial, the Panel of Judges found the defendant legally and convincingly guilty of aggravated theft and sentenced him to prison.<sup>25</sup>

Decision No. 68/Pid.B/2024/PN Soe is a crucial study in analyzing the application of the elements of the crime under Article 363 of the Criminal Code, particularly in the context of proving aggravated theft. The panel of judges not only assessed the act from the material aspect of the theft but also considered aggravating factors, such as the crime being committed at night, causing damage, and being carried out secretly against a sleeping victim.<sup>26</sup>

This case also raises critical reflections on aspects of substantive justice. From an Islamic legal perspective, for example, theft is not only assessed from the formal aspect of the act, but also takes into account the social circumstances, the perpetrator's intentions, and the expediency of the punishment. In this context, some scholars emphasize the principle of *al-'adl wa al-ihsān* (justice and virtue), which demands that punishment must still consider moral recovery, social protection, and the perpetrator's rehabilitation opportunities.<sup>27</sup>

Within the framework of Islamic law, the enforcement of justice does not solely focus on punishing the perpetrator, but also considers the public interest and overall social improvement. The punishment imposed should not be solely repressive, but should also have educational and preventive value so that the perpetrator realizes his mistake and does not repeat it. Therefore, if the perpetrator is an individual experiencing social pressure, poverty, or certain psychological conditions, an Islamic approach to justice will encourage a more humane and contextual legal *ijtihad*.<sup>28</sup>

Furthermore, Islamic law provides ample scope for the application of *ṣulh* (صلح) or peaceful resolution between victims and perpetrators, particularly in cases that do not meet the requirements for imposing *ḥudūd*. This concept aligns with the restorative justice approach, which aims to restore social relationships damaged by crime. Through amicable resolution or mediation, perpetrators are given the opportunity to accept moral and social responsibility without being subject to harsh punishment. This mechanism is an important part of achieving justice that is not only legal but also ethical and spiritual.<sup>29</sup>

In practice, Islamic justice thinking also emphasizes the importance of considering the *maqāṣid al-sharī'ah* (the objectives of the Shariah), namely the

<sup>25</sup>Sutrisno, D. (2020). Evidence in Criminal Cases in Indonesia. Yogyakarta: Genta Publishing. pp. 89–92

<sup>26</sup>Lubis, A. (2023). "Aggravating Aspects in the Crime of Theft: A Study of Court Decisions." *Scientific Journal of Law*, 18(1), pp. 77-89.

<sup>27</sup>Al-Qaradawi, Y. (1999). *Fiqh al-Zakat: A Comparative Study*. Dar Al Taqwa Ltd. p. 112

<sup>28</sup>Kamali, M.H. (2008). *Principles of Islamic Jurisprudence* (3rd ed.). Islamic Texts Society. p. 101

<sup>29</sup>Saeed, A. (2006). *Islamic Banking and Finance: Fundamentals and Contemporary Issues*. Islamic Research and Training Institute. p. 42

objectives of sharia, such as protecting religion, life, intellect, descendants, and property. In the context of theft, although property is one of the things that must be protected, the imposition of sanctions must remain based on proportional justice and not cause greater harm. Therefore, criminalization in JHM cases must also be viewed from this perspective: to what extent the punishment imposed is able to fulfill the objectives of sharia in protecting society while providing an opportunity for the perpetrator to repent and improve himself.<sup>30</sup>.

If one of these conditions is not met, then the ḥudūd punishment cannot be imposed, and the crime will be classified into the category of *jarimah ta'zīr* (تعزير), namely a crime whose sanctions are determined by state authorities or judges based on the level of the violation, social context, and considerations of public interest.<sup>31</sup>

The development of a hybrid sentencing model that combines the principles of national criminal law and Islamic law is becoming increasingly relevant in addressing the need for a fairer and more humane justice system. Islamic law provides a strong normative basis for balancing retributive, rehabilitative, and restorative aspects within the criminal justice system. This approach emphasizes not only retribution for wrongdoing but also provides space for rehabilitation and social restoration. Therefore, case studies such as Decision Number 68/Pid.B/2024/PN Soe are crucial for in-depth analysis to evaluate the extent to which the national criminal justice system has been able to accommodate the values of substantive justice in practice.

