

COMPARISON OF ARRANGEMENTS FOR THE CRIME OF CATTLE THEFT ACCORDING TO THE CRIMINAL CODE AND THE DRAFT CRIMINAL CODE

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Abstract

The crime of cattle theft is regulated in Article 363 paragraph (1) number 1 of the Criminal Code, where the qualification of this crime is categorized as a crime against property. The cattle theft is included in the theft by weight or qualified theft. Based on the formulation of the elements regulated in Article 363, cattle theft is qualified as a formal offense. Meanwhile in the Draft Criminal Code, the cattle theft is still regulated in Article 483 paragraph (1) point c. However, in contrast to the formulation in the Criminal Code, the cattle theft has expanded not only regulated cattle but also goods that are a source of livelihood or a person's main source of livelihood.

Keywords: *cattle, criminal law, theft*

INTRODUCTION

Along with the development of the times and technology, nowadays criminal acts are also increasingly occurring and the modus operandi of the perpetrators is increasingly varied in committing these crimes. One of the criminal acts that have developed is the crime of theft. The crime of theft is an act that violates the norms that live in society, not only legal norms but also religious norms. In legal norms (Law Number 1 Year 1946 concerning Criminal Law Regulations), the crime of theft is included in the category of crimes against property as regulated in Book II of the Criminal Code (KUHP) in chapter XXII. Theft itself is defined as the act of taking other people's belongings without the permission of the owner in a way that violates the rights.¹

Not only violating legal norms, the crime of theft also violates religious norms as regulated in the Holy Qur'an in Surah Al-Maidah verse 38, which means "And male thieves and female thieves, then cut off their hands each (as) revenge. for what they do and as a punishment from Allah, and Allah is Mighty, Wise." The prohibition of stealing was also emphasized by the Prophet Muhammad SAW, he said, "O people, mankind has actually perished before you, where when noble people steal they just let it go, and if it is done by ordinary people among them, they will be punished with cutting off their hands (had), by Allah, if Fatimah bint Muhammad stole, I would cut off her hand".²

Although there have been prohibitions in both religious and legal norms, this does not necessarily eliminate the crime of theft. This is proven based on the number of cases that went to the Takalar District Court for the last three years, namely in 2018 as many as 35 cases, in 2019 as many as 24 cases and in 2020 as many as 31 cases, the total theft cases decided by the Takalar District Court were 90 cases.³

The crime of theft is still rampant so that in the Draft Criminal Code, the regulations related to the crime of theft are still maintained. Based on this description, the purpose of this paper is to analyze the comparison of the regulation of the crime of cattle theft in the Criminal Code and the Draft Criminal Code.

METHOD

The method used is normative legal research. The normative legal research method is library law research which is carried out by examining library materials or secondary legal materials.⁴ The approach used is a statutory approach and a comparative approach.⁵ The types of legal materials used are primary legal materials sourced from legislation, namely Law Number 1 Year 1946 concerning Criminal Law Regulations and Draft Criminal Code, while secondary legal materials are books and journals that discuss criminal acts. theft crime. The technique of collecting legal materials is through literature study.⁶ The legal materials that have been collected are then analyzed using theories and principles of criminal law through a qualitative approach in order to obtain conclusions on the problems discussed.

ANALYSIS

Comparison of the Arrangements for the Crime of Cattle Theft in the Criminal Code and the Draft Criminal Code

Law Number 1 Year 1946 concerning Criminal Law Regulations

In Law Number 1 Year 1946 concerning Criminal Law Regulations, hereinafter referred to as the Criminal Code (KUHP), it is divided into 3 (three) chapters, namely Chapter I concerning General Provisions; Chapter II on Crime and Chapter III on Violations. Theft in the Criminal Code is qualified as a crime, namely a crime against property as regulated in chapter XXII starting from Article 362 to Article 367 of the Criminal Code.

