

Comparison of Criminal Liability Regulations for Theft Committed Jointly Comparison Between the Old Criminal Code and the National Criminal Code (Focus on Article 477 of the 2026 Criminal Code)

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Abstract. *This study aims to analyze the regulation of jointly-committed theft under the old Criminal Code (Article 363) and the National Criminal Code (Article 477 of Law No. 1 of 2023, effective 2 January 2026), to examine criminal liability thereunder, and to compare both codes through the Theory of Criminal Liability, Participation Theory (deelneming), and the Principles of Justice in Islamic Law. The findings show that the old Criminal Code treats plurality of perpetrators as an aggravating circumstance (gequalificeerde diefstal) relying on Articles 55–56 for participation, while the National Criminal Code offers a more integrative and humanistic construction. Liability under Article 477 requires three cumulative conditions: a theft act, involvement of two or more persons, and shared criminal intent (bewuste samenwerking), within a dualistic framework demanding differentiated responsibility for each perpetrator's role. The study employs three theories: the Theory of Criminal Liability (geen straf zonder schuld), Participation Theory distinguishing each perpetrator's degree of involvement, and the Islamic Theory of Justice (العدل, al-'adl) converging with Rawls's justice as fairness all affirming the principle of individual and proportional liability, consistent with the Islamic concept of الاشتراك في الجريمة (al-ishtirak fi al-jarimah) in criminal jurisprudence.*

Keywords: *Committed; Criminal; Justice; Liabilities; Participation.*

1. Introduction

The history of criminal law in Indonesia shows a long journey through various phases of legal development, from pre-colonial legal traditions, through the colonial period, and up to the independence era. Before the arrival of colonialism, the people of the archipelago already had customary criminal norms that existed in their social lives as a form of social regulation and sanctions for violations of norms. However, with the arrival of Dutch rule, the criminal law applicable in the Dutch East Indies was *the Wetboek van Strafrecht voor Nederlandsch-Indië*

(*National Code of Criminal Procedure*), implemented from the early 20th century, based on the European criminal law model oriented towards classical concepts of crime and criminal responsibility. This system reflected a colonial perspective that focused on controlling legal subjects without much consideration for the context of humanity and substantive justice for the Indonesian people.¹

Following the proclamation of independence, as a sovereign nation, Indonesia gradually reformed its criminal law to align provisions previously based on colonial legacies with the principles of the rule of law, respect for human rights, and prevailing social values. These changes constituted a crucial foundation for realizing a more modern criminal law system that is relevant to Indonesia's social realities.²

In the context of this reform, the ratification of Law -Number 1 of 2023 concerning the Criminal Code marks a major milestone in the reform of national criminal law. The National Criminal Code not only replaces the existing *Wetboek van Strafrecht* but also reflects a substantive paradigm shift in Indonesian criminal law. This law was formulated to affirm a criminal law system rooted in the values of substantive justice, humanity, and social relevance, in accordance with the aspirations of the Indonesian people and the development of contemporary criminal law theory that places humans as moral subjects in criminal law.³

Furthermore, the National Criminal Code is designed as a normative instrument that balances legal certainty *and* the principle of justice. In this context, criminal law is no longer understood solely as a repressive tool, but also as a social control mechanism aimed at protecting legal interests and restoring social balance. This approach reflects the modern criminal law paradigm, which prioritizes substantive justice and the protection of human rights alongside the certainty of legal norms.⁴

In line with these principles, the reform of the national criminal code through Law -Number 1 of 2023 concerning the Criminal Code marks a paradigmatic shift in the Indonesian criminal law system. This new codification not only replaces the long-standing colonial rule *-of the Wetboek van Strafrecht but also establishes a criminal law system rooted in* humanitarian values, social justice, and relevance to the dynamics of contemporary Indonesian society.⁵ This reform also reflects the state's response to developments in contemporary criminal law theory that place

¹Engelbrecht, R., & Engelbrecht, J. (1960). *History of the Indonesian Criminal Code (Wetboek van Strafrecht)* . Indonesian Journal of Social Science, 2(4), 653–656.

²Mubarok, N. (2024). *History of the Development of Criminal Law in Indonesia* . Qanun: Journal of Legal Studies, Sunan Ampel State Islamic University, (first page of the history chapter).

³Barasa, ARP, & Saputra, W. (2024). *Legal System Reform: Law -Number 1 of 2023 concerning the Criminal Code* . Indonesian Journal of Criminal Law and Criminology, 6(3), 1–18.

⁴Ibid

⁵Rizki, Siregar, & Indonesia (2025). *New Paradigm of Sentencing in the Criminal Code 2023*. Jurnal E -RAPublikasi, 1 (latest issue),

humans as moral subjects in criminal law and affirm the values -of Pancasila as the foundation of a modern constitutional state.⁶

The National Criminal Code was drafted as instrument normative which emphasizes balance between certainty legal *certainty* and justice. Within *the* framework this, law criminal No Again understood just as means repressive, but rather as mechanism control protection - oriented social interest law and recovery balance social. Thought This in line with idea *modern criminal law* that rejects criminalization mechanistic and demanding a more approach contextual to perpetrator action criminal.⁷

One of areas that are experiencing reformulation significant in the National Criminal Code is arrangement about action criminal theft, in particular theft committed in a way together. In construction law criminal classic, theft together generally placed in framework *medeplegen* or inclusion, the arrangement of which spread and nature abstract. As a result, the practice enforcement law often face difficulty in determine the limits of responsibility the punishment for each perpetrator in a way fair and proportional.⁸

The old Criminal Code tends to put theft together as form weighting criminal without give elaboration adequate about differentiation roles and levels error each This situation has the potential to create substantive injustice, especially when perpetrators with minimal contributions are treated the same as the main perpetrators. Criticism of this approach has been widely expressed in Indonesian criminal law literature, which emphasizes the importance of individualizing punishment⁹.

