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CRIMINAL LIABILITY IN THE ACT OF THEFT (VIDE ARTICLE 362 KUHP) OF GOLD WHICH IS COMMITTED ON A CONTINUOUS BASIS (VOORTGEZETTE HANDELING VIDE ARTICLE 64 KUHP)

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ABSTRACT

Continuing actions are a combination of several actions committed by a person, where between one action and another action there has never been a judge's decision that has permanent legal force, so that the perpetrator is subject to a certain method of punishment, as stipulated in article 64 of the Criminal Code. This combined form in Dutch is known as "Voortgezette Handling". The form of continuous action can be identified if a person commits several actions and some of these actions are separate crimes but among these actions, there is such a close relationship with one another that several of these actions must be considered as one continuous action. Continued theft is explained in Article 362 of the Criminal Code Jo Article 64 Paragraph (1) of the Criminal Code. The formulation of the problem in this study is how is the legal responsibility for the crime of gold theft by continuing Article 362 of the Criminal Code in conjunction with Article 64 paragraph (1) of the Criminal Code and law enforcement for the crime of gold theft by continuing Article 362 of the Criminal Code in conjunction with Article 64 Paragraph (1) of the Criminal Code.

The type of method applied in this research is normative legal research, where normative legal research is a scientific research procedure to find truth based on scientific logic from a normative perspective. using a statutory regulation approach is analyzed using qualitative normative methods with inductive logic, namely thinking from specific matters to general matters. Criminal responsibility is the responsibility of a person for the crime he has committed. Strictly speaking, that person is responsible for the crime he committed. Thus, the occurrence of criminal liability because there has been a criminal act committed by someone. Criminal responsibility is essentially a mechanism built by criminal law to react to violations of the "agreement to refuse" a certain act.

Law enforcement by the Pasuruan Police through investigation and investigation the conclusion that it is strongly suspected that the suspect has violated Article 362 of the Criminal Code in conjunction with Article 64 Paragraph (1) of the Criminal Code. Meanwhile, the basis for the judge's consideration in deciding the case is that the legal facts that emerged during the trial, prove that all the elements of Article 362 Jo. Article 64 paragraph (1) of the Criminal Code has been fulfilled, so the Defendant must be legally and convincingly proven to have committed the crime as charged in the Public Prosecutor's single Indictment..

Keywords: criminal liability; theft; continuing action.

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INTRODUCTION

The Republic of Indonesia is a state of law, as stated in Article 1 (3) of the 1945 Constitution. As a result, the government and law enforcement can only take actions that are by the law. In particular, the contents of the Criminal Code are implemented in the Criminal Procedure Code (KUHP) and other applicable laws and regulations in Indonesia.

Theft is by far the most common form of property crime. It is a crime that threatens the public safety and inner peace of its victims¹. According to the routine activity approach, crime occurs when potential victims, motivated offenders, and the absence of guardianship meet in space and time ^{2,3}.

In the context of an imperfect rule of law, crime inflicts significant welfare losses ^{4,5} and imposes economic costs, with companies shifting labor toward security ⁶, and farmers invested in the relationship ⁷ to reduce the risk of theft. Fear of theft also influences other business decisions, such as merchants keeping less-than-optimal stock to reduce vulnerability ^{8,9}.

Theft is a universal problem across many sectors. For example, employee theft exists in the restaurant and retail industries ^{10,11,12,13}; tree theft has been a persistent

¹ Rusmiati. (2017). Konsep Pencurian dalam Kitab Undang-undang Hukum Pidana dan Hukum Pidana Islam. *Syiah Kuala Law Journal*, 1(1), p. 340.

² Cohen, L. E., & Felson, M. (1979). Social Change and Crime Rate Trends: A Routine Activity Approach. *American Sociological Review*, 44(4), pp. 588-608.

³ Song, G. W., Cai, L., Liu, L., Xiao, L. Z., Wu, Y. H., & Yue, H. (2023). Effects of Ambient Population with Different Income Levels on the Spatio-Temporal Pattern of Theft: A Study Based on Mobile Phone Big Data. *Cities*, 137, pp. 1-13.

⁴ Soares, R. R. (2015). Welfare Costs of Crime and Common Violence. *J. Econ. Stud.*, 42(1), pp. 117-137.

⁵ Fafchamps, M. & Minten, B. (2009). Insecurity and Welfare: Evidence from County Data. *J. Dev. Stud.*, 12(4), pp. 625-671.

⁶ Besley, T. & Mueller, H. (2018). Predation, Protection, and Productivity: A Firm-Level Perspective. *American Economic Journal: Macroeconomics*, 10(2), pp. 184-221.

