

Juridical Analysis of Criminal Responsibility of Collective Theft Perpetrators from a Justice Perspective

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Abstract. *This study aims to analyze criminal liability for perpetrators of theft committed jointly under the Indonesian Criminal Code (KUHP) and the National Criminal Code, as well as to examine its application from a justice perspective. This research employs a normative legal method using statutory, conceptual, and case approaches. The data consists of primary, secondary, and tertiary legal materials collected through library research and analyzed qualitatively using a deductive method. The findings indicate that criminal liability for joint theft is based on the provisions governing theft offenses and the doctrine of participation as regulated in Articles 55 and 56 of the Criminal Code. The National Criminal Code promotes a more proportional sentencing system through the principles of individualized punishment, victim protection, and a restorative approach. Nevertheless, judicial practice still demonstrates a tendency to equalize criminal liability without considering the degree of involvement of each offender, which may hinder the realization of substantive justice. This study applies the Theory of Criminal Liability to analyze the relationship between fault and criminal responsibility and the Theory of Substantive Justice to assess legal enforcement that emphasizes not only legal certainty but also justice and social utility.*

Keywords: *Criminal Liability; Collective Theft; Substantive Justice.*

1. Introduction

The reform of national criminal law through the enactment of Law Number 1 of 2023 concerning the Criminal Code marks an important phase in the development of an Indonesian legal system oriented towards the values of Pancasila, the rule of law, and the protection of human rights.¹ The presence of the National Criminal Code is an answer to the need for criminal law reform

¹Law Number 1 of 2023 concerning the Criminal Code, State Gazette of the Republic of Indonesia 2023.

which is still rooted in the colonial paradigm of the *Wetboek van Strafrecht* (WvS).

The formation of the National Criminal Code is not only a normative codification, but also a manifestation of national legal policy that seeks to build a more humanistic, progressive, and just criminal system.² Mahfud MD emphasized that legal policy must be directed at creating a legal order that reflects the social will and ideals of the nation.³

In this context, the National Criminal Code serves as a reform instrument that integrates the values of substantive justice, legal certainty, and expediency in a balanced manner. Soponyono emphasized that national criminal law reform must stem from a restorative and corrective justice paradigm, not merely a repressive one.⁴

One important aspect of the National Criminal Code is its more comprehensive provisions regarding criminal liability. This provision clarifies the relationship between the criminal act and the perpetrator's culpability as the basis for sentencing.⁵ This is in line with Roeslan Saleh's view that criminal responsibility is at the heart of the modern criminal justice system.⁶

In the context of property crimes, theft remains the most prevalent crime in society. Empirical data shows that theft is often committed collectively and in an organized manner.⁷

Article 477 (g) of the National Criminal Code regulates the increased penalties for theft committed by two or more people in collaboration. This norm demonstrates a criminal policy that views collective criminality as a form of crime with a higher level of danger than individual acts.⁸

This regulation demonstrates a shift in the criminal law paradigm from merely examining the consequences of actions to analyzing crime patterns and the level of social threat they pose. This aligns with Marc Ancel's criminal policy theory on the importance of a social defense approach in modern criminal law.⁹

The phenomenon of joint theft in judicial practice demonstrates the complexity of determining the role of each perpetrator. Not all perpetrators contribute

²Soponyono, National criminal law reform (2020), p. 12.

³Mahfud MD, Legal politics in Indonesia (2017), p. 4.

⁴Soponyono, Justice-based national criminal law reform (2021), p. 22.

⁵Law Number 1 of 2023, Article 37.

⁶Roeslan Saleh, Criminal acts and criminal responsibility (1983), p. 65.

⁷Wahyuningsih, Criminal law policy (2020), p. 89.

⁸Law Number 1 of 2023, Article 477 letter (g).

⁹Marc Ancel, Social defense (1965), p. 78.

equally, either physically or psychologically, thus requiring careful analysis to determine the nature of culpability.¹⁰

Sudarto emphasized that criminalization must always be based on the principle of *nulla poena sine culpa*, which means there is no punishment without fault.¹¹ This principle emphasizes that every punishment must be based on the subjective fault of the perpetrator, not solely on the consequences of his actions.

