

Criminal Responsibility for Perpetrators of The Criminal Act of Theft in The Family Based on Positive Law

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Abstract. *This study aims to analyze criminal liability for perpetrators of theft within the family based on positive law, examine its weaknesses, and formulate an ideal criminal liability structure for the future. This research is motivated by the awareness that theft within the family has a different complexity than ordinary theft, thus requiring a normative approach that is more contextual and responsive to the social realities of Indonesian society. The research findings indicate that the National Criminal Code (KUHP) regulates criminal liability for perpetrators of domestic theft, with a number of normative specificities through a relative complaint mechanism. However, three weaknesses were identified: the general nature of the legal substance that fails to accommodate the nuances of family relationships; the disparity in decisions and the weak capacity of law enforcement officials; and a legal culture that remains retributively oriented. Integrative reforms are needed in the future, encompassing normative categorization of domestic theft and domestic theft, strengthening restorative justice mechanisms, increasing institutional capacity, and transforming the legal culture toward a more humanistic and recovery-oriented paradigm. This research is based on three main theories, namely the theory of criminal responsibility which emphasizes guilt as an absolute condition for punishment, the theory of the legal system of Lawrence M. Friedman which analyzes the effectiveness of the law through three components, namely legal substance, legal structure, and legal culture, and the theory of justice (Gustav Radbruch) which places the balance between justice, legal certainty, and utility as the highest ideals in a dignified legal system.*

Keywords: *Criminal Liability; Family Theft; National Criminal Code.*

1. Introduction

The enactment of Law Number 1 of 2023 concerning the National Criminal Code marks a crucial phase in Indonesia's criminal law reform journey. This codification was born in response to the need to break away from the colonial criminal justice system and establish a criminal code rooted in the values of Pancasila, the constitution, and the social realities of the Indonesian nation. The National Criminal Code was designed not merely as an instrument for crime control, but as a means to realize substantive justice oriented toward humanity and social balance.¹

Philosophically, the reform of national criminal law entails a paradigm shift from a retributive justice approach to a more integrative approach that accommodates the interests of victims, perpetrators, and society. This thinking aligns with modern developments in criminal law, which position criminal law as the ultimum remedium, not merely a tool of state retribution.² The National Criminal Code thus seeks to harmonize legal certainty with the values of justice and utility.

One aspect that has undergone conceptual adjustments in the National Criminal Code is the regulation of the crime of theft. Theft is no longer understood narrowly as an unlawful act against property, but rather as a social event with relational dimensions. This is evident in the regulation of theft that occurs within the family, which has sociological characteristics that differ from theft in general.

In social practice, theft within families often occurs within relationships steeped in trust, economic dependence, and emotional ties. Blood ties, marital ties, and other familial relationships create a unique context that cannot be separated from legal analysis. Therefore, a formalistic approach to criminal law has the potential to result in injustice if applied without considering these social dimensions.³

On the other hand, ignoring the criminal aspects of domestic theft also risks eliminating legal protection for victims. Victims of domestic theft still experience significant material and psychological losses, so the state remains obligated to guarantee justice. This dilemma between protecting victims and maintaining family integrity is the primary challenge in formulating criminal accountability for perpetrators.

¹Law Number 1 of 2023 concerning the Criminal Code. (2023). State Gazette of the Republic of Indonesia 2023. Jakarta: State Secretariat of the Republic of Indonesia, pp. 1–15.

²Ashworth, A. (2015). Principles of criminal law (7th ed.). Oxford: Oxford University Press, p. 21–25.

³Fletcher, G. P. (2000). Rethinking criminal law. Oxford: Oxford University Press, p. 52–60.

The National Criminal Code attempts to address this dilemma by prioritizing the principle of balance between legal certainty and substantive justice. This approach reflects the idea that criminal law should not stand apart from the social values inherent in society. A similar idea was put forward by Gustav Radbruch, who placed justice as a fundamental legal value alongside certainty and expediency.⁴

From the perspective of criminal responsibility theory, theft within the family raises fundamental questions regarding the limits of punishment. Criminal responsibility relates not only to the fulfillment of the elements of the crime but also to the perpetrator's culpability and capacity to take responsibility. Roeslan Saleh emphasized that punishment can only be imposed if the perpetrator has committed a crime for which he can be morally and legally accountable.⁵

Fault as the basis for criminal liability encompasses the aspects of intent or negligence, as well as the perpetrator's awareness of their actions. In a family context, the perpetrator's fault is often influenced by economic conditions, power relations, and complex psychological dynamics. Therefore, the analysis of criminal liability for perpetrators of theft within the family cannot be separated from the surrounding social context.