In response to these issues, the National Criminal Code reformulated the regulation of theft in a more systematic manner, including through Article 477, which explicitly qualifies theft as committed by two or more persons. This norm is not only descriptive but also has normative implications for the construction of criminal responsibility, particularly in the context of joint acts. Thus, Article 477 of the National Criminal Code is a crucial point in understanding the new direction of Indonesian criminal policy.

The regulation of joint theft in Article 477 of the National Criminal Code represents a shift from a formalistic approach to a more substantive one. This norm allows for a more thorough assessment of the perpetrators' shared contribution, intention,

⁶Dibi Vation Manik, Yasmirah Mandasari Saragih, Fauzan Fauzan, et al. (2024). *Reform of Indonesian Criminal Law Reviewed From Law Number 1 of 2023 About the Criminal Code* . International Journal of Sociology and Law.

⁷Roxin, C., *Criminal Policy and the System of Criminal Law* , Oxford University Press, 2016, p. 45.

⁸Moeljatno, *Principles of Criminal Law* , Rineka Cipta, 2008, p. 115.

⁹Saleh, R., *Criminal Acts and Criminal Responsibility* , Aksara Baru, 1983, p. 56.

and awareness. In this context, criminal responsibility is no longer based solely on physical involvement, but also on the inherent culpability of each individual.¹⁰

Theoretically, the concept of criminal responsibility requires the fulfillment of the elements of responsibility, the existence of fault (*mens rea*), and a causal relationship between the act and its consequences. Hans Welzel, through *his finalistic theory*, asserts that fault must be understood as a normative error rooted in the perpetrator's conscious will. This view was further developed by Claus Roxin through a *normative attribution approach* that emphasizes the importance of the individual's role in collective criminal acts.¹¹

Andrew Ashworth also emphasized that punishment can only be justified if there is *normative blameworthiness*, namely a condition where the perpetrator is morally and legally blameworthy for their actions. This principle rejects collective criminal responsibility without differentiation, as it contradicts the principles of justice and proportionality. Therefore, theft committed collectively requires a thorough analysis of the structure of cooperation and the distribution of blame.¹²

In the context of Indonesian criminal law thought, Roeslan Saleh emphasized that criminal responsibility is the bridge between the criminal act and punishment. Without subjective culpability, punishment loses its moral legitimacy. Moeljatno also emphasized that complicity must be understood as a real causal relationship between the perpetrator and the criminal act, not merely a factual association.¹³

Start next develop idea justice in criminalization with emphasize importance approach *individual sentencing*. According to him, the law modern criminal law must capables differentiate level mistakes and responsibilities each actor's responsibility, especially in action crimes committed in a way collective. Thought This relevant evaluate whether Article 477 of the National Criminal Code has been accommodates principle individual justice adequate.¹⁴

In perspective Islamic law, basic accountability criminal known through draft *المسؤولية الجنائية* (*al- mas'ūliyyah al- jinā'iyah*), which can interpreted as *not quite enough answer criminal somebody on violations provision Sharia*. Concept This built on principle that criminalization only can dropped to individuals who are conscious and free do actions prohibited reprehensible law. Therefore that,

¹⁰Riyadi, A., "Substantive Justice in the Punishment of Criminal Acts of Assault," *Khairul Ummah Law Journal* , Vol. 14 No. 3, 2021, p. 176.

¹¹Welzel, H., *Das Deutsche Strafrecht* , De Gruyter, 1969, p. 132; Roxin, C., 2016, p. 89.

¹²Ashworth, A., *Principles of Criminal Law* , Oxford University Press, 2019, p. 78.

¹³Moeljatno, 2008, p. 121.

¹⁴Muladi, 2013, p. 67.

accountability criminal in Islamic law has personal and non-personal character nature collective.¹⁵

Element main in accountability criminal *القصد* (*al- qasḍ*) is *المسؤولية الجنائية*, which means *intentional or intention aware do actions*, and *الأهلية* (*al- Ahliyyah*), which is interpreted as *skills or ability law somebody accountable his actions*. Second element This show that accountability criminal No only depending on the occurrence actions externally, but also in conditions mind and capacity subject the law that does actions the.¹⁶

With emphasize *القصد* (*intentional*), Islamic law rejects criminalization to actions taken without will free or awareness full. Meanwhile that, the condition *الأهلية* (*skills responsible answer*) contains meaning that somebody only can asked accountability criminal if own reason healthy, ripe thinking, and freedom recognized act in a way law. Conception This in harmony with principle *mens rea* in law modern criminal law that requires existence error subjective as base legitimacy criminalization.¹⁷

Abdul Qadir Audah emphasized that accountability criminal in Islamic law does not can charged in a way automatic to everyone involved in something incident criminal. Every individual must assessed based on role concrete, intentional, and level his involvement in actions said. With Thus, Islamic law in general firm rejects form criminalization collective that ignores differentiation role and quality the fault of each perpetrator.¹⁸

Approach This show that law Islamic criminal law since beginning has adopt principle individual justice in criminalization. Principles the own relevance strong with development law criminal contemporary, especially in evaluate accountability criminal offenses crimes committed in a way together, where is justice only can come true if every perpetrator accountable in a way proportional in accordance with his contributions and mistakes.

