

Juridical Analysis of Theft in the Family (Article 367 of the Indonesian Penal Code)

Nina Yolanda¹

¹ Universitas 17 Agustus 1945

E-mail: ninayolanda51@yahoo.co.id

ABSTRACT--*The purpose of this research is to find out how the characteristics of the complaint offense theft in the family environment according to Article 367 of The Criminal Code and how the possible consequences of investigating offense complaints of theft in the family environment. Using the normative juridical research method, it can be concluded : 1. Theft in the family as stipulated in Article 367 of The Criminal Code the Legislator establishes theft as a criminal offense (klacht delict) , that is theft that can only be prosecuted if there from the injury party. Family theft as stipulated in Article 367 of The Criminal Code, the legislator determine theft as a criminal offense which is theft that can only prosecuted if there is a complaint from the injury party. The types of complaints in Article 367 of the Criminal Code are relatives complaints, namely complaints against people who commit theft and absolute complaints, namely their actions. 2. In understanding according to the Criminal Code can only be prosecuted if there is a complaint, only applies at the prosecuted stage and in the responsibility of the public prosecutor but does not apply in the investigation stage to the investigating official, and the actions made possible by law in the course of an investigation, such as summoning suspects and witnessess, arrest, detention, confiscation can be carried out, and justified, although it turns out that because there were no complaints, the public prosecutor did not prosecute. But on the contrary the possibility of such acts of investigation, in view of the background of the offense of complaint in the Criminal Procedure Code is contradictory which means that the purpose of the offense of complaint is not achieved, is to protect the interests of those affected by crime, not to be further disadvantages. Therefore, the act of investigation should also not be carried out on offenses of complaint or without complaint, except for the act of investigation which is essence does not cause any harm to the crime.*

Keywords: *investigation, complaint offense , theft in the family*

I. INTRODUCTION

Theft is one of the types of crimes against assets set out in Chapter XXII of the Second Book of the Criminal Code and is endless problem. Theft in its main forms is regulated in Article 362 of Criminal Code (KUHP) which reads: “Anyone who takes an object, wholly or in parts belongs to another person, with the intention to control the objects against the right then he was convicted of his guilty of theft by imprisonment for up to five years or a fine of up to nine hundred rupiah”. Seeing from the formulation of the article, we can know that the crime of theft is a formula formulated offense, which is prohibited and threatened with punishment is an act which in this case is an act of “taking” [1]. Delicts of theft are regulated in Article 362 through Article 67 of the Criminal

Code. Theft offense is the most offense listed in all the Criminal Code in the world.

According to Cleiren, taking (*wegnemen*) means intentionally with intent. There is an intention to have [2]. The intention must be intended “to control the object that he took for himself against the right”. This means that must be proven [1]. Related to the above, after taking an action to the authorities, a complaint cannot be withdrawn. This makes the complaint offense different from offense not complaint. In a type of offense that is not a complaint, a criminal case is processed by law enforcement officers in the criminal justice system, then becomes the law enforcement authority to conduct the prosecution for the case. In Article 75 of the Criminal Code, this is formulated as: “The person who filled the complaint, has the right to withdraw within three months after the complaints is filed”.

The offense of complaint referred to if the crime has been reported to the Police by the victim, but the victim wishes to revoke the complaint then the complaint can be withdrawn within 3 (three) months after the complaint is filed (in case of the victim including the family scope as mentioned in the Article 367 of the Criminal Code). Thus, for example, that the parent of the offender has the right to report the child to the police on charges of theft, but the parent can revoke the complaint within 3 (three) months after the complaint was failed. In addition to the general provisions above, there are also special provisions as regulated in Article 75 (paragraph) 4 of the Criminal Code, that in the case withdrawal of complaints can be made at any time, as long as the examination in a court hearing has not begun. This paper will focus on analyzing legally the characteristics of theft in the family with the title “Juridical Analysis of Family Theft”.

II. RESULT AND DISCUSSION

A. Provisions for Criminal Complaints in Article 367 of the Indonesian Criminal Code

Article 367 of the Criminal Code concerning Family Theft Crime theft, including theft in the family which will be discussed in this Chapter, is regulated in Book II Chapter XXII Article 362 through Article 367 of the Criminal Code under the title Chapter About Theft. The sound od Article 367 Pragraph 2 “If he is a husband (wife) who is separated by a table and a bed or separated assets, or if he is a family member or blood member, both in a straight line or a second degree deviating line, then that

person only prosecution may be held if there are complaints that are exposed to crime”.