This thinking aligns with Moeljatno's view that criminal responsibility is a normative assessment of the perpetrator, not solely of their actions. According to this view, criminal law must be able to distinguish between acts that deserve full punishment and those that require a more proportional legal approach.⁶

In contemporary criminal law, the restorative justice approach is gaining increasing attention, particularly in cases involving close personal relationships. Howard Zehr views crime as fundamentally a violation of relationships, so its resolution must be oriented toward restoring those relationships.⁷ This approach has strong relevance in the context of theft within the family.

An Islamic legal perspective also makes a significant contribution to understanding criminal liability in family relationships. In Islamic law, criminal liability is known as the concept of *المسؤولية الجنائية* (القصد (intention) and *الأهلية* (ability to take responsibility). This concept emphasizes that punishment must take into account the subjective condition of the perpetrator as well as the broader public interest.

Islamic law does not view punishment solely as a means of retribution, but also as an instrument for maintaining social and moral balance. In the family context,

⁴Radbruch, G. (2006). *Legal philosophy*. Oxford: Oxford University Press, p. 101–110.

⁵Saleh, R. (1983). *Criminal acts and criminal responsibility*. Jakarta: Aksara Baru, pp. 40–50.

⁶Moeljatno. (2008). *Principles of criminal law*. Jakarta: Rineka Cipta, pp. 150–160.

⁷Zehr, H. (2015). *The little book of restorative justice*. New York: Good Books, p. 17–25.

the goal of maintaining harmony and preventing harm (*dar' al-mafāsīd*) is a primary consideration in determining the form of criminal liability. This approach demonstrates alignment of values with the modern criminal law paradigm.

The tradition of legal thought in Indonesia also exhibits a similar tendency. Satjipto Rahardjo emphasized that law must be guided by substantive justice and humanity, rather than being trapped solely by normative texts.⁸ This idea is relevant in assessing the effectiveness of applying criminal sanctions to perpetrators of theft within the family.

In the context of developing national criminal law, several Indonesian legal thinkers emphasize the importance of reconstructing criminal law oriented toward local and religious values. This idea positions criminal law as part of a social system that must be able to respond to the contextual needs of society.⁹

Academic studies in national law journals also show increasing attention to the issues of restorative justice and proportionate sentencing. Several studies confirm that a purely repressive approach tends to be ineffective in cases involving family relationships, as it has the potential to trigger further conflict.¹⁰

The National Criminal Code can thus be understood as a normative instrument that opens up space for a more flexible and equitable approach to criminal punishment. Regulations regarding theft within the family reflect legislators' efforts to accommodate the social, moral, and religious values prevalent in Indonesian society.

However, these normative arrangements still require in-depth academic study to ensure consistency between legal norms, criminal responsibility theory, and law enforcement practices. Without comprehensive analysis, there is a risk of a disconnect between the objectives of criminal law reform and its implementation on the ground.

Therefore, research is needed that specifically examines the criminal liability of perpetrators of theft within the family under the National Criminal Code, using an integrated theoretical and normative approach. This research is expected to provide an academic construct that can bridge the gap between legal certainty and substantive justice.

This research is also expected to contribute to the development of national criminal law, particularly in formulating a model of criminal responsibility that is sensitive to social relations and moral values. Thus, criminal law functions not only as a tool of social control but also as a means of just social engineering.

⁸Rahardjo, S. (2009). *Progressive law: A synthesis of Indonesian law*. Jakarta: Kompas, pp. 60–75.

⁹Soponyono, E. (2020). *National criminal law reform*. Semarang: UNISSULA Press, pp. 80–95.

¹⁰Wahyuningsih, SE (2021). Restorative justice in the national criminal justice system. *Khaira Ummah Law Journal*, 16(2), 201–215, pp. 205–210.

Based on the overall description, this dissertation raises the title of criminal responsibility for perpetrators of the crime of theft within the family based on positive law.

2. Research Methods

This research is a normative legal study, focusing on the examination of positive legal norms governing criminal liability for perpetrators of theft within the family, as stipulated in Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code). This research emphasizes the analysis of relevant criminal law principles, norms, and doctrines, without collecting field data.

3. Results and Discussion

3.1. Criminal liability for perpetrators of criminal acts of theft within the family based on positive law

This research specifically focuses on criminal liability in nuclear family relationships, namely husband and wife and parents and children. The choice of focus is based on the characteristics of relationships that have emotional, economic, and joint property ownership dimensions that are unique to households. Criminal liability is a fundamental principle in criminal law that regulates the extent to which an individual can be held accountable for a criminal act they have committed. In the context of theft, this liability requires the fulfillment of the elements of the act (*actus reus*), fault (*mens rea*), and the perpetrator's ability to be legally punished.¹¹ This principle still applies even if the act occurs within a family environment, although there are several normative specificities that distinguish it from general theft.

In the National Criminal Code Chapter XXIV concerning the Crime of Theft, Article 476 states that anyone who takes another person's property with the intention of possessing it unlawfully can be punished with a maximum prison sentence of five years or a category V fine.¹² This provision confirms the existence of the principle of legality (*nullum crimen, nulla poena sine lege*) in criminal responsibility.