Abdul Qadir Audah explained that in law Islamic criminal law, a person only can asked accountability criminal if his actions done with will freedom and awareness full. Every perpetrator assessed individually based on contribution actions and the intentions that accompany them. The approach This show harmony mark with theory accountability modern criminal law that emphasizes personalization error.¹⁹

¹⁵Audah, AQ, *At-Tasyri' al-Jinā'ī al-Islāmī Muqāranan bi al-Qānūn al-Waḍ'ī*, Dar al-Kitab al-'Arabi, 1992, Volume I, p. 239.

¹⁶Ibid., pp. 243–245.

¹⁷Ashworth, A., *Principles of Criminal Law*, Oxford University Press, 2019, p. 77–78.

¹⁸Audah, AQ, 1992, Volume I, p. 251.

¹⁹Ibid., p. 251.

2. Research Methods

This research is a normative legal research, which focuses on the study of positive legal norms, legal principles, and the doctrine of criminal responsibility in the crime of theft committed together, especially the comparison between the old Criminal Code and the National Criminal Code with a focus on Article 477 of the National Criminal Code. This research uses the following approaches: statute approach, to study arrangement accountability criminal in the old Criminal Code and the National Criminal Code; Approach conceptual (conceptual approach), for analyze draft accountability criminal, involvement (*deelneming*), and fault (*mens rea*); Approach comparative approach, for compare system accountability criminal in the old Criminal Code and the National Criminal Code; Approach case approach, as supporters, through review decision relevant courts. The data used is secondary data, which consists above: Primary legal materials: 1) The 1945 Constitution of the Republic of Indonesia; 2) The old Criminal Code; 3) Law Number 1 of 2023 concerning the National Criminal Code; 4) Law Number 1 of 2026 concerning Adjustment Criminal law; legal materials secondary: books text law criminal, journal scientific, articles academic, and expert opinion law criminal law; legal materials tertiary: dictionary law, encyclopedia, and sources referential others. Data collected through studies library research with search systematic to regulation legislation, literature scientific, and documents relevant laws. Data analysis was carried out in a way qualitative-normative, through interpretation systematic against legal norms, comparison between regime law, as well as construction argumentation juridical in a way deductive formulate conclusion about shifting and construction accountability criminal in theft in a way together.

3. Results and Discussion

3.1. Regulation of Joint Theft in the Old Criminal Code and the National Criminal Code

The crime of theft is a form of crime against property that has been known since the beginning of human civilization. In the Indonesian criminal law system, regulations regarding theft have long been enshrined in the Dutch Wetboek van Strafrecht (WvS) which was implemented in Indonesia through Staatsblad 1915 Number 732, which is then commonly referred to as the Old Criminal Code (KUHP). Historically, this normative instrument is a colonial product adopted by the Indonesian government after independence and has been in effect for more than a century. Moeljatno emphasized that the Old Criminal Code, although a direct adoption of Dutch law, has philosophical roots based on the classical school of criminal law that prioritizes legal certainty as a pillar of social order.²⁰

²⁰Moeljatno, Principles of Criminal Law, 8th edition, PT Rineka Cipta, Jakarta, 2009, p. 54.

In the old Criminal Code, the crime of theft was formulated systematically in Articles 362 to 367. Article 362 is the formulation of the crime of theft in its most basic form (*diefstal in zijn eenvoudige vorm*), namely taking someone else's property unlawfully with the aim of owning it. R. Soesilo explains that the element *of taking* in the context of theft must be interpreted as an act that results in the item being in the real control of the perpetrator, even though the transfer occurs immediately.²¹ Meanwhile, Article 363 of the old Criminal Code determines the qualifications for theft categorized as *gequalificeerde diefstal* or aggravated theft, which includes theft committed by two or more people together as stated in Article 363 paragraph (1) number 4.

The element of "committed jointly" in Article 363 paragraph (1) number 4 of the old Criminal Code reflects the recognition of the legislators that the involvement of a plurality of perpetrators in a property crime inherently carries the potential for greater damage and threat to society than crimes committed individually. Barda Nawawi Arief stated that the formulation of the offense that increases the threat of punishment based on objective circumstances—including the number of perpetrators—is a reflection of the principle of proportionality in criminal policy which aims to align the severity of sanctions with the level of danger posed by the act.²²

Normatively, theft committed together in the old Criminal Code does not stand alone as an independent crime, but rather is an aggravating qualification attached to the basic crime of theft. The legal implication is that the criminal threat which was originally a maximum of five years imprisonment as regulated in Article 362 of the old Criminal Code increases to a maximum of seven years imprisonment if it is committed by two or more people together. Muladi and Barda Nawawi Arief stated that this kind of aggravating construction not only contains a *retributive function*, but also reflects a *preventive function* that aims to determine potential perpetrators so that they do not form an association in committing crimes against property.²³

From a comparative legal perspective, the regulation of joint theft in the old Criminal Code can be examined in relation to the doctrine *of deelneming* or participation regulated in Articles 55 and 56 of the old Criminal Code. Article 55 of the old Criminal Code regulates *the father* in its various forms, including the perpetrator (*pleger*), the orderer (*doen pleger*), the participant (*medepleger*), and the instigator (*uitlokker*). Jan Remmelink argues that the concept of *medepleger* requires a shared awareness (*bewuste samenwerking*) among the participants,

²¹R. Soesilo, Criminal Code (KUHP) and its Complete Commentaries Article by Article, Politeia, Bogor, 1991, p. 249.

