



Disparities in the Crime of Petty Theft and Aggravated Theft: Study of the Supreme Court of the Republic of Indonesia Regulation Number 2 of 2012

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ABSTRAK

Penelitian ini bertujuan untuk membahas secara mendalam analisis regulasi hukum dan disparitas tindak pidana pencurian, serta menganalisis kendala dan kebijakan dalam penegakan hukum tindak pidana pencurian. Jenis penelitian yang digunakan adalah yuridis normatif dengan pendekatan deskriptif analitis, membahas gejala dan permasalahan hukum yang ada serta mengujinya berdasarkan peraturan perundang-undangan, dan norma hukum. Hasil penelitian ini menunjukkan bahwa tindak pidana pencurian diklasifikasikan menjadi pencurian biasa berdasarkan Pasal 362, pencurian dengan pemberatan berdasarkan Pasal 363, pencurian ringan berdasarkan Pasal 364, dan pencurian dengan kekerasan berdasarkan Pasal 365. Penyebab terjadinya disparitas tindak pidana pencurian disebabkan oleh aturan pidana yang saling bertentangan, pertimbangan hakim, dan integritas penegak hukum. Kendala dan kebijakan penegakan hukum pencurian antara lain: batasan nilai barang, minimnya pelaporan dan pelibatan korban, keterbatasan sumber daya, serta kendala teknis dan prosedural. Untuk mengatasi kendala tersebut, diperlukan kebijakan hukum seperti: peningkatan kualitas dan kuantitas aparat penegak hukum, penerapan keadilan restoratif, melakukan upaya represif dan preventif untuk mengantisipasi terjadinya tindak pidana, serta melakukan penyesuaian aturan tentang pencurian agar relevan dengan perkembangan zaman.

ABSTRACT

This research aims to discuss in depth the analysis of legal regulations and disparities in the crime of theft, as well as analyze the obstacles and policies in law enforcement of the crime of theft. The type of research used is normative juridical with a descriptive-analytical approach, discussing existing legal symptoms and problems and testing them based on laws regulations, and legal norms. The results of this study show that the crime of theft is classified into ordinary theft under Article 362, theft under Article 363, petty theft under Article 364, and Theft with violence under Article 365. The cause of disparities in theft crimes is caused by conflicting criminal rules, judges' considerations, and the integrity of law enforcement. Obstacles and policies for law enforcement of theft include: limits on the value of goods, lack of reports and victim participation, limited resources, and technical and procedural obstacles. To overcome these obstacles, legal policies are needed such as: improving the quality and quantity of law enforcement officials, implementing restorative justice, making repressive and preventive efforts to anticipate crime, and making adjustments to the rules on theft to be relevant to the times.

1. INTRODUCTION

The law continues to evolve following social phenomena that occur in society because law and social change are closely related and affect each other. The law must dynamically adapt to the times, technology, and changes in societal values. Law does not just passively follow developments, but plays an active and anticipatory role in facing social change, as well as being a means of social engineering to encourage desired change (Yamin et al., 2023).

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Indonesia, as one of the countries with the largest population in the world with an uneven level of welfare, makes its social conditions very prone to crime, especially theft. Data from the Central Statistics Agency (BPS) states that the number of crimes nationally in 2023 will reach 584,991 cases with a crime risk level of 214 per 100,000 population. Meanwhile, *the Global Initiative Against Transnational Organized Crime* places Indonesia second in ASEAN in terms of crime rate after Myanmar which is in first place ([Ramadhani & Irfan, 2024](#)).

The crime of theft in the Criminal Code is divided into several categories, namely: ordinary theft (362), theft with aggravation (Article 363), petty theft (364), and theft with violence (Article 365). Article 362 of the Criminal Code states that whoever takes goods that belong in whole or in part to another person with the intention of unlawful possession, is threatened with theft, with imprisonment for a maximum of five years or a maximum fine of nine hundred rupiah ([Enny et al., 2013](#)).

Article 1 of the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 regulates the Adjustment of Limits on Misdemeanor Crimes and the Number of Fines in the Criminal Code stipulates the limit on the value of goods be categorized as a misdemeanor (tipiring), namely the emphasis on the diction of "two hundred and fifty rupiahs" to Rp 2,500,000 (two million five hundred thousand rupiahs). This causes theft cases with values below the limit often not to be handled optimally, so criminals take advantage of this loophole to commit petty theft repeatedly ([Anton Hendrik Samudra, 2019](#)).