Article 477 further regulates forms of theft that constitute more serious crimes, such as theft of sacred objects, antiquities, livestock, or goods that are sources of livelihood. Furthermore, this provision covers theft under special circumstances, such as natural disasters, riots, or war, which carries a maximum penalty of seven years.¹³

¹¹Arief, BN (2018). Anthology of criminal law policies. Jakarta: Kencana, pp. 50–52.

¹²National Criminal Code, Chapter XXIV, Article 476, Law No. 1 of 2023.

¹³National Criminal Code, Chapter XXIV, Article 477, Law No. 1 of 2023.

These regulations demonstrate the differentiation of criminal treatment based on the social, religious, and economic value of the stolen item, as well as the specific circumstances under which the offense occurred. This demonstrates that criminal liability is not merely formal but also considers contextual and moral factors.¹⁴

Article 478 of the National Criminal Code states that petty theft occurs when the stolen item is worth less than Rp 500,000.00 and is committed outside the home or in an enclosed yard. The Category II fine is intended to align the penalty with the level of loss suffered by the victim while maintaining the principle of proportionality in criminal penalties.¹⁵

Furthermore, Article 479 emphasizes criminal liability for perpetrators who commit theft accompanied by violence or the threat of violence, with a prison sentence of up to nine years. This provision emphasizes that the element of violence increases the severity of the perpetrator's liability because it threatens the victim's physical safety.¹⁶

For theft committed at night, in a home or enclosed yard, by vandalism, breaking into, or using a false key, the penalty can be increased to 12 years. If the act results in serious injury or death, the National Criminal Code even stipulates a prison sentence of up to 20 years or the death penalty, demonstrating strict legal protection for victims.¹⁷

Article 480 adds that the perpetrator may be subject to additional penalties in the form of revocation of rights, including the right to vote or hold certain positions, as an additional consequence of the crime of theft.¹⁸ This shows that criminal responsibility is not only material in nature, but also targets the social rights of the perpetrator.

In the family context, Article 481 of the National Criminal Code provides an important limitation. Criminal prosecution will not be pursued if the perpetrator is the victim's spouse and is not separated from them by bed, board, or property. This emphasizes the principle of special criminal responsibility within the family.¹⁹

If a husband, wife, or other blood or in-law relative up to the second degree commits theft after separating property or residence, criminal prosecution can only be initiated upon a complaint from the victim. This provision makes the

¹⁴Hiariej, EOS (2016). Principles of criminal law. Yogyakarta: Cahaya Atma Pustaka, pp. 90–92.

¹⁵National Criminal Code, Chapter XXIV, Article 478, Law No. 1 of 2023.

¹⁶National Criminal Code, Chapter XXIV, Article 479 paragraph (1), Law No. 1 of 2023.

¹⁷National Criminal Code, Chapter XXIV, Article 479 paragraph (2–4), Law No. 1 of 2023.

¹⁸National Criminal Code, Chapter XXIV, Article 480, Law No. 1 of 2023.

¹⁹National Criminal Code, Chapter XXIV, Article 481 paragraph (1), Law No. 1 of 2023.

criminal process a relative complaint, respecting family values and the victim's interests.²⁰

The principle of *ultimum remedium* is also applied, where criminal law is used as a last resort when internal family mechanisms fail to resolve conflict. This approach aligns with Barda Nawawi Arief's theory that criminal law must consider social harmony and substantive justice.²¹

3.2. Weaknesses in criminal responsibility for perpetrators of the crime of theft within the family based on positive law

The study of the weaknesses of criminal liability for the crime of theft within the family based on the applicable positive law cannot be done partially and atomistically, but must be approached systematically and comprehensively. Lawrence M. Friedman in his monumental theory of legal systems states that the effectiveness of a legal system is determined by the quality of the interaction of three organically interrelated components, namely legal substance, legal structure, and legal culture.²² The absence or weakness of any of these three components will create dysfunction in the entire system, rendering the law unable to optimally function as an instrument of order, justice, and social change. In the context of criminal liability for perpetrators of theft within the family, these weaknesses are detected simultaneously across all three dimensions of the legal system, necessitating a comprehensive and balanced evaluation.

Criminal liability is a fundamental pillar in the structure of criminal law that determines whether a person can legally be subject to criminal sanctions for a prohibited act that he/she has committed. In the dogmatic construction of criminal law, criminal liability requires the fulfillment of three main elements cumulatively, namely: the existence of an act that fulfills the formulation of a crime (*actus reus*), the existence of a mistake in the form of intent (*dolus*) or negligence (*culpa*) on the part of the perpetrator (*mens rea*), and the absence of reasons for eliminating the crime, whether justifiable (*rechtvaardigingsgronden*) or forgiving (*schulduitsluitingsgronden*). Barda Nawawi Arief firmly stated that criminal law may not criminalize a person without any justifiable mistake (*geen straf zonder schuld*), because the principle of fault is a fundamental principle that guarantees justice in the application of criminal sanctions.²³

The crime of theft within the family has a dimension of complexity that is qualitatively different from theft that occurs between parties who are not related

²⁰National Criminal Code, Chapter XXIV, Article 481 paragraph (2–3), Law No. 1 of 2023.