According to the Criminal Code, the crime of theft is distinguished by various different qualifications ranging from the crime of ordinary theft (Article 362 of the Criminal Code), qualified theft or theft by weight, (Article 363 of the Criminal Code), light theft (Article 364 of the Criminal Code), theft

¹ R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP), Serta Komentar-Komentarnya Lengkap Pasal demi Pasal*, Bogor: Politeia, 1995, p. 249

² Hadith narrated by Bukhari and Muslim

³ See <https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pntakalar/kategori/pencurian-1.html>

⁴ Soerjono Soekanto and Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Jakarta: Raja Grafindo Persada, 2003, p. 13

⁵ Irwansyah, *Penelitian Hukum, Pilihan Metode dan Praktik Penulisan Artikel*, Yogyakarta: Mirra Buana Media, 2020, p. 173

⁶ Kadarudin, *Penelitian di Bidang Ilmu Hukum (Sebuah Pemahaman Awal)*, Semarang: Formaci Press, 2021, p. 203

with violence (Article 365 of the Criminal Code), and theft among families (Article 367 of the Criminal Code), which of course each type of theft crime carries a different threat of criminal punishment, which can be seen from the way, time and place of the crime.⁷

Animal theft is included in the qualification of qualified theft or theft by weight as regulated in Article 363 of the Criminal Code. The crime of theft with aggravating elements or in doctrine is also called *distal gequalificeerde* or theft with qualifications as a theft by using certain methods so that it is more severe and is threatened with a higher maximum sentence of more than 5 (five) years in prison.⁸

The formulation of Article 363 of the Criminal Code states:

(1) Threatened with a maximum imprisonment of seven years:

1. Cattle theft;
2. Theft is committed in the event of a fire, eruption, flood, earthquake or sea earthquake, volcanic eruption, shipwreck, shipwreck, train accident, riots, rebellion or danger of war;
3. Theft at night in a house or a closed yard in his house, committed by the person who is there is not known or not wanted by the person who is entitled;
4. Theft committed by two or more persons;
5. Theft which is to enter the place of committing the crime, or to arrive at the goods taken is carried out by breaking, cutting or climbing, or by using false keys, false orders, or using false positions.

(2) If the theft described in point three is accompanied by one of the things in points four and five, it is punishable by a maximum imprisonment of nine years.⁹

The qualification of the offense regulated in Article 363 paragraph (1) number 1 of the Criminal Code is the same as the qualification of the offense regulated in Article 362 of the Criminal Code, where the formulation states that "Whoever takes something, wholly or partly belonging to another person with the intention of being owned against shall be punished for theft by a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs.

The difference lies in the object of the goods taken by the perpetrator. In Article 362 of the Criminal Code, what is meant by an item is everything that is tangible, including animals (humans are not included), for example money, clothes, necklaces and so on. This item does not need an economical price (value), but it can also be because something is valuable to its owner, both in terms of aesthetics, history, usability or mementos.¹⁰ Meanwhile, the object of goods taken by the perpetrator in Article 363 paragraph (1) number 1 is cattle. Cattle here as one of the aggravating or qualifying elements. Based on Article 101 of the Criminal Code, what is meant by cattle are "all animals with one hoof, ruminant animals and pigs". In Indonesia, cattle is a very important pet for the people, because cattle is an important property, the cattle theft is considered heavy, no matter if it is stolen from the barn or from the grazing area.

Both ordinary theft and theft by weight are both categorized as formal offenses. Formal offenses are those that describe prohibited acts, this offense does not regulate the consequences of the prohibited acts. The offense of theft only contains prohibited acts in the form of taking other people's goods with the intention of possessing them against the law. In Article 362 of the Criminal Code, it is not used as an element of the consequences, for example, victims of theft suffer losses.¹¹

For perpetrators of the crime of cattle theft, based on the formulation of Article 363 paragraph (1) of the Criminal Code, they are threatened with the main punishment, namely imprisonment for a maximum of seven years. Unlike the case with ordinary theft which is regulated in Article 362 of the Criminal Code, where the criminal threat consists of two main crimes stipulated in Article 10 of the Criminal Code, namely imprisonment and fines, although this crime is alternative, so that later the Panel of Judges can choose to impose imprisonment or imprisonment. fines for criminals. The prison sentence stipulated in Article 362 of the Criminal Code is a maximum of five years, while a maximum fine of nine hundred rupiahs. It can be seen that the criminal act of cattle theft, the criminal threat is much higher than the criminal threat regulated for the crime of ordinary theft.

