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## JURIDICAL REVIEW OF DEFECT COMPLAINTS THEFT IN THE FAMILY BASED ON ARTICLE 367 OF THE CRIMINAL LAW BOOK

**Farahwati, Ekawati, Erwansa Nazara, Ony Rosifany**  
Faculty of Law, University of 17 Agustus 1945 Samarinda

Corresponding author: erwansyahnazara@gmail.com

### ABSTRACT

The crime of theft is a social phenomenon that is always faced by society. Theft is not only committed between perpetrators and victims of theft who do not know each other but there is also theft between people where there is a family relationship in the household. The creators of the Criminal Code also gave special treatment to theft that occurred between people who have family relationships as stipulated in Article 367 Paragraph 2 of the Criminal Code. The research aims to determine the characteristics of the provisions for the offense of theft complaints in the family environment based on Article 367 of the Criminal Code and the consequences of investigating the offense of theft complaints in the family environment. The research was carried out using normative juridical research methods, namely research carried out using library research studying books, statutory regulations, and other documents related to research, and the results of the research shows that based on Article 367 of the Criminal Code it is explained that the perpetrator of theft is in the family Punishment can only be given if there is a complaint from the victim of the theft, so that if there is no complaint from the injured party, then there will be no legal process for the perpetrator of the theft in the family. This is as regulated and explained in Article 367 Paragraph 2 of the Criminal Code, which states that if the person is a husband (wife) who has been freed from the obligation to live at home with his wife (husband), or a family of blood, or a family of the same blood, both in descent. straight, or deviant descent in the second degree, then legal proceedings can only be carried out against the person himself if there is a complaint from the person who has been harmed by the crime committed.

### KEYWORDS:

**Juridical Review, Defect Complaint, Theft In Family.**



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## INTRODUCTION

The Indonesian state is legal as regulated in the Republic of Indonesia Constitution of 1945 in Article 1 Paragraph 3. This means that in the Unitary State of the Republic of Indonesia, law is the life blood of all aspects of state and social life.

Law functions to regulate relations between one human being and another human being and the relationship between countries and citizens so that everything runs orderly. Therefore, the law aims to achieve peace by realizing legal certainty and justice in society [1]. Law is the totality of rules and norms that apply in a shared life that regulate behavior, the implementation of which can be enforced by the presence of sanctions.

Law regulates legal relations consisting of ties between individuals and society and between individuals themselves which are reflected in rights and obligations. In its efforts to regulate, the law adapts individual interests to the interests of society as best as possible. Considering that society itself is made up of individuals who cause interactions, there will always be conflict or tension between individual interests and the interests of individuals and the interests of society. The law tries to accommodate this tension or conflict as best as possible.

Criminal acts or criminal acts that occur in society and crimes against property, especially theft. Print media and electronic media show that theft crimes of various types often occur which are motivated by inadequate living needs and are motivated by the perpetrator's evil intention to commit theft.

Theft in its basic form is regulated in Article 362 of the Criminal Code (KUHP) which states that anyone who takes something, that wholly or partly belongs to another person, to unlawfully possess it, is threatened with a maximum prison sentence. five years or a maximum fine of nine hundred rupiah. Looking at the formulation of this article, the crime of theft is a delict that is formally formulated, where what is prohibited and punishable by punishment is an act, which in this case is the act of taking [3]. Theft offenses are regulated in Articles 362 to 367 of the Criminal Code. Theft offense is the most common offense, listed in all Criminal Codes in the world.

Theft is not only carried out between the perpetrator and the victim of the theft who does not know each other but there is also theft between people where there is a certain family relationship between them. The creators of the Criminal Code also provide special treatment for theft that occurs between people who have certain family relationships as specified in Article 367 Paragraph 2 of the Criminal Code. The offense in Article 367 of the Criminal Code is the offense of theft within the family according to Cleiren, namely taking (wegnemen) means intentionally with intent. There is a purpose for having. The intention must be aimed at controlling the object that he took for himself against his rights.

The research aims to determine the characteristics of the provisions for the offense of theft complaints in the family environment and the consequences of investigating the offense of theft complaints in the family environment.