The reform of Indonesia's substantive criminal law through Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the National Criminal Code) marks a significant milestone in the development of the national criminal law system. Among the various provisions of this reform, the norm governing the inclusion of criminal acts (*deelneming*), as stipulated in Article 477, is one of the most crucial legal constructs in criminal justice practice.¹²

Specifically, Article 477 letter (g) of the National Criminal Code regulates provisions regarding participation in committing a crime (*medeplichtigheid*), which explicitly stipulates the subjective qualification of intent (*dolus*) as an absolutely necessary element. The provisions of this article state:

"Anyone who intentionally provides the opportunity, means or information to commit a crime shall be punished for participating in a crime." The criminal threat for perpetrators who participate as regulated in Article 20 paragraph (2) of the National Criminal Code is reduced by one third of the main criminal threat imposed for the crime in question.¹³

Such normative construction necessitates comprehensive proof of two fundamental elements: first, the element of awareness (*bewustheid*) that the act committed constitutes a real contribution to the realization of the crime; and second, the element of shared will (*gemeenschappelijk opzet*) which reflects the harmony of intentions among the parties involved in the *deelneming* in question.¹⁴

¹⁰UNISSULA Law Journal, Vol. 37 No. 2 (2022), p. 145.

¹¹Sudarto, Criminal Law I (2010), p. 56.

¹²See Article 477 letter (g) of Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code), State Gazette of the Republic of Indonesia 2023 Number 1, Supplement to the State Gazette Number 6842. This provision shall come into effect three years from the date of promulgation, namely in 2026.

¹³The full text of Article 477 letter (g) of the National Criminal Code: "Any person who intentionally provides the opportunity, means or information to commit a crime shall be punished for participating in a crime." The threat of punishment for those who participate as regulated in Article 20 paragraph (2) of the National Criminal Code is reduced by one third of the main criminal threat for the crime in question.

¹⁴Wirjono Prodjodikoro, Principles of Criminal Law in Indonesia (Bandung: Refika Aditama, 2003), p. 118. Compare with Moeljatno, Principles of Criminal Law, Revised Edition (Jakarta: Rineka Cipta, 2008), pp. 82–84.

Modern criminal law doctrine places consciousness as an inherent cognitive component within the structure of intent (*dolus*). The phrase "intentionally" (*opzettelijk*) in the formulation of Article 477 letter (g) of the National Criminal Code does not merely refer to the voluntary aspect of the will, but also requires an adequate mental representation of the nature of the act contributed and its relationship to the crime to be committed.¹⁵

From a criminal law perspective, the awareness referred to in this context includes the perpetrator's knowledge of: (1) the nature of the act he committed; (2) his position as a party contributing to the crime; and (3) the possibility of the crime being committed as a result of the contribution made. The absence of any of these three components can exclude the fulfillment of the subjective element required by Article 477 letter (g).¹⁶

The relevance of proving the element of awareness becomes increasingly crucial in the context of criminal justice, which demands a judge's conviction beyond reasonable doubt. The jurisprudence of the Supreme Court of the Republic of Indonesia consistently asserts that the charge of complicity cannot be sustained if the evidence fails to demonstrate that the defendant knew and understood the criminal implications of his actions within the framework of the alleged *deelneming*.¹⁷

While the element of consciousness is individualistic in nature, the element of shared will (*gemeenschappelijk opzet*) contains a relational dimension that requires a meeting of wills (*wilsovereenstemming*) between the parties involved in the *deelneming*. In the context of Article 477 letter (g) of the National Criminal Code, proving this element is important because it distinguishes between the main perpetrator (*dader*) who actively carries out the crime and the party who plays a passive role as a participant in the act (*medeplechtige*).¹⁸

This understanding aligns with Abdul Qadir Audah's view, which asserts that a person can only be held criminally responsible if they possess common sense and

¹⁵The explanation of Article 477 of the National Criminal Code emphasizes that the phrase "intentionally" (*opzettelijk*) in the context of participation requires the fulfillment of two components: first, knowledge (*wetenschapselement*) regarding the act to be committed; and second, the will (*wilselement*) to participate in realizing the results of the crime. See Drafting Team, *Academic Draft of the Draft Criminal Code* (Jakarta: BPHN, 2019), pp. 347–349.

¹⁶E. Utrecht, *Criminal Law I* (Surabaya: Pustaka Tinta Mas, 1994), pp. 314–315. See also Andi Hamzah, *Principles of Criminal Law* (Jakarta: Rineka Cipta, 2010), p. 155.

¹⁷Supreme Court Decision of the Republic of Indonesia Number 1601 K/Pid/2021, which affirms that *deelneming* cannot be presumed solely on the basis of physical presence, but rather must be proven to have a unity of will (*wilsovereenstemming*) between the perpetrators. Compare this with Supreme Court Decision Number 2234 K/Pid.Sus/2019.