⁷ Schechter, L. (2007). Theft, Gift-giving, and Trustworthiness: Honesty is Its Own Reward in Rural Paraguay. *Am. Econ. Rev.*, 97(5), pp. 1560-1582.

⁸ Butinda, L. D., Lameke, A. A., Nunn, N., de la Sierra, R. S., & Winkler, M. (2020). *Traditional Belief Systems and Economic Behavior: Evidence from Beer Retailers in the Eastern DRC*.

⁹ Dyer, J. (2023). The Fruit (and Vegetables) of Crime: Protection from Theft and Agricultural Development. *Journal of Development Economics*, pp. 163, 1-15.

¹⁰ Broun John, I., Konya, K. T., & Ejo-Orusa, H. (2019). Employee Dissatisfaction and Workplace Theft of Retail Firms in Port Harcourt, Nigeria. *Int. J. Adv. Acad. Res.*, 5, 44-57.

¹¹ Goh, E., & Kong, S. (2018). Theft in the Hotel Workplace: Exploring Frontline Employees' Perceptions towards Hotel Employee Theft. *Tour. Hosp. Res.*, 18, 442-455.

¹² Poulston, J. (2008). Rationales for Employee Theft in Hospitality: Excuses, Excuses. *J. Hosp. Tour. Manag.*, 15, 49-58.

¹³ Shighihara, A. M. (2013). It's Only Stealing a Little a Lot: Technique of Neutralization for Theft Among Restaurant Workers. *Deviant Behav.*, 34, 494-512.

activity since the start of commercial extraction^{14,15}; theft of agricultural products is done to reduce hunger¹⁶; theft of agricultural products is done to reduce hunger^{17,18}; and oil theft is spreading globally, occurring in many developing and developed countries^{19,20,21}. From a legal perspective, theft is defined as the illegal taking of a person's property or services without the owner's consent. Two key elements constitute the crime of theft, including taking property from the rightful owner and having the intent to permanently deprive the rightful owner of the property²².

Chapter 22 of Book II of the Criminal Code addresses theft as a crime; and is linked to Articles 362-367 of the Criminal Code for property crimes. The maximum penalty is five years imprisonment or IDR 900,000.²³

The formulation of the article makes it clear that stealing is an unlawful act with tangible consequences; in this case, stealing is defined as "taking", which translates to "zich toeigenen" with "possession", but as we will see below, "zich toeigenen" means something very different from the concept of "possession", which is widely used in the Dutch

The criminal element in the crime of theft has two possible interpretations, namely a narrow interpretation and a broad interpretation²⁴. Petty theft, for example, fulfills the requirements of Article 362 of the Penal Code, thus constituting a crime in the truest sense. Theft is an example of the more general types of crimes governed by the Penal Code and broken down into the following five buckets:

1. "Ordinary theft (Article 362 of the Criminal Code);
2. Theft with aggravation (Article 363 of the Criminal Code);
3. Petty theft (Article 364 of the Criminal Code);

¹⁴ Klooster, D. (2000). Community Forestry and Tree Theft in Mexico: Resistance of Complicity in Conservation? *Dev. Change*, 31, 281-305.

¹⁵ Pendleton, M. R. (1997). Looking the Other Way: The Institutional Accommodation of Tree Theft. *Qual. Sociol.*, 20, 325-340.

¹⁶ Xu, Z. (2022). The Conceptual Basis of Farmers' Action: A Case Study of Crop Theft on a Corporate Farm. *Sci. Stud.*, 182-205.

¹⁷ Sharma, T., Pandey, K. K., Punia, D. K., & Rao, J. (2016). Of Pilferers and Poachers: Combating Electricity Theft in India. *Energy Res. Soc. Sci.*, 11, 40-52.

¹⁸ Wong, J., Chun, Y., Blankenship, B., Urpelainen, J., Ganesan, K., Bharadwaj, K., & Balani, K. (2021). Perceptions and Acceptability of Electricity Theft: Towards Better Public Service Provision. *World Dev.*, 140.

¹⁹ Akpomera, E. (2015). International Crude Oil Theft: Elite Predatory Tendencies in Nigeria. *Rev. Afr. Polit. Econ.*, 42, 156-165.

²⁰ Berbotto, A. A. & Chainey, S. (2021). Theft of Oil from Pipelines: An Examination of Its Crime Commission in Mexico Using Crime Script Analysis. *Global Crime*, 22(4), 265-287.

²¹ Romsom, E. (2022). Global Oil Theft: Impact and Policy Responses. *The United Nations University World Institute for Development Economics Research (UNU-WIDER)*, 16, 1-45.