²¹Arief, BN, pp. 55–56.

²²Friedman, L. M. (1975). *The Legal System: A Social Science Perspective*. Russell Sage Foundation, p. 11-16.

²³Arief, BN (2014). *Anthology of Criminal Law Policy: Developments in the Drafting of the New Criminal Code*. Kencana Prenada Media Group, pp. 23-26.

by kinship. Affective relationships, mutual trust, reciprocal moral obligations, and hierarchical order within the family structure create a unique social context and cannot be ignored in the legal assessment of an act that formally fulfills the elements of the crime of theft. Eko Soponyono and Eddy OS Hiariej emphasized that proving the element of mens rea becomes very complex and contextual when the perpetrator and victim are bound by family ties, because the prevailing family norms in society often create different perceptions about ownership, rights of use, and the limits of morally justifiable actions within the family environment.²⁴

1. Weaknesses in the Legal Substance Dimension

Legal substance in Friedman's theory refers to the entire content of applicable legal norms, including the formulation of statutory regulations, the underlying legal principles, and the precedents or jurisprudence that form the pattern of application of these norms in judicial practice.²⁵ In the realm of positive Indonesian criminal law, the weakness of the legal substance relating to criminal responsibility for the crime of theft within the family stems from several fundamental normative issues which until now have not received satisfactory answers from the existing legal system.

The National Criminal Code as stipulated in Law Number 1 of 2023 which came into effect in 2026 regulates the crime of theft with a formulation that is substantively generic and does not differentiate between theft committed by people who are related to each other and theft that occurs between parties who are not related at all.²⁶ In fact, as emphasized by Sri Endah Wahyuningsih, criminal law that is responsive to social reality should be able to accommodate the specific social context of an act in the formulation of its norms, because substantive justice requires different treatment for situations that are substantively different.²⁷

The first substantive weakness lies in the inability of the formulation of the crime of theft in the National Criminal Code to capture the nuances of animus domini (intent to possess permanently) when the act of taking is committed within the context of family relations. Perpetrators who take property belonging to family members often have the perception which for him is a very socially reasonable

²⁴Soponyono, E. (2018). Victim-oriented criminal justice system policy. *Jurnal Daulat Hukum*, 1(1), 42-45. <http://jurnal.unissula.ac.id/index.php/RH/>

Hiariej, EOS (2016). *Principles of Criminal Law*. Cahaya Atma Pustaka, pp. 118-122.

²⁵Friedman, L. M. (1975). *The Legal System: A Social Science Perspective*. Russell Sage Foundation, p. 93-98.

²⁶Law Number 1 of 2023 concerning the Criminal Code (State Gazette of the Republic of Indonesia 2023 Number 1), Article 362 in conjunction with Articles 479-483.

²⁷Wahyuningsih, SE (2018). Renewal of Indonesian material criminal law based on the values of the One Almighty God. *Jurnal Daulat Hukum*, 1(2), 348-352. <http://jurnal.unissula.ac.id/index.php/RH/>

perception that the goods are communal property (*res communis*) or at least that he has the right to use the goods based on the family relationship that surrounds him. Mahrus Ali stated that the construction of the crime of theft that does not accommodate this kind of relational nuance has the potential to result in morally excessive criminalization (over-criminalization) and is substantively unfair to the perpetrator who does not actually have *dolus specialis* as required by criminal norms.²⁸

The provisions regarding grounds for expungement of criminal penalties contained in Articles 40 to 44 of the National Criminal Code provide room for exceptions to criminal liability in certain circumstances. Article 40 of the National Criminal Code emphasizes that children who are under twelve years of age at the time of committing a crime cannot be subject to criminal liability. Article 41 stipulates that if a child under twelve years of age commits or is suspected of committing a crime, investigators, community counselors, and professional social workers are required to make a decision to return the child to their parents or guardians, or to enroll them in an education, guidance, and mentoring program. Article 42 provides a justification for actions committed due to irresistible coercion (*over macht*), while Article 43 regulates the defense of excessive force due to mental shock (*الحيرة النفسية*). Article 44 regulates the issue of invalid office orders as a reason for forgiveness.²⁹ However, these provisions are general in nature and do not provide specific provisions for situations where the perpetrator is a family member acting in the context of family economic pressure or internal household conflict, thus creating a significant normative vacuum (*lacuna legis*).