Laws stated in the form of norms are made to be obeyed, so that if a norm is violated then sanctions will be imposed. The consequence that arises from the implementation of these sanctions is a guarantee from the government or the authorities to provide a sense of security for citizens so that if there are citizens who feel they are in an unsafe situation then the government or the authorities must provide fair legal protection for the citizens. that country. "John Rawls stated that the law is fair if its

application is truly by the spirit of the positive legal system. Because the goal to be achieved by law is justice [2].

## **THEORETICAL FRAMEWORK**

### **1. General Overview of Crime and Sentencing**

#### **1.1 Definition of Crime**

Crime comes from the word *Straf* (Dutch) it can be said to be a suffering that is deliberately imposed or imposed on someone who has been proven guilty of committing a criminal act. According to [4], the term punishment, which comes from the word *straf*, is a conventional term. Moeljatno uses an unconventional term, namely criminal.

The term punishment is a general term used for all types of sanctions in the realm of civil, administrative, disciplinary, and criminal law, while the term criminal is defined narrowly, namely only sanctions relating to criminal law. According to [5] (criminal) punishment is like torture or suffering, which is given by the criminal law to someone who violates a norm determined by the criminal law<sup>14</sup>, and the torture or suffering is imposed by the judge's decision on the person who is blamed. Based on the opinions of legal experts above, it can be understood that the term punishment contains a general meaning as a sanction that is deliberately imposed on someone who has violated the law, both criminal law and civil law. Meanwhile, the term criminal has a special meaning related to criminal law. This means that in the event of a violation of the provisions of criminal law, the perpetrator can be subject to sanctions in the form of a criminal sentence. So to refer to punishment in the field of criminal law, it is better and more appropriate with criminal terms rather than punishment, such as the death penalty, imprisonment, and fine. Likewise, the mention of sanctions in criminal cases is more accurately called punishment rather than punishment.

#### **1.2. Absolute theory and relative theory**

According to [6], the absolute theory views punishment as retaliation for a mistake that has been committed so that it is action-oriented and lies in the occurrence of the crime itself. This theory puts forward that sanctions in criminal law are imposed solely because a person has committed a crime which is the result absolutely must exist as retaliation to the person who committed the crime so that sanctions aim to satisfy the demands of justice.

The basis of this relative theory or objective theory is that crime is a tool for enforcing order (law) in society. According to [5] punishment is not retaliation for the perpetrator's mistakes but is a means of achieving useful goals to protect society towards the welfare of society. Sanctions are emphasized on their purpose, namely to prevent people from committing crimes, so they are not aimed at absolute satisfaction of justice.

#### **1.3. Combined/Modern Theory (Verenigings Theorien)**

Apart from the absolute theory and relative theory above, a third theory has emerged which on the one hand recognizes the existence of an element of retaliation in criminal law. However, on the other hand, it also recognizes the elements of prevention and elements of correcting criminals that are inherent in each crime. This third theory emerged because there were weaknesses in the absolute theory and the relative theory. The weaknesses of the two theories were: weaknesses in the absolute theory. This theory was introduced by Prins, Van Hammel, and Van List with the following views: (a) the most important goal of crime is to eradicate crime as a phenomenon of society; (b) The science of criminal law and criminal legislation must pay attention to the results of anthropological and sociological studies; (c) punishment is one of the most effective things that the government can use to eradicate crime. Punishment is not the only means; therefore it must not be used alone but must be

used in combination with social efforts [7].

## 2. General Overview of Criminal Offenses

In the Criminal Code, the term criminal act uses the words "strafbaar feit about an explanation of what is meant by strafbaar feit." The word feit itself in Dutch means "part of reality" or een gedeelte van de werkelijkheid, while strafbaar means punishable so that the word strafbaar feit can be translated as "part of a reality that can be punished,"<sup>31</sup> which of course is not appropriate, because what can be punished is humans as individuals and not facts, deeds or actions, meaning that Criminal Law is the law that regulates violations and crimes against the public interest. These violations and crimes are threatened with punishment which constitutes suffering or torture for those concerned.