²² Yang, X. Y., & Chen, Q. P. (2023). Property Rights and Theft Wrongs? A Preliminary Analysis of Stealing in the Extractive Industries. *The Extractive Industries and Society*, 15, 1-8.

²³ Rusmiati. *Op. Cit.*

²⁴ Lamintang, P. A. F. (1997). *Dasar-dasar Hukum Pidana Indonesia*. Bandung: Citra Aditya Bakti.

4. Theft with violence (Article 365 of the Criminal Code); Theft in the family (Article 367 of the Criminal Code)".

Continued theft in the Criminal Code is described in Article 64 which reads:

1. The most severe criminal punishment shall apply where there is a difference in punishment between two or more acts that together constitute a crime or an illegal act but are related and shall be considered as a continuous act.
2. Similarly, a person may only be subject to one set of criminal regulations if they are found guilty of using damaged or counterfeit goods and counterfeit currency.
3. However, the following are punishable, if the crime committed by the offender in violation of Articles 364, 373, 379, and 407 paragraph 1, is a continuous act and the value of the loss is more than Rs.375: Offenses under Article 362 which are also covered by Articles 373, 378, and 406.

The first step to taking further action is to make a conscious choice to do so. The categories of action are identical. According to him, the judge's decision is by the rules²⁵:

1. "There is unity of will;
2. The acts are of the same kind; and
3. The time relationship factor (the distance is not too long)"

On Friday, February 5, 2021, gold was stolen from the gold shop "SEMAR" in Pasurua. The suspect admitted to committing the theft between Friday, January 2020, at 8:30 a.m. and Friday, February 5, 2021, at the same time each day. When he first opened the "SEMAR" gold shop in Pasuruan, the suspect stole gold jewelry at least five times a month, including necklaces, earrings, pendants, and bracelets. This is likely due to the suspect's habit of stealing gold jewelry so often that he began to forget what he had stolen. The owner of the gold shop "SEMAR" in Pasuruan suffered a loss of Rp140,000,000 (one hundred and forty million rupiah) as a result of the incident. The article is responsible for criminal abuse as defined by Article 362. Criminal Code, Article 64.

Police investigations can lead to a single criminal suspect as referred to in Article 362 of the Criminal Code and multiple criminal suspects as referred to in Article 64 Paragraph 1 of the Criminal Code:

1. Who;
2. "Takes a Thing;
3. Which Partly or Wholly Belongs to Another;
4. With Intent to Unlawfully Possess;

²⁵ Hamzah, A. (2008). *Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika.

5. If between several acts, although each of them constitutes a crime, it must be considered as a continuing act";

From the background of the problem, the author will conduct thesis research with the title "Legal Liability for the Crime of Gold Theft with Continuing Acts Article 362 of the Criminal Code Jo Article 64 Paragraph (1) of the Criminal Code". This research seeks to clarify who is responsible when gold is stolen repeatedly and how this case is handled by law enforcement

RESEARCH METHODS

This paper uses a normative legal research strategy to answer the questions it poses. That is, a method of inquiry that uses pre-existing legal norms to understand how they may change the situation and suggest a way forward to address a particular legal issue²⁶.

The Statute Approach is used to solve the problems encountered in this research by reviewing all applicable laws and regulations. The legal sources consulted for this research came from primary and secondary legal sources. Legal Material Collection Methods, desk research is what we call "legal data", and it involves looking into the laws relating to the topic at hand to formulate a research question. Legal Material Analysis Method, Based on the study findings presented in the descriptive report, we can classify it as an analytical work. It is analytical because the research questions will be addressed through a multifaceted examination of the research findings from a legal perspective. The normative and qualitative approach in analyzing legal materials consists of collecting legal materials as answers to the research questions, conducting qualitative analysis, and drawing conclusions to answer the questions.

DISCUSSION

Criminal Responsibility in the Act of Theft (Vide Article 362 of the Criminal Code) of Gold Committed in Continuity (*Voortgezette Handling* Vide Article 64 of the Criminal Code) *Provision of Continuing Offense Article 64 Paragraph (1) KUHP*

According to Article 1 section 64 of the Penal Code, a series of acts is any series of acts committed by the same person, which has not been intervened by a judge to nullify the legal force of any of the acts. In the Netherlands, this is known as "*Voortgezette Handling*", and is codified in Article 64 paragraph 1 of the Criminal Code. This provision states that if multiple acts (even if each is an offense or offenses) are related in many

²⁶ Ibrahim, J. (2015). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing.

ways, they are treated as a single act, and only the criminal law applies if a different rule containing harsher penalties is imposed.