²²Barda Nawawi Arief, Anthology of Criminal Law Policy: Developments in the Drafting of the New Criminal Code, 2nd edition, 3rd printing, Kencana Prenada Media Group, Jakarta, 2011, p. 107.

²³Muladi and Barda Nawawi Arief, Criminal Theories and Policies, revised edition, Alumni, Bandung, 1998, p. 62.

where each party consciously and voluntarily takes part in the commission of the crime.²⁴

Wirjono Prodjodikoro emphasized that the relationship between Article 363 paragraph (1) number 4 of the old Criminal Code and Article 55 of the old Criminal Code is complementary. Article 363 determines the qualifications of the offense and the criminal threat, while Article 55 is the normative basis for the application of criminal responsibility to each participant in the involvement.²⁵ In other words, the element of "carried out together" in Article 363 refers to the factual reality of the participation of more than one person, while Article 55 determines the form and degree of involvement of each individual so that they can be held criminally responsible.

After more than a century of relying on the colonial legacy of the Criminal Code, Indonesia finally succeeded in issuing Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code), which came into effect on January 2, 2026. This monumental step marked a milestone in the reform of national criminal law, reflecting the spirit of legal independence as well as the aspiration to build a more humane, contextual, and just criminal law system. Chairul Huda stated that the National Criminal Code does not simply replace the text of the law, but marks a paradigm shift from a *daad-strafrecht criminal approach* to a more balanced approach between the act and the perpetrator.²⁶

In the National Criminal Code, the provisions regarding theft are contained in Articles 474 to 480, which are included in Chapter XXXV on Theft. The normative construction of the National Criminal Code shows a tendency to simplify and systematize the provisions of theft compared to its predecessor. Any Ismayawati notes that the legal policy underlying the National Criminal Code prioritizes a more integrative approach between positive legal values, customary legal values, and legal values that exist in society, including Islamic values that are part of the legal treasury of the Indonesian nation.²⁷

The crime of theft committed together in the National Criminal Code is specifically regulated in Article 477 paragraph (1) letter e, which stipulates that theft is punishable by a maximum imprisonment of seven years if committed by two or

²⁴Jan Remmelink, *Criminal Law: Commentary on the Most Important Articles of the Dutch Criminal Code and Their Equivalents in the Indonesian Criminal Code*, PT Gramedia Pustaka Utama, Jakarta, 2003, p. 95.

²⁵Wirjono Prodjodikoro, *Principles of Criminal Law in Indonesia*, 3rd edition, PT Eresco, Bandung, 1989, p. 118.

²⁶Chairul Huda, *From Criminal Acts Without Fault Towards No Criminal Responsibility Without Fault*, 2nd edition, Kencana, Jakarta, 2006, p. 65.

²⁷Any Ismayawati, "Legal Approaches and Politics in the Development of Criminal Law in Indonesia", *Yudisia: Journal of Legal Thought and Islamic Law*, Vol. 12, No. 1, Faculty of Law, Sultan Agung Islamic University, Semarang, 2021, p. 110.

more people together.²⁸ This criminal threat is parallel to the similar regulation in Article 363 paragraph (1) number 4 of the old Criminal Code, but the National Criminal Code adds a new dimension in the form of the possibility of imposing alternative sentences and more flexible main criminal regulations. Eddy OS Hiariej stated that flexibility in sentencing is one of the distinguishing characteristics of the National Criminal Code which allows judges to impose sentences that are more appropriate to the concrete conditions of the perpetrator and the impacts caused.²⁹

A comparison between the old Criminal Code and the National Criminal Code in terms of regulating joint theft shows both continuity and significant updates. In terms of continuity, both instruments place plurality of perpetrators as a factor that aggravates the threat of punishment, in recognition of the greater level of danger of crimes committed in an organized manner. Agung Pratama and Ira Permata, in their research published in the Journal of Legal Sovereignty, assert that the regulation of theft with violence and joint theft in the Criminal Code is a manifestation of criminal law policy that prioritizes the protection of property as a basic right of citizens.³⁰

From a reform perspective, the National Criminal Code formulates the crime of theft with a more modern and systematic construction. Unlike the old Criminal Code, which positioned participation as a general provision applied across articles, the National Criminal Code integrates aspects of participation into the specific crime provisions in a more coherent manner. Sudarto explained that this integration is part of an effort to actualize an integrated criminal justice system *in* which various normative elements complement each other and do not overlap.³¹

In addition, the National Criminal Code also accommodates the concept of *living law* or law that lives in society as contained in Article 2 paragraph (1) of the National Criminal Code. This provision opens up space for the application of local values and customary law in criminal law enforcement, including in cases of theft. PAF Lamintang stated that accommodating local values in the national criminal law system is a necessity in order to achieve substantive justice and not merely formal justice.³²

²⁸Law Number 1 of 2023 concerning the Criminal Code (State Gazette of the Republic of Indonesia 2023 Number 1, Supplement to the State Gazette Number 6842), Article 477.

²⁹Eddy OS Hiariej, Principles of Criminal Law, 2nd edition, Cahaya Atma Pustaka, Yogyakarta, 2016, p. 213.