From the norms of the article, we can take the elements of criminal acts in the family as follows :

1. A husband or wife who commits theft in a family is in the status of a separate table and bed or their property is separated;
2. A person who commits theft in a family is a blood family or marriage subject in either a straightline or a second degree deviating line;
3. Prosecution can only be carried out if there is a complaint which has a crime;

The husband or wife who commits theft in this family is in the status of a separate table and bed with their spouse, or the assets of the husband and wife are intended to be separated from one another. This condition is an lternative condition and not a cumulative condition, meaning that one is a separate table and bed or a separate assest and not both. In this case, theft in this family can only be prosecuted if there is a complaint from the husband or wife who was affected by the crime or who became a victim. For example, if a husband commits theft, the wife must make a complaint. Vice versa, if the wife committing theft in the family, then the husband must complain. Without a complaint, there will be no prosecution because complaints from parties who feel disadvantaged are a requirement for prosecution.

Likewise, those who commit theft in the family are blood relatives or partners, both in a straight line or a second degree deviating line. What is meant by blood relatives in a straight line in the second degree are: to the top are the father and grandfather/mother and grandmother. Down are children and grandchildren. **Father/Mother and child are the first degree, while grandfather and grandchildren are the second degree in a straight line. While the siblings or semenda in the second degree deviating line are : brothers, sisters, mothers and sisters both brothers and sisters, brothers and sisters (nephews).** While the siblings or semenda in the second degree deviating line are brothers, sisters, mothers and sisters both brothers and sisters (nephew).

These people, if they commit theft in the family, can only be prosecuted if there is a complaint from the party that feels disadvantaged. For example in a family there is theft committed by a child from that family. Here the victims are father and mother or husband and wife. And because those who are affected by crime or become victims, then if they want that the perpetrators of the theft be prosecuted, the husband/wife/father is the one who must make a complaint.

As explained earlier, the offenses of complaints are absolute and some are relative. The difference between absolute complaint offense and relative complaint offense is the difference in nature. Complaints in the offense of an absolute complaint are directed against the act itself against its *“feit”* whereas in the relative complaint offense, the complaint is directed against a particular person who committed a criminal offense and not the criminal event.

By using this criterion, the complaint offense referred to in Article 367 paragraph (2) of the Criminal Law Code

is a type of relative offense complaint, because the complaint is directed at people who commit theft in the family, for example husband and wife or who are in a separate status table and beds or separate assets, or family or blood relatives either in a straight line or sideways.

Whereas article 367 paragraph (3) of the Criminal Law Code stipulated that if according to matriarchal (matriarkal) [3], institutions, the power of a father is exercised by someone other than his biological father, then the aforementioned rules above also apply to that person. R. Soesilo formulated: “If according to the customs of the maternal descent, the power of the father is exercised by another person from the biological father, then the provisions in the second paragraph also apply to that person.” Paragraph (3) Article 367 of the Criminal Law Code respects the Customary Law which applies in Indonesia as a living law in Indonesian society.

This is evidenced by the recognition of the existence of customs in certain ethnic groups in Indonesia especially in determining the lineage. As we know in our customary legal system there are three types of lineage namely:

1. Parental lineages or lineage withdrawals through mothers and fathers :
2. Lineage which is matriarchal or lineage withdrawal through mother;
3. Patriarchal lineage or lineage through the father.

Especially in societies that draw a lineage through the mother (matriarchal), the power of the father is carried out by someone else from the biological father, for example through an uncle. Thus, in an adat law community that draws its lineage through the mother (for example in the customary law community in Minangkabau), the uncle who replaces the position as the biological father, meaning he can make a complaint if in the family thefts committed in the family, for example, steals committed by blood relatives or semenda, both in a straight line or second degree deviating line. The position of the uncle as a substitute for the biological father is seen to be the same as the position of the biological father himself. This is confirmed in article 367 paragraph (3) of the Criminal Law Code.

B. The Process of Investigating Cases of Burglary in the Family

The authority of the investigation carried out by the Indonesian National Police is contained in article 102 of the Criminal Procedure Code which reads *“Investigators who know, receive reports or complaints about the occurrence of an event that is reasonably suspected of being a criminal offense must immediately carry out the necessary investigative actions.* From the sound of the norm, we can conclude that the article authorizes the investigator to receive reports and complaints, after receiving the report :

1. Investigators who know, receive reports or complaints about the occurrence of an event that is reasonably suspected of being a criminal offense must immediately take the necessary investigative actions;
2. In the case of being caught red-handed without waiting for an investigator’s order, the investigator

must immediately take the necessary actions in the framework of the investigation as referred to in Article 5 paragraph (1) letter b;

3. With regard to the actions taken in paragraph (1) and paragraph (2) the investigator is required to make an official report and report it to the investigator in accordance with the law.

In connection with article 102 paragraph (1) of the Criminal Procedure Code regarding complaints regarding a criminal act, complaints can be submitted or submitted to investigator, auxiliary investigator, Forms of complaint can be made verbally or in writing.