Another substantive weakness is the minimal integration of restorative justice mechanisms as a normative resolution instrument explicitly recognized in the construction of the crime of family theft. Teguh Prasetyo and Abdul Halim Barkatullah argue that an ideal criminal law policy must be able to accurately distinguish between acts that require a repressive-retributive response and those that are more appropriately resolved through restorative and reintegrative mechanisms.³⁰ The National Criminal Code has indeed opened the door to this approach through provisions regarding the objectives and guidelines for sentencing, but it has not explicitly formulated procedures and criteria for its application in cases of theft occurring within family relationships. This situation creates normative ambiguity that directly impacts inconsistent law enforcement in practice.

²⁸Ali, M. (2019). Criminalization and formulation of the crime of theft in the reform of Indonesian criminal law. *Law Development Journal*, 1(1), 17-21. <http://jurnal.unissula.ac.id/index.php/ldj>

²⁹Law Number 1 of 2023 concerning the Criminal Code, Articles 40-44 (Reasons for Pardon) and Articles 49-55 (Purpose of Punishment).

³⁰Prasetyo, T. & Barkatullah, AH (2005). *Criminal Law Politics: A Study of Criminalization and Decriminalization Policies*. Student Library, pp. 33-37.

3.3. Criminal liability for perpetrators of theft crimes within the family in the future

Projecting future criminal liability for perpetrators of theft within the family cannot be formulated in a monodimensional and fragmented manner. It demands a systemic and integrative approach, one that consistently refers to the three components of the legal system as brilliantly conceptualized by Lawrence M. Friedman: legal substance, legal structure, and legal culture.³¹ These three components interact dynamically and influence each other, so that reforms that only touch one dimension without being balanced by improvements in the other dimensions will certainly not produce real, sustainable, and just change. Barda Nawawi Arief emphasized that true criminal law policy must be able to reach and transform these three dimensions simultaneously and in a coordinated manner, so that the goal of criminal law as an instrument of community protection while respecting the dignity of the perpetrator can be optimally realized.³²

Criminal liability, as a core concept in criminal law, requires the fulfillment of the elements of an unlawful act (*actus reus*), fault (*mens rea*), the capacity to be responsible (*toerekeningsvatbaarheid*), and the absence of a reason to excuse the crime. When these four conditions are projected into the context of family relations, an analytical complexity emerges that is qualitatively different from the application of similar concepts to crimes committed between strangers. Eddy OS Hiariej asserts that the affective dimension, mutual trust, and moral obligations surrounding family relations create fundamental ambiguity in the assessment of the perpetrator's *mens rea*, which, if not accommodated normatively, will result in criminal liability that is substantively excessive and unfair.³³³⁴

Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code), which came into effect on January 2, 2026, has laid a new foundation for the criminal accountability system in Indonesia. The provisions regarding the crime of theft, now formulated in Articles 476 to 481 of the National Criminal Code, bring a number of substantive changes relevant to the handling of criminal acts of theft within the family, including the provisions of Article 481 which progressively limit the ability to sue married couples who have not separated their assets and residences.³⁵ The presence of this norm is an implicit recognition from the legislators that family relations have legal relevance that cannot be ignored in the

³¹Friedman, L. M. (1975). *The Legal System: A Social Science Perspective*. Russell Sage Foundation, p. 11–16.

³²Arief, BN (2014). *Anthology of Criminal Law Policy: Developments in the Drafting of the New Criminal Code*. Kencana Prenada Media Group, pp. 23–27.

³³Hiariej, EOS (2016). *Principles of Criminal Law*. Cahaya Atma Pustaka, pp. 118–124.

³⁴Soponyono, E. (2018). Victim-oriented criminal justice system policy. *Jurnal Daulat Hukum*, 1(1), 42–46. <http://jurnal.unissula.ac.id/index.php/RH/>

³⁵Law Number 1 of 2023 concerning the Criminal Code (State Gazette of the Republic of Indonesia 2023 Number 1), Articles 476–481.

context of criminal responsibility, and at the same time serves as a starting point for the development of more systematic policies in the future.

In examining the direction of criminal responsibility for perpetrators of family theft in the future, Gustav Radbruch's philosophical perspective on the trilogy of legal values—justice (*Gerechtigkeit*), legal certainty (*Rechtssicherheit*), and expediency (*Zweckmassigkeit*)—become a compass of values that cannot be ignored.³⁶Radbruch stated that laws that only pursue formal certainty without regard for substantive justice will lose their legitimacy as instruments for regulating a dignified society. In the context of family theft, this means that future criminal accountability policies must be able to integrate contextual considerations of the relationships, motivations, and social impacts of the act into the prevailing normative system, so that the resulting punishment truly reflects justice that is lived and felt by all parties.