Based on whether or not a complaint is necessary in terms of prosecution, criminal acts are divided into complaint crimes and ordinary crimes. Ordinary crimes (gewone delicten) are "criminal acts for which prosecution of the perpetrator does not require a complaint from the rightful person. Meanwhile, the Criminal Act of Complaints (klacht delicten) is a criminal act in which criminal prosecution can be carried out, it is required that a complaint is first made by the rightful party [8], namely the victim or his representative in civil cases (Article 72 of the Criminal Code) or certain families in cases certain matters (Article 73) or people who are given special authority to make complaints by entitled people. Without a complaint from the party who has the right to complain who is the victim of the perpetrator, a perpetrator cannot be prosecuted.

In principle, the crime of relative complaints is not a complaint offense, but a reporting offense. The difference between a report and a complaint is that a report is a notification submitted by a person because of a right or obligation under the law to an authorized official regarding a criminal incident that has occurred or is being suspected to have occurred (Article 1 point 24 of the Criminal Procedure Code), while a complaint is a notification accompanied by a request by an interested party. to an authorized official to take legal action against a person who has committed a criminal complaint that is detrimental to him (Article 1 point 25 of the Criminal Procedure Code). However, it becomes an offense to complain because it is done within one's own family. Complaints in such cases are necessary to prosecute the people who committed the crime, not to prosecute the crime. In this way, the complaint offense can relatively be split or the prosecution can be split.

## 3. Overview of Theft in the Family

Definition of Theft Theft in Indonesian comes from the basic word "curi" which has the suffix "pe" and the suffix "an" to form the word theft. "The word theft means process, the act of stealing is carried out. Theft is an act that is very detrimental to other people and many people, especially the community around us [9]. Therefore, we must prevent theft from occurring frequently in everyday life, because sometimes theft occurs due to many opportunities. In the Indonesian Dictionary, it is stated that stealing is an act of taking someone else's property in an unauthorized way.

Theft is one of the criminal acts that we often encounter in society, theft is a crime aimed at property and occurs most often in society. This crime is a crime that can shake the stability of security both for and against the souls of society. Theft is the act of taking someone else's property without permission or illegally with the intention of unlawful possession. A person is said to have stolen if all the elements stipulated in the written article on the crime of theft are fulfilled, then that is what is said to be actual stealing to secretly possess another person's property.

## 4. Understanding theft in the family

What is meant by theft within the family as intended in Article 367 of the Criminal Code is

theft committed by the husband or wife and the person who helps carry out the theft, or committed by the family by blood or blood, either in a straight line or a second-degree deviation. Theft in the family is a Complaint Offense. According to [3] the Complaint Offense is an offense that can only be prosecuted if the aggrieved person files a complaint (klachten). The question often arises whether if the police see someone committing a complaint offense, can they act immediately, or do they have to wait for a complaint to come from an interested person? If you look at the law that what depends on the complaint is the prosecution and not the investigation or investigation, then the police as investigating officers (not prosecutors) can act before a complaint is made.

Based on the provisions of Article 367 Paragraph (1) of the Criminal Code, if the husband and wife are still fully married, do not have separate tables or beds, or have separate assets, then theft or assisting in theft committed by them absolutely cannot be prosecuted. So, "if a husband, for example, commits theft or helps (someone else) commit theft of his wife's property, as long as both of them are still tied to their assets, then the husband absolutely cannot be prosecuted, and vice versa applies [8]. However, if a husband or wife commits theft against the wife's or husband's property, there is another person (not in the family) either as the perpetrator or as an accomplice, and then this person can still be prosecuted, even if there is no complaint.

## 5. Overview of Law Enforcement

Law enforcement is an effort to overcome crime rationally, fulfill a sense of justice, and be efficient. To tackle crime, various means of reaction can be given to perpetrators of crime, in the form of criminal and non-criminal legal means, which can be integrated [9]. If criminal means are called upon to tackle crime, it means that criminal law politics will be implemented, namely holding elections to achieve results of criminal legislation that are appropriate to the circumstances and situations at one time and for the future.

