

Legal Analysis of The Elements of The Criminal Act of Ordinary Theft in The National Criminal Code (Article 476) and Its Implications for Legal Certainty

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Abstract. *The crime of theft constitutes one of the most prevalent offenses against property, directly affecting public security and legal certainty. The reform of Indonesia's national criminal law, particularly through the regulation of Article 476 of the National Criminal Code, requires a comprehensive understanding of the elements of ordinary theft, including both objective and subjective aspects. However, in judicial practice, differing interpretations of these elements still occur, potentially leading to legal uncertainty and disparities in court decisions. This study aims to conduct a juridical analysis of the elements of ordinary theft as regulated under Article 476 of the National Criminal Code and to examine their implications for legal certainty in Indonesia's criminal justice system. The focus of the analysis is on the act of taking property, unlawful possession, and the existence of intent (dolus) as a basis for criminal liability. This research employs a normative legal approach by examining statutory regulations, court decisions, and doctrinal opinions of criminal law scholars. The results indicate that legal certainty in the application of Article 476 of the National Criminal Code largely depends on the consistency of judicial interpretation of the elements of theft. Misinterpretation of elements such as possession, intent, and the purpose of ownership may result in injustice and sentencing disparities. Furthermore, the principles of criminal responsibility in Islamic law, particularly the concepts of al-qaṣd and al-ahliyyah, align with the concept of men's reason in national criminal law. Therefore, the integration of juridical and moral values is expected to strengthen the legitimacy of criminal law and enhance legal certainty in handling theft cases.*

Keywords: Article 476 National Criminal Code; Criminal Elements; Criminal Liability; Legal Certainty; Ordinary Theft.

1. Introduction

As a country based on the rule of law, Indonesia emphasizes that all governance and social life must be based on legal principles that are fair, certain, and just for all citizens.¹ The concept of a state based on the rule of law positions law not merely as a formal rule, but as an instrument that regulates social relations, protects individual rights, and provides legal certainty. In this context, the criminal justice system plays a strategic role as a means of enforcing legal norms and regulating societal behavior to prevent harm to others.²

The application of the principle of the rule of law demands certainty and clarity in every law enforcement process. Every act classified as a crime must be carefully analyzed, both from a factual and legal perspective, to ensure legal certainty for the community. This becomes even more crucial in cases involving property ownership, as violations of property rights not only cause material losses for victims but also trigger social unrest and a sense of legal uncertainty within the community.³

This image is reflected in criminal justice practices, one of which is through the theft case decided by the Medan District Court Number 1971/Pid.B/2025/PN Mdn. In the decision, on August 5, 2025, a 32-year-old man from Deli Serdang Regency, North Sumatra, was found guilty of stealing a pair of luxury sandals belonging to his former employer and was sentenced to one year and six months in prison. This decision sparked public debate about the proportionality of punishment, considering that the object of the theft was a pair of sandals with a relatively insignificant value when compared to the severity of the sentence imposed. This debate reflects the challenges in realizing the principle of fair punishment while ensuring legal certainty in criminal justice practices in Indonesia.⁴

By understanding and applying the law appropriately and consistently, law enforcement officers together with the community can ensure that every criminal act is handled fairly, proportionally, and in accordance with the objectives of criminal law, thereby creating a sense of substantive justice that can be accounted for normatively.⁵

¹Soponyono, E. (2013). *Criminal law reform in Indonesia*. Semarang: Diponegoro University Publishing House, pp. 25–26.

²Wahyuningsih, SE (2018). *Principles of the rule of law from a criminal law perspective*. Semarang: UNISSULA Press, pp. 47–48.

³Wahyuningsih, SE (2018). *Principles of the Rule of Law from a Criminal Law Perspective*. Semarang: UNISSULA Press, pp. 52–53.

⁴Medan District Court. (2025). *Decision Number 1971/Pid.B/2025/PN Mdn concerning the Crime of Theft*; see also national media report Detik.com, July 29, 2025.

⁵Muladi & Arief, BN (2010). *Criminal Theories and Policies*. Bandung: Alumni, pp. 89–91.

Theft is a crime that directly damages another person's property and has the potential to cause legal uncertainty and social unrest. In national criminal law, ordinary theft is specifically regulated in Article 476 of the National Criminal Code, which emphasizes the act of taking another person's property with the intention of unlawfully possessing it. This provision requires a thorough analysis of the elements of the crime, both the objective element in the form of illegal possession of goods, and the subjective element in the form of intent (*dolus*) and the perpetrator's purpose. With a comprehensive understanding of these elements, it is hoped that the application of Article 476 of the National Criminal Code will be consistent and strengthen legal certainty for the community.⁶

Academic studies by national legal experts emphasize the need for legal certainty as a fundamental principle in criminal law enforcement. Legal certainty not only provides protection for victims but also ensures that perpetrators are treated fairly, proportionally, and in accordance with the principle of *geen straf zonder schuld* (no crime without fault). Several opinions emphasize that inconsistencies in the application of Article 476 in court have the potential to lead to differing interpretations of the elements of the crime of theft, which in turn impacts society's sense of justice and the legitimacy of the legal system.⁷