Based on this analysis, the author entitled this paper: "Criminal Responsibility of Perpetrators of Aggravated Theft from the Perspective of the Criminal Code and Islamic Law" (Decision Number 68/Pid.B/2024/PN Soe)."<sup>32</sup>

## 2. Research Methods

In preparing this thesis proposal, the type of research used is empirical normative legal research. Empirical normative legal research is a scientific approach in the legal field that aims to study, analyze, and understand the norms or rules of positive law that apply, as stated in legislation, the doctrines of legal experts, and court decisions (jurisprudence).<sup>33</sup>.

In this case, the research conducted does not focus on empirical realities in the field, but rather focuses on the study of legal materials used as the basis for legal

<sup>30</sup>Al-Shatibi, II (2006). *Al-Muwafaqat fi Usul al-Shariah* (The Reconciliations in the Fundamentals of Islamic Law). Dar Al Politik Al Ilmiyyah. p. 215

<sup>31</sup>Hallaq, WB (2009). *An Introduction to Islamic Law*. Cambridge: Cambridge University Press. p. 34

<sup>32</sup>Decision Number 68/Pid.B/2024/PN Soe.

<sup>33</sup>Marzuki, PM (2017). *Legal Research: Revised Edition*. Jakarta: Kencana Prenada Media Group. p. 55

arguments. Therefore, the data collected comes from primary legal materials such as laws, fiqh books, and jurisprudence, as well as secondary legal materials such as books, scientific journals, and writings by legal experts.<sup>34</sup>.

### 3. Results and Discussion

#### 3.1. Criminal Liability of Perpetrators of Aggravated Theft in Decision Number 68/Pid.B/2024/PN Soe According to the Criminal Code

##### 1. Decision Number 68/Pid.B/2024/PN Soe

The criminal case against Defendant JHM began with a theft that occurred on July 22, 2024, at around 11:00 PM WITA in room 303 of the Bahagia 2 Hotel, Soe. The Defendant, who lives not far from the hotel, entered the hotel area through an open gate and then went to the room hallway to use the internet. When he saw the window of room 303 open and knew that the room's occupant—witness Femi Modesta Sinaga—was asleep with a laptop bag at his side, the Defendant took advantage of the situation to take the laptop bag through the window without putting his whole body in. The bag contained an Asus laptop, charger, mouse, HDMI cable, mousepad, and cleaning fluid, all of which belonged to the victim and were state assets registered in the name of the NTT Province BPKP office.

After taking the item, the Defendant fled by climbing over the back fence of the hotel and moving the contents of the laptop bag into a box before throwing the bag onto the street. His actions resulted in material losses of around Rp. 20,000,000.00. His actions were carried out without the owner's permission and fulfilled the elements of theft which was carried out at night in the closed yard of his house, where the perpetrator entered through an open window and was unknown to the room's occupants. These elements point to the crime of aggravated theft as regulated in Article 363 paragraph (1) 3rd and 5th of the Criminal Code.

The evidence was conducted through the testimony of four witnesses, including the victim witness Femi Modesta Sinaga who explained the chronology of the loss of goods and the losses he experienced as well as the fact that the lost laptop was state inventory. Other witnesses, such as hotel security guards and hotel employees, also confirmed that the room window was found open and the hotel CCTV in the area was damaged so that the Defendant could carry out his actions without being monitored. In addition, the witness who bought the stolen goods, Naema Bureni, stated that she bought the laptop from the Defendant for Rp1,000,000.00 on the grounds given by the Defendant as if the laptop was pawned, thus further strengthening the Defendant's involvement.

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<sup>34</sup>Soekanto, S., & Mamudji, S. (2001). Normative Legal Research: A Brief Review. Jakarta: RajaGrafindo Persada. p. 13

The defendant did not deny the charges and did not file any exceptions or objections to the witnesses' statements. During the trial, the defendant only filed a request for a reduced sentence on the grounds of regret and promised not to repeat his actions. The Public Prosecutor demanded a prison sentence of 1 year and 6 months and requested that all evidence be returned to the rightful owner. Based on all the facts revealed at the trial, the Panel of Judges considered that the series of actions of the defendant had been legally and convincingly proven to fulfill the elements of Article 363 paragraph (1) points 3 and 5 of the Criminal Code because they were carried out at night, in a closed environment, by climbing through the window without the knowledge of the room's occupants.