1. Required Legal Substance Updates

Legal substance refers to the entire content of norms, values and principles that form the material of applicable legal regulations.³⁷In the context of criminal accountability for perpetrators of family theft, comprehensive substantive legal reform is an urgent and undeniable need. Sri Endah Wahyuningsih stated that genuine reform of Indonesian substantive criminal law must stem from values rooted in society, not simply the transplantation of foreign norms lacking adequate social and cultural resonance.³⁸In the realm of family theft, adequate legal substance must be able to formulate norms that simultaneously protect the rights of victims, accommodate the social context of the perpetrator, and encourage the restoration of family cohesion as a fundamental social unit.

The most fundamental normative reformulation is the need for a clear categorization between ordinary theft and intra-family theft. Teguh Prasetyo and Abdul Halim Barkatullah argue that this categorical differentiation is a political demand for criminal law that is responsive to social reality, because the differences in relational context between the two types of crimes fundamentally influence the assessment of the level of culpability, the level of social danger, and the choice of the most appropriate legal response.³⁹This reformulation aligns with developments in comparative criminal law in various countries that have

³⁶Radbruch, G. (1950). *Legal Philosophy*. In: EW Patterson (Ed.), *The Legal Philosophies of Lask, Radbruch and Dabin*. Harvard University Press, p. 107–112.

³⁷Friedman, L. M. (1975). *The Legal System: A Social Science Perspective*. Russell Sage Foundation, p. 93–101.

³⁸Wahyuningsih, SE (2018). Renewal of Indonesian material criminal law based on the values of the One Almighty God. *Jurnal Daulat Hukum*, 1(2), 348–353. <http://jurnal.unissula.ac.id/index.php/RH/>

³⁹Prasetyo, T., & Barkatullah, AH (2005). *Criminal Law Politics: A Study of Criminalization and Decriminalization Policies*. Student Library, pp. 33–38.

already integrated relational considerations into their criminal norm systems. Mahrus Ali added that reorienting criminalization policies to take into account the context of the perpetrator-victim relationship is a prerequisite for realizing a truly proportional and just criminal accountability system.⁴⁰

2. Necessary Legal Structure Updates

The legal structure in Friedman's legal system theory refers to the institutional framework of the legal system as a whole, which includes law enforcement institutions, the mechanisms and procedures they use, and the patterns of interaction between these various institutions in carrying out their law enforcement functions.⁴¹In projections to the future, updating the legal structure in the context of criminal responsibility for perpetrators of family theft requires at least five fundamental and interrelated transformative steps, as will be outlined in the following paragraphs.

The first urgent structural step is to increase the capacity and specialization of law enforcement officers in handling cases with complex relational dimensions, including family theft. Soerjono Soekanto stated that human resources within law enforcement agencies are the most direct and influential determinant of the quality of law enforcement in the field.⁴²In the future, it is necessary to establish special units trained in handling family-related offenses at every level of law enforcement agencies, accompanied by ongoing training programs that include an in-depth understanding of family psychological dynamics, restorative justice mechanisms, and a victim-centered approach.

The second structural step is the development of comprehensive and detailed sentencing guidelines for family theft cases. Rizal Nugroho stated that unjustified disparities in sentencing constitute a real threat to public confidence in the criminal justice system and reflect the failure of the judicial system to perform its functions consistently and predictably.⁴³The ideal sentencing guidelines for family theft cases should include: first, clear criteria for assessing the relevance and weight of family relationships in determining the type and severity of sanctions; second, factors to be considered as mitigating or aggravating reasons that specifically apply in the context of family relationships; and third, standard procedures for exploring possible resolution through restorative justice mechanisms before making a decision to pursue formal criminal sanctions.

⁴⁰Ali, M. (2019). Criminalization and formulation of the crime of theft in the reform of Indonesian criminal law. *Law Development Journal*, 1(1), 17–22. <http://jurnal.unissula.ac.id/index.php/ldj>

⁴²Soekanto, S. (2014). *Factors Influencing Law Enforcement*. Raja Grafindo Persada, pp. 8–13.

⁴³Nugroho, R. (2020). Optimizing criminal law enforcement against motor vehicle theft based on justice. *Jurnal Daulat Hukum*, 3(2), 212–217. <http://jurnal.unissula.ac.id/index.php/RH/>

The third structural step is the development of an effective, systematic, cross-institutional coordination system that is oriented toward the best interests of all parties involved. Anis Widyawati stated that institutional fragmentation in handling crimes with complex social dimensions such as the crime of family theft is one of the biggest factors hindering the achievement of a comprehensive and just solution.⁴⁴In the future, structured coordination between the police, prosecutors, courts, correctional institutions, social services, family counseling institutions, and child protection institutions must be formally institutionalized in a mechanism that has clear roles, responsibilities, and communication channels between these various institutions.