Conceptually, the meaning of law enforcement lies in the activity of harmonizing the relationship between values described in stable and embodied rules and attitudes as a series of final stages of value elaboration, to create, maintain, and maintain a peaceful social life.

In enforcing the law, the human factor (officers) becomes an important position. The success or failure of the case resolution process depends greatly on the people. Law enforcement officers who carry out their duties with high dedication, a high sense of devotion, and adequate professional skills will further support the successful implementation of their duties.

Law enforcement comes from society and aims to achieve peace in society. Therefore, viewed from a certain angle, society can influence legal compliance. Indonesian society in particular has certain opinions regarding law.

Society as citizens requires awareness and compliance with laws and regulations. A good law does not guarantee the implementation of the law if citizens' legal awareness and compliance do not support the implementation of the law.

## 6. Responsibility Theory

The definition of responsibility can be interpreted as a state of being obliged to hold onto everything if something happens that can be sued, blamed, litigated, or also a right that functions to receive a burden as a result of one's attitude by another party. "According to law, responsibility is a consequence of the consequences of a person's freedom regarding his actions which are related to ethics or morals in acting [10]. Accountability means the obligation to provide an answer which is an accounting of all things that happen and the obligation to provide compensation for losses that may result.

The concept of responsibility was also put forward by the originator of pure legal theory, namely Hans Kelsen. According to [11] responsibility is closely related to obligation but is not identical. These obligations arise because of the existence of legal rules that regulate and provide obligations to legal subjects. Legal subjects who are burdened with obligations must carry out these obligations as ordered by legal rules. The consequences of not carrying out obligations will result in sanctions. This sanction is a forced action from legal rules so that obligations can be carried out properly by legal subjects. The legal subject who is subject to these sanctions is said to be "responsible" or legally liable for the violation.

Based on this concept, it can be said that responsibility arises from the existence of legal rules that provide obligations to legal subjects with the threat of sanctions if these obligations are not carried out. Such responsibility can also be said to be a legal responsibility, because it arises from the orders of legal rules/laws and the sanctions given are also sanctions stipulated by law, therefore the responsibility carried out by legal subjects is a legal responsibility.

## **7. Crimes of Complaints and Ordinary Crimes**

### **7.1. Crime of Complaints**

The word "delik" comes from Latin, namely delictum. In German it is called delict, in French, it is called delit and in Dutch, it is called delict. In the Big Indonesian Dictionary, the meaning of offense is defined as follows: an act that can be punished because it is a violation of the law or a criminal act. E. Utrecht uses the term criminal incident "because what is reviewed is an event (feit) from the perspective of criminal law. According to Satochid Kartanegara, the elements of an offense consist of objective elements and subjective elements. Objective elements are elements that exist outside humans, namely, an action, a consequence, or a situation. Subjective elements are elements of actions that can be in the form of abilities that can be accounted for [3].

The definition of criminal acts used in Indonesia comes from the Dutch language, namely strabaarfeit, but until now there has been no concept that explains the term strafbaarfeit in its entirety. Until now there has been no agreement between scholars regarding the meaning of criminal acts (strafbaarfeit). "The word "feit" itself means part of a reality or "een gedeelte van de werkelijkheid", while "strafbaar" means punishable, so literally the word strafbaarfeit can be translated as part of a reality that can be punished,"<sup>60</sup> where What can be punished is humans as individuals. Sometimes criminal acts are called delicts, which comes from the Latin word delictum.

The term strafbaarfeit is a whole. Until now there has been no agreement between scholars regarding the meaning of criminal acts (strafbaarfeit). "The word "feit" itself means part of a reality or "een gedeelte van de werkelijkheid", while "strafbaar" means punishable, so literally the word strafbaarfeit can be translated as part of a reality that can be punished [3], where what can be punished is humans as individuals. Sometimes criminal acts are called delicts, which comes from the Latin word delictum.