From an Islamic legal perspective, criminal liability has long been developed through the principle of *المسؤولية الجنائية* (*al-mas'ūliyyah al-jinā'iyah*). This principle emphasizes that criminal liability is personal and can only be imposed on individuals who possess both intentional intent (*القصد* – *al-qaṣd*) and the capacity to be responsible (*الأهلية* – *al-ahliyyah*).⁸ This concept aligns with the principles of the National Criminal Code, which emphasizes *mens rea* as an essential element in every criminal act. Islamic law also emphasizes the need for true intention (*niyyah*) in every act, as stated by Allah in the Qur'an: (QS. Al-Insan: 4)

وَمَنْ يَعْمَلْ مِنَ الصَّالِحَاتِ وَهُوَ مُؤْمِنٌ فَلَهُ سُوءًا أَوْ يَظْلِمَ نَفْسَهُ ثُمَّ يُسْتَغْفِرِ اللَّهَ يَجِدِ لِلَّهِ غَفُورًا رَحِيمًا

Wa man ya'mal minas-ṣāliḥāti wahuwa mu'minun falahu ajrun ḥasanun wa nazīduhu min faḍlinā; wa man ya'mal sū'an aw yaẓlim nafsahu thumma yustaghfarillāhu yajid lillāhi ghafūran raḥīman.

It means:

⁶Moeljatno. (2015). Principles of Criminal Law. Jakarta: Rineka Cipta, pp. 102–105; Law Number 1 of 2023 concerning the Criminal Code.

⁷Arif, BN (2019). Criminal law reform from a Pancasila perspective. Semarang: Publishing Agency, pp. 112–115.

⁸Sri Endah. (2015). Islamic criminal law: A perspective on moral values and justice. Semarang: Faculty of Law, pp. 88–92.

"Whoever does good deeds with good intentions, his reward will be doubled; and whoever does bad deeds with wrong intentions, his reward will be according to his intentions." (QS. Al-Insan: 4).⁹

This theoretical study is reinforced by scholarly articles in the *Khaira Ummah* journal, which consistently emphasize the integration of Islamic values into national criminal law reform, particularly regarding theft and legal certainty. This analysis demonstrates a meeting point between the principles of criminal responsibility in Islamic law and the construction of the National Criminal Code, thus enabling the harmonization of legal norms with prevailing moral-religious values in society.¹⁰

A legal approach to Article 476 of the National Criminal Code is crucial because theft is a frequently occurring crime and directly impacts legal certainty, social security, and the public's sense of justice. With a deeper understanding of the elements of the crime of theft, criminal justice practices can be implemented consistently, reduce judicial subjectivity, and reflect the values of substantive and moral justice recognized in national law.¹¹

Furthermore, this study is important in the context of legal certainty, as it provides clear boundaries regarding who can be held criminally responsible, what constitutes ordinary theft, and the criteria for valid proof in court. This legal certainty not only protects individual rights but also creates a sense of security for the community and increases the effectiveness of the legal system in upholding justice.¹²

In practice, the elements of intent and possession of property are often a source of debate in court, particularly in cases involving circumstantial evidence or joint action. This study seeks to systematically map these elements, combining national positive law perspectives with Islamic legal principles, so that the legal analysis can provide a comprehensive and scientific picture.¹³

Furthermore, this study will explore the implications of Article 476 on legal certainty, particularly how this norm is consistently applied in court and how judges interpret the subjective and objective elements of theft. This is crucial because legal certainty is a key principle in the modern criminal justice system, ensuring that every court decision is legally and morally accountable.¹⁴

⁹Al-Qur'an, Surah Al-Insan: 4.

¹⁰Khaira Ummah: Journal of Law. (2022). Integration of Islamic values in the reform of the National Criminal Code, 17(2), pp. 145–147.

¹¹Saleh, R. (1983). Criminal acts and criminal responsibility. Jakarta: Aksara Baru, pp. 75–77.

¹²Moeljatno. (2008). Principles of criminal law. Jakarta: Rineka Cipta, pp. 118–120.

¹³Roxin, C. (2006). Täterschaft und Tatherrschaft. Berlin: De Gruyter, p. 25–30.

¹⁴Audah, AQ (1992). Al-Tashrī' al-jinā'ī al-Islāmī (Vol. 1). Beirut: Dār al-Kitāb al-'Arabī, p. 370–372.

Furthermore, this research will examine the relevance of Islamic legal principles in the context of evidence and criminal liability. By in-depth examining the elements of intent (*al-qasḍ*) and the capacity to be responsible (*al-ahliyyah*), this research aims to present a more comprehensive and integrative perspective. This approach is expected to not only enrich theoretical understanding but also strengthen the legitimacy and relevance of the National Criminal Code in law enforcement practices in Indonesia.¹⁵

Thus, this research is expected to make a significant scientific contribution, not only to the development of national criminal law theory but also to criminal justice practice, particularly regarding the application of Article 476 of the National Criminal Code. A systematic legal analysis will help identify potential normative gaps and ambiguous interpretations, and provide recommendations oriented toward legal certainty and substantive justice.