Legal expressions and regulations do not provide a clear definition of the continuation of the act or process of voting. The requirement that certain acts must be connected to it is not spelled out in the law, as argued for example by Dr. P.A.F. Lamintang, SH and C. Djisman Samosir, SH. One explanation for this connection is that the events occurred simultaneously or in the same location. Voortgezette processing, also known as continuous action, is defined by the Hoge Raad as the repetition of the same action while achieving the same goal. When he was arrested in New Jersey on October 19, 1932, the Hoge Raad and other officers believed that this was the case."

The provisions of Article 64 of the Criminal Code only imply that continuous acts are acts that have such a relationship without explaining or emphasizing the nature of the relationship, so the definition of continuous acts is still ambiguous. According to the above authors, there are many possible interpretations of this relationship because it can be viewed from multiple points of view. In addition, one can argue that there is a connection due to external factors such as time, location, etc.

Based on the connection between the acts, the Criminal Code treats them as a single criminal offense under Article 64 paragraph 1. Therefore, the multiple operations performed should be counted as a single operation. Some of these things have happened, and some of them have been broken.

There are only three conditions for continuing an act under criminal law, which are as follows.²⁷:

1. One must act with the forbidden intention (wilbesluit) and take no more than a reasonable time between each act.
2. Secondly there are groups of behaviors that share characteristics.

When a person commits multiple crimes, some of which are independent of each other but are so related that they should be treated as one continuous act, this is known as "form". There are three prerequisites for the presence of "Folgate care" which is characteristic of continuous acts.²⁸:

1. The existence of a single volitional decision

In terms of persistent behavior, many actions ultimately lead to illegal acts. Instead of being based on the intention of the perpetrator on a case-by-case basis, subsequent crimes stem from an initial determination of will formed before the commission of the first crime. Once the criminal disposition has been established,

²⁷ Ariman, R. & Raghieb, F. (2016). *Hukum Pidana*. Malang: Setara Press.

²⁸ Ali, M. (2015). *Dasar-Dasar Hukum Pidana*. Jakarta: Sinar Grafika.

it proceeds to subsequent behavior. This free choice is at the core of every criminal act.

2. Criminal acts must be of the same kind

What is meant by "conduct" in "continuing conduct" is not the meaning of material conduct nor is it conduct in the sense of the elements of a crime, but rather conduct that results in a crime. In this context, "conduct" refers to conduct that meets all the legal requirements for the designated criminal offense.

The crime, the elements of the object of the crime, the effect of the act, the object itself, and the accompanying circumstances are all listed in Article 64 paragraph 1 of the Criminal Code. acts and others, are a collection of factors that when taken together constitute a criminal offense within the meaning of the law.

3. The time interval between one criminal offense and the next should not be too long.

However, legal experts do not specify the length of the action given the time limit mentioned in Article 64 paragraph 1 of the Criminal Code. This constant movement can last for years, but each subsequent movement must be relatively close together. Because it will be difficult to establish a causal link between the crime and the decree in the original will, or between the crime and another (similar) crime if too much time passes. That is, if the clock has been ticking for a very long time, it may no longer depict a continuous process but rather a series of actions that have been repeated. The law still uses an ad hoc system of punishment, which imposes penalties based on specific criminal sanctions outlined in the specific legal provisions that were violated. Only one offender, at most, should face the most severe punishment under the law.

Legal Responsibility of the Defendant in the Crime of Theft (Vide Article 362 of the Indonesian Penal Code) of Gold Committed Continuously (Voortgezette Handeling Vide Article 64 of the Indonesian Penal Code)

Criminal responsibility refers to the responsibility that a person bears for the crimes committed by him. Strictly speaking, this man is responsible for the crime he committed. Thus, criminal responsibility arises because a person has committed a criminal offense. Criminal responsibility is essentially a response mechanism established by criminal law to the violation of certain "agreed refusal" behaviors.²⁹

Any person who violates the law and must bear the consequences of his actions is said to have criminal responsibility. In other words, if a person commits a crime, he is liable if he is found guilty; if a person commits an act from a social point of view, he or

²⁹ Huda, C. (2006). *Dari Tiada Pidana tanpa Kesalahan Menuju kepada Tiada Pertanggungjawaban Pidana tanpa Kesalahan*. Jakarta: Pranada Media.

she is guilty if proven to have done so. Conventional judgment of a person's shortcomings.