The fourth structural step is strengthening and expanding diversion and mediation mechanisms as systematic, structural settlement instruments, not merely incidental measures dependent on the initiative and goodwill of individual officers. Muladi stated that the effective and consistent implementation of alternative sentencing requires adequate institutional infrastructure, including the availability of trained mediators, standardized mediation procedures, mechanisms for monitoring agreements reached, and a system for evaluating the success of settlements.⁴⁵In the context of family theft cases, strengthening the diversion and mediation infrastructure has the potential to produce far more meaningful and sustainable solutions than imprisonment, which often permanently sever family ties and create new, far more serious social problems.

The fifth, equally important structural step is the development of a comprehensive and reliable empirical database on the patterns, characteristics, and resolution outcomes of family theft crimes in Indonesia. Soerjono Soekanto and Sri Mamudji emphasize that formulating effective and targeted legal policies absolutely requires a foundation of accurate, comprehensive, and up-to-date empirical data.⁴⁶Utilization of information technology in the development of integrated database systems which includes data from all law enforcement agencies, courts, and correctional institutions throughout Indonesia will significantly improve the analytical capabilities of policy makers in evaluating the effectiveness of existing policies and designing more responsive policies in the future.

At the legal structure level, the implementation of the Child Protection Law and the Juvenile Criminal Justice System Law in family theft cases involving children

⁴⁴Widyawati, A. (2019). Combating motor vehicle theft through non-penal policies. *Jurnal Daulat Hukum*, 2(1), 65–70. <http://jurnal.unissula.ac.id/index.php/RH/>

⁴⁵Muladi. (2008). *Conditional Penal Institution*. Alumni, pp. 148–155.

⁴⁶Soekanto, S., & Mamudji, S. (2015). *Normative Legal Research: A Brief Review*. Raja Grafindo Persada, pp. 14–19.

as perpetrators must be significantly strengthened.⁴⁷ Mahrus Ali emphasized that the effectiveness of child protection norms in the criminal justice system is highly dependent on the readiness and willingness of law enforcement agencies to operationalize these norms consistently and not merely pro forma.⁴⁸ In the future, the availability of adequate community counselors and professional social workers in every police, prosecutor's office, and court that handles children's cases must be guaranteed by the state as a constitutional obligation, not merely as a procedural complement.

3. Necessary Legal Culture Updates

Legal culture as the third component of Friedman's legal system theory refers to the overall attitudes, values, expectations and behavioral orientations held by society, both in his capacity as an ordinary citizen and as a legal professional towards existing laws and legal institutions.⁴⁹ Without transformation in the legal culture dimension, even the most sophisticated renewal of legal substance and structure will fail to produce meaningful change in real life. Akhmad Khisni emphasized that legal culture is the energy that drives or hinders the legal machinery; without a conducive legal culture, even the most ideal legal norms will remain ineffective in practice.⁵⁰

The most fundamental and urgent transformation of legal culture is a paradigmatic shift from a criminal law orientation still heavily dominated by retributive-punitive logic to a more humanistic, restorative, and reintegrative paradigm. Rizal Nugroho and Eko Soponyono argue that this paradigmatic shift is not merely a technical reform option but a binding moral imperative for any criminal law system that claims to be civilized and humane.⁵¹ In the context of family theft specifically, a restorative paradigm that places the restoration of family relationships and reconciliation between perpetrator and victim as the primary orientation of the legal response is not only more humane, but has also been empirically proven to be more effective in preventing the repetition of crime (recidivism) and restoring the psychological well-being of all parties involved.

⁴⁷Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 (State Gazette of the Republic of Indonesia 2014 Number 297), Article 64 paragraph (2).

⁴⁸Ali, M. (2020). Formulation of criminal responsibility in the reform of Indonesian criminal law. *Law Development Journal*, 2(2), 94–100. <http://jurnal.unissula.ac.id/index.php/ldj>

⁵⁰Khisni, A. (2018). Islamic criminal law and its contribution to national criminal law reform. *Jurnal Daulat Hukum*, 1(1), 3–8. <http://jurnal.unissula.ac.id/index.php/RH/>

⁵¹Nugroho, R., & Soponyono, E. (2021). The restorative justice approach in the Indonesian criminal justice system. *Jurnal Daulat Hukum*, 4(1), 58–64. <http://jurnal.unissula.ac.id/index.php/RH/>

Increasing public legal literacy and awareness is a strategic investment in legal culture with long-term impacts. Andi Hamzah stated that a society with adequate legal understanding will be better able to identify and utilize available legal mechanisms effectively, including alternative mechanisms that are more constructive than formal criminal channels.⁵² Systematic legal education programs that reach all levels of society starting from outreach in schools, mosques, churches and village halls, to social media-based campaigns that reach the younger generation. is an investment in legal culture that cannot be ignored. Particularly in the context of family theft, adequate legal literacy will enable families to recognize early signs of conflict that could potentially escalate into criminal activity and identify appropriate intervention mechanisms before the conflict reaches a point of irreversibility.