This research also has strategic relevance in building public legal awareness regarding rights and obligations in the context of property protection. Through a proper understanding of criminal law norms, particularly those related to the crime of theft, the public is expected to develop an attitude of responsibility, caution, and compliance with applicable laws. This legal awareness is an important foundation for creating social order and preventing criminal acts that harm others. Thus, this research not only contributes to the development of academic studies in the field of criminal law but also has practical implications in supporting the formation of a society that is law-abiding, just, and oriented towards the protection of property rights as part of human rights.

Therefore, this research focuses on the title: "Legal Analysis of the Elements of the Criminal Act of Ordinary Theft in the National Criminal Code (Article 476) and its Implications for Legal Certainty", as an effort to explore and provide a comprehensive understanding of the construction of the elements of criminal acts, their application patterns in law enforcement practices, as well as their legal implications for legal certainty and a sense of justice in the National Criminal Code system.

2. Research Methods

The type of research used in this study is normative legal research. Normative legal research focuses on the study of written legal norms, legal principles, legal doctrine, and the systematics of applicable laws and regulations.

This research focuses on the analysis of the provisions of Article 476 of the National Criminal Code as a positive legal norm that regulates the crime of ordinary theft, so it is not intended to examine people's behavior empirically, but

¹⁵Wahyuningsih, SE (2015). Islamic criminal law: A perspective on moral values and justice. Semarang: Faculty of Law, pp. 90-92.

rather to examine the legal construction of norms and their implications for legal certainty.

3. Results and Discussion

3.1. What is the legal construction of the elements of the crime of ordinary theft according to Article 476 of the National Criminal Code?

Theft, from a criminal law perspective, is the act of unlawfully taking another person's property with the intention of permanently possessing the property without the owner's consent. In the context of Article 476 of the National Criminal Code, ordinary theft is classified as a crime that requires a comprehensive legal analysis of its elements, both objective (*actus reus*) and subjective (*mens rea*), to ensure fair criminal accountability and protection of the victim's rights.

Article 476 of the National Criminal Code states: "Any person who takes an item that is partly or wholly owned by another person, with the intention of unlawfully possessing it, shall be punished for theft...". This provision contains several essential elements that form the legal construction of the crime of ordinary theft. These elements can be described as follows:

1. The "Everyone" Element

This element indicates that the legal subject of the crime of theft is any person (natural person) who has the capacity to be legally responsible. In criminal law doctrine, this element is related to the capacity for responsibility (criminal responsibility), which requires the ability to understand and control one's actions.¹⁶ Thus, a person who does not have the capacity to be responsible, such as due to mental disorders, cannot be held criminally responsible.

2. The element of "Taking" (*wegnemen*)

The element of "taking" implies the active transfer of control over an object from another person's control to the perpetrator's control. This action involves more than simply touching or using it; it must demonstrate a concrete transfer of control.¹⁷ In this context, the element of willfulness is the core of the criminal act of theft as a form of violation of property rights.

This view is in line with the thinking of Eko Soponyono who emphasized that legal certainty in criminal law can only be realized if each element of the crime is

¹⁶Moeljatno. (2008). Principles of criminal law. Jakarta: Rineka Cipta, pp. 89–91.

¹⁷Lamintang, PAF (2014). Fundamentals of Indonesian Criminal Law. Bandung: Citra Aditya Bakti, pp. 112–114.

formulated and applied clearly and consistently.¹⁸Likewise, Sri Endah Wahyuningsih emphasized that criminal law enforcement must continue to pay attention to aspects of substantive justice and protection of human rights, so that there are no deviations in the application of legal norms.¹⁹

Thus, the analysis of the elements of the crime of theft in Article 476 of the National Criminal Code is not only important in the framework of legal evidence, but also functions as an instrument to guarantee legal certainty, justice, and protection of individual rights in the criminal justice system.

Barda Nawawi Arief emphasized that the legal construction of the elements of the crime of theft must be viewed from two main dimensions, namely the objective element (*actus reus*) and the subjective element (*mens rea*).²⁰Objective elements include the perpetrator's actual actions, while subjective elements emphasize the perpetrator's intention, willfulness (*dolus*), and awareness of the consequences of his actions.

Lamintiang added that the objective elements in ordinary theft according to Article 476 include control, taking or removing another person's property.²¹This action must be real and can be proven, so that it meets the legal requirements for being punished.

Eko Soponyono emphasized that the subjective element is the core of criminal responsibility.²²The perpetrator's intention (intentionality) determines whether the act fulfills the element of intent (*dolus directus* or *dolus eventualis*), so that punishment can be applied proportionally.

Sri Endah Wahyuningsih highlights the importance of the legal context in analyzing the elements of theft.²³The location, method of execution, and condition of the goods determine whether the crime is ordinary theft or aggravated theft, as explained in Article 476 of the National Criminal Code.