¹⁸Article 20 paragraph (1) of the National Criminal Code: "Anyone who can be held criminally responsible is anyone who commits a crime by fulfilling the elements of a crime." This provision correlates with the doctrine of error (*schuldbeginsel*) which is the foundation of criminal responsibility in the Indonesian criminal law system.

free will in carrying out their actions. This emphasis on reason and free will demonstrates the rational foundation of Islamic criminal law, which positions humans as conscious and autonomous actors. Therefore, criminal responsibility is not interpreted mechanically, but rather as the result of a comprehensive evaluation of the subjective and objective elements of an act. This demonstrates a correspondence of values between national criminal law and Islamic law, particularly in terms of affirming the principle of fault and the principle of substantive justice.¹⁹

The integration of religious values into national criminal law reform was also emphasized by Wahyuningsih, who stated that Indonesian criminal law must reflect the moral and spiritual values of society. This view strengthens the argument that the values in Islamic law, such as intentionality and the capacity for responsibility, have contextual relevance in the development of national criminal law. Thus, the dialogue between Islamic law and national criminal law is not only normative-theoretical but also has the potential to enrich the ethical and humanistic orientation in the formulation of criminal law policy in Indonesia.²⁰

Several scientific studies in national legal journals confirm that the adoption of a restorative justice approach in the National Criminal Code is a normative response to declining public trust in conventional sentencing patterns that focus solely on punishment. This approach is seen as an effort to restore the balance of social relations disrupted by criminal acts by placing victims, perpetrators, and the community as subjects of equal concern in the criminal law enforcement process.²¹

Ramadhan's (2022) research shows that collective crimes have more complex and widespread social implications than crimes committed individually. Collective crimes not only cause material losses but also have the potential to undermine the sense of security, social trust, and the value system within society. Therefore, criminalizing perpetrators of collective crimes requires a more comprehensive and proportionate approach.²²

Furthermore, Nasution's (2023) research emphasizes the urgency of differentiating the roles and levels of culpability of each perpetrator in the sentencing process. This differentiation is seen as a prerequisite for achieving substantive justice, ensuring that the criminal sanctions imposed truly reflect the

¹⁹Ibid. pp. 321–325.

²⁰Wahyuningsih, SE (2020). National criminal law reform based on justice and religiosity. Semarang: Faculty of Law Publishing Agency, pp. 88–92.

²¹Muladi. (2014). Human rights, politics, and the criminal justice system. Semarang: Diponegoro University Publishing House, pp. 123–128.

²²Ramadhan, MF (2022). Criminal liability in collective crimes and its social implications. Constitutional Journal, 19(3), 455–472, especially pp. 460–465.

causal contribution and severity of each individual's culpability in a collective crime. This approach aligns with the principle of personal criminal responsibility and the principle of culpability as a basis for sentencing.²³

Based on this description, this research is relevant to examine the legal criminal liability of perpetrators of theft committed together based on Article 477 letter (g) of the National Criminal Code. This study is expected to contribute both conceptually and practically to the development of national criminal law that is oriented towards substantive justice, upholds humanitarian values, and is based on the character and values of Pancasila.

In line with the focus of the study, this research is compiled with the title "Juridical Analysis of Criminal Liability of Collective Theft Perpetrators in the Perspective of Justice", which is intended to examine in depth the normative construction of criminal liability in collective theft crimes, as well as examine its relevance to the principle of substantive justice, the principle of fault, and the philosophical values underlying the reform of national criminal law. Through a systematic and comprehensive juridical approach, this research is expected to be able to provide strong academic arguments in supporting the implementation of criminal law that is proportional, humanistic, and in line with the character of Indonesian law.

2. Research Methods

This study employs normative legal research, focusing on the study of positive legal norms governing criminal liability for perpetrators of theft committed jointly. This study focuses on analyzing statutory regulations, criminal law principles, and legal doctrines relevant to Article 477 letter (g) of the National Criminal Code.

This research is descriptive-analytical in nature, namely describing the applicable legal provisions regarding the criminal responsibility of perpetrators of theft together, while also analyzing it critically based on the theory and principles of criminal law.

3. Results and Discussion

3.1. Legal construction regarding criminal responsibility for perpetrators of theft committed jointly according to the Criminal Code (KUHP)

The legal construction of criminal liability for perpetrators of theft committed jointly in the Indonesian criminal law system is not solely based on the formulation of the offense, but also on the integration of norms, doctrine, and judicial practice. Within the framework of *strafbaar feit*, an act can only be

²³Nasution, AR (2023). Differentiation of the roles of perpetrators in joint criminal acts as a basis for substantive justice. *Journal of Law and Development*, 53(2), 215–230, especially pp. 221–226.

qualified as a crime if it meets the elements of an unlawful act, a mistake, and can be accounted for by the perpetrator. Therefore, theft committed jointly must be analyzed comprehensively, taking into account the relationship between the elements of the offense and the form of accompanying participation.