Criminal acts are differentiated into intentional criminal acts (delik dolus) and negligence (delik culpa). A dolus offense is an offense that contains an element of intent. For example, the crime of murder in Article 338 of the Criminal Code. Meanwhile, a culpa offense is an offense that contains an element of negligence. For example, Article 359 of the Criminal Code concerns someone's negligence which results in someone's death.

Criminal acts are differentiated into single criminal acts and multiple criminal acts. Firstly, it is an offense that can only be committed in one act. This offense is considered to have occurred with

only one act being committed, such as theft, fraud, and murder. Second, there is an offense whose qualification only occurs if the act is carried out several times, such as Article 480 of the Criminal Code which determines that to qualify as an offense of arrest, the arrest must be carried out several times.

A complaint offense is a criminal act for which prosecution is only carried out if there is a complaint from the party affected or harmed. Complaint offenses are divided into 2 (two) types, namely absolute complaint offenses and relative complaint offenses. An absolute complaint offense is an offense that requires an absolute complaint to be prosecuted, such as defamation as regulated in Article 310 of the Criminal Code. Meanwhile, a relative complaint offense is an offense committed within the family environment, such as theft within the family which is regulated in Article 367 of the Criminal Code.

## **7.2. Ordinary crime**

Ordinary crime is the simplest form of crime, without any aggravating elements as in Article 362 of the Criminal Code concerning theft. "A criminal case that can be processed without the consent or report of the injured party (victim). In ordinary offenses, even though the victim has reconciled with the suspect, the legal process cannot be stopped. The legal process continues until it reaches court [12]. Examples include Article 338 of the Criminal Code concerning murder and Article 362 of the Criminal Code concerning theft. Meanwhile, a qualifying offense is a criminal act in the main form which is added with an aggravating element,"<sup>64</sup> so that the criminal threat becomes aggravated as in Article 363 of the Criminal Code and Article 365 of the Criminal Code which is a qualifying form of the theft offense in Article 362 of the Criminal Code.

## **RESEARCH METHODS**

The method used is a legal research method carried out in a normative juridical manner, namely law that is conceptualized as written in laws and regulations (Law in Books) or law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate [13]. This type of research is descriptive qualitative, namely research based on general theories or concepts allocated to explain material devices. The approach used in this legal research is the statutory approach. The legal sources used are: (1) primary legal materials: the 1945 Republic of Indonesia Constitution and the Criminal Code; (2) secondary legal materials: derived from literature, legal journals, print and electronic media, and books that discuss key issues in legal research; and (3) tertiary legal materials, namely: legal dictionaries and large Indonesian dictionaries.

The legal materials that have been collected and processed will be analyzed. The analysis of the legal materials used in this writing is descriptive qualitative.

## **RESULTS AND DISCUSSION**

### **1. Characteristics of the Provisions for Theft Complaints in the Family Environment Based on Article 367 of the Criminal Code**

Article 367 paragraph 2 (two) of the Criminal Code states that theft in the family is one part of the crime of complaint. Even though theft itself is an ordinary offense, when the theft occurs within the family, the theft, which was initially just an ordinary offense, turns into a complaint offense. In the sense that the perpetrator of theft in the family can only be charged criminally if there is a complaint from the victim of the theft. So if there is no complaint from the injured party, there will be no legal sanctions for the perpetrator of theft in this family.

Theft within the family as referred to in Article 367 of the Criminal Code is theft committed by the husband or wife and the person who helps carry out the theft, or committed by blood or related blood relatives, either in a straight line or in the second degree.