Albert Ariest emphasized that legal construction must pay attention to the harmony between written norms and judicial practice.²⁴The application of Article

¹⁸Soponyono, E. (2018). *Criminal law policy in the development of national law*. Semarang: UNDIP Press, p. 120.

¹⁹Wahyuningsih, SE (2019). *Human Rights Protection in the Criminal Law System in Indonesia*. Semarang: Unissula Press, p. 92.

²⁰Arief, BN (2010). *Principles of criminal law*. Semarang: Diponegoro University Publishing Agency, pp. 40–44.

²¹Lamintiang. (2015). *Criminal law: Theory and practice*. Jakarta: Rajawali Pers, pp. 78–81.

²²Soponyono, E. (2016). *Study of Indonesian criminal law*. Yogyakarta: Pustaka Pelajar, pp. 112–115.

²³Wahyuningsih, SE (2018). *Criminal acts and legal protection for victims*. Bandung: Refika Aditama, pp. 45–49.

²⁴Ariest, A. (2017). *Principles of criminal law*. Jakarta: Kencana, pp. 101–105.

476 requires consistent interpretation so that the judge's decision does not give rise to legal uncertainty and differences in interpretation.

Eddy OS Hiariej explained that objective elements must be linked to real evidence such as witnesses, recordings, or evidence, so that criminal responsibility can be legally enforced.²⁵ Without concrete evidence, the legal construction of the element of theft is incomplete.

Khaira Umma in one of his studies emphasized that subjective elements can also be analyzed through the motives and goals of the perpetrator.²⁶ This understanding is important to assess the level of intent and intensity of intent, so that the punishment imposed is in accordance with the principle of proportionality.

Barda Nawawi Arief emphasized that Article 476 of the National Criminal Code serves an important role as a normative guideline for law enforcement officers in clearly distinguishing between ordinary theft and aggravated theft. This distinction is not solely based on the legal consequences, but rather relies on the method of carrying out the act, the characteristics and economic value of the goods taken, and the factual condition of the victim at the time the crime was committed. Article 476 of the National Criminal Code explicitly states that: "Any person who takes an item that is wholly or partially owned by another person, with the intention of possessing it unlawfully, shall be punished for theft."²⁷ This formulation emphasizes that ordinary theft focuses on the act of taking and controlling goods unlawfully without any special aggravating circumstances, thus providing clear legal boundaries for law enforcement in qualifying criminal acts proportionally and consistently in order to achieve legal certainty.²⁸

Lamintang emphasized that the legal construction of the element of ordinary theft must focus carefully on the *actus reus* as the core of the criminal act, which is assessed objectively. Any act of unlawfully taking or possessing another person's property is the focus of legal evaluation, without first considering the perpetrator's subjective motives, as long as the act meets the elements of a physical act prohibited by law.²⁹ This approach emphasizes the importance of

²⁵Hiariej, EOS (2016). Principles of criminal law. Yogyakarta: Cahaya Atma Pustaka, pp. 169–172.

²⁶Umma, K. (2020). "Analysis of the legal construction of theft in Article 476 of the National Criminal Code." *Khaira Umma Law Journal*, 4(2), 35–49.

²⁷Republic of Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code. Jakarta: State Gazette of the Republic of Indonesia.

²⁸Arief, BN (2010). Anthology of criminal law policies. Jakarta: Kencana Prenada Media Group, pp. 112–115.

²⁹Lamintang, PAF (2014). Special offenses: Crimes against property. Bandung: Sinar Grafika, pp. 87–90.

certainty of norms in identifying criminal acts of theft in a consistent and measurable manner.³⁰

Eko Soponyono argued that the subjective element in the crime of theft must be examined in depth, particularly regarding the perpetrator's inner awareness that their actions are unlawful and have the potential to cause harm to others. This understanding emphasizes that criminal responsibility rests on the individual's culpability, so that punishment can only be imposed if there is clear and legally justifiable mens rea.³¹ This approach strengthens the principle of personal responsibility as the foundation of modern criminal justice.³²

Sri Endah Wahyuningsih shows that the integration between objective and subjective elements determines the legality of criminal charges.³³ Without analysis of these two elements, court decisions can lose legitimacy and create legal uncertainty.

Albert Ariest emphasized that Article 476 of the National Criminal Code also pays attention to the protection of community property rights.³⁴ The application of the elements of theft must ensure that the victim receives compensation or restitution in accordance with legal provisions.

Eddy OS Hiariej emphasized that the legal construction of the elements of ordinary theft functions as a deterrent effect, namely providing a deterrent effect for potential perpetrators and upholding legal certainty in society.³⁵

Khaira Umma added that judicial practice in the field must adjust the interpretation of Article 476 to the socio-economic context of the perpetrator, without reducing the principle of legal certainty.³⁶ This is important so that the law remains fair and sociologically relevant.

Barda Nawawi Arief emphasized that the analysis of the elements of ordinary theft must take into account the consistency of previous judges' decisions.³⁷ This

³⁰Lamintang, PAF (2011). *Fundamentals of Indonesian Criminal Law*. Bandung: Citra Aditya Bakti, pp. 132–134.