Normatively, Article 362 of the Criminal Code is the main foundation in constructing the crime of theft, which contains the elements of “taking”, “other people's property”, and “with the intention of unlawfully possessing it”. The element of “taking” (*wegnemen*) in doctrine is interpreted as the act of transferring control of goods from the owner to the perpetrator, while the element of “against the law” (*wederrechtelijk*) contains the meaning that the act is contrary to legal norms and the sense of justice of society.²⁴In the context of collective theft, these elements must still be proven, but with the added dimension of the collective nature of the act.

Furthermore, the provisions regarding aggravated theft in Article 363 of the Criminal Code emphasize the existence of certain conditions that increase the degree of culpability of the perpetrator. One such aggravating circumstance is when the theft is committed by two or more people together. This provision demonstrates that criminal law views cooperation as a factor that increases the potential for loss and danger, thus deserving a more severe penalty than for ordinary theft.²⁵

Furthermore, Article 365 of the Criminal Code regulates theft with violence (*diefstal met geweld*), which is a further qualifying form of theft. This article emphasizes that the use of violence or the threat of violence, whether before, during, or after the theft, constitutes a basis for aggravating the crime. This demonstrates that criminal law protects not only property rights but also the physical and psychological integrity of the victim.

In the development of national law, Law Number 1 of 2023 concerning the Criminal Code systematically updates and reorganizes these provisions. Article 479 of the new Criminal Code emphasizes that aggravated theft can occur if accompanied by violence or the threat of violence, with a broader scope, including psychological impacts such as fear and anxiety. This interpretation demonstrates an expansion of the concept of violence, no longer limited to merely physical aspects.

Furthermore, the construction of joint theft cannot be separated from the theory of participation (*deelneming*) as regulated in Article 55 and Article 56 of the Criminal Code. Article 55 of the Criminal Code classifies perpetrators into several categories, namely the direct perpetrator (*pleger*), the person who orders it

²⁴Moeljatno. (2008). Principles of criminal law. Jakarta: Rineka Cipta, pp. 54–57.

²⁵Soesilo, R. (1995). The Criminal Code and its complete article-by-article comments. Bogor: Politeia, pp. 251–253.

(doen pleger), and the person who participates in it (medepleger). In the context of joint theft, the most relevant category is medepleger, which requires conscious cooperation (bewuste samenwerking) and a common will (gemeenschappelijke wil).²⁶

Meanwhile, Article 56 of the Criminal Code regulates assistance (medeplichtigheid), which includes acts of assistance before or during the commission of a crime. In practice, the distinction between medepleger and medeplichtige is crucial because it impacts the severity of the sentence imposed. The principal perpetrator is generally subject to a heavier sentence than an accomplice.

According to R. Soesilo, aggravated theft or gekwalificeerde diefstal reflects the existence of certain qualities that make this crime more dangerous than ordinary theft, both because of the method of execution, the object, and the consequences it causes.²⁷ In the case of theft carried out together, the quality lies in the coordination of actions which increases the chances of the crime being successful.

From a modern criminal law perspective, criminal responsibility is based not only on the external act but also on the perpetrator's inner self. This concept aligns with the principle of Islamic law, which emphasizes the importance of intention (القصد) as the basis for moral and legal assessment of an act. Therefore, a collective analysis of theft must also consider the subjective dimensions of each perpetrator.

Eko Soponyono emphasized that in analyzing participation, judges must be able to identify the concrete contribution of each perpetrator in the occurrence of the crime, both in the form of physical actions and psychological support.²⁸ This is important to ensure that criminal responsibility is assigned proportionately according to each individual's role.

This view is reinforced by Sri Endah Wahyuningsih who stated that the principle of justice in criminal law requires differentiation of responsibility, so that not all perpetrators are treated equally without considering the level of their fault and involvement.²⁹ Thus, the application of the accompanying articles must be carried out carefully and contextually.

²⁶Lamintang, PAF (2014). *Fundamentals of Indonesian Criminal Law*. Bandung: Citra Aditya Bakti, pp. 585–590.

²⁷Soesilo, R. (1995). *The Criminal Code and its complete article-by-article comments*. Bogor: Politeia, pp. 249–251.

²⁸Soponyono, E. (2018). *Criminal law policy*. Semarang: Publishing Agency, pp. 90–94.

²⁹Wahyuningsih, SE (2020). *The principle of justice in criminal law*. Semarang: Pustaka, pp. 135–140.