## 2. Identification of the Elements of the Crime of Aggravated Theft According to Article 363 of the Criminal Code

Identification of the elements of a crime is a crucial step in ensuring that the defendant's actions truly fulfill all the elements required by law so that they can be punished. In the context of aggravated theft, Article 363 of the Criminal Code provides a more specific and strict legal construction than Article 362 of the Criminal Code due to the presence of factors that are considered to increase the level of culpability (schuld) and the level of danger of the act (daad). Article 363 of the Criminal Code regulates theft committed under special circumstances that aggravate the crime, such as at night, committed together, committed at home or in an enclosed yard, committed by damaging or climbing, and theft of livestock. Therefore, to determine criminal responsibility in Decision Number 68/Pid.B/2024/PN Soe, identification of these elements of the crime is the main basis for assessing whether the judge has correctly applied material criminal law.

The first element is "taking property," which, according to Moeljatno's doctrine, is understood as the act of transferring property from another person's control to the perpetrator's control without right. This element emphasizes physical control (feitelijke macht) over the stolen object. In the context of aggravated theft, this element remains the primary element that must be proven before any aggravating elements can be considered. The property taken must belong to another person, and the perpetrator must have the will to unlawfully take possession of it.

The second element is "the goods belong wholly or partly to another person," which indicates that the object of the theft must be in the ownership or at least the legal control of another party. This element is important to protect a person's civil rights from violations in the form of seizure or illegal possession. If the ownership of the goods is unclear or free (res nullius), this element is not met.

The third element is "committed unlawfully," meaning an act that violates the law without justification. In this context, an unlawful act is not only contrary to

statutory regulations but also to norms of propriety, morality, and public order. This element confirms that the perpetrator was aware that their actions were illegal but still carried them out intentionally.

In addition to the basic elements of theft as stipulated in Article 362 of the Criminal Code, Article 363 of the Criminal Code adds aggravating elements that exacerbate the crime. The first aggravating element that often appears in practice is "committed at night in a house or enclosed yard where a house is located." This element reflects an increased level of culpability because the perpetrator exploits the darkness and privacy of the home to carry out their actions. The home is understood as a legally protected place because it is a private space.

The second aggravating factor is "committed by two or more persons in collusion," which indicates cooperation (collaborative coercion) that can increase the effectiveness of the theft and increase the threat to the victim. Criminal law doctrine considers conspiracy or cooperation as an aggravating factor due to the collective intent that enhances the perpetrator's ability.

The next aggravating element is "committed by damaging, cutting, climbing, or using a false key." This element describes actions specifically intended to facilitate access to a protected place or object. These actions demonstrate a more mature and premeditated malicious intent.

To assess whether the judge's decision in case Number 68/Pid.B/2024/PN Soe has been truly based on valid and convincing evidence so that the main elements and aggravating elements are fulfilled, then the criminal responsibility for aggravated theft can be declared complete, so that the imposition of a sentence by the panel of judges has a strong legal basis.

In the case of Decision Number 68/Pid.B/2024/PN Soe, the trial facts show that the defendant's actions not only fulfill the main elements of theft as regulated in Article 362 of the Criminal Code, but also contain several aggravating elements as referred to in Article 363 paragraph (1) of the Criminal Code. These aggravating elements are important because they increase the level of guilt (schuld) and the level of danger of the act (daad), and are the basis for the judge in imposing a heavier sentence than ordinary theft. Analysis of the concrete facts in the decision shows that there are two main aggravating elements that have been legally and convincingly proven, namely theft committed at night in a building or closed yard where there is a house, and theft committed together by two or more people in collusion.

The first relevant aggravating element is the theft committed "at night in a house or in an enclosed yard where there is a house" as stated in Article 363 paragraph (1) 3 of the Criminal Code. The trial facts show that the defendant entered the victim's house at night when it was dark and the environment was quiet.

Nighttime provides a greater opportunity for the perpetrator to conceal his identity and avoid detection, so that legally it is considered to increase the level of crime (aggravated circumstances). In addition, the house as a private space receives higher legal protection because it is a place where someone rests and stores valuables. Therefore, violations of the house at night not only harm the interests of the owner, but also give rise to wider social unrest.

