



# LEGAL ANALYSIS OF JUDGES' CONSIDERATIONS IN ADJUDICATING THEFT CRIMES COMMITTED BY WOMEN

Received: November 30, 2025 Accepted: December 05, 2025 Online Published: December 22, 2025

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**Abstract:** The law serves to regulate relationships between individuals and between individuals and the state so that everything runs in an orderly manner. In the Criminal Code (KUHPidana), theft is classified into various categories, including, as stipulated in Article 362 of the Criminal Code, theft with aggravating circumstances. Theft with crime is a crime against property. The crime committed in theft has the purpose of preparing or facilitating theft or, if caught, providing an opportunity for the perpetrator to escape so that the stolen goods remain in the perpetrator's possession. The problem is the gap between *das sollen* and *das saen*, the difference between what should be and what is in reality. In relation to the topic raised in this study, the problem is: How should criminal punishment be imposed on women who commit theft? How is Article 362 applied to a woman who commits theft? To find out the reasons why a woman commits theft. To find out how Article 362 is applied to a woman who commits theft. The type of research used in this study is normative empirical research using secondary data sources and legislation.

**Keywords:** Criminal Act of Theft; Judge's Considerations; Woman

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## I. INTRODUCTION

The criminal act of theft is one of the most common conventional crimes occurring in society and is explicitly regulated in the Indonesian Criminal Code (Kitab Undang

- Undang Hukum Pidana / KUHP). Theft is not merely understood as an unlawful act against another person's property, but also reflects underlying social, economic, and moral issues that motivate such conduct.<sup>1</sup> In criminal court practice, theft cases demonstrate wide variations in terms of modus operandi, the background of the offender, and the legal considerations employed by judges in rendering their decisions.

One phenomenon that merits particular attention is the increasing involvement of women as perpetrators of theft. From a sociological perspective, women are often positioned as a group that is more vulnerable to social and economic pressures, such as poverty, economic dependency, and heavy domestic responsibilities.<sup>2</sup> These conditions may compel women to engage in unlawful behavior, including theft. Nevertheless, the criminal justice system frequently faces a dilemma between normative law enforcement and the pursuit of substantive justice that takes into account the personal circumstances of the offender.

Within the framework of criminal law, judges play a central role in determining the guilt or innocence of the accused and in imposing proportionate sentences. Judicial decisions are not based solely on the fulfillment of the statutory elements of a criminal offense, but also consider various non-juridical aspects, such as the defendant's background, socio-economic conditions, and the impact of the offense on both the victim and society.<sup>3</sup> Consequently, judicial considerations constitute an essential component reflecting how the law is concretely applied in individual cases.

Judicial considerations in theft cases committed by women are particularly significant because they often incorporate humanitarian elements and restorative justice perspectives. In several court decisions, judges do not merely emphasize retributive aspects of punishment, but also take into account other objectives of sentencing, such as offender rehabilitation and crime prevention.<sup>4</sup> This approach is consistent with the view that criminal law is not solely intended to punish, but also to rehabilitate offenders and protect society in a balanced manner.

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<sup>1</sup> Moeljatno, 2008. *Asas-Asas Hukum Pidana*. Jakarta: Rineka Cipta, p. 54.

<sup>2</sup> Abdulsyani, 2007. *Sosiologi Kriminalitas*. Bandung: Remaja Rosdakarya, p. 87.

<sup>3</sup> Sudarto, 2010. *Hukum dan Hukum Pidana*. Bandung: Alumni, p. 102.

<sup>4</sup> Muladi & Barda Nawawi Arief, 2012. *Teori-Teori dan Kebijakan Pidana*. Bandung: Alumni, p. 45.

However, in practice, disparities remain in judicial considerations when adjudicating theft cases involving female offenders, particularly with regard to the imposition of imprisonment, suspended sentences, or fines. Such disparities raise questions concerning the consistency of legal application and the extent to which gender factors influence judicial reasoning in sentencing.<sup>5</sup> Therefore, a comprehensive and systematic study is required to analyze judicial considerations in deciding theft cases committed by women.