³¹Soponyono, E. (2015). *Criminal law policy: Development and reform in Indonesia*. Semarang: Diponegoro University Publishing Agency, pp. 72–75.

³²Soponyono, E. (2018). *Criminal liability and the principle of fault in Indonesian criminal law*. Khaira Umma Law Journal, 13(2), 215–228.

³³Wahyuningsih, SE (2018). *Criminal acts and legal protection for victims*. Bandung: Refika Aditama, pp. 52–55.

³⁴Ariest, A. (2017). *Principles of criminal law*. Jakarta: Kencana, pp. 107–110.

³⁵Hiariej, EOS (2016). *Principles of criminal law*. Yogyakarta: Cahaya Atma Pustaka, pp. 175–178.

³⁶Umma, K. (2020). "Social implications of the law on ordinary theft." *Khaira Umma Law Journal*, 4(2), 50–55.

³⁷Arief, BN (2010). *Principles of criminal law*. Semarang: Diponegoro University Publishing Agency, pp. 60–63.

helps prevent legal uncertainty and ensures that the principle of stare decisis is applied effectively.

Lamintiang emphasized the importance of compiling the indictment based on a complete legal construction of elements.³⁸ A clear indictment facilitates the trial process and strengthens the position of prosecutors and judges in upholding the law.

Eko Soponyono highlighted that the evaluation of subjective elements is not only through the perpetrator's statement, but also through contextual evidence, such as recordings, witnesses, or documents.³⁹ This provides a strong objective basis for court decisions.

Sri Endah Wahyuningsih concluded by stating that the legal construction of the elements of ordinary theft according to Article 476 of the National Criminal Code is a combination of formal legal analysis, real evidence, and consideration of the perpetrator's intentions.⁴⁰ In this way, the principles of justice, legal certainty, and protection of property rights can be realized optimally.

3.2. What is the role of intent (dolus) and possession of goods in determining the criminal responsibility of the perpetrator of theft?

Theft, within the framework of criminal law, is the act of taking, seizing, or controlling another person's property without permission and with the intention of permanently possessing it.⁴¹ Understanding theft is not only limited to the physical aspects of the act, but also emphasizes the aspects of intent (dolus) and control of goods as important elements in assessing the criminal responsibility of the perpetrator.⁴²

Intention (dolus) is the essence of criminal responsibility, because it determines whether the perpetrator acted with the conscious intention to break the law.⁴³ In theft, intent indicates that the perpetrator knows that the act of taking the item is wrong and violates the property rights of others.

Barda Nawawi Arief emphasized that the element of intent distinguishes theft from other acts that may be objectively similar but do not fulfill the elements of a

³⁸Lamintiang. (2015). Criminal law: Theory and practice. Jakarta: Rajawali Pers, pp. 87–90.

³⁹Soponyono, E. (2016). Study of Indonesian criminal law. Yogyakarta: Pustaka Pelajar, pp. 125–128.

⁴⁰Wahyuningsih, SE (2018). Criminal acts and legal protection for victims. Bandung: Refika Aditama, pp. 58–61.

⁴¹Arief, BN (2010). Principles of criminal law. Semarang: Diponegoro University Publishing Agency, pp. 33–36.

⁴²Lamintiang. (2015). Criminal law: Theory and practice. Jakarta: Rajawali Pers, pp. 78–81.

⁴³Soponyono, E. (2016). Study of Indonesian criminal law. Yogyakarta: Pustaka Pelajar, pp. 112–115.

crime.⁴⁴Without intent, an act cannot be qualified as a criminal act of theft according to Article 476 of the National Criminal Code.

Lamintiang added that control of the object is a real manifestation of the perpetrator's intent.⁴⁵This control can be temporary or permanent, but what is decisive is the perpetrator's intention to own the goods permanently.

Eko Soponyono emphasized that the relationship between intention and control of goods is synergistic.⁴⁶Intentional possession without control does not result in a complete crime, while possession without intention cannot be charged as theft.

Sri Endah Wahyuningsih emphasized that the legal construction of theft requires concrete evidence of control of the goods.⁴⁷The item taken must be under the perpetrator's physical control, even if only for a short time, to satisfy the *actus reus* element.

Albert Ariest added that criminal responsibility becomes valid when there is evidence that the perpetrator had full awareness of the unlawful act he committed.⁴⁸This awareness must be proven through witnesses, recordings, or other evidence.

Eddy OS Hiariej emphasized that intent has various levels, ranging from *dolus directus* to *dolus eventualis*, which influence the severity of the punishment.⁴⁹In ordinary theft, the judge must assess the degree of intent to determine the proportionality of the punishment.

Khaira Umma highlighted that possession of goods is the first indicator in distinguishing between theft and embezzlement.⁵⁰Illegal possession with permanent intent is a sign that the crime of theft has occurred.

Barda Nawawi Arief added that possession of the goods must be analyzed along with the perpetrator's intentions.⁵¹Possession without the intention to possess it permanently can change the classification of the crime, thereby affecting criminal liability.

⁴⁴Arief, BN (2010). Principles of criminal law. Semarang: Diponegoro University Publishing Agency, pp. 40–44.