Furthermore, the legalistic-positivistic approach that has been dominant in judicial practice often emphasizes legal certainty while paying little attention to substantive justice. Therefore, a more progressive approach is needed that integrates the values of social justice into criminal law enforcement.

Masdurohatun emphasized that criminal law must function as an instrument to realize social justice, not merely a tool of state repression.³⁰In the context of joint theft, this means that sentencing must take into account the social impact, the perpetrator's condition, and the victim's interests.

An analysis of various court decisions shows that there is still a tendency to assign equal responsibility to perpetrators in cases of joint theft, without adequate differentiation. This has the potential to create injustice, especially for perpetrators with minor roles.

Within the framework of the new National Criminal Code, judges have essentially been given broader normative space to develop a more humane, proportional, and substantive justice-oriented approach to sentencing. This is reflected in the formulation of a more flexible sentencing system, which no longer positions imprisonment as the sole primary instrument (*ultimum remedium*) but rather as one option among various available sanctions. Furthermore, the National Criminal Code explicitly recognizes the multidimensional nature of sentencing, focusing not only on retributive justice but also on rehabilitation, social reintegration, and restoring balance between the perpetrator, the victim, and society. Thus, judges have stronger legitimacy to differentiate criminal liability based on the level of culpability, the role, and the individual circumstances of the perpetrator, so that the resulting decision not only meets formal legality but also reflects the sense of justice that exists in society.³¹

This strengthened orientation ultimately confirms that national criminal law is no longer positioned solely as an instrument of state repression, but rather as a means of social reconstruction that functions to restore relationships disrupted by criminal acts. Therefore, the application of norms in cases of theft collectively demands a balance between legal certainty and substantive justice, to prevent the equalization of responsibility, which could potentially lead to injustice, particularly for perpetrators with marginal roles.³²

Thus, the legal construction of criminal liability for joint theft perpetrators in the National Criminal Code is a complex system, involving the interaction of criminal norms, the theory of participation, and the principle of justice. All of these

³⁰Masdurohatun, A. (2019). *Criminal law and social justice*. Semarang: UNISSULA Press, pp. 102–105.

³¹Hiariej, EOS (2023). *Annotation of the Criminal Code*. Jakarta: Erlangga, pp. 430–436.

³²Soponyono, E. (2018). *Criminal law policy in the development of national law*. Semarang: Publishing Agency, pp. 108–112.

elements must be understood in an integrated manner so that law enforcement achieves not only certainty but also justice and benefit.

3.2. The criminal responsibility of the perpetrators of theft is jointly reviewed from the perspective of justice, especially justice for the perpetrator and the victim.

Criminal liability for perpetrators of theft committed jointly from a justice perspective, when specifically reviewed based on the National Criminal Code (Law Number 1 of 2023), indicates a paradigm shift from a purely repressive approach to a more integrative approach oriented toward a balance between the interests of the perpetrator and the victim. In this construction, justice is not only interpreted as the rigid application of norms (formal justice), but also as an effort to realize justice that lives in society (living justice) that takes into account the human dimension.

Normatively, criminal responsibility remains rooted in the principle of fault (*schuld*) as the basis for punishment. The National Criminal Code emphasizes that a person can only be punished if there is a connection between the act and the fault for which he or she is responsible. This principle aligns with the adage "*geen straf zonder schuld*," which requires a balance between the act and the perpetrator's moral responsibility.

In the context of the crime of theft, the National Criminal Code regulates Article 479, which essentially embraces the substance of aggravated theft, including when committed with violence or the threat of violence. The explanation of this article broadens the scope of violence beyond physical violence to include psychological violence, namely actions that cause fear, anxiety, or mental distress in the victim. This demonstrates the need for more comprehensive legal protection for victims.

If theft is committed collaboratively, the construction of criminal responsibility cannot be separated from the provisions regarding inclusion in the National Criminal Code. Despite being re-codified, the essence of the regulation remains that every party involved in the crime can be held accountable according to their role and contribution.

From the perspective of justice for perpetrators, the National Criminal Code emphasizes the principle of individualization of punishment, which requires judges to carefully assess the level of culpability of each perpetrator. Therefore, perpetrators acting as principal perpetrators (*pleger*) cannot be equated with those who merely provide assistance (*medeplichtige*), both in terms of the severity of the punishment and the form of sanctions imposed.