Responsibility for fault is not part of the definition of crime. When we talk about criminal acts, we are only referring to acts that are illegal and carry criminal penalties. If the offender is found guilty, then they have the right to face the consequences of their actions.

Offenders can express disapproval of wrongdoing because, from society's perspective, they have alternatives if they don't want to engage in it. If someone commits a crime, it can be said that they did something wrong, and from society's perspective, they deserve to be punished. But why would they do something so harmful to society? He can understand the significance of this behavior and even forget about it if he wishes.

A person must have both the prohibited outward act (criminal offense) and the evil/shameful mental attitude (*mens rea*) to be punished. A person with *mens rea* may be motivated by malice, recklessness, or indifference.

Mental fallacy holds an actor accountable for his or her actions by emphasizing the connection between the actor's mental state and the act, but it is rare in legal practice because of the complications it brings. When it comes to the building blocks of crime, there is no "willful" or "negligent". Current criminal law does not require the element of "willfulness" or "negligence" to constitute an unlawful or criminal act. This raises the question, "Is intentionality or negligence not yet a crime so that even if there is no unlawful act, the perpetrator is still punished?" in the context of actual legal practice. The emergence of this inquiry calls into question the efficacy of pseudo-psychological explanations for the problem of culpability.

From what has been mentioned above, it can be said that error consists of several elements, namely:

1. The maker must be of sound mind to be responsible to them (*schuld-fahigkeit* or *Zurechnungsfahigkeit*).
2. Whether the connection between the offender and the act is intentional (*dolus*) or careless (*culpa*), we classify this as an offense.
3. Third, forgetting or forgiving past offenses is pointless.

The above three elements must be present before a person is found guilty or criminally responsible and punished accordingly. Criminal offense is considered by many to be a factor that determines guilt, but its precise meaning is hotly debated among academics. According to van Hamel, guilt in criminal behavior lies in the "psychological understanding" of the offender, or the relationship between the offender's personal history and the peculiarities of his crime that he manifests through his behavior. In Dutch, "guilt" translates to "legal responsibility", or "*verantwoordelijkeheid rechtens*".

To punish a criminal, the concept of criminal responsibility must be fulfilled. In doing so, the offender's own interests must be taken into account in accordance with the principle of monism (daad en bader strafrecht). If the offender meets the criteria for punishment, then the process is legitimate and the crime can be committed. The rule of law and its institutions are useless if this condition is ignored and the creator is not guilty of any crime.

Criminal responsibility is the legal system's mechanism for responding to violations of certain "agreed refusal" norms of behavior. According to Sudato, if someone violates or breaks the law, the punishment is not severe enough. Therefore, even if the act is against the law and not justified, it still does not meet the criteria for punishment. There are conditions for punishment, such as the guilt or innocence of the actor. The actor must take ownership of his actions, or his actions must be responsible to no one but himself.

As Roscoe Pound said, "I... use the simple word "responsibility" to describe the situation in which one person is legally accurate while another is legally levied," referring to the concept of responsibility or duty in legal philosophy. By "criminal responsibility" he meant the duty of the offender to take revenge on the victim, and by "moral values or moral issues", he meant that the burden of guilt goes beyond the realm of legal good social behavior.

The idea of criminal responsibility has been put forward by many experts, not just Roscoe Pound:

1. According to Simmons, one definition of responsibility is an attitude that rationalizes illegal behavior. He goes on to explain that a person is responsible for his actions if he is aware and capable of deliberately choosing to act unlawfully.
2. While Simmons sees criminal responsibility as an abnormal state of mind and skill, van Hamel sees it as a normal state of mind and skill that gives rise to three capabilities. Second, having the insight to know that doing so is against the rules of society. Third, the ability to ascertain motivation.
3. Third, according to Pompe, the offender has the element of criminal responsibility if he is able to understand the meaning and consequences of his own actions, control his own mind and will, and act on this understanding. will agree with his judgment (about the significance and results of his actions).³⁰.

According to the aforementioned authorities, criminal responsibility and criminal behavior are two different things. Only acts that are explicitly prohibited and subject to punishment can be considered criminal. Whether or not the offender receives

³⁰ Teguh Prasetyo, *Op. Cit.*, p. 86.

punishment depends on the severity of the crime. Since the assessment of criminal responsibility is based more on the inner attitude of the offender than on his or her actions, the principle of responsibility in criminal law is "no fault, no punishment" (Geen straf zonder schuld; Actus non facit reum nisi mens sis rea). Evaluation. Only in cases of strict liability, where no proof of fault or mens rea element is required, are exceptions to the principles of conduct and mens rea allowed.