³⁰Agung Pratama and Ira Permata, "Criminal Law Policy in Handling Violent Theft Crimes", Jurnal Daulat Hukum, Vol. 2, No. 3, Master of Law Study Program, Sultan Agung Islamic University, Semarang, 2019, p. 471.

³¹Sudarto, Criminal Law I, 2nd edition, Sudarto Foundation, Semarang, 1990, p. 85.

³²PAF Lamintang, Basics of Indonesian Criminal Law, PT Citra Aditya Bakti, Bandung, 1997, p. 356.

Substantively, the most fundamental difference between the old Criminal Code and the National Criminal Code regarding joint theft lies in their penal systems and philosophical orientations. The old Criminal Code was retributive and deterministic, emphasizing retribution as the primary objective of punishment. In contrast, the National Criminal Code adopts a more multidimensional approach, integrating the objectives of punishment, including retribution, rehabilitation, and restoration. Barda Nawawi Arief emphasized that reform of the penal system should be rooted in a comprehensive understanding of the purpose of criminal law as an instrument of justice, not merely an instrument of punishment.³³

The provisions of Article 477 of the National Criminal Code also need to be examined in relation to the provisions on participation stipulated in Articles 20 to 23 of the National Criminal Code. Unlike Article 55 of the old Criminal Code, which simply regulates participation, the National Criminal Code provides more detailed regulations regarding the forms of perpetrator involvement, including provisions regarding the limitation of responsibility for perpetrators whose roles are minimal. Andi Hamzah argues that the differentiation of roles in participation is an important element in achieving proportional justice, where each perpetrator is only held accountable according to their respective level of involvement and degree of culpability.³⁴

In conclusion, the regulation of theft committed jointly in the old Criminal Code and the National Criminal Code reflects two distinct legal eras that are historically and philosophically interconnected. The old Criminal Code laid a solid normative foundation by placing plurality of perpetrators as an aggravating factor, while the National Criminal Code builds on that foundation by refining the construction of the offense, enriching the objectives of punishment, and integrating more comprehensive values of justice. Roeslan Saleh reminded that any reform of criminal law must remain rooted in the fundamental principle that the law exists to protect humans, not merely to punish, so that legislative reforms undertaken must reflect a balance between certainty, benefit, and justice.³⁵

3.2. Criminal Liability for Perpetrators of Theft Committed Jointly Based on Article 477 of the 2026 National Criminal Code

Criminal liability, or in Dutch called *strafrechtelijke aansprakelijkheid*, is a fundamental concept in criminal law that determines who can be subject to criminal sanctions for a crime. Theoretically, criminal liability cannot be separated from the concept of fault (*schuld*), which includes two main elements, namely

³³Barda Nawawi Arief, Problems of Law Enforcement and Criminal Law Policy in Crime Prevention, 3rd edition, Kencana, Jakarta, 2014, p. 23.

³⁴Andi Hamzah, Certain Offenses (Speciale Delicten) in the Criminal Code, 2nd edition, Sinar Grafika, Jakarta, 2011, p. 102.

³⁵Roeslan Saleh, Criminal Acts and Criminal Responsibility: Two Basic Understandings in Criminal Law, 3rd edition, Aksara Baru, Jakarta, 1983, p. 78.

dolus (intention) and *culpa* (negligence). Teguh Prasetyo stated that without fault, a person cannot be held criminally responsible, in accordance with the adage *geen straf zonder schuld* which has become a universal principle in the modern criminal law system.³⁶

Article 477 of the National Criminal Code is a key provision that regulates the criminal qualifications for theft under aggravating circumstances, including theft committed together. In the context of criminal responsibility, Article 477 of the National Criminal Code cannot be read separately from the general provisions on responsibility contained in Book I of the National Criminal Code. SE Wahyuningsih emphasized that the integration between special provisions and general provisions in the National Criminal Code is one of the normative advantages that distinguishes it from the old Criminal Code, because this integrated construction results in consistency in the application of the law.³⁷

For criminal liability to be applied under Article 477 of the National Criminal Code, several cumulative requirements must be met. First, there must be an act that fulfills the basic elements of the crime of theft, namely the unlawful taking of another person's property with the intention of possessing it. Second, the act must be committed by two or more people. Third, there must be a shared awareness (*bewuste samenwerking*) among the perpetrators in carrying out the crime. Mahrus Ali stated that shared awareness is the core of the concept of participation, which must be concretely proven through legal facts in court.³⁸

George P. Fletcher in his monumental work *Rethinking Criminal Law* argues that in the modern criminal law system, accountability for crimes involving multiple perpetrators must take into account two dimensions at once: the objective dimension relating to the contribution of each perpetrator's actions to the occurrence of the crime, and the subjective dimension relating to the awareness and will of each perpetrator in carrying out the crime.³⁹ The relevance of Fletcher's view is very significant in the context of the application of Article 477 of the National Criminal Code, where judges are required not only to prove the fact of togetherness, but also to explore the psychological dimensions of each perpetrator.

HLA Hart, in his work *Punishment and Responsibility*, asserts that the foundation of just criminal responsibility lies in the principle that an individual should only be

³⁶Teguh Prasetyo, *Criminal Law*, 5th edition, PT RajaGrafindo Persada, Jakarta, 2015, p. 142.

³⁷SE Wahyuningsih, "Criminal Law Enforcement Policy on Money Laundering Prevention in the Context of Criminal Law Reform in Indonesia", *Journal of Legal Reform*, Vol. II, No. 1, Faculty of Law, Sultan Agung Islamic University, Semarang, 2015, p. 44.