The values of Islamic law and customary law that exist within Indonesian society actually hold enormous legal cultural potential for non-criminal measures against the crime of family theft. Akhmad Khisni stated that Islamic teachings on God bless you (reconciliation and peace between the disputing parties) provides a very strong ethical and spiritual legitimacy for the resolution of family conflicts. including the crime of family theft through peace and restoration of relations.⁵³ Similar values are also found in various Nusantara customary law traditions, which prioritize communal reconciliation and restoring social balance as the primary goals of conflict resolution. Tongat stated that this richness of living law must be actively integrated into formal criminal law policies as a source of values that enrich the substance and cultural orientation of the legal system.⁵⁴

The transformation of legal culture cannot stop at the general public, but must simultaneously and consistently target the internal legal culture of legal professionals. particularly investigators, public prosecutors, and judges. Sri Endah Wahyuningsih and colleagues stated that reconstructing the legal culture of law enforcement officers toward a more humanistic and restorative paradigm is a non-negotiable prerequisite for the successful implementation of the National Criminal Code substantively, not merely formally.⁵⁵ A sustainable training and development program that seriously and systematically instills the values of restorative justice, gender and family sensitivity, and mediation and negotiation skills into the professional culture of law enforcement officers must be an integral part of Indonesia's criminal justice reform agenda going forward.

⁵²Hamzah, A. (2012). Principles of Criminal Law in Indonesia and Their Development. PT Softmedia, pp. 130–136.

⁵³Khisni, A. (2019). Transformation of Islamic law into Indonesian national law. *Jurnal Daulat Hukum*, 2(2), 180–186. <http://jurnal.unissula.ac.id/index.php/RH/>

⁵⁴Tongat. (2008). The Basics of Indonesian Criminal Law from a Reform Perspective. UMM Press, pp. 44–49.

⁵⁵Wahyuningsih, SE, & Arif, M. (2020). Reconstructing the values of justice in the reform of the Indonesian criminal justice system. *Law Development Journal*, 2(3), 142–148. <http://jurnal.unissula.ac.id/index.php/ldj>

The legal academic community has a significant moral and intellectual responsibility to promote the transformation of legal culture in Indonesia through the production of relevant scientific knowledge, evidence-based policy research, and active involvement in the legislative and legal reform processes. Achmad Ali stated that authentic legal science must be able to bridge existing social realities with the legal ideals to be realized, not merely produce normative commentary disconnected from the realities of society.⁵⁶ In the context of criminal responsibility for perpetrators of family theft, academic studies that integrate sociological, psychological, criminological, and comparative approaches will be very helpful in formulating criminal law policies that are truly responsive to the needs of society.

4. Conclusion

1. Criminal liability for perpetrators of theft within the family based on positive law is regulated in Articles 476 to 481 of the National Criminal Code based on the principle of *geen straf zonder schuld* which requires the fulfillment of the *actus reus* and *mens rea* elements cumulatively. Family relations do not eliminate the unlawful nature of the act, but provide normative specificity through the mechanism of relative complaint offenses (*relatief klachtdelict*), where prosecution cannot be carried out against husbands or wives who are not separated by table, bed, or property, and can only be carried out upon complaint by victims for blood relatives or marriages up to the second degree. This approach reflects the principle of *ultimum remedium* which places criminal law as a last resort while maintaining a balance between legal certainty, substantive justice, and protection of family institutions.

2. Criminal liability for perpetrators of theft within the family based on positive law contains systemic weaknesses in three dimensions. In the legal substance dimension, the formulation of norms is generic, restorative justice mechanisms have not been explicitly integrated and mandated, and provisions on kinship limits have the potential to lead to multiple interpretations. In the legal structure dimension, there is no specific institutional unit for handling family criminal conflicts, inter-institutional coordination is weak, and accessibility of justice for victims remains limited. In the legal culture dimension, law enforcement officers remain legalistic-formalistic, family values are often instrumentalized to oppress victims, and public legal awareness of victims' rights to protection remains low.

3. Criminal accountability for perpetrators of theft within the family in the future requires a paradigmatic transformation from a retributive approach to a restorative approach through four directions of reform, namely: reconstruction of normative substance by integrating the mandatory restorative justice mechanism into the National Criminal Code; strengthening institutional structures through the establishment of special units and optimizing inter-institutional coordination; integration of

⁵⁶Achmad Ali. (2009). *Uncovering Legal Theory and Judicial Prudence*. Kencana, pp. 204–210.

Islamic legal values, especially the doctrine of syubhat, the ta'zīr mechanism, and the principle of maqāṣid al-syarī'ah as the material basis for judges' considerations; and transformation of legal culture through systematic legal education and the development of a Family Group Conference model based on the values of deliberation and al-iṣlāḥ, in order to realize a balance between legal certainty, substantive justice, and social benefits based on the values of Pancasila.

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