Furthermore, Article 51 of the National Criminal Code emphasizes six multidimensional objectives of punishment: preventing crime, rehabilitating

convicts, resolving conflicts, restoring social balance, exonerating guilt, and granting pardons. This formulation marks a shift from a purely retaliatory model to a punishment system that combines prevention, rehabilitation, and recovery.³³

"The purpose of sentencing is to: prevent criminal acts for the protection of society; socialize convicts through guidance; resolve conflicts caused by criminal acts; restore balance and a sense of peace in society; free convicts from guilt; and forgive convicts."

Article 52 of the National Criminal Code codifies the principle of individualization of criminal penalties by requiring judges to consider eleven concrete factors before imposing a penalty, starting from the perpetrator's guilt, motive, and mental attitude, to the life history and impact of the crime on the victim and his or her family.³⁴

In particular, the factor of "the impact of the criminal act on the victim or the victim's family" read together with Article 66 letter (d) regarding compensation as a sanction provides a firm normative basis for the restoration of the victim's rights directly in the criminal decision, without having to divert the case outside the criminal justice system.³⁵

"In sentencing, it is mandatory to consider: the perpetrator's guilt; motive and purpose; mental attitude; planning; method of committing; attitude after committing; life history and socio-economic circumstances; the impact of the crime on the perpetrator's future; the impact on the victim or his/her family; forgiveness from the victim; and the views of society."

Article 53 of the National Criminal Code authorizes judges to withhold punishment if the specific circumstances of the case meet certain criteria: the crime did not cause serious harm, the defendant is elderly, or it is their first time in criminal law.

³³Article 51 of Law Number 1 of 2023 concerning the National Criminal Code stipulates six objectives of criminal punishment: (a) preventing criminal acts for the protection of society; (b) socializing convicts through guidance; (c) resolving conflicts resulting from criminal acts; (d) restoring balance and a sense of peace in society; (e) absolving convicts of guilt; and (f) forgiving convicts. State Gazette of the Republic of Indonesia 2023 Number 1.

³⁴Article 52 of the National Criminal Code requires judges to consider, among other things: the perpetrator's guilt; motive and purpose; mental attitude; whether or not there was planning; method of committing; attitude after committing; life history and socio-economic circumstances; the impact of the crime on the perpetrator's future; the impact of the crime on the victim or their family; the victim's forgiveness; and the views of society. See also Muladi, Lembaga Pidana Berempatan (Bandung: Alumni, 1992), pp. 51–52.

³⁵Article 52 paragraph (1) letter (i) of the National Criminal Code. Read together with Article 66 letter (d) of the National Criminal Code regarding the obligation to pay compensation as a sanction, this provision provides a solid normative basis for the restoration of victims' rights through criminal decisions, without diverting the case outside the criminal justice system.

This provision emphasizes that punishment is not a mechanical necessity, but rather a proportionate and humane legal response.³⁶

"The judge may not impose a penalty or action if the crime does not cause serious harm and/or impact; is only punishable by a fine; is committed by an elderly person; or is committed for the first time by the defendant."

Systematically, Articles 51, 52, and 53 of the National Criminal Code construct a unified normative architecture that integrates legal certainty, substantive justice, and expediency within a coherent framework. Thus, it cannot be understood merely as a causal relationship between the act and the punishment, but rather as a legal construction that demands comprehensive analysis so that punishment is proportional, just, and does not lose its human side.³⁷

Within the framework of justice for victims, joint theft often has more complex impacts, both economically and psychologically. Therefore, the increased penalties in the National Criminal Code are intended to provide stronger legal protection for victims and serve as a preventative measure to prevent similar crimes from occurring.

The annotation of the Criminal Code compiled by Eddy OS Hiariej explains that the increased criminal penalty in cases of theft committed together is not only based on the number of perpetrators, but also on the quality of cooperation established between them.³⁸ Organized cooperation indicates a stronger intention to commit a crime, and therefore deserves heavier sanctions.

From a justice perspective, it is important to emphasize that criminal responsibility cannot be collective and undifferentiated. Each perpetrator must be judged based on their contribution to the commission of the crime, whether through direct action or indirect support. This approach aligns with the principle of culpability, which is fundamental to modern criminal law.

Sri Endah Wahyuningsih emphasized that justice in criminal law must be realized through a balance between legal certainty and substantive justice, so that the judge's decision not only fulfills the legal aspect, but also the public's sense of

³⁶Article 53 of the National Criminal Code. Judges may not impose a penalty or action if: the crime does not cause serious harm and/or impact; is only punishable by a fine; is committed by an elderly person; or is committed for the first time by the defendant. See Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Kencana, 2010), pp. 97–103.

³⁷Barda Nawawi Arief, *Problems of Law Enforcement and Criminal Law Policy in Crime Prevention* (Jakarta: Kencana, 2007), pp. 79–83; Sudarto, *Law and Criminal Law* (Bandung: Alumni, 1981), pp. 44–47.