Based on the foregoing, this study aims to analyze juridically the considerations of judges in adjudicating theft cases committed by women, as well as to assess the conformity of such considerations with the principles of criminal law and the sense of justice prevailing in society. The findings of this research are expected to contribute to the development of criminal law scholarship and to serve as evaluative material for criminal justice practice in Indonesia.

## **II. RESEARCH METHODS**

This study employs a normative legal research method (doctrinal research) aimed at analyzing judges' legal reasoning in adjudicating cases of theft committed by women, with particular emphasis on legal norms, principles, and judicial decisions. The approaches used in this research include the statute approach, case approach, and conceptual approach. Primary legal materials consist of statutory regulations governing theft, particularly the Indonesian Criminal Code (KUHP), as well as court decisions that have obtained permanent legal force. Secondary legal materials comprise legal textbooks, scientific journal articles, and scholarly opinions discussing criminal law, gender perspectives, and judicial considerations in sentencing, while tertiary legal materials such as legal dictionaries and legal encyclopedias are used to clarify legal concepts and terminology. All legal materials are collected through library research and analyzed qualitatively using a descriptive-analytical method by systematically examining judges' considerations in court decisions and relating them to applicable positive law and criminal law

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<sup>5</sup> Barda Nawawi Arief, 2016. *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Kencana, p. 133.

theories in order to draw comprehensive conclusions regarding patterns of judicial reasoning in theft cases involving female offenders.<sup>6,7,8</sup>

### **III. ANALYSIS AND DISCUSSION**

#### **a. Judicial Considerations in Deciding Theft Cases**

Judicial considerations constitute the core of a court decision, as they reflect the judge's legal reasoning in applying legal norms to the facts revealed during the trial. In cases of theft as regulated under Article 362 of the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana / KUHP), judges must assess whether the essential elements of the offense have been fulfilled, namely the act of taking property, the property belonging wholly or partly to another person, and the intent to unlawfully possess such property.<sup>9</sup>

In theft cases committed by women, judicial considerations often extend beyond the formal fulfillment of the elements of the offense. Judges tend to consider the subjective conditions of the defendant, such as socio-economic background, family responsibilities, and psychological circumstances. This approach aligns with the principle of individualized punishment, which requires sentencing to be tailored to the personal circumstances of the offender.<sup>10</sup> Accordingly, judges usually elaborate both aggravating and mitigating factors prior to imposing a sentence.

From a procedural perspective, judicial considerations must be based on facts established at trial, valid evidence, and the judge's conviction, as stipulated in Article 183 of the Indonesian Criminal Procedure Code (KUHP).<sup>11</sup> This demonstrates that judicial decisions are not merely formalistic, but aim to achieve substantive justice.

#### **b. Gender Perspective in Judicial Considerations**

In criminal justice practice, women as offenders are often situated within specific social contexts that differ from those of men. Empirical studies indicate that women

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<sup>6</sup> Soerjono Soekanto & Sri Mamudji, 2015. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: RajaGrafindo Persada, p. 13.

<sup>7</sup> Peter Mahmud Marzuki, 2017. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, p. 133.

<sup>8</sup> Johnny Ibrahim, 2012. *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing, p. 295.

<sup>9</sup> Moeljatno, 2008. *Ibid.*

<sup>10</sup> Sudarto, 2010. *Op. Cit.*, p. 79.

<sup>11</sup> Indonesian Criminal Procedure Code (KUHP), Article 183.

who commit theft are frequently driven by economic hardship, caregiving responsibilities, or social vulnerability.<sup>12</sup> These factors are commonly regarded by judges as mitigating circumstances.

Incorporating a gender perspective in judicial reasoning does not imply preferential treatment; rather, it reflects an understanding of the structural and social contexts influencing criminal behavior. This approach is consistent with restorative justice principles and progressive legal thought, which view law as a means to achieve social justice rather than merely as an instrument of punishment.<sup>13</sup>

Nevertheless, judicial considerations may also reflect gender bias. In certain decisions, women offenders are implicitly judged against traditional moral expectations, perceiving their actions as deviations from socially constructed gender roles. Such moral judgments may lead to inconsistent or overly punitive assessments compared to cases involving male offenders.<sup>14</sup> This indicates that the integration of a gender-sensitive perspective in judicial reasoning remains uneven and requires further refinement.