In criminal law, the concept of liability is analogous to the broader concept of fault. This suggests that fault lies with the creator or the act. Therefore, if a person is said to commit a crime, it is because his behavior is morally repugnant. If someone is found guilty of breaking the law, they will face consequences. The psychological significance of the intrinsic link between the perpetrator and the act committed is twisted in such a way, leads to intentional or negligent acts.

Only when the perpetrator is found guilty does criminal responsibility attach; therefore, the law must first establish what constitutes a crime. An offender is criminally responsible for his or her actions if and only if they fulfill the elements of a crime as defined by the law. If an act is illegal and no justification can be provided to remove the illegality or make it acceptable, then criminal responsibility must be sought. From the point of view of legal liability, only those who are guilty can be prosecuted.

In conclusion, guilt is essential to convict someone. Without it, criminal liability can never exist. Therefore, it is not surprising that "no crime without fault" (geen straf zonder schuld; actus no facit reum nisi mens sir rea) is a recognized principle in criminal law. This principle of fault is a fundamental principle in criminal law, so fundamental that it permeates and echoes almost all-important teachings in criminal law. This principle is also not mentioned in written law but in unwritten law which also applies in Indonesia. Fiscal criminal law does not use fault. There, if a person has violated a provision, he is given a fine or forfeiture³¹.

The judge must consider that regardless of whether or not the prosecutor can prove it. On the other hand, when an accused raises a defense based on exoneration, the judge must conduct an additional investigation. If the judge has reason to believe that the defendant is attempting to use mitigating circumstances to exonerate himself, he must conduct a thorough investigation into the circumstances. In addition, even if the defendant denies responsibility, it must be recognized that he or she did not have such information at the time of committing the crime. Even if the defendant does not use the fact that he had no defense to his guilt as part of his defense, the judge must still make that determination.

³¹ Moeljatno. (2003). *Kitab Undang-Undang Hukum Pidana*. Jakarta: Bumi Aksara.

Considering that the Public Prosecutor has filed a single charge against the defendant based on Article 362 and Article 64 (1) of the Penal Code. has these components:

1. "Whoever;
2. Has taken an object;
3. Which wholly or partially belongs to another;
4. With intent to possess unlawfully;
5. If the several acts, although each of them constitutes a crime or misdemeanor, are so connected as to constitute a continuous act."

Ad.1. Elements of Who:

The term "any person" refers to any human being, regardless of whether they are in a state of mental or physical health, and can be used to describe anyone who has committed a crime that carries a criminal penalty. Individuals with mental illness who are free to make their own decisions and bear the consequences of their actions are considered autonomous actors.

The defendant in this case can introduce himself before the court and state that he understands the charges read out by the Public Prosecutor, can give a clear explanation of his actions, and can assess the statements addressed to him. testimony from witnesses to face criminal or civil charges for his actions. This means that the defendant's actions have no justification or explanation. This means that everyone involved is content.

Ad.2.The element of having taken something;

Property is anything tangible, including animals (humans may not enter), money, clothes, necklaces, etc., and "taken" refers to property that is removed from its place of origin as a direct result of the perpetrator's conduct. Although intangible, "electricity and gas" are also included because they are transported through wires and pipes. These items can be obtained through any lawful and proper means, including but not limited to purchase, exchange, grant/gift, and so on.

Ad.3. The element of "partly or wholly belonging to another person";

Considering that the behaviors contained in the element "partly or wholly belonging to another person" are optional, namely if one of the behaviors in this element is fulfilled, then this element is also fulfilled;

Considering that based on the facts of the trial of the aforementioned elements, the aforementioned collectibles do not belong entirely to the defendant, the collegial panel believes that the aforementioned collectibles do not belong entirely to the defendant, but rather belong entirely to another person;

Considering that the element "everything belonging to another person" has been fulfilled;

Ad.4. "With intent to unlawfully possess" element;

The jury will break down the "intent to possess" element into separate "intent to possess" sub-elements to help them more easily generalize the other elements. The "illegal" component. If the defendant had the intent or ability to possess or gain control of the objects on his body, then he is said to have possessed them.

Some people believe that breaking the law is immoral because it goes against their sense of justice or accepted norms of society, and because it violates the rights of others.

Because of the foregoing, it is clear that the accused took the goods to support his own needs and life without first obtaining the owner's permission or giving prior notice to the owner.

In this regard, the Panel has concluded that the "intent to possess" prerequisite is satisfied when the goods are taken, possessed, and sold from a location where the owner of the goods has authority; Payment/gift, and other legal matters.