³⁸Mahrus Ali, *Basics of Criminal Law*, Sinar Grafika, Jakarta, 2012, p. 89.

³⁹George P. Fletcher, *Rethinking Criminal Law*, Oxford University Press, New York, 2000, p. 401.

punished for things that are truly within his or her own control and choice.⁴⁰This principle has direct implications for the application of Article 477 of the National Criminal Code in the context of joint theft, particularly in terms of the differentiation of roles and degrees of involvement of each perpetrator. A perpetrator who acts as the main executor (*pleger*) cannot simply be equated with a perpetrator who acts as a supervisor or assistant in the theft operation.

In practical application, Article 477 of the National Criminal Code requires law enforcement officials to carefully identify the role and function of each perpetrator in the overall theft operation. Muladi argues that role differentiation in involvement is essential for achieving proportional justice.⁴¹This role categorization then forms the basis for determining the severity of criminal responsibility imposed on each perpetrator, so that the punishment imposed reflects the relevant degree of contribution and degree of culpability.

In his research published in the UNISSULA Law Journal, Mashdurohatun stated that substantive justice in criminal decisions requires a correspondence between legal facts, legal construction, and the values of justice that exist in society.⁴²This view is highly relevant in the context of the application of Article 477 of the National Criminal Code, where judges cannot rely solely on formal deductive logic but must also consider the social context, the perpetrator's motives, and the real impact of the crime on the victim and society.

Bambang Poernomo stated that the concept of criminal responsibility in Indonesian positive law adheres to a dualistic approach, which separates the concept of criminal acts from the concept of criminal responsibility.⁴³In this dualistic perspective, fulfilling the elements of a crime in Article 477 of the National Criminal Code only means that the act is a crime, but does not necessarily mean that the perpetrator can be punished. Criminal responsibility requires separate proof of the ability to take responsibility (*toerekeningsvatbaarheid*), fault in the form of intent or negligence, and the absence of reasons to eliminate the fault.

Setiyono, in his article published in the Khaira Ummah Journal, stated that individual culpability in criminal liability must be carefully constructed and should not be generalized based on physical participation alone.⁴⁴In cases of joint theft, this means that even if a perpetrator is present at the scene and physically

⁴⁰HLA Hart, *Punishment and Responsibility: Essays in the Philosophy of Law*, 2nd ed., Oxford University Press, Oxford, 2008, p. 181.

⁴¹Muladi, *Selected Chapters on the Criminal Justice System*, 1st edition, Diponegoro University Publishing Agency, Semarang, 1995, p. 43.

⁴²Mashdurohatun, A., "Substantive Justice in Criminal Decisions", *UNISSULA Law Journal*, Vol. 12, No. 1, Faculty of Law, Sultan Agung Islamic University, Semarang, 2021, p. 48.

⁴³Bambang Poernomo, *Principles of Criminal Law*, Ghalia Indonesia, Jakarta, 1987, p. 130.

⁴⁴Setiyono, H., "Individual Error in Criminal Responsibility", *Khaira Ummah Journal*, Vol. 14, No. 1, Postgraduate Program, Sultan Agung Islamic University, Semarang, 2022, p. 58.

participates in the theft, the public prosecutor is still obliged to prove that the person concerned has sufficient malicious intent (*mens rea*) and that his contribution causally contributes to the commission of the crime.

In his research published in the Unissula Law Journal, Arifin analyzed that the development of criminal responsibility theory in Indonesian judicial practice shows a tendency towards greater emphasis on rehabilitative and restorative aspects, especially after the enactment of the National Criminal Code.⁴⁵ In the context of joint theft, the practical implication is that criminalization is not solely oriented towards punishment as retaliation, but also considers the prospects for social reintegration of the perpetrator and the restoration of relations between the perpetrator, victim, and society.

The National Criminal Code explicitly stipulates that in determining the severity of the sentence imposed, the judge must consider various factors, including the perpetrator's guilt, motive and purpose in committing the crime, the method of committing the crime, and the perpetrator's life history and socio-economic circumstances. In the context of Article 477 of the National Criminal Code for cases of joint theft, these considerations are very important because the perpetrators often have different backgrounds and levels of involvement, so that fair punishment must take into account the unique circumstances of each perpetrator.

Claus Roxin, a German criminal law expert whose views have significantly influenced criminal law reform in various countries, put forward the theory of *Tatherrschaft*, or *dominion over the act*, which states that a person can be classified as a principal perpetrator if they control the course of a crime from beginning to end.⁴⁶ This theory is relevant in the context of assessing criminal responsibility based on Article 477 of the National Criminal Code, where control over the commission of a crime is an important criterion in determining the degree of responsibility of a person.

Hanafi Amrani and Mahrus Ali argue that the development of the criminal accountability system in Indonesia shows a significant shift toward a greater focus on the individual as an autonomous legal subject.⁴⁷ In this context, the application of Article 477 of the National Criminal Code to cases of joint theft should not result in mass punishment that ignores the role of individuals, but rather requires a careful and detailed analysis of the specific contributions of each perpetrator.

⁴⁵Arifin, Z., "The Theory of Criminal Responsibility in Indonesian Judicial Practice", Unissula Law Journal, Vol. 41, No. 2, Faculty of Law, Sultan Agung Islamic University, Semarang, 2024, p. 203.

⁴⁶Claus Roxin, Criminal Law: Foundations and General Part, Vol. I, translated by D. Bohlander, Hart Publishing, Oxford, 2006, p. 788.