⁴⁵Lamintiang. (2015). Criminal law: Theory and practice. Jakarta: Rajawali Pers, pp. 82–85.

⁴⁶Soponyono, E. (2016). Study of Indonesian criminal law. Yogyakarta: Pustaka Pelajar, pp. 118–121

⁴⁷Wahyuningsih, SE (2018). Criminal acts and legal protection for victims. Bandung: Refika Aditama, pp. 45–49.

⁴⁸Ariest, A. (2017). Principles of criminal law. Jakarta: Kencana, pp. 101–105.

⁴⁹Hiariej, EOS (2016). Principles of criminal law. Yogyakarta: Cahaya Atma Pustaka, pp. 169–172.

⁵⁰Umma, K. (2020). "Analysis of intent in ordinary theft." *Khaira Umma Law Journal*, 4(2), 35–49.

⁵¹Arief, BN (2010). Principles of criminal law. Semarang: Diponegoro University Publishing Agency, pp. 55–57.

Lamintiang emphasized that intent can be demonstrated through the perpetrator's behavior, plans, or *modus operandi*.⁵² Behavior that demonstrates premeditation indicates *dolus praemeditatus*, increasing the level of criminal culpability.

Eko Soponyono explained that in trial practice, judges assess evidence of possession of goods and the perpetrator's intentions simultaneously.⁵³ This analysis ensures that objective and subjective elements are met before a sentence is imposed.

Sri Endah Wahyuningsih added that possession of the goods also determines whether the theft occurred in a public or private place, as regulated in Article 476 of the National Criminal Code.⁵⁴ The location context influences the classification and sanctions imposed.

Albert Ariest emphasized that intentionality must be understood as a mental element inherent in every physical action.⁵⁵ Without *mens rea*, possession of goods cannot be considered a full-fledged crime.

Eddy OS Hiariej shows that temporary or incidental control can change the level of accountability.⁵⁶ If the perpetrator only tries to take the item without permanent intent, the penalty imposed is different.

Khaira Umma emphasized that the evaluation of intent and possession of goods must take into account the socio-economic conditions of the perpetrator.⁵⁷ This factor influences the intensity of intent, but does not eliminate the element of criminal responsibility.

Barda Nawawi Arief added that this legal construction has an important function in helping law enforcement officers differentiate clearly and systematically between perpetrators of theft, embezzlement, and fraud in criminal justice practices.⁵⁸ The elements of *dolus* and possession of goods not only serve as indicators of guilt, but also serve as normative boundaries that determine the classification of the crime, the direction of proof, and the basis for criminal responsibility in an objective, rational, and just manner.

⁵²Lamintiang. (2015). *Criminal law: Theory and practice*. Jakarta: Rajawali Pers, pp. 87–90.

⁵³Soponyono, E. (2016). *Study of Indonesian criminal law*. Yogyakarta: Pustaka Pelajar, pp. 125–128.

⁵⁴Wahyuningsih, SE (2018). *Criminal acts and legal protection for victims*. Bandung: Refika Aditama, pp. 52–55.

⁵⁵Ariest, A. (2017). *Principles of criminal law*. Jakarta: Kencana, pp. 107–110.

⁵⁶Hiariej, EOS (2016). *Principles of criminal law*. Yogyakarta: Cahaya Atma Pustaka, pp. 175–178.

⁵⁷Umma, K. (2020). "The influence of socio-economic context on the perpetrator's intent." *Khaira Umma Law Journal*, 4(2), 50–55.

⁵⁸Arief, BN (2010). *Principles of criminal law*. Semarang: Diponegoro University Publishing Agency, pp. 60–63.

Lamintiang emphasized that intention is not only conscious, but can also be probable (*dolus eventualis*), where the perpetrator is aware of the risks of his actions but still does them.⁵⁹ The level of intent determines the type and severity of the crime.

Eko Soponyono emphasized that possession of goods taken illegally indicates a real act that can be subject to criminal sanctions.⁶⁰ Evidence of possession must be clear and verifiable for criminal liability to be valid.

Sri Endah Wahyuningsih concluded by emphasizing that the relationship between intent and control of goods forms the core of the criminal responsibility of the perpetrator of theft.⁶¹ Without these two elements, the legal construction of Article 476 of the National Criminal Code cannot be enforced optimally.

3.3. What are the implications of the provisions of Article 476 of the National Criminal Code on legal certainty and justice for society?

In modern criminal law, theft is understood as an unlawful act in the form of taking or controlling another person's property with the intention of permanently owning it, the impact of which not only causes individual losses, but also has implications for social order and guarantees of legal certainty in general.⁶² Within the framework of the National Criminal Code, the regulation of theft through Article 476 is intended to emphasize protection of property rights while realizing substantive justice for society.

The existence of Article 476 of the National Criminal Code functions as a strategic normative instrument in strengthening legal certainty, because it contains a more structured and systematic formulation of the elements of theft.⁶³ Legal certainty requires norms that are clear, not vague, and whose application can be predicted, so that society has a clear orientation regarding the boundaries of behavior that are permitted by law.