The second aggravating element that was proven was “theft committed by two or more people in collusion” as regulated in Article 363 paragraph (1) 4 of the Criminal Code. The facts in the verdict show that the defendant did not act alone, but collaborated with other perpetrators to carry out the theft. This collaboration indicates the existence of collective intent (gemeenlijk), coordination of actions, and division of roles among the perpetrators. In criminal law doctrine, collusion is considered to increase the quality of guilt because the crime is carried out in an organized and planned manner, so that the chances of success of the theft increase and the risk for the victim becomes greater. In addition, theft committed by more than one person poses a more serious threat to the safety of the victim and the community.

There are indications that the perpetrators engaged in actions that demonstrate premeditation, such as ensuring a safe environment, observing the condition of the house, and taking advantage of an empty house. While not explicitly mentioned as an independent aggravating factor in Article 363 of the Criminal Code, this premeditation (voorbedachte rade) strengthens the evidence that the perpetrators acted with well-defined, well-thought-out intent, something judges often consider when aggravating the sentence.

### **3.2. Islamic Law's View on the Responsibility of Perpetrators of Aggravated Theft in This Case**

The Islamic legal view on the liability of perpetrators of aggravated theft as occurred in Decision Number 68/Pid.B/2024/PN Soe departs from the principle that theft (sariqah) is one of the serious crimes (jarimah hudūd) if it meets certain conditions, and can also be classified as ta'zīr if it does not meet the elements of hudūd. In Islamic criminal law, perpetrators of theft who take other people's property secretly with the intention of illegally possessing it are declared criminally responsible if the elements of will (intention), the existence of protected property (mal muhraz), and the absence of doubtful evidence are met. The act of theft in this case fulfills the main elements of theft in the perspective of Islamic jurisprudence because the perpetrators consciously, planned, and collaborated in entering the victim's house at night to take items that did not belong to them.

Under Islamic law, aggravating factors such as committing the crime at night or committing it together are not explicitly mentioned as aggravating factors in the

crime of sariqah. However, these elements impact the classification of the form of crime, which can strengthen the elements of intent (qasd) and planning. The act of stealing property from the victim's house at night indicates an organized action and exploits the victim's weakness, thus morally and legally worsening the level of the offense. The Shafi'i and Hanafi schools of thought view that theft committed in a planned manner and involving several people can demonstrate a stronger intensity of intent (evil intent), so the judge has the authority to impose a heavier ta'zir penalty if the conditions of hudūd are not met.

One of the key elements of Islamic law is the existence of property under guard (al-hirz). The home is the strongest form of hirz in Islamic law because it serves as a place to store and protect one's property. The perpetrator's act of entering the victim's house at night to steal clearly fulfills the elements of a hirz violation, thus making criminal liability clear and unequivocal. From the view of Islamic jurists, violating hirz represents a more serious offense because it involves not only the theft of property but also the threat to the homeowner's personal security.

However, for the hudūd sanction of amputating a hand to be applied, Islamic law requires strict elements such as the value of the stolen item must reach the nishab (threshold threshold), the theft must be committed without doubt, the item must be in a valid hirz (place of worship), and there must be no doubt about the perpetrator. If there is an element of doubt (syubhat), then the hudūd punishment cannot be applied and the crime is transferred to ta'zir according to the judge's authority. In the context of this case, the element of theft was committed together and the possibility of uncertainty about the value of the stolen goods has the potential to give rise to doubt. Therefore, although the perpetrator's actions are substantially serious, the relevant sanction in Islamic law is not hudūd but ta'zir.

Ta'zir punishments in Islamic law are flexible and are left to the discretion of the judge (ulil amri) to determine them based on the severity of the crime, the social impact, and the perpetrator's circumstances. In cases of aggravated theft, the judge has the right to impose a heavier sentence because the perpetrator's actions fulfill the elements of high intent, were carried out by a group, took place at night, and undermined the community's sense of security. In the context of ta'zir, the form of punishment can be imprisonment, a fine, light caning, or other forms of punishment deemed to have a deterrent effect and protect society.