⁷ Ravinska Audina Zhasadoma and Budi Setiyanto, *Tinjauan Terhadap Pemidanaan Tindak Pidana Pencurian Dengan Pemberatan Yang Dilakukan Oleh Anak (Analisis Putusan Nomor: 15/Pid.Sus/2014/PN.Skh)*, *Jurnal Recidive*, Vol. 4, No. 1, 2015, p. 96

⁸ *Ibid.*, p. 97-98

⁹ Lamintang, *Delik-Delik Khusus Kejahatan Terhadap Harta Kekayaan*, Jakarta: Sinar Grafika, 2009, p. 34-35

¹⁰ Rony A. Walandouw, et.al., *Unsur Melawan Hukum Yang Subjektif Dalam Tindak Pidana Pencurian Pasal 362 KUHP*, *Jurnal Lex Crimen*, Vol. IX No. 3, Juli-September 2020, p. 253

¹¹ Indah Sari, *Unsur-Unsur Delik Materiel dan Delik Formil Dalam Hukum Pidana Lingkungan*, *Jurnal Ilmiah Hukum Digantera*, Vol. 10, No.1, September 2019, p. 71

Draft Criminal Code

In the 2019 Draft Criminal Code (RUU KUHP), there have been several changes not only related to the substance of criminal acts but also arrangements for offenses that have never been regulated before. Unlike the previous KUHP, in the latest Draft Criminal Code there are only 2 (two) books, namely Book I on General Provisions and Book II on Criminal Acts. There is no longer a division of criminal acts into crimes and violations previously regulated in the Criminal Code.

It is explained in Article 12 of the Draft Criminal Code that what is meant by a criminal act is an act which by legislation is threatened with criminal sanctions and/or action. To be declared a criminal act, an act that is subject to criminal sanctions and/or action by laws and regulations must be against the law or contrary to the law that cattle in society. Every crime is always against the law, unless there is a justification.

Regarding the crime of theft in Chapter XXII of the Criminal Code, it is still maintained to be regulated in the Draft Criminal Code. Expansion of the crime of theft, for example the theft of a sacred religious object or objects used for religious purposes or archaeological objects. In this crime, the act of taking goods, only the target or object of the theft is a special object, namely every religious object, which is often the object of theft.¹²

The criminal act of theft in the Draft Criminal Code is regulated in Chapter XXIV starting from Article 482 to Article 487. Ordinary theft is regulated in Article 482 which states that "Anyone who takes an item which is partly or wholly owned by another person, with the intention of unlawfully possessing it, shall be subject to a criminal sanction. for theft, with a maximum imprisonment of 5 (five) years or a maximum fine of category V".¹³

With regard to the criminal act of cattle theft of in the Draft Criminal Code, Article 483 is regulated as follows:

- (1) Sentenced to a maximum imprisonment of 7 (seven) years or a maximum fine of category V, any person who commits:
 - a. Theft of religious sacred objects;
 - b. Theft of antiquities;
 - c. Cattle theft or goods which are a person's source of livelihood or main source of livelihood;
 - d. Theft during fire, explosion, natural disaster, shipwreck, shipwreck, airplane accident, train accident, road traffic accident, riot, rebellion, or war;
 - e. Theft at night in a house or in a closed yard where there is a house, carried out by the person who is there, is not known or desired by the person entitled;
 - f. Theft by destroying, dismantling, cutting, breaking, climbing, using false keys, using false orders, or wearing false official clothes, to enter the place of committing a crime or to arrive at the stolen goods; or
 - g. Collective and allied theft.¹⁴
- (2) If the act as referred to in paragraph (1) letter e is accompanied by one of the methods as referred to in paragraph (1) letter f and letter g, the person shall be sentenced to a maximum imprisonment of 9 (nine) years.

If you look at the formulation of Article 483 of the Draft Criminal Code, there is an expansion of aggravating elements in the crime of theft that are different from the weights stipulated in Article 363 of the Criminal Code. In Article 363 of the Criminal Code, there are 5 (five) aggravating elements, namely cattle theft, theft during a disaster, theft at night, theft committed by two or more people and theft carried out by destroying, dismantling and so on. Meanwhile, in Article 483 of the Criminal Code Bill, there are 7 (seven) aggravating elements, namely theft of religious sacred objects, theft of archaeological objects, cattle theft, theft when there is a fire, explosion, natural disaster, and so on, theft at night in the house, theft with joint and allied ways of vandalism and theft.

Especially for the crime of cattle theft, it is still regulated in the Draft Criminal Code in Article 483 paragraph (1) point c. The terminology for cattle theft as regulated in Article 363 of the Criminal Code has expanded with the addition of the formulation in the Draft Criminal Code not only regulating the cattle theft but also goods that are a source of livelihood or a person's main source of livelihood.