Whereas the way to submit the complaint is:

1. If the complaint is in the form of an oral, the oral complaint is recorded by the receiving official. Once recorded, the complaint is signed by the complainant and the recipient of the report (investigator, investigator, assistant investigator);
2. If the complaint is in written form, the complaint is signed by the complainant;
3. If in case the complainant is unable to write, it must be noted in the complaint (Article 103 paragraph (3))
4. After the official (investigator, investigator, assistant investigator) receives the complaint, the investigating officer of investigator gives a letter of receipt of the complaint to the person concerned.

In relation to Article 102 paragraph (2) of the Criminal Procedure Code regarding being caught red-handed and related to cases of offense of complaint (theft in the family) even though there has been no complaint from an interest of the police is not prohibited from conducting an examination. Those who have the right to conduct or know it but not, the investigator can only conduct an investigation while prosecution cannot be carried out.

In terms of investigations the things that the investigator can do are:

1. Examination of the suspect
Investigation of the suspects conducted by investigators made be made in the news. Where the minutes are signed by the suspect/witnesses and by the investigator himself. Article 75 of the Criminal Procedure Code stipulated that for all acts such as examining suspects arrests, detention, search, house entry, confiscation of objects, examination of letters, examination of witnesses, examination at the scene. The objects, examination of letters, examination of witnesses, examination at the scene. The implementation of court decisions and decisions, and the implementation of the other actions in accordance with the provisions in this law, must be made available. Apart from being signed by the investigator, the minutes are also signed by all parties involved in the action. The minutes of the examination that were not signed by the suspect, the investigator recorded this in the official report and stated the reason (Article 118 paragraph (2) of the Criminal Procedure Code)

2. Termination of investigation
In the event that the investigator stops the investigation, the investigator will notify the Prosecutor. The valid reasons for stopping the investigation are :

- (1) There is not enough evidence ;
- (2) The incident turned out not to be a criminal offense;
- (3) No such complaint or complaint is revoked in the case of a criminal complaint;

3. The course of investigation
Before starting an examination of a suspect, the investigator must notify the suspect of his right to obtain legal assistance. When the investigator conducts an examination of the suspect, the legal counsel can follow the proceedings by seeing and hearing the examination. The suspect gave information to the investigator without pressure from anyone and or in any form whatsoever (Article 117 paragraph (1) of the Criminal Procedure Code). Information given by the suspect to the investigator about what he actually did with the crime alleged to him;

4. Witness examination
For the purpose of examining cases, the investigator can conduct an examination of witnesses. Witnesses examined at the investigation level give their statements without being sworn in unless the witness is allegedly not present at the hearing in the district court. The witness gave testimony without being pressured by anyone and in any form. Information provided by witnesses is also recorded in the official report signed by the investigator and the person providing the information, after he approves it, and if the witness does not want to sign the official report, then investigator records it in the official report stating the reasons [4].

So, even though an offense is a complaint offense in this case in the form of a criminal act of theft in the family to conduct an investigation on the offense, it does not necessarily require a complaint, but to be submitted to the public prosecutor for prosecution must be made a complaint beforehand by the injured party.

Investigators in conducting investigations in offenses complaints

(theft in the family) in accordance with those stipulated in the law without any addition or amendment or reduction. The prosecution's action is to submit a criminal case to the competent district court in the matter and in the manner stipulated in the Criminal Procedure Code with a request to be examined and decided by a judge in a court session (Article 1 butir 7 of the Criminal Procedure Code).

The institution authorized to conduct prosecutions and implement judges' decisions is the public prosecutor. Public prosecutors are prosecutors who are authorized by this law to prosecute and implement judges (Article 1 point 6 huruf b and Article 13 of the Criminal Procedure Code). In the event that the investigator has commenced an investigation of a criminal theft in the family, the investigator will notify the Prosecutor (Article 109 paragraph (1) of the Criminal Procedure Code) and if the investigator has completed his investigation, the investigator must submit case files (containing minutes of the examination as mentioned in article 75 of the Criminal Code, which among others contain minutes of

examination of suspects, arrests, detention at the scene and other actions) to the Public Prosecutor (article 110 paragraph (1) of the Criminal Code) and finally finish the investigation if :the Public Prosecutor is of the option that the results of the investigation have been able to carry out a prosecution, the public prosecutor shall immediately produce an “indictment” [4].If the investigator is deemed complete if within 14 (fourteen days) the public does not return the results of the investigation or before the deadline has expired there has been notification aboutit from thepublic prosecutor to the investigator (Article 110 paragraph (4)of the Criminal Procedure Code).

The prosecutor before composing his claim must consider which elements are not proven, so that he can determine his claim whether the accused will be prosecuted, release from all charges or acquittal.