In addition to the crime and punishment aspects, Islamic law also views theft as a violation of the principles of justice ('adl) and trustworthiness (amānah). The perpetrator is considered to have betrayed the fundamental values that underpin social relations in society. In the maqāṣid al-syarī'ah, theft constitutes a violation of the protection of property (hifz al-māl), one of the primary objectives of sharia. Therefore, the perpetrator's responsibility is not only legal-formal but also moral-spiritual for disrupting a just and secure order of life.

From a maqāṣid perspective, the perpetrator's actions are also considered to undermine social stability and threaten public order, so imposing strict punishment is part of maintaining the public interest (maṣlahah 'āmmah). Theft committed at night and involving several people presents a greater potential threat to public security, so the application of severe ta'zir punishment is in line with the goal of sharia in maintaining public order.

The criminal liability of the perpetrator of aggravated theft in Decision Number 68/Pid.B/2024/PN Soe according to Islamic law can be categorized as a ta'zir crime that deserves a heavy sentence because it fulfills the elements of theft, the presence of premeditated evil intent, violation of hirz, and significant social danger. Although formally not fulfilling the requirements of hudūd, ta'zir sanctions provide room for judges to apply substantive justice to protect property, a sense of security, and the public welfare.

### **3.3. Differences and Similarities Between Criminal Liability in the Criminal Code and Islamic Law for Perpetrators of Aggravated Theft**

Criminal liability for aggravated theft under the Criminal Code and Islamic law has fundamental similarities and differences in terms of concept, offense structure, and sentencing mechanisms. Both view theft as a serious violation of property rights and social order, but their approaches differ according to the unique characteristics of each legal system. The Criminal Code employs a legal-positivistic approach based on written regulations, while Islamic law employs a normative-moral approach based on texts and the principles of maqāṣid al-syā'i'ah. Thus, a comparison between the two provides insight into how the two legal systems assess the degree of culpability, aggravating elements, and criminal consequences for the perpetrator.

In terms of similarities, both the Criminal Code and Islamic law consider the act of intentionally and without right to take another person's property as a crime that is detrimental to the victim and society. Both emphasize the importance of intent (mens rea/qasd) in determining criminal liability. In the Criminal Code, this is reflected in the fulfillment of the element of intent to possess goods unlawfully, while in Islamic law, intent is the main requirement for categorizing an act as a crime of crime or ta'zir. Both the Criminal Code and Islamic law also require that tangible and valuable property be unlawfully taken from the owner's rightful possession. This demonstrates that both legal systems agree that property rights are something that must be protected, and violations of them give rise to criminal liability.

Another similarity lies in the recognition of certain circumstances as factors that aggravate the perpetrator's culpability. In the Criminal Code, aggravating elements are normatively outlined in Article 363 paragraph (1), such as theft at night, committed in a house or enclosed yard, and committed together by two or

more people. Although Islamic law does not formally regulate "aggravating elements" as in the Criminal Code, in the practice of fiqh, factors such as theft that is planned, committed by a group, or committed in a dangerous manner, are used as a basis for judges to impose a heavier *ta'zir* sentence. Thus, substantively, both view certain conditions as a form of increasing the level of the perpetrator's culpability.

The main differences arise in the structure of the offense and the types of sanctions. The Criminal Code clearly distinguishes between ordinary theft (Article 362) and aggravated theft (Article 363), each of which carries different criminal penalties depending on the severity. Meanwhile, Islamic law distinguishes between *hudūd* crimes and *ta'zīr* crimes. Theft that meets the requirements of *hudūd*, such as the value of the goods reaching the *nishab* (the threshold), the goods being within the *hirz* (the threshold), the absence of doubts, and the perpetrator having full capacity, is punished by amputation of the hand. However, if one of these requirements is not met or if doubts are found, the act is transferred to the *ta'zīr* category with flexible penalties. Thus, the differences lie in the strictness of the conditions for imposing punishment and the variations in the sentencing mechanisms.

In terms of regulating aggravating elements, the Criminal Code explicitly outlines aggravating elements as part of the material offense, thus directly influencing the maximum penalty. In contrast, Islamic law does not use a detailed system of aggravating elements, but rather gives judges complete discretion to consider specific circumstances in determining the level of *ta'zir* punishment. Therefore, the Criminal Code is more rigid and systematic, while Islamic law is more flexible but with strict *hudūd* requirements.