In the regulation of sanctions in the Criminal Code Bill related to the criminal act of cattle theft, there has also been a change in the type of punishment imposed on the perpetrators. Not only imprisonment but also fines. This is different from the regulation in Article 363 of the Criminal Code,

¹² Academic Draft of the Draft Criminal Code, p. 249

¹³ See <http://reformasikuhp.org/data/wp-content/uploads/2015/02/RKUHP-FULLL.pdf>

¹⁴ *Ibid.*

where the type of criminal sanction that is regulated is only imprisonment. The length of imprisonment that is threatened in Article 483 of the Draft Criminal Code is a maximum of 7 (seven) years, while the maximum fine is category V.

Discussing the types of crimes in the Draft Criminal Code also underwent changes as stipulated in Article 10 of the Criminal Code, where the types of crimes consisted of basic and additional penalties. The descriptions of Article 10 of the Criminal Code are:

- a. Basic Punishment
 1. Death penalty
 2. Imprisonment
 3. Confinement
 4. Fines
 5. Closure penalty
- b. Additional Penalties
 1. Revocation of certain rights
 2. confiscation of certain goods
 3. Announcement of judge's decision¹⁵

Meanwhile, in the Draft Criminal Code, especially Article 64, it is regulated that the punishment consists of:

- a. Principal crime;
- b. Additional penalties; and
- c. Specific penalties for certain criminal acts specified in the law.

Article 65 stipulates that the main punishments consist of:

- a. imprisonment;
- b. Criminal cover;
- c. Criminal supervision;
- d. Criminal fines; and
- e. Social work crime.

The main criminal order above determines the severity or severity of the punishment to be imposed on the perpetrator. The additional penalties are regulated in Article 66 of the Draft Criminal Code which consists of:

- a. Revocation of certain rights;
- b. confiscation of certain goods and/or invoices;
- c. Announcement of judge's decision;
- d. Payment of compensation;
- e. Revocation of certain permits; and
- f. Fulfillment of local customary obligations.

In connection with the imposition of the main criminal in the form of a fine in the Draft Criminal Code, the amount has been determined in Article 79, where the maximum fine is determined based on:

- a. Category I, IDR 1,000,000.00 (one million rupiah);
- b. Category II, Rp. 10,000,000.00 (ten million rupiah);
- c. Category III, Rp. 50,000,000.00 (fifty million rupiah);
- d. Category IV, Rp. 200,000,000.00 (two hundred million rupiah);
- e. Category V, Rp. 500,000,000.00 (five hundred million rupiah);
- f. Category VI, Rp. 2,000,000,000.00 (two billion rupiah);
- g. Category VII, Rp. 5,000,000,000.00 (five billion rupiah); and
- h. Category VIII, Rp. 50,000,000,000.00 (fifty billion rupiah).

In the event of a change in the value of the currency, the provisions for the amount of the fine shall be stipulated by a government regulation. In imposing a fine, the judge must consider the ability of the defendant by considering the actual income and expenses of the defendant. Based on the above arrangement, it can be concluded that the regulation of criminal penalties in Article 483 of the Draft Criminal Code regarding the crime of cattle theft, the amount of the fine refers to Article 79, namely category V with a maximum amount of Rp. 500,000,000.00 (five hundred million rupiah).

¹⁵ R. Soesilo (1995), *Op.Cit.*, p. 34

CONCLUSION

Theft in the Criminal Code is qualified as a crime against property as regulated in chapter XXII starting from Article 362 to Article 367 of the Criminal Code. Specifically, the criminal act of qualified theft is regulated in Article 363 of the Criminal Code where in its formulation there are five aggravating elements ranging from cattle theft, theft during a disaster, theft at night, theft committed by two or more people and theft carried out by destructive means, disassemble and so on. The criminal sanctions regulated in Article 363 of the Criminal Code are imprisonment for a maximum of seven years. Meanwhile, in the Draft Criminal Code (RUU KUHP), a qualified crime of theft is regulated in Article 483 where the formulation of aggravating elements has been expanded to 7 (elements) namely theft of religious sacred objects, theft of archaeological objects, cattle theft, theft when there is a fire, explosion, natural disaster, etc., theft at night in the house, theft by destructive means and theft together and in alliance. Meanwhile, the sanctions imposed on the perpetrators of the criminal act of cattle theft are imprisonment for a maximum of seven years or a fine for a maximum category V of Rp. 500,000,000.00 (five hundred million rupiah).

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