The implementation is still many investigators and public prosecutors who do not apply the provisions of this Perma in each process ([Okamahendra, 2017](#)). As a result, detention and legal proceedings against the perpetrators of petty theft are still carried out even though the value of the stolen goods is below Rp 2.5 million. Usually, investigators use the provisions of article 362 or 365 to overcome so that minor theft is not classified as a theft (being an ordinary theft or treason) so that the perpetrator can be designated as a suspect and undergo detention ([Shang et al., 2025](#)). This condition results in disparities in law enforcement for theft crimes ([Furi, 2017](#)).

The phenomenon of theft and the existence of a nominal limit on stolen goods (Perma No. 2 of 2012) has become a dilemma in the social life of the community. Theft under a nominal amount of Rp. 2.5 million, against which the law of tipiring is applied. This means that the perpetrator does not have to be detained, and the trial is carried out with a quick examination. This does not have a deterrent effect on the perpetrator and does not fulfill justice for the victim. On the other hand, because they are not detained and only given probation, perpetrators of petty theft are not afraid to return to commit similar crimes because of the light sanctions given. This condition causes criminal disparities or inconsistencies between crimes occurring and the implementation of law enforcement.

Perma Number 2 of 2012 is indeed effective in accelerating the criminal legal process, as well as providing an alternative to restorative justice, but it is not optimal in efforts to reduce the level of crime (theft) due to the objectivity factor of law enforcement officials in handling cases. In addition, the judge's consideration in the trial, and the issue of injustice between the victim and the perpetrator of the theft, cause criminal disparity ([Nicoletti et al., 2022](#)). Appropriate countermeasures and policy efforts are needed to overcome this problem to provide justice, certainty, and legal benefits ([Sutrisno, 2020](#)).

The focus of the problems in this study is: 1. how to analyze the legal regulation and disparity of theft, 2. how are the obstacles and policies in law enforcement of theft. The purpose of this study is to discuss in depth the analysis of legal regulations and disparities in the crime of theft, as well as to analyze the obstacles and policies in law enforcement of the crime of theft.

2. RESEARCH METHOD

The research carried out is normative juridical research or research analyzing written law, jurisprudence, and norms living in society. The descriptive-analytical approach aims to take systematic, factual, and accurate data about a problem based on applicable laws and legal norms and analyze it based on laws and regulations. The data collection technique is carried out through literature research, which is to obtain data by examining literature materials or secondary data which includes primary legal materials, secondary legal materials which can be in the form of laws and regulations, books and works, or other scientific journals or university legal materials in the form of dictionaries, magazines, newspapers, and articles ([Triono Eddy, Agustina, 2025](#)). Adopting the Theory of Proportional Justice according to Aristotle is to give everyone what he or she has right, according to his abilities and achievements. Where normative legal instruments regarding the crime of theft must be able to accommodate and provide legal certainty to the community in distinguishing criminal acts that must be given heavy or light sanctions according to what is done ([Parisa Ebrahimpour, 2017](#)).

3. RESULT AND DISCUSSION

Analysis of Legal Regulations and Disparities in Theft Crime

Based on data from the National Criminal Information Center (Pusiknas) of the National Police of the Republic of Indonesia, theft was recorded as the most common type of crime throughout 2024, reaching 52,449 cases. Theft refers to the act of taking someone else's property without permission or legal rights. Theft falls under the category of crimes against wealth or property ([Wiharma, 2016](#)). Some of the distinctive features of the crime of theft are:

- 1) Taking Someone Else's Property: Theft occurs when a person intentionally and unlawfully takes goods or property that is wholly or partially owned by another person;
- 2) Illegally: There is an element of intent to possess the item illegally. Thieves have the intent to seize or take advantage of goods without legitimate rights;
- 3) Without Permission or Rights: Theft is taking goods without the permission or legal rights of the original owner. These actions may involve the use of force or attempts to evade arrest;
- 4) Transfer of Ownership: There is a transfer of ownership of the goods from the original owner to the perpetrator of the theft, resulting in loss or inconvenience for the rightful owner.