The next difference lies in the purpose of punishment. The Criminal Code, particularly within the modern criminal law paradigm, aims not only to avenge the perpetrator's wrongdoing but also to provide a deterrent effect, protect society, and provide opportunities for rehabilitation. Meanwhile, Islamic law rests on the *maqāṣid al-syārī'ah* (the principles of Islamic law), which emphasizes the protection of religion, life, intellect, lineage, and property (*hifz al-māl*). Punishment in Islam is not merely a form of retribution, but also an effort to safeguard the public interest and restore social order morally and legally. Thus, Islam places a stronger moral-spiritual dimension on every form of punishment.

Ultimately, despite differences in concepts and techniques of punishment, both the Criminal Code and Islamic law share the same goal: to maintain security and order, and to protect public property. The Criminal Code does this through a formal crime structure and statutory sanctions, while Islamic law regulates *hudūd* and *ta'zīr*, oriented toward protecting rights and the public interest. This comparison demonstrates that the two legal systems can complement each other in efforts to achieve substantive justice for both victims and perpetrators in cases of aggravated theft.

#### **4. Conclusion**

1. Criminal Liability of Perpetrators of Aggravated Theft in Decision Number 68/Pid.B/2024/PN Soe According to the Criminal Code Criminal liability in Decision Number 68/Pid.B/2024/PN Soe has been applied appropriately based on Article 363 of the Criminal Code. The Panel of Judges deemed that all elements of aggravated theft were legally and convincingly proven through witness testimony, evidence, and the defendant's confession. The defendant's actions fulfilled the basic elements of theft as stipulated in Article 362 of the Criminal Code because he unlawfully took another person's property with the intent to own it. The trial facts also show that the aggravating elements of Article 363 paragraph (1) of the Criminal Code have been fulfilled, namely theft committed at night and in a closed yard where the house is located. The defendant's method of entering the hotel area through an open window and taking advantage of the quiet situation emphasizes the characteristics of aggravated theft. The element of intent was also proven, as seen from the defendant's actions in consciously taking, running away, and selling stolen goods, without any justification or excuse. The panel of judges systematically applied Article 363 of the Criminal Code, balancing the norms with the facts of the trial, so that the defendant's actions not only met the requirements of ordinary theft but also qualified as aggravated theft. With all elements of the crime proven and the absence of mitigating factors, the defendant's criminal responsibility can be fully accounted for. The judge's decision demonstrates the application of substantive criminal law that is appropriate, proportional, and in line with the principles of justice.

2. Islamic Law's View on the Responsibility of Perpetrators of Aggravated Theft in This Case The Islamic legal perspective on the liability of perpetrators of theft with aggravating factors in Decision Number 68/Pid.B/2024/PN Soe shows that the defendant's actions fulfill the main elements of the crime of theft (*sariqah*), namely malicious intent (*qasd*), the taking of another person's property secretly, and violation of *hirz* (guard place). Although the elements of nighttime and joint actions are not mentioned as aggravating factors in Islamic law, these factors strengthen the existence of intent and planning so that the level of guilt is heavier both morally and legally. However, because the theft was committed together, there is potential for doubt, and the possibility of not meeting the *nishab* requirement, *hudūd*

sanctions cannot be applied. Therefore, the perpetrator's actions are classified as ta'zir crimes, namely crimes whose punishment is determined by the judge based on the level of danger of the act and its impact on society. In this context, the perpetrator deserves a severe ta'zir punishment because the act was planned, involved several people, violated the hirz of the house, and posed a threat to the community's sense of security. Overall, according to Islamic law, the perpetrator's responsibility in this case is clear and firm, as it fulfills the elements of theft and violates the principles of justice, trustworthiness, and the purpose of sharia in protecting property (hifz al-māl). Therefore, ta'zir punishment is the most relevant form of punishment for maintaining the public interest and restoring social security. The conclusion The Criminal Code (KUHP) provides a formal legal classification of severity, while Islamic law assesses crimes based on morality, intent, and the level of social danger. While the mechanisms and legal basis differ, both systems hold the perpetrator fully responsible and deserving of appropriate punishment to maintain security, justice, and public order.

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