The elements contained in Article 367 of the Criminal Code. In paragraph (1) of Article 367 of the Criminal Code, the first element is the maker (perpetrator) or assistant. When we mention the maker (dader), then, of course, this is related to Article 55 of the Criminal Code, while the assistant (medeplichtige) is related to Article 56 of the Criminal Code. Article 56 of the Criminal Code reads as follows: Sentenced as an accomplice (medeplichtige) of a crime: 1st. those who deliberately assist when a crime is committed. 2nd. those who deliberately provide opportunities, means, or information to commit crimes; the second element of Article 367 of the Criminal Code is: that the perpetrator or accomplice is the husband or wife of the person affected by the crime. So, if the husband commits the theft, then he is the husband of the wife who was affected by the crime or who was the victim. On the other hand, if the wife commits theft, then she is the wife of the person affected by the crime or the victim; and the third element of Article 367 of the Criminal Code is that the husband and wife are not in the status of separate tables and beds, and are not in the status of separate assets. This means that the husband and wife are still married and their marital property is joint property (gemeenschaap van goederen). For example: there is theft of goods in a family. After an examination, it turned out that the husband was the one who committed the theft, while the wife was the victim. The husband has committed theft and fulfills all the elements contained in Article 362 of the Criminal Code. The question is: whether the husband who committed the theft can be prosecuted and punished.

In cases like this example, the husband cannot be charged with committing theft within the family as regulated in Article 367 paragraph (1) of the Criminal Code. Likewise, if the wife commits theft in the family. Because the husband and wife are not in a state of separate tables and beds and are not in a state of separate assets, the wife who commits theft in the family cannot be prosecuted or punished. From an academic perspective, the question that arises is: What is the basis or reason for the legislators to determine that theft committed by a husband or wife in a family that is still bound by marriage and whose assets are not separated cannot be punished. This is also based on morals. It is an appropriate act for two people: a man and a woman who are bound by marriage as husband and wife, to be pitted by the prosecutor as public prosecutor against each other before a court hearing on charges that one of the parties committed theft or assisted in committing theft. This is contrary to decency in society and therefore this kind of theft is designated as a complaint offense and not as an ordinary offense.

This condition is an alternative and not a cumulative condition, meaning that one is either a separate table and bed or separate assets and not both. In cases like this, theft in the family can only be prosecuted if there is a complaint from the husband or wife who was affected by the crime or who was the victim. For example, if the husband commits theft, then the wife must make the complaint. Likewise, vice versa, if the wife commits theft in the family, then the husband must complain. Without a complaint, there will be no prosecution because a complaint from the party who feels disadvantaged is a requirement for prosecution. Likewise, if the person who commits theft in the family is blood or blood relatives, either in a straight line or in a second-degree deviation. What is meant by blood family in a straight line in the second degree is: upwards: father and grandfather/mother and grandmother. Below are children and grandchildren. Father/Mother and child are the first degree, while grandfather and grandson are the second degree in a straight line. Meanwhile, siblings or siblings in the second degree of deviation are brothers, sisters, mother's brothers, and father's brothers, both male and female, sons and daughters (nieces). These people, if they commit theft within the family, can only be prosecuted if there is a complaint from the party who feels they have been harmed. For example, in a family, there is a theft committed by a child from that family. Here the victims are father and mother or husband and wife. And because they are the ones affected by the crime or are the victims, if they want the perpetrators of the theft to be prosecuted,



then the husband and wife/father and mother are the ones who must make the complaint. As has been explained, some complaint offenses are absolute and some are relative. Which types of complaint offenses are in Article 367 of the Criminal Code? The difference between absolute complaint offenses and relative complaint offenses is the difference in nature. The complaint in the absolute complaint offense is directed against the act itself and its "fait", whereas in the relative complaint offense, the complaint is directed against a particular person who committed a criminal act and not against the criminal incident. By using these criteria, the complaint offense referred to in Article 367 Paragraph (2) of the Criminal Code is a type of relative complaint offense, because the complaint is directed at the person who committed theft in the family, for example, a husband and wife or who are in separate table status. and bed or separation of assets, or family by blood or marriage either in a straight line or sideways.

Article 367 Paragraph (3) of the Criminal Code stipulates that if according to the matriarchal institution, the father's authority is exercised by someone other than the biological father, then the rule in the paragraph above also applies to that person. [14] formulated: "If according to the customs of the mother's lineage, the father's authority is exercised by someone other than the biological father, then the provisions in the second paragraph also apply to that person."66 Paragraph (3) Article 367 of the Criminal Code respects the laws of Customs that apply in Indonesia as laws that live in Indonesian society. This is proven by the recognition of the existence of customs in certain ethnic groups in Indonesia, especially in determining lineage.