Considering that the Panel of Judges did not find evidence in letters or testimony that the defendant had the right to sue legally, and the defendant's actions were unlawful because they were carried out without the knowledge or permission of the rightful owner, the plaintiff's claim was rejected. If the sale of goods is removed, then "haram" meets the criteria.

Considering that the element of "intent to unlawfully possess" is fulfilled.

Ad.5. The element of "several acts that must be considered as a continuous act";

What is meant by the phrase "several acts which must be regarded as a continuous act" is that a series of interconnected acts can be regarded as one continuous act under certain circumstances:

1. "They must arise from a single intention, will or decision;
2. The acts must be the same or of the same kind.
3. The time between the acts is not too long, i.e. the time between the repeated acts to complete them is not too long".

The defendant's actions have the same intent, are similar, and have been committed many times in a relatively short period, which is proven by the elements of the defendant mentioned above. A series of lawsuits filed within a short period constitutes a continuous lawsuit, as evidenced by the above trial. Therefore, the Panel believes that "several acts that must be considered continuous" have been fulfilled.

As the Public Prosecutor only filed one indictment, and all of the criminal elements specified in Article 362 Jo. Article 64 paragraph 1 of the Criminal Code has been fulfilled, and the burden of proof shifts to the prosecution. Since the prosecution cannot exonerate the accused during the trial, he must face the consequences of his actions.

Law Enforcement of Crime of Gold Theft with Continuing Actions Article 362 of the Criminal Code Jo Article 64 Paragraph (1) of the Criminal Code

Analysis of Law Enforcement through Investigation and Investigation of the Crime of Gold Theft with Continuing Actions Article 362 of the Criminal Code Jo Article 64 Paragraph (1) of the Criminal Code by Pasuruhan Police Officers

The following is an analysis of the crime of continuing theft in the Gold Shop "SEMAR" Pasuruan:

1. Case Analysis

- a. Around 10:00 am on February 5, 2021. "SEMAR" Pasuruan Gold Shop was the target of repeated thefts from January 2020 to February 2021.
- b. The perpetrator is a 32-year-old Muslim woman who is an Indonesian citizen and an employee of "SEMAR" Gold Shop Pasuruan.
- c. The perpetrator at the Semar Gold Shop Kebon Agung Market, Pasuruan City was motivated by (C) his insistence on examining the sale and purchase of various types of gold jewelry (one time only).
- d. The suspect continued his theft activities by stealing gold jewelry, especially from the newly opened gold shop "SEMAR", which kept the stolen items in a glass display case. After the shop closed, the suspect stole 1 (one) piece of jewelry and hid it in his pocket or bag; then, the suspect took the jewelry home and tried again and again until he succeeded; finally, the suspect took the jewelry to a pawnshop or set up a shop on the side of the road; Finally, the suspect brought the stolen goods to Dewi Sartika, Pasuruan City with the evidence he made himself. purchase.
- e. The suspect stole from Gold Shop "SEMAR" Pasuruan in Kebon Pasar Agung, including gold jewelry of various shapes, types, and weights, as well as 1 (one) review of the sale and purchase of gold jewelry stones.

2. Juridical Analysis

Together with the examination of the facts of the case, this article provides evidence that the suspect committed the crime of theft as set out in Article 64 and Article 362 of the Criminal Code.

a. Article 362 of the Penal Code

"Any person who takes property which wholly or partially belongs to another, with intent to possess it unlawfully, shall, being guilty of theft, be punished by a maximum imprisonment of five years or a maximum fine of Rp.900,---"

- 1) whoever;
- 2) takes property which wholly or partially belongs to another;

3) with intent to possess it unlawfully.

b. Article 64 of the Penal Code

"If several acts are connected, so that they must be regarded as a continuous act, then only one penal provision shall be applied, even if each act is a crime or misdemeanor. If the penalties are different, then the rule that carries the heaviest penalty shall be applied."

3. Conclusion

- a. Based on our conversation, we know that there has been a theft, especially of gold jewelry from the storefront of the gold shop "SEMAR" Pasuruan.
- b. According to Article 362 of the Criminal Code, the person suspected of evidence.