³⁸Hiariej, EOS (2023). *Annotation of the Criminal Code*. Jakarta: Erlangga, pp. 412–418.

justice.³⁹In this context, judges are required to carry out progressive interpretations of legal norms.

Eko Soponyono also stated that criminal law policy must be directed towards achieving justice that is oriented towards social benefits, not merely retaliation against the perpetrator.⁴⁰Therefore, the application of criminal sanctions must consider the long-term impact on the perpetrator and society.

In Islamic law, the concept of justice is fundamentally reflected in the principle of justice, which demands a balance between the rights and obligations of each individual, and is realized through the mechanisms of justice and reparation as a form of accountability and redress for losses incurred. The principle of justice is not only oriented towards punishment, but also towards maintaining social balance (*tawāzun al-mujtama'*) disturbed by an unlawful act. Thus, these values have a philosophical alignment with the restorative justice approach that is beginning to be accommodated in the National Criminal Code, particularly within the framework of punishment that is not solely repressive, but also corrective and rehabilitative.⁴¹

Furthermore, the concept of restitution in Islamic law emphasizes the perpetrator's obligation to compensate the victim as a form of moral and legal responsibility. This demonstrates that the dimension of justice in Islamic law emphasizes not only retributive justice but also restorative justice, which prioritizes the victim's interests. In the context of the National Criminal Code, this approach is reflected in the recognition of the victim's right to restitution and recovery, thus creating a balance between the interests of the perpetrator and the victim.⁴²

The National Criminal Code also opens up broader space for the application of alternative punishments and non-imprisonment measures as part of efforts to achieve more humane justice. Forms of punishment, such as supervision, community service, and fines, are positioned as instruments that can be used proportionally to the level of culpability of the perpetrator. This approach reflects the principle of individualization of punishment, which emphasizes that punishment must be tailored to the characteristics and specific circumstances of the perpetrator.⁴³

³⁹Wahyuningsih, SE (2020). The principle of justice in criminal responsibility. Semarang: Pustaka, pp. 142–146.

⁴⁰Soponyono, E. (2018). Criminal law policy in the development of national law. Semarang: Publishing Agency, pp. 97–101.

⁴¹Masdurohatus, A. (2019). Criminal law and social justice. Semarang: UNISSULA Press, pp. 112–115.

⁴²Hiariej, EOS (2023). Annotation of the Criminal Code. Jakarta: Erlangga, pp. 420–425.

⁴³Soponyono, E. (2018). Criminal law policy in the development of national law. Semarang: Publishing Agency, pp. 101–105.

In cases of theft committed by a group, the application of alternative punishments becomes relevant, especially for perpetrators who have a minor role or are not involved in a dominant manner. Thus, the criminal justice system no longer views punishment as the sole solution, but rather as part of a broader mechanism for achieving substantive justice. This also avoids the negative effects of imprisonment, such as imprisonment and social stigmatization.⁴⁴

However, in cases of theft accompanied by violence or committed in an organized manner, a retributive justice approach remains significantly relevant. The application of strict criminal sanctions is necessary to maintain public order and provide a deterrent effect on perpetrators and the community. In this regard, the National Criminal Code, through its provisions on aggravating criminal penalties, emphasizes that higher levels of danger must be met with heavier sanctions.⁴⁵

Thus, the national criminal law system essentially accommodates a balance between repressive and restorative approaches. This balance reflects an effort to integrate the various objectives of punishment, namely retribution, deterrence, rehabilitation, and restoration. This multidimensional approach is crucial in addressing the complexity of modern crime, including theft committed by groups.⁴⁶

In law enforcement practice, the primary challenge in achieving justice lies in the tendency of law enforcement officials to apply norms textually without considering the social context underlying the crime. An overly formalistic approach (legal formalism) has the potential to ignore substantive justice values, resulting in decisions that do not fully reflect society's sense of justice.⁴⁷

Therefore, judges must play an active role in exploring, adhering to, and understanding the legal values that exist within society, as mandated by the National Criminal Code. Judges serve not only as "la bouche de la loi," but also as "guardians of justice," with a moral responsibility to ensure that every decision rendered reflects true justice.⁴⁸

In this context, a hermeneutical approach to legal interpretation becomes relevant, where judges not only read the statutory text literally but also understand the meaning behind it by considering social, cultural, and moral

⁴⁴Wahyuningsih, SE (2020). The principle of justice in criminal responsibility. Semarang: Pustaka, pp. 150–155.