That the crime of theft is regulated from Articles 362 to 367 of the Criminal Code which is explained as follows:

a. Ordinary (Article 362 of the Criminal Code)

Any person who takes an item that wholly or partially belongs to another person with the intention of unlawful possession is threatened with theft with imprisonment for a maximum of five years or a fine of up to nine hundred rupiahs. Common elements of theft include:

- 1) Objective Element: the act of taking goods that belong wholly or partially to another person.
- 2) Subjective Element: the perpetrator has the intention to possess the goods illegally.

b. Theft with Aggravation (Article 363 of the Criminal Code):

Theft with aggravated assault is an ordinary theft accompanied by certain aggravating circumstances, for example, committed by two or more people in an alliance or by

dismantling or damaging something. Threatened with imprisonment for a maximum of seven years:

- 1) Theft of livestock;
- 2) Theft at times of fire, eruption, flood, earthquake, earthquake, earthquake, volcanic eruption, shipwreck, stranded ship, train accident, riot, rebellion, or danger of war;
- 3) Theft at night in a house or in an enclosed yard where the house is located;
- 4) Theft committed by two or more persons in an associate;
- 5) Theft by dismantling a house or a closed yard;
- 6) Theft by using fake keys, false orders, or wearing false office clothes (uniforms)."

c. Petty Theft (Article 364 of the Criminal Code)

The acts described in Article 362 and Article 363 point 5, if not carried out in a house or closed yard where there is a house, if the price of the stolen goods is not more than two hundred and fifty rupiahs, is threatened with petty theft with imprisonment for a maximum of three months or a maximum fine of two hundred and fifty rupiahs.

d. Theft with Violence (Article 365 of the Criminal Code)

Theft preceded, accompanied, or followed by violence or threats of violence against persons, with the intent to prepare or facilitate theft or in the event of being caught, to enable oneself or another person to remain in control of the stolen goods.

- 1) Threatened with imprisonment for a maximum of nine years for theft preceded, accompanied, or followed by violence or threats of violence against persons, to take goods belonging to another person that belongs wholly or partly to another person;
- 2) If the theft is committed at night in a house or in an enclosed yard where the house is located or is committed by two or more persons together, or by damage, climbing, wearing false keys, false orders, or false office clothes, then the perpetrator is threatened with imprisonment for a maximum of twelve years;
- 3) If the theft with violence results in serious injury or death, the perpetrator is threatened with imprisonment for a maximum of fifteen years, and can even reach the death penalty, life imprisonment, or imprisonment for a maximum of twenty years if committed by two or more people together under the circumstances of aggravation as intended in paragraph (2).

The elements of Article 365 of the Criminal Code include:

- a. Carried out with violence and/or threats of violence
- b. Performed by two or more people jointly (associated)
- c. The perpetrator entered the crime scene by damaging it, climbing, wearing fake keys, fake orders, or fake office clothes.
- d. Theft results in serious injuries to the victim;

In addition to that, there is also theft in the family (Article 367 of the Criminal Code), that is, if the perpetrator or helper of one of the crimes is the husband or wife of the person affected by the crime, or is blood or semen either in a straight line or a deviant line of the second degree, then prosecution can only be carried out if there is a complaint from the aggrieved person ([Tampi, 2013](#)).

That petty theft (*geprivilegieerde diefstal*), as referred to in Article 364 of the Criminal Code, is an act of theft that has elements of theft in the principal form, coupled with mitigating elements so that the threat of punishment is mitigated, with the conditions that are:

- 1) It is not done in a closed yard on which there is a dwelling;
- 2) Not by dismantling, vandalism, climbing, false keys, false orders or false uniforms;
- 3) The price of the stolen goods did not exceed the value of 2.5 million;
- 4) It does not constitute a repetition of a criminal act.

Emphasizing and distinguishing petty theft from ordinary theft, Winarmo Budyatmojo explained that although the price of the stolen goods is not more than Rp 250, it cannot be a petty theft if it is committed against:

- 1) Theft of livestock;
- 2) Theft in times of disaster such as fire, flood, earthquake, etc.;
- 3) Theft at night, in a house or a closed yard where there is a house, by a person who is there without any right;
- 4) Theft by force.

The Criminal Code that we use today is the result of an adaptation of the Dutch colonial period. The value of the object of the case of articles of minor crimes at that time was only Rp. 25.00 (twenty-five rupiah), so in 1960, the government issued two Government Regulations in place of Law (Perpu) which regulated the adjustment of the value of the object of the case and the fine money in the Criminal Code ([Muhammad Soma Karya, 2013](#)).