### **c. Compatibility of Judicial Considerations with the Objectives of punishment**

The objectives of punishment under Indonesian criminal law encompass not only retribution but also deterrence, rehabilitation, and social protection.<sup>15</sup> In theft cases committed by women, judges frequently impose relatively lenient sentences, such as suspended imprisonment or fines, particularly when the defendant is a first-time offender and demonstrates remorse.

This sentencing pattern reflects a rehabilitative orientation, consistent with modern criminal law theories that emphasize the reintegration of offenders into society.<sup>16</sup> Judicial considerations that prioritize rehabilitation over retribution may contribute to reducing recidivism and promoting social harmony.

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<sup>12</sup> Abdulsyani, 2007. *Op. Cit*, p. 112.

<sup>13</sup> Satjipto Rahardjo, 2009. *Hukum Progresif: Hukum yang Membebaskan*. Jakarta: Kompas, p. 45.

<sup>14</sup> Sulistyowati Irianto, 2006. *Perempuan dan Obor*. Jakarta: Obor Foundation, p. 98.

<sup>15</sup> Andi Hamzah, 2012. *Sistem Pidana dan Pemidanaan Indonesia*. Jakarta: Pradnya Paramita, p. 34.

<sup>16</sup> Muladi & Barda Nawawi Arief, 2012. *Op. Cit*. p. 157.

However, disparities in sentencing remain a significant issue. Differences in judicial interpretation and the absence of comprehensive sentencing guidelines often result in inconsistent decisions in cases with similar factual and legal characteristics.<sup>17</sup> Consequently, clearer sentencing standards are necessary to ensure fairness, proportionality, and legal certainty in theft cases, including those involving female offenders.

#### **d. Legal and Social Implications of Judicial Decisions**

Judicial decisions in theft cases committed by women carry both legal and social implications. Legally, such decisions serve as precedents that may influence future sentencing practices. Socially, decisions that consider the socio-economic realities of female offenders can help reduce stigma and promote a more humane approach to criminal justice.<sup>18</sup>

Nevertheless, excessive reliance on compassion without rigorous legal analysis may undermine the deterrent effect of criminal law and foster perceptions of inequality before the law. Therefore, achieving a balance between empathy and legal rigor is essential in judicial considerations to uphold justice, legal certainty, and social order.

### **IV. CONCLUSION**

Based on the analysis of judicial considerations in adjudicating cases of theft committed by women, it can be concluded that judges generally base their decisions on juridical considerations, particularly the fulfillment of the elements of the criminal offense as stipulated in the Indonesian Criminal Code (KUHP), supported by facts revealed during the trial, legally valid evidence, and the judge's personal conviction. Such considerations reflect the application of the principle of legality and the independence of judicial power as mandated by Indonesian law. However, in practice, non-juridical considerations—such as the defendant's social background, economic conditions, and gender-specific roles—are often not thoroughly or systematically elaborated in judicial reasoning, even though these factors may significantly influence the commission of the crime.<sup>19</sup>

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<sup>17</sup> Barda Nawawi Arief, 2016. *Op. Cit.*, p. 89.

<sup>18</sup> Lilik Mulyadi, 2014. *Judicial Decisions in Criminal Procedure Law*. Bandung: Citra Aditya Bakti, p. 121.

<sup>19</sup> Sudarto, 2010. *Op. Cit.*, p. 74 – 76.

Furthermore, this study indicates that substantive justice and a gender-sensitive approach have not yet been fully integrated into judicial decision-making. In several cases, female defendants are treated merely as legal subjects who violate criminal norms, without sufficient consideration of their structural vulnerabilities, including economic pressures, domestic responsibilities, and unequal social relations. Therefore, it is essential to strengthen judges' understanding of restorative justice and gender perspectives in criminal law enforcement, so that judicial decisions not only ensure legal certainty but also reflect justice and social utility for the broader community.<sup>20</sup>

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<sup>20</sup> Satjipto Rahardjo, 2009. *Op. Cit.*, p. 89 – 91.

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