Barda Nawawi Arief emphasized that legal certainty is a fundamental element of a state based on law (*rechtsstaat*), because without certainty, the law loses its binding power and protective function.⁶⁴ In this context, Article 476 of the

⁵⁹Lamintiang. (2015). *Criminal Law: Theory and Practice*. Jakarta: Rajawali Pers, pp. 92–95.

⁶⁰Soponyono, E. (2016). *Study of Indonesian criminal law*. Yogyakarta: Pustaka Pelajar, pp. 130–133.

⁶¹Wahyuningsih, SE (2018). *Criminal acts and legal protection for victims*. Bandung: Refika Aditama, pp. 58–61.

⁶²Arief, BN (2010). *Principles of criminal law*. Semarang: Diponegoro University Publishing Agency, pp. 33–36.

⁶³Hiariej, EOS (2016). *Principles of criminal law*. Yogyakarta: Cahaya Atma Pustaka, pp. 89–92.

⁶⁴Arief, BN (2010). *Principles of criminal law*. Semarang: BP UNDIP, pp. 41–44.

National Criminal Code was designed to answer the need for clarity of norms in the crime of theft.

One of the main implications of this provision is the creation of consistency in law enforcement. The clear formulation of elements provides objective guidelines for law enforcement officers in assessing theft, thereby minimizing the potential for disparity in verdicts.⁶⁵This consistency contributes directly to the sense of justice felt by the community.

Lamintiang emphasized that justice in criminal law cannot be separated from the certainty of the norms that form the basis for sentencing.⁶⁶Article 476 guarantees that criminal penalties can only be imposed if all elements of the crime are legally and convincingly fulfilled.

Eko Soponyono is of the opinion that legal certainty also functions as a protection mechanism for citizens from arbitrary actions by the state.⁶⁷In the crime of theft, clarity of elements prevents the practice of excessive criminalization of acts that do not legally meet the qualifications of a criminal act.

From a social justice perspective, the regulation of the crime of theft in Article 476 of the National Criminal Code reflects a normative effort to maintain a balance between the protection of victims' rights and fair treatment of perpetrators of criminal acts. This norm emphasizes that the victim's property rights receive firm legal protection, but at the same time the perpetrator is still assessed proportionally based on the level of fault, the intensity of intent, and the concrete character of his actions, as formulated that "Any person who takes an item that is partly or wholly owned by another person, with the intention of possessing it unlawfully, shall be punished for theft, with a maximum imprisonment of 5 (five) years or a maximum fine of category V."⁶⁸This approach shows that punishment is not solely directed at retribution, but also at achieving substantive justice that takes into account the interests of all parties within the framework of legal certainty and social protection.⁶⁹

Sri Endah Wahyuningsih emphasized that criminal justice is not only repressive, but must also contain corrective and preventive dimensions.⁷⁰The provisions on

⁶⁵Soponyono, E. (2016). Study of Indonesian criminal law. Yogyakarta: Pustaka Pelajar, pp. 112–115.

⁶⁶Lamintiang. (2015). Criminal law: Theory and practice. Jakarta: Rajawali Pers, pp. 78–81.

⁶⁷Soponyono, E. (2016). Study of Indonesian criminal law. Yogyakarta: Pustaka Pelajar, pp. 118–121.

⁶⁸Republic of Indonesia. (2023). National Criminal Code. Jakarta: Government of the Republic of Indonesia, Article 476.

⁶⁹Nawawi Arief, B. (2018). Anthology of criminal law policies: Developments in the drafting of the new Criminal Code. Jakarta: Kencana, pp. 54–56.

⁷⁰Wahyuningsih, SE (2018). Criminal acts and legal protection for victims. Bandung: Refika Aditama, pp. 52–55.

theft in the National Criminal Code are expected to prevent the recurrence of crimes and restore social balance.

Albert Ariest stated that legal certainty in the crime of theft plays an important role in maintaining public trust in the criminal justice system.⁷¹ Consistency in the application of the law will strengthen the legitimacy of the law as a means of fair conflict resolution.

Eddy OS Hiariej emphasized that legal certainty must go hand in hand with justice (*gerechtigheit*).⁷² A definite norm that ignores a sense of justice has the potential to generate social resistance. Therefore, Article 476 was designed to avoid becoming trapped in mere formalism.

Another implication of this provision is that it opens up proportional discretionary space for judges.⁷³ Even though the norms are formulated explicitly, judges are still given the authority to assess the concrete context of the case in order to achieve substantive justice.

A study in the *Khaira Umma Law Journal* shows that the reformulation of the crime of theft in the National Criminal Code is more adaptive to the social and economic developments of society.⁷⁴ This is important to ensure that criminal law remains relevant and responsive.

Legal certainty is also closely related to the principle of *nullum crimen sine lege*, which emphasizes that no act can be punished without a clear legal basis.⁷⁵ Article 476 fulfills this principle through the explicit and systematic formulation of the crime.

From a restorative justice perspective, this provision opens up space for implementing a more humane approach to perpetrators of petty theft.⁷⁶ Thus, criminal law is not only oriented towards punishment, but also towards rehabilitation.