Perpu No.16 of 1960 concerning Several Amendments in the Criminal Code changed the nominal object of a case for minor crimes to Rp. 250 (two hundred and fifty rupiah). The articles of minor crimes in question include Articles 364, 373, 379, 384, 407 paragraph (1) and 482 of the Criminal Code. Meanwhile, Perpu No. 18 of 1960 adjusts the value of fines in the Criminal Code to 15 times. However, from 1960 to 2011, the value of the object of the tipping case has never been updated, so it has become less relevant to the development of the times ([Anindyajati et al., 2015](#)). This is where there is a disparity in criminal law, theft with small nominal amounts such as flip-flops, cocoa, firewood, and corn, by investigators and prosecutors prefer to use the provisions of Article 362 (ordinary theft) or theft followed by destruction (if fulfilled) so that the perpetrators can be processed. This phenomenon certainly seriously hurts the values of justice in society ([Handoko, 2021](#)).

The disparity of *sentencing* is the application of unequal penalties to criminal acts (*same offense*) or criminal acts of *comparable seriousness* (*offenses of comparable seriousness*) without a clear basis for justification. Furthermore, without referring to the legal category, criminal disparities can occur in the punishment of those who commit a crime together ([Gulo, 2018](#)). The disparity in punishment has a major impact because it contains a constitutional balance between individual freedom and the state's right to punish or impose sanctions ([Zainab Ompu Jainah, 2018](#)).

Criminal law adheres to the principle of criminal individualization which gives the judge the freedom to adjust the sentence based on the facts, this often causes differences in the judge's decision on similar theft cases. Factors that affect disparities in theft include:

1. Rules of Criminal Law

Article 362 of the Criminal Code (ordinary theft) carries a maximum criminal threat of 5 years in prison and Article 364 (minor theft) is sanctioned by imprisonment for a maximum of 3 months. Both are articles for the crime of theft, the difference is the condition and elements.

2. Judge's Considerations

The judge not only assesses the perpetrator's actions, but also considers the aggravating and mitigating factors, the specific circumstances of the perpetrator, the motive for the theft, and the norms or habits that apply in society. The freedom of judges to apply the principle of criminal individualization is one of the causes of disparity.

3. Law Enforcement Integrity

Starting from the investigation, prosecution, and trial stages, law enforcement officials must be diligent in distinguishing whether the crime of theft is a crime of theft or an ordinary criminal act so that there is no bias in the application of articles 362 and 364. Mistakes in the application of articles are detrimental to both the perpetrators and the victims of the crime itself because the law is not able to meet the community's sense of justice ([Handoko, 2021](#)).

Obstacles and Policies in Law Enforcement of Theft Crimes

Many cases of theft with small goods value are tried in court, and have received public attention. For example, a Scavenger (KH) was sentenced to one year and four months in prison by the Balikpapan District Court in 2024 because it was legally and convincingly proven to have stolen sandals worth tens of thousands. In addition, IS and LS were also convicted by the Stabat District Court for being proven to have stolen oil palm fruits worth Rp. 41,000 and Rp. 500,000, respectively. In this case, the panel of judges sentenced the defendant to three months in prison. However, the prosecutor objected to the verdict because it was too light, by filing an appeal. Indirectly, the Prosecutor has ignored the provisions of Perma Number: 2 of 2012.

The public considers that it is unfair if the case of petty theft is threatened with a five-year sentence as stipulated in Article 362 of the Criminal Code because it is not proportional to the value of the stolen goods. The Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 does not intend to change the Criminal Code, the Supreme Court only makes adjustments to the value of money which is very not following the current conditions. This is intended to make it easier for law enforcement in the process of handling cases ([Anggraeni & Damayanti, 2022](#))

Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012, provides limits and guidelines in the settlement of fraud, including theft with a value of goods below Rp 2,500,000. This regulation aims to provide legal certainty for the perpetrators of fraud to avoid the wrong legal process ([Lestari, 2019](#)). There are several important points in the law enforcement process against petty theft perpetrators, including:

1. Restorative justice can be applied;
2. Suspects are not required to be detained in the investigation process;
3. The trial is carried out through a rapid examination mechanism (Single Judge);
1. The verdict handed down by the Panel of Judges is a probation sentence (for the first time) ([Surbakti & Sitepu, 2024](#))

In conclusion, Perma No. 2 of 2012 has a positive impact on the fulfillment of justice in petty theft cases by providing a more realistic limit on the value of losses, speeding up the judicial process, avoiding unnecessary detention, and encouraging restorative justice. However, its effectiveness depends heavily on the independence, professionalism, and consistency of law enforcement officials in carrying out the trial process ([Albrecht & Bandeira, 2023](#)).