⁴⁷Hanafi Amrani and Mahrus Ali, Criminal Responsibility System: Development and Implementation, Rajawali Pers, Jakarta, 2015, p. 33.

Agung Pratama, writing in the Ratio Legis Journal, argues that criminal liability for repeat offenders of property crimes demonstrates the need for a system that not only prioritizes legal certainty but also accommodates development and prevention.⁴⁸ This conclusion aligns with the spirit of the National Criminal Code, which positions punishment not as an end in itself but as an instrument for achieving a more noble goal: protecting society, providing protection, and restoring the legal balance disrupted by criminal acts.

Thus, criminal liability for perpetrators of joint theft under Article 477 of the National Criminal Code requires a holistic and differentiated approach. This implies that law enforcement—from investigators and prosecutors to judges—must work synergistically to ensure that each perpetrator is held accountable proportionately according to their respective roles, culpability, and subjective circumstances, in order to achieve true and dignified justice.

3.3. Criminal Responsibility for Theft Committed Jointly between the Old Criminal Code and the National Criminal Code Reviewed from the Theory of Criminal Responsibility, the Theory of Participation, and the Principle of Justice in Islamic Law

A comparative analysis of criminal liability for collective theft between the Old Criminal Code and the National Criminal Code requires a solid theoretical foundation. Three primary theoretical frameworks relevant for use are the Theory of Criminal Responsibility, Participation Theory, and the Principles of Justice in Islamic Law. These three frameworks do not exist in isolation but rather complement each other in forming a comprehensive understanding of how criminal law responds to the phenomenon of collective crimes against property.

The classical theory of criminal responsibility rests on the principle of *actus non facit reum nisi mens sit rea*, which asserts that an act does not render a person guilty unless accompanied by malicious intent. In the context of comparing the old Criminal Code and the National Criminal Code, both instruments fundamentally adhere to this principle. However, there are fundamental differences in how each instrument operationalizes this principle. The old Criminal Code tends to apply the *mens rea principle* simply without paying much attention to the differentiation of roles in participation, while the National Criminal Code provides a richer elaboration of how intent and role interact in determining the degree of responsibility. Syafari et al. show that the fulfillment of legal rights in the criminal justice system requires a system that is able to distinguish between the main perpetrator and the accessory perpetrator clearly and measurably.⁴⁹

⁴⁸Agung Pratama, "Criminal Responsibility of Recidivists in Violent Theft Crimes", Ratio Legis Journal, Vol. 4, No. 4, Faculty of Law, Sultan Agung Islamic University, Semarang, 2026, p. 5891.

⁴⁹Syafari, T., Fathurahim, F., and Robo, BD, "Fulfillment of Rights to Recovery for Victims of Sexual Violence Whose Settlement is Made Outside the Judicial Process in Ternate City", Jurnal Daulat

Glanville Williams, in *Criminal Law: The General Part*, argues that *mens rea* in the context of participation is not a single concept, but can vary among participants.⁵⁰ This means that one person participating in a crime may have intentions that differ in intensity and scope compared to other participants in the same crime. The relevance of this proposition in the context of comparing the old Criminal Code and the National Criminal Code lies in the fact that the old Criminal Code tends to ignore the variability of *mens rea* in participation, while the National Criminal Code attempts to accommodate it through more detailed provisions.

Participation Theory is an important branch of criminal law doctrine that specifically addresses responsibility in the context of crimes involving more than one perpetrator. This theory stems from the recognition that the reality of modern crime is often collective and organized, requiring an adequate normative framework to distribute responsibility fairly among participants. In the old Criminal Code, the doctrine of participation was formulated briefly in Articles 55 and 56, which differentiate between the main perpetrator and additional perpetrators (*medeplichtige*). Meanwhile, in the National Criminal Code, the regulation of participation has been developed to be more comprehensive by taking into account the graduation of roles and levels of involvement.

From the perspective of the Theory of Participation, a comparison between the old Criminal Code and the National Criminal Code reveals significant differences in the recognition and assessment of the role of accessories. The old Criminal Code, inherited from Dutch law, divided participants in a crime into two large groups: those considered the main perpetrators (*dader*) and those who only played an auxiliary role (*medeplichtige*). This distinction has direct consequences for the criminal penalties, where the accessory is only threatened with a maximum of two-thirds of the criminal penalty stipulated for the main perpetrator. The National Criminal Code maintains this distinction but with more careful and systematic elaboration.

In a more in-depth comparative study, the National Criminal Code appears to adopt a more progressive approach to liability for joint theft. Article 477 of the National Criminal Code, read in conjunction with Articles 20 to 23, demonstrates a more nuanced normative construction, with the boundaries between the primary and secondary perpetrators more clearly defined, and the mechanism for determining the degree of responsibility of each perpetrator more structured. This aligns with the development of the doctrine of joint theft in comparative criminal law, which increasingly emphasizes the principle of individual responsibility.

Hukum, Vol. 8, No. 2, Master of Law Study Program, Sultan Agung Islamic University, Semarang, 2025, p. 219.

⁵⁰Glanville Williams, *Criminal Law: The General Part*, 2nd ed., Stevens & Sons, London, 1961, p. 349.