In order for a person to be proven to have committed a criminal act of theft, that person must be proven to have fulfilled all elements of the criminal offenses contained in the formulstion of Article 362 of The Criminal Code. Based on Article367 of the Criminal Code, the elements of theft in the family are : 1) If the maker or servant of one of the crimes in this chapter is the husband (wife) of the person affected by the crime and does not separate tables and beds or separate assets, then the maker or helper may not be subject to criminal prosecution. 2) If he is a husband (wife) who is separated from a table and a bed or separated from assets, or if he is a family member or family member, both in a straight line and in a second line of line, then a person may only be prosecuted if there is a complaint that has a crime. 3) If according to the matrilineal institution, the power of the father is exercised by someone other than the biological father (himself), then the provisions of the above paragraph applies also to that person.

The theft as referred to in Article 367 of the Criminal Code is a theft in the family circle, that is, between the perpetrator and the victim are still in a family bond. The first type of theft that if a husband or wife himself steals the property of his wife or husband while the husband and wife relationship has not been decided by a divorce, then they absolutely cannot be prosecuted [5].One of the complaints that is offense is theft in the family.

The offenses for complaint as referred to in Article 367 paragraph (2) and paragraph (3) of the Criminal Code are relative offenses, that is, offenses for which a complaint is only a condition so that the perpetrators can be prosecuted [1].The offense of complaint referred to is if the crime has been reported to the police by the victim wihes to withdraw the complaint, then the complain can be withdrawn/revoked within 3 (three) months after the complaint is filed (in casethe victim falls within the scope of the family as mentioned in the Article 367 of the Criminal Code). Thus, the parent of the offender has the right to report the child to thepolice alleged theft, but the parent can revoke the complaint within three months after the complaint was Based on Article 367 of the CriminalCode, in this case the limitation of theft in the family are :

1. As long as the marriage is not broken, theft between husband and wife is not prosecuted. For those who are subject to the civil law (B.W) book, the rules regarding “divorced dining table ” means that the marriage is still permanent, but the obligation of a husband and wife to be together at home is abolished. In this case, the theft by a husband and wife can be punished, but there must be a complaint from the injured husband or wife;
2. Theft or assist in theft by blood relatives or straight-line marriages (unlimited number of degrees) for example : grandchildren, children, fathers, grandparents, grandchildren-in-law, sons-in-law, father-in-law, grandfather-grandmother-in-law, etc or blood relatives or families of hereditary families deviating in two degrees, for example: brothers and sisters, brother-in-law and sister-in-law of those who own goods, a person can only be prosecuted if there is a complaint from someone who owns trhe goods;
3. If according to the customs ofthe material descent, the authority of the father is carried out by another person from thebiological father, then the regulation regarding theft in the family circle Article 367 paragraph (2) also applies to that person, forexample : a nephew who steals his mamak’s assets is complaint offense [6].

In the case of theft within the scope of a family which costitutes offense of complaint, the prosecution is the same as the prosecution of ordinart offenses, namely the public prosecutor maks the indictment thst has been proven before the trial. In the case that the Public Prosecutor will producean indictment, he must pay attention to who are the prosecutors (inthis case are more than one perpetratos). Because theft in the family is a relative offense in which the prosecuted are those who committed in a crime, or in other words theft in the scope of this family is a relative offense that the proscution can be divided.

Complaint of theft in the family must be declared a family relationship when advancing the complaint. Prosecution is only limited to the person mentioned in the complaint, for example, it is said that only the perpetrator of the crime, who may also be a close relative, cannot be prosecuted, thus this complaint can be broken up [7].

III. CONCLUSION

Family theft is a complaint of offense, whereby the perpetrators of the crime can be prosecuted if there is a complaint from the person suffering from the crime. In this offense the absolute complaint complained against the culprit is the act and the relative offense of complaints complained of is the person. Although in principle theft is an ordinary crime, but in some types of theft such as theft in the family as stipulated in Article 367 of the Criminal Code, the legislators determine theft as a criminal offense (*klacht delict*), n theft that can only be prosecuted if there is a complaint from the injured party. The types of complaints contained in Article 367 of the Criminal Code are relative complaints namely complaints against people

who commit theft and absolute complaints, namely their actions.

In understanding according to the Criminal Procedure Code, can only be prosecuted if there is a complaint, it only applies at the prosecution of the stage and within the responsibilities of the public prosecutor but does not apply at the investigation stage for investigating officials, so that investigations can be carried out by investigating officials, and the actions made possible by laws in the framework of investigationnns such as summoning suspects and witnesses, arrests, detention, confiscation can be carried out, and justified, although it turns out that because there were no complaints, the public prosecutor did not prosecute. But on the contrary, the possibility of such acts of investigation, in view of the background of the offense of complaint in the Criminal Procedure Code, is contradictory which means the background of the offense of complaint is not achieve, is to protect the interests of those affected by crime not to be further disadvantaged.

Therefore, the act of investigation should also not be carried out on offenses of complaint before or without complaint, except for the act of investigation which in essence does not cause any harm to the crime.

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