Especially in societies that draw the line of descent through the mother (matriarchal), the father's authority is exercised by someone other than the biological father, for example through uncles. Thus, in a customary law community that draws its lineage through the mother (for example in the customary law community in Minangkabau), the uncle who replaces the position of the biological father has the same position as the biological father, meaning that he can make a complaint if in that family There is theft committed within the family, for example theft committed by the same blood or blood relatives, whether in a straight line or a line deviated from the second degree. The uncle's position as a substitute for the biological father is seen as the same as the position of the biological father himself. This is confirmed in Article 367 Paragraph (3) of the Criminal Code.

## **2. Consequences of investigating theft complaints in the family environment**

It needs to be emphasized that every incident that is known or reported or that is complained about to police officials, is not necessarily a criminal act. Complaints are one of 3 sources of action so that the process of action in criminal procedural law can begin immediately. We can find the definition of complaint in Article 1 point 25 of the Criminal Procedure Code. The key word is that the complaint is made by an interested party. Therefore, complaints can only be made by parties who feel their rights have been harmed by other people, such as the victim, the victim's family, or a lawyer appointed by the victim. Complaints are made as a form of notification or request that the injured party receive legal justice, where the police official must act as an investigator who is obliged to immediately take the necessary action, namely action to determine whether or not an investigation can be carried out.

About Article 102 Paragraph (2) of the Criminal Procedure Code regarding being caught redhanded and its connection with cases of complaint offenses (theft within the family), even though there has been no complaint from interested parties, the police are not prohibited from conducting investigations. For those who have the right to conduct or know about it but do not, investigators can only carry out their investigations while prosecution cannot be carried out. In terms of investigations, things that investigators can do are:

### **(1) Examination of the suspect**

The investigation of the suspect carried out by investigators must be made into an official report. Where the minutes are signed by the suspect/witness and by the investigator himself. Article 75 of the Criminal Procedure Code determines that for all actions such as examining suspects, arresting, detaining, searching, entering a house, confiscating objects, examining documents, examining witnesses, and examining the scene of the incident. The implementation of court rulings and decisions, and the implementation of other actions by the provisions of this law, must be made into minutes.

Apart from being signed by the investigator, the minutes of the event are also signed by all parties involved in the action. If the investigation report is not signed by the suspect, the investigator will record this in the report and state the reason in Article 118 Paragraph 2 of the Criminal Procedure Code.

### **(2) Termination of investigation**

If the investigator stops the investigation, the investigator will notify the Public Prosecutor of this matter. The valid reasons for stopping the investigation are: (a) There is not enough evidence; (b) The incident turned out not to be a criminal act; and (c) There are no complaints/complaints withdrawn in the event of a criminal complaint.

### **(3) The course of the investigation**

Before starting an examination of a suspect, the investigator is obliged to inform the suspect of his or her right to obtain legal assistance. When an investigator examines a suspect, the legal advisor can follow the course of the examination by seeing and hearing the examination. The suspect gave information to investigators without any pressure from anyone or in any form whatsoever under Article 117 Paragraph (1) of the Criminal Procedure Code. Information is given by the suspect to investigators about what he did with the crime he is accused of.

### **(4) Witness Examination**

To examine cases, investigators can examine witnesses. Witnesses who are examined at the investigative level give their statements without being sworn in first unless it is suspected that the witness will not appear at the examination at the district court. Witnesses give statements without pressure from anyone and in any form. The information given by the witness is also recorded in the minutes which are signed by the investigator and the person giving the information after he agrees, and if the witness does not want to sign the minutes, then the investigator records this in the minutes by stating the reasons. To explain the results of the examination carried out by the investigator for the witness.

So even though an offense is a complaint offense, in this case in the form of a criminal act of theft within the family, to investigate the offense, it does not necessarily require that there be a complaint, but to be handed over to the public prosecutor for prosecution there must be a complaint first by the injured party. Investigators carry out investigations into complaint offenses (theft within the family) by what has been stipulated in the Law without any additions changes or reductions.