⁴⁵Hiariej, EOS (2023). Annotation of the Criminal Code. Jakarta: Erlangga, pp. 430–435.

⁴⁶Soponyono, E. (2018). Criminal law policy in the development of national law. Semarang: Publishing Agency, pp. 106–110.

⁴⁷Wahyuningsih, SE (2020). The principle of justice in criminal responsibility. Semarang: Pustaka, pp. 156–160.

⁴⁸Masdurohatun, A. (2019). Criminal law and social justice. Semarang: UNISSULA Press, pp. 118–120.

values. This approach allows for decisions that are more adaptive and responsive to societal dynamics.⁴⁹

Thus, collective criminal responsibility for theft perpetrators, from a justice perspective, must be understood as a holistic and integrative process. This process involves the interaction of legal norms, moral values, and social realities, resulting in a system that not only guarantees legal certainty but also justice and benefit.

Justice for perpetrators is essentially achieved through the application of the principles of proportionality and individualization of punishment, so that each individual is only held accountable according to the level of culpability (*schuld*) and degree of involvement in the crime. Within this framework, criminal law no longer views perpetrators as mere objects of punishment, but rather as legal subjects who have the right to be treated fairly and humanely. On the other hand, justice for victims is achieved through the guarantee of effective legal protection and the provision of adequate reparation mechanisms, whether in the form of restitution, compensation, or social rehabilitation, so that the balance disturbed by the crime can be restored proportionally.⁵⁰

Thus, the paradigm of criminal responsibility in the National Criminal Code indicates an increasingly progressive direction of development, namely toward a criminal law system oriented toward substantive justice and sustainable social balance. This orientation aligns with the development of modern legal thought that places humans at the center of the legal system (human-centered law), where law functions not only as an instrument of social control but also as a means to ensure the dignity and well-being of all human beings.⁵¹

Therefore, the National Criminal Code essentially provides a relatively comprehensive normative foundation for realizing justice in criminal accountability. However, the effectiveness of its implementation is largely determined by the quality of law enforcement and the integrity of law enforcement officials in internalizing and actualizing the values of substantive justice. In other words, the success of the criminal law system depends not only on the excellence of written norms (law on the books), but also on the consistency and sensitivity in their practical application (law in action), so that the law truly exists as a living manifestation of justice in society.⁵²

⁴⁹Hiariej, EOS (2023). *Annotation of the Criminal Code*. Jakarta: Erlangga, pp. 440–445.

⁵⁰Wahyuningsih, SE (2020). *The principle of justice in criminal responsibility*. Semarang: Pustaka, pp. 158–162.

⁵¹Masdurohatun, A. (2019). *Criminal law and social justice*. Semarang: UNISSULA Press, pp. 120–123.

⁵²Hiariej, EOS (2023). *Annotation of the Criminal Code*. Jakarta: Erlangga, pp. 445–448.

4. Conclusion

1. Criminal liability for perpetrators of theft committed jointly in the Indonesian criminal law system reflects a systematic and integrated normative structure, which is not only based on the formulation of the crime of theft in the National Criminal Code, but also relies on the theory of participation (*deelneming*) and the theory of criminal responsibility. From the perspective of the theory of criminal responsibility, punishment can only be imposed if there is fault on the part of the perpetrator, as reflected in the principle of *nulla poena sine culpa*. Therefore, each individual involved in a joint crime must be held accountable proportionally based on their respective roles, contributions, and levels of culpability. This approach demonstrates that the National Criminal Code has accommodated the principle of differentiation of responsibility, thereby avoiding the overgeneralization of punishment and ensuring the application of the principles of justice and proportionality in criminal justice practice. 2. The criminal responsibility of perpetrators of theft collectively from a justice perspective demonstrates a paradigm shift towards substantive justice, which is not solely oriented towards formal legal certainty, but also towards the values of justice that exist in society. Within the framework of the theory of substantive justice, the National Criminal Code provides space for the application of the principle of individualization of punishment, so that the punishment of the perpetrator is adjusted to the level of culpability and the concrete conditions surrounding it. On the other hand, legal protection for victims is no longer viewed marginally, but is realized through a reparative sanction mechanism, as reflected in the provisions of Article 66 letter (d) of the National Criminal Code which regulates the obligation to pay compensation as a form of sanction. This instrument provides a firm normative basis for judges to order the restitution of losses suffered by victims directly in criminal decisions, without having to divert the resolution of cases outside the criminal justice system. Thus, the criminal system in the National Criminal Code reflects a balance between a repressive approach and a victim-oriented approach, which is not only oriented towards punishment, but also towards restoring the victim's condition and creating balance in society.

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