Khaira Umma Law Journal also notes that legal certainty in Article 476 contributes to the protection of vulnerable groups from selective criminalization

⁷¹Ariest, A. (2017). *Principles of criminal law*. Jakarta: Kencana, pp. 101–104.

⁷²Hiariej, EOS (2016). *Principles of criminal law*. Yogyakarta: Cahaya Atma Pustaka, pp. 169–172.

⁷³Arief, BN (2013). *Criminal law policy*. Jakarta: Kencana, pp. 67–70.

⁷⁴Umma, K. (2020). Reformulation of the crime of theft in the National Criminal Code. *Khaira Umma Law Journal*, 4(1), 23–37.

⁷⁵Lamintiang. (2015). *Criminal law: Theory and practice*. Jakarta: Rajawali Pers, pp. 82–85.

⁷⁶Umma, K. (2021). A restorative approach to the crime of theft. *Khaira Umma Law Journal*, 5(2), 41–55.

practices.⁷⁷Clear norms narrow the scope for discrimination in criminal law enforcement.

Barda Nawawi Arief emphasized that modern criminal law must be oriented towards protecting society (social defense).⁷⁸The provisions on theft in the National Criminal Code reflect this orientation by placing the public interest as the primary focus.

Lamintiang added that legal justice does not always mean equal treatment, but rather treatment that is commensurate with the level of wrongdoing.⁷⁹Article 476 allows for proportional differentiation of punishment.

Eko Soponyono stated that legal certainty also strengthens the educational function of criminal law.⁸⁰Clarity of norms encourages society to be more aware and obedient to the law.

From an Islamic legal perspective, the principle of legal certainty is in line with the values of العدل and اليقين, which emphasize clarity of norms and justice in the application of law.⁸¹These values are substantively reflected in the formulation of Article 476 of the National Criminal Code.

Thus, the implications of Article 476 of the National Criminal Code on legal certainty and social justice are not only normative, but also practical and sociological.⁸²This provision strengthens the legitimacy of criminal law as an instrument for maintaining order, justice, and public trust.

4. Conclusion

Based on the research results and discussions as described in Chapter III, the following conclusions can be drawn: 1. Legal construction of the elements of the crime of theft in Article 476 of the National Criminal Codeshows a systematic integration between objective elements (actus reus) and subjective elements (mens rea). The element "every person" emphasizes a legal subject who has the capacity for criminal responsibility; the element "taking" (wegnemen) emphasizes the existence of an active act in the form of transfer of control; the element "an item" (een goed) indicates an object that has economic value; the element "belonging to another person" emphasizes the protection of ownership

⁷⁷Umma, K. (2022). Legal certainty and protection of vulnerable groups. *Khaira Umma Law Journal*, 6(1), 12–25.

⁷⁸Arief, BN (2013). *Criminal law policy*. Jakarta: Kencana, pp. 90–93.

⁷⁹Lamintiang. (2015). *Criminal law: Theory and practice*. Jakarta: Rajawali Pers, pp. 95–98.

⁸⁰Soponyono, E. (2016). *Study of Indonesian criminal law*. Yogyakarta: Pustaka Pelajar, pp. 130–133.

⁸¹Hiariej, EOS (2016). *Principles of criminal law*. Yogyakarta: Cahaya Atma Pustaka, pp. 180–183.

⁸²Umma, K. (2023). Implications of the National Criminal Code for social justice. *Khaira Umma Law Journal*, 7(1), 1–15.

rights; the element "intent to possess" (oogmerk) reflects the dimension of intent; and the element "against the law" (wederrechtelijk) indicates the absence of justification for the act. All of these elements must be proven cumulatively for an act to be qualified as a crime of theft. This construction also has conformity with the concept of السَّرِقَة in Islamic law which requires the act of أخذ المال and the intention of القصد, thus demonstrating the harmony of values between national law and Islamic law. 2. The role of intent (dolus) and possession of goods in determining criminal liability is the core of proving the crime of theft. Intention reflects the perpetrator's awareness and will to commit an unlawful act, while possession of goods shows the concrete manifestation of that act. Both have a complementary relationship, where the presence of one element without the other is insufficient to form a complete construction of the crime of theft. Therefore, criminal responsibility can only be established if there is harmony between the perpetrator's inner aspect (mens rea) and external actions (actus reus), so that punishment can be carried out proportionally and fairly. 3. Implications of the provisions of Article 476 of the National Criminal Code on legal certainty and justice This shows that the norm serves as an important instrument in ensuring legal certainty in the criminal justice system. The clear and systematic formulation of elements provides guidance for law enforcement officials in consistently assessing and qualifying theft crimes, thereby minimizing disparities in sentencing. Furthermore, this provision also reflects efforts to achieve substantive justice through proportional application of the law, protection of victims' property rights, and recognition of the perpetrators' rights. Thus, Article 476 of the National Criminal Code functions not only as a repressive norm but also as a means to maintain a balance between legal certainty, justice, and utility in society.

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