The law enforcement process against theft, especially minor theft, has some obstacles or obstacles (investigation process) including:

1. Value Limitation

Perma Nomor 2 Tahun 2012 menetapkan batasan nilai barang dikategorikan tipiring adalah Rp 2.500.000. Hal ini menyebabkan kasus pencurian dengan nilai di bawah batas tersebut sering tidak ditindaklanjuti secara maksimal. Akibatnya, pelaku cenderung memanfaatkan celah ini untuk melakukan pencurian dengan nilai kecil secara berulang;

2. Lack of Reports and Victim Participation

Because of the light sanctions given to the perpetrators of petty theft, the public is reluctant to report the theft cases they experienced. In addition, the complainant is also often less corporate in the examination process at the police such as being difficult to contact and facing to be asked by the BAP.

3. Resource limitations

The limited number of police personnel and the lack of supporting infrastructure are obstacles for investigators in handling theft cases, especially in large and remote areas. This hinders effective law enforcement efforts.

4. Technical Barriers

In the law enforcement process, investigators often face demands from the public, especially whistleblowers, to immediately establish their status and detain suspects. In fact, in the case of petty theft, the process can be completed through restorative justice and the perpetrator does not have to be detained. Because of this, investigators used the provisions of Article 362 which have a heavier criminal threat than the provisions of fraud.

5. Obstacles in finding evidence and supporting witnesses

Goods that are the object of light looting are items that have a small value, usually the perpetrator has sold the goods. In addition, petty theft is usually not accompanied by a person (witness) who saw the theft directly, so it is difficult to find witnesses other than the complainant and the perpetrator ([Bayu Putro Bintang Pamungkas, 2015](#)).

The community's legal awareness is very influential in building stability, security, and order. The more aware and obedient the people are to the law, the better the order and social order, and vice versa. Therefore, it is important to instill values and a culture of legal awareness in every individual ([Hasibuan, 2013](#)). In overcoming obstacles to law enforcement of theft, effective and evasive legal policies are needed, including:

1. Improving the quality and quantity of law enforcement officials. Increasing the number of personnel, especially in remote areas and or areas prone to theft. In addition, training is needed in order to improve the quality and ability of investigators so that they do not make mistakes in applying the articles of ordinary theft to minor theft.
2. The lack of public knowledge about the mechanism of resolving cases and, the negative stigma against law enforcement officials for not detaining perpetrators of petty theft. Therefore, education and socialization must be carried out to increase public awareness and understanding of the legal mechanism. The public must understand the important substance of Perma Number: 2 of 2012.
3. Settlement of petty theft cases can use restorative justice mechanisms involving perpetrators, victims, families, and community leaders to reach an agreement without going through a lengthy judicial process. This has been regulated in the Prosecutor's Regulation of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecutions Based on Restorative Justice. In this way, the prosecution can be stopped if just peace is achieved between the perpetrator and the victim ([Hutagalung, Mangara & Zarzani, 2022](#)).

Actively carry out legal measures both preventive and repressive (prevention and enforcement), against various forms of crime. For example, the police can conduct intense patrols in theft-prone areas to anticipate the occurrence of criminal acts and maintain security and order ([Hasan et al., 2024](#)).

4. CONCLUSION

The crime of theft is classified into several groups, namely: ordinary theft under Article 362, theft under Article 363, Petty theft under Article 364, and theft with violence under Article 365. In order to be categorized as petty theft and the provisions of Perma Number: 2 of 2012 apply, the value of the stolen goods must not exceed Rp.2,500,000. The cause of disparity in the crime of theft is caused by the difference in sanctions in articles 362 and 364 of the Criminal Code, the judge's consideration at trial, and the integrity of law enforcement officials in distinguishing tipiring from ordinary theft.

Obstacles and policies for law enforcement of theft include: limits on the value of goods, lack of reports and victim participation, limited resources, technical and procedural obstacles, and obstacles in finding evidence and supporting witnesses. To overcome these obstacles, effective legal policies are needed, such as: improving the quality and quantity of law enforcement officials, education and socialization to increase public awareness,

restorative justice, and making repressive and preventive efforts to anticipate the occurrence of crime. In addition, it is also necessary to change legal regulations, whether Criminal Code, government regulations, or judicial institutions to adjust the substance of the crime of theft (both corporal punishment and fines) to the reality that occurs in today's society in order to prevent the occurrence of disparities and legal inequality.

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