The principle of justice in Islamic law is a very important third dimension in this comparative analysis. Islamic law views justice (العدل, *al-'adl*) as one of the highest values that must be upheld by every legal system. In the context of the crime of theft (السرقه, *al-sariqah*), Islamic law has a very detailed set of norms regarding the elements that must be fulfilled, including in cases of theft committed by a group. Abd al-Qadir Audah in *Al-Tasyri' al-Jina'i al-Islami* explains that Islamic law does not view all perpetrators in a collective crime identically, but rather assesses the contribution and intention of each individual separately.⁵¹

Al-Mawardi in *Al-Ahkam al-Sultaniyyah* states that the crime of theft in Islamic law is classified as a *hudud offense* if it meets very strict conditions, including the requirement regarding the nisab (minimum value of the stolen goods) and the requirement that the goods be taken from a proper storage place (حرز, *hirz*).⁵² When theft is carried out together by a group of people, Islamic jurists have different opinions on how to distribute the nisab value. The more influential opinion states that the nisab value is calculated based on the total value of the stolen goods, not divided per perpetrator, so that all perpetrators can be punished with *hadd punishment* if the total value of the stolen goods meets the nisab.

Wahbah al-Zuhaili in *Al-Fiqh al-Islami wa Adillatuh* comprehensively outlines the doctrine of participation in Islamic jurisprudence.⁵³ He asserts that in Islamic law, the concept of joint involvement in a criminal act (الاشتراك في الجريمة, *al-isytirak fi al-jarimah*) requires proof of a mutual agreement (التواطؤ, *al-tawatu'*) among the perpetrators, as well as a real contribution from each individual to the commission of the crime. This provision has direct relevance to the principle of individual responsibility which is also the philosophical foundation of the National Criminal Code.

Ahmad Wardi Muslich, in his work on Islamic criminal law, asserts that one of the most important principles of Islamic jurisprudence is that punishment should not be imposed on someone who has not been definitively proven to have committed the alleged act.⁵⁴ This principle, which aligns with the principle of *in dubio pro reo* in positive criminal law, reflects Islamic law's commitment to procedural justice as a prerequisite for substantive justice. In the context of joint theft, the implication is that each perpetrator can only be held accountable on the basis of clear and convincing evidence of their active role and malicious intent.

Topo Santoso, in his work on Islamic criminal law in Indonesia, argues that the values of justice in Islamic law actually have many points of intersection with the

⁵¹Abd al-Qadir Audah, *Al-Tasyri' al-Jina'i al-Islami Muqaranan bi al-Qanun al-Wad'i*, Juz II, Dar al-Kutub al-'Ilmiyyah, Beirut, 2011, p. 340.

⁵²Al-Mawardi, Abu al-Hasan Ali ibn Muhammad, *Al-Ahkam al-Sultaniyyah wa al-Wilayat al-Diniyyah*, Dar al-Hadith, Cairo, 1996, p. 222.

⁵³Wahbah al-Zuhaili, *Al-Fiqh al-Islami wa Adillatuh*, Juz VI, Dar al-Fikr, Damascus, 1985, p. 5114.

⁵⁴Ahmad Wardi Muslich, *Islamic Criminal Law*, Sinar Grafika, Jakarta, 2005, p. 82.

principles of justice in modern positive law.⁵⁵ Both recognize that punishment must be proportionate to the act, that responsibility is individual and cannot be shifted to another party, and that legal certainty is an essential prerequisite for achieving justice. This intersection forms the basis for a comparative analysis that positions the National Criminal Code as an instrument that, despite being a product of positive law, has absorbed universal values of justice.

4. Conclusion

The regulation of joint theft in the old Criminal Code and the National Criminal Code shows normative continuity as well as substantial updates. In the old Criminal Code (*Wetboek van Strafrecht*), joint theft is regulated in Article 363 paragraph (1) number 4, which places plurality of perpetrators as a qualifying factor that increases the criminal threat from a maximum of five years imprisonment (Article 362) to a maximum of seven years imprisonment.⁵⁶ The construction of the offense in the old Criminal Code is fragmentary and relies on a normative bridge between Article 363 and the doctrine of inclusion (*deelneming*) in Articles 55 and 56 of the old Criminal Code to determine the responsibility of each perpetrator. Meanwhile, in the National Criminal Code (Law Number 1 of 2023 which has been in effect since January 2, 2026), joint theft is regulated more systematically in Article 477 with a more integrative normative construction between special offenses and the provisions of inclusion contained in Articles 20 to 23 of the National Criminal Code.⁵⁷ The fundamental difference lies in the philosophical orientation of the two instruments: the old Criminal Code rests on a retributive-deterministic paradigm inherited from the Dutch colonial legal tradition, while the National Criminal Code adopts a more multidimensional and humanistic approach that combines the objectives of retribution, development, rehabilitation, and restoration in one integrated criminal system. In addition, the National Criminal Code also accommodates *living law* or law that lives in society as emphasized in Article 2 paragraph (1), which opens up space for respect for local values and customary law in the enforcement of criminal law, something that is not found in the old Criminal Code.

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⁵⁵Topo Santoso, *Grounding Islamic Criminal Law: Enforcing Sharia in Discourse and Agenda*, Gema Insani Press, Jakarta, 2003, p. 56.

⁵⁶Moeljatno, *Principles of Criminal Law*, 8th edition, PT Rineka Cipta, Jakarta, 2009, p. 54.

⁵⁷Barda Nawawi Arief, *Anthology of Criminal Law Policy: Developments in the Drafting of the New Criminal Code*, 2nd edition, 3rd printing, Kencana Prenada Media Group, Jakarta, 2011, p. 107.

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