Considerations of Judges in Deciding Cases in Decision Number 48/Pid.B/2021/PN Psr

1. Case Description

The perpetrator, between approximately 08.30 WIB in early January 2020 and approximately 08.30 WIB on Friday, February 5, 2021, or at least at another time in February at the Gold shop "SEMAR", or at least at another place which is still within the jurisdiction of the Pasuruan District Court, took property belonging to another person in whole or in part, to have legal title. Each act may be illegal, but when taken together they form a continuous pattern of behavior. The actions of the Defendant were committed in the following manner:

- a. On Friday, February 5, 2021, at approximately 10.30 WIB, the owner of the SEMAR Gold Shop asked the perpetrator to recount the inventory of gold jewelry items in the SEMAR Shop, and after inspection, it turned out that 75 (seventy-five) gold jewelry was missing; The defendant also admitted to the witness the owner of the gold shop that the suspect MEGA took 75 (seventy-five) necklaces, earrings, and other gold ornaments SEMA Gold Shop has a variety of sizes available.
- b. The defendant and her husband drove to Tamanan Village, Pasuruan City on Friday 5 February 2021 at approximately 21.00 over 39 (thirty-nine) pieces of jewelry, necklaces, and files of goods to the witness. Earrings of the same weight. They come in different sizes, and a single gold link in the necklace weighs about three grams.
- c. Then on Sunday 7 February 2021 at approximately 16.00 WIB, the defendant returned to the witness's house and pleaded guilty to the theft of gold from the SEMAR shop, but only because of his negligence. failure to compensate the witness by the deadline of 21.00 that night. After both parties were injured, the alleged gold thief was summoned to the police station for questioning.

- d. The accused worked the first two shifts, from 08.00 to 12.00 and from 20.00 to 21.00, stealing 75 (seventy-five) pieces of gold jewelry from the SEMAR gold shop.
- e. The defendant stole the jewelry when he was sorting out the types of gold jewelry such as necklaces, pendants, and earrings which he did every time the gold shop opened. Five times a month, the defendant stole gold jewelry. From the beginning of January 2020 until February 2021, the defendant did this repeatedly; another witness who kept the bracelets at the SEMAR shop knew that the defendant had stolen several gold bracelets because he often forgot to return them.
- f. The defendant took the gold to a pawnshop in Kebon Agung Market, with notes and stamps made by the defendant himself, while the defendant's driver was collected and placed in his house.
- g. The defendant took 199.8 grams of gold in various forms and obtained a profit of Rp. 310,000, - (three hundred and one thousand rupiah) per gram, then sold the gold at the SEMAR gold shop to pay off the Warungdowo cooperative debt. As a result of the defendant's actions, the witness suffered a loss of approximately Rp. 200 million.

2. Aggravating and Mitigating Circumstances

Aggravating and mitigating circumstances must be considered before sentencing;

Aggravating circumstances, namely:

- a. "The Defendant's actions disturbed the community
- b. The defendant has enjoyed the proceeds of the sale;
- c. The defendant has not yet compensated the victim witness".

Mitigating circumstances:

- a. "The defendant behaved politely in court;
- b. The defendant confessed and regretted his actions;
- c. The defendant has never been convicted;
- d. The defendant has tried to reconcile with the victim, but failed"

3. Court Decision

The perpetrator must pay costs, the amount of which will be determined in this decision, because the perpetrator was convicted and did not previously request a waiver of costs.

Therefore, based on these circumstances, the court decided:

- a. finding that the above defendants have been legally and convincingly proven guilty of committing "serial theft" as described in the single indictment;
- b. imprisonment of 2 (two) years and 3 (three) months;
- c. the period that the defendants have served their sentence shall be deducted entirely from the punishment imposed;

- d. stipulation that the defendant shall remain in detention.

CONCLUSION

Based on the description of the discussion regarding criminal responsibility for the crime of gold theft with continuing acts, the conclusions of this study are: Criminal responsibility is the responsibility of a person for the criminal offense he committed. Strictly speaking, what the person is responsible for is the criminal offense he committed. Thus, criminal responsibility occurs because there has been a criminal offense committed by a person. Criminal responsibility is essentially a mechanism built by criminal law to react to violations of the "agreement to reject" a certain act

Law enforcement by the Pasuruan Police through investigation and investigation the conclusion that the suspect is strongly suspected of violating Article 362 of the Criminal Code Jo Article 64 Paragraph (1) of the Criminal Code. Meanwhile, the basis for the judge's consideration in deciding the case was that by the facts of the legal facts that emerged during the trial, it was proven that all elements of Article 362 Jo. Article 64 paragraph (1) of the Criminal Code has been fulfilled, then the Defendant must be declared legally and convincingly proven to have committed a criminal offense as charged in the single charge of the Public Prosecutor.

Suggestions that the author can convey are: Semar Gold Shop should install CCTV to monitor the actions of its employees so that in the event of theft not too much jewelry is stolen. Stock-taking is done once a week so that if there is a loss of goods, not too many items are lost. The district court judge should ask for the return of losses suffered by the Semar Gold Shop so that the victim's rights can be returned.

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