## **CONCLUSIONS AND RECOMMENDATIONS**

### **1. Conclusion**

- a. Theft in the family is a complaint offense, where the perpetrator of the crime can be prosecuted if there is a complaint from the person who suffered as a result of the crime. In this offense the absolute complaint that is complained against the perpetrator is his actions and the relative complaint that is complained about is the person. Although in principle theft is an ordinary crime, in some types of theft such as family theft as regulated in Article 367 of the Criminal Code, the

legislators stipulated theft as a complaint crime (klacht delict), namely theft which can only be prosecuted if there is a complaint from the injured party. The types of investigations contained in Article 367 of the Criminal Code are relative investigations, investigations of the person who committed the theft, and absolute investigations, namely the actions.

- b. Police officials as investigators are obliged to take the necessary actions, namely actions to determine whether or not an investigation can be carried out. Therefore, concretely it can be said that an investigation begins after a criminal act occurs to obtain information about What criminal act was committed when the crime occurred. the crime was committed, where the crime was committed, what the crime was committed, how the crime was committed, and who did it. Investigators in conducting investigations into complaint offenses (theft within the family) must be by what has been stipulated by law without any additions changes or reductions.

## 2. Suggestions

- a. It is best for parents as heads of families to provide moral guidance to their families, both wives and children. So that every evil act that could harm other people can be carried out. Therefore, parents must also be more careful and pay attention to the economic aspect, because the economic impact can influence everyone to commit crimes. Therefore, every family that lives in the same house or even separate houses should respect each other and advise each other, so that a family can be achieved that is harmonious and dignified and far from evil, which is not what every family wants.
- b. As law enforcers, you should be firm in handling cases and not discriminate, however, if the casebeing processed is a complaint or theft within the family, it would be best for law enforcement officials to provide an opportunity for both the injured parties and the perpetrator to make peace through mediation if this action occurs. does not produce results, then the perpetrator must be processed by the applicable law.

## **BIBLIOGRAPHY**

### **Books**

- [1] Sudikno Mertokusumo, 2007, Getting to Know the Law, an Introduction, Yogyakarta.
- [2] Abdussalam, 2006, Prospects for Indonesian Criminal Law. Sinar Graphics, Jakarta.
- [3] P.A.F Lamintang & C. Djisman Samosir, 2002, Special Offenses for Crimes Aimed at Property Rights and Other Rights Arising from Property Rights, . Tarsito, Bandung.
- [4] Muladi and Barda Nawawi Arief, 2005, Criminal Theories and Policies. Alumni, Bandung.
- [5] Andi Hamzah, 2008, Principles of Criminal Law. Rineka Cipta, Jakarta.
- [6] Zainal Abidin Farid. 2007. Criminal Law I. Sinar Graphics, Jakarta
- [7] Djoko Prakoso, 2002, Indictment Letter, Criminal Charges and Case Examination in the Criminal Process. Liberty, Yogyakarta.
- [8] Moeljatno, 2005, Criminal Acts and Accountability in Criminal Law. UGM Press, Yogyakarta.
- [9] Barda Nawawi Arief, 2002, Criminal Law Policy. PT Citra Aditya Bakti, Bandung.
- [10] Department of Education and Culture, 2006, Big Indonesian Dictionary, Balai Pustaka, Jakarta.
- [11] Hans Kelsen, 2008, Pure Theory of Law, Translation, Raisul Muttaqien, Pure Theory of Law: Basics of Normative Legal Science, Sixth Printing. Nusa Media Publisher, Bandung.
- [12] Ridwan Hasibuan, 2005. "Criminology in the Narrow Meaning and Forensic Sciences", USU Press, Medan.
- [13] Amiruddin & Zainal Asikin, 2012, Introduction to Legal Research Methods. Raja Grafindo Persada, Jakarta.
- [14] R. Soesilo, 2010, Criminal Law Theories. Politea, Bogor.
- [15] Zainal Abidin Farid, 2009, Criminal Law 11. Sinar Graphics, Jakarta.

### **Regulation**

Republic of Indonesia Constitution of 1945  
Criminal Code (KUHP)