

EQUATING VILLA WITH “HOUSE” IN AGGRAVATED THEFT OFFENSE

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Abstract: *One of the places that is often targeted by thieves is in a villa. In Article 363 paragraph (1) 3 of the Criminal Code, there is a regulation related to theft with a aggravating if the theft is carried out at night in a house or closed yard where the house is, but there is no provision that explicitly states that it is related to theft in a villa. Based on this background, the formulation of the objectives of this article is to understand: 1. What are the elements of the aggravated theft offense ? 2. Can a villa be considered with a “house” as an element of the aggravated theft offense ? This research is a normative legal research with statutory, conceptual, and case approaches. Based on the analysis in this article, it can be understood that 1. The elements in the offense are the same as ordinary theft, but there are additional elements that are alternative. 2. The theft in a villa at night can be qualified for theft with a aggravating factor as stipulated in Article 363 paragraph (1) of the Criminal Code, on the basis of socio-historical interpretation and extensive interpretation.*

Keywords: *theft; aggravating; Villa*

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INTRODUCTION

Criminal action is a form of deviant social phenomenon that is always present and inherent in every form of society. Arif Rohm-

an, even made an analogy of a crime as a recurring illness and death, as is the case with

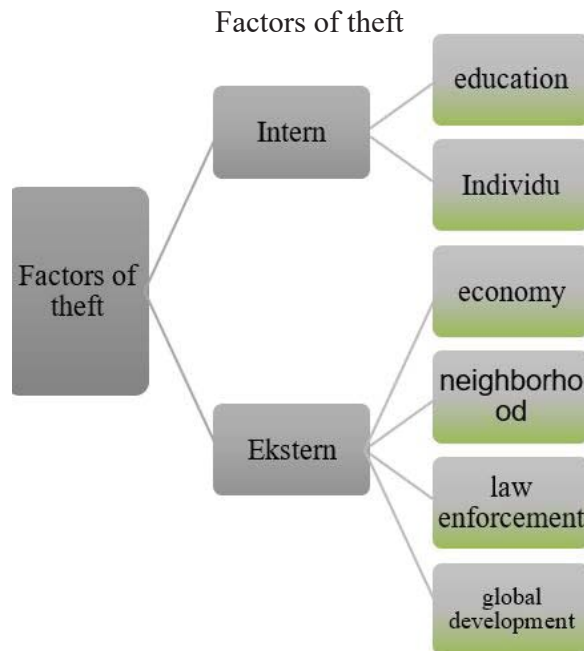
seasons that change from year to year.¹ Criminal acts as one of the social phenomena on this earth, may even never end, even with the social dynamics that continue to occur in society.² It seems that the problem of crime as a social phenomenon will continue to grow and will never subside, both in terms of quality and quantity. This is actually in accordance with the opinion of Yesmil Anwar, who said: “evil, insubordination, or *deviance* will always exist and only exist in mutual association.”³

One of the criminal acts that often occur in the community is theft (*ditefstal*). This crime of theft can even be said to be one of the “oldest” crimes, because it has existed since time immemorial. This is in accordance with Anderson’s opinion which states:⁴ “theft is the oldest, costliest and most commonly committed crime that could destructively affect the whole flow of global trade.” Of course, various attempts have been made to eliminate this crime, but unfortunately as of this writing this has not been successful.

In general, many people think that the cause of the crime of theft is related to eco-

nomie factors.⁵ This opinion cannot be said to be completely wrong, because in the beginning economic factors were the cause of the crime of theft. In its development, it turns out that the factors that cause theft have expanded. According to Berdy Despar Magrhubi, the factors that cause theft today are:⁶

Figure 1



Data Source: Management Results of the Berdy Despar Magrhubi Article

From the factors that cause the occurrence of the crime of theft, it can be seen that in fact there are new factors that lead to theft.

¹ Arif Rohman, “Upaya Menekan Angka Kriminalitas Dalam Meretas Kejahatan Yang Terjadi Pada Masyarakat,” *Perspektif* 21, no. 2 (2016): 125–134, <http://jurnal-perspektif.org/index.php/perspektif/article/view/187>.

² Lalu Parman, “Reorientasi Pemikiran Penggunaan Hukum Pidana Sebagai Sarana Penanggulangan Kejahatan The Thinking Reorientation of the Use of Criminal Law as the Tool in the Overcome of Crime By : Lalu Parman,” *Jatiswara* 27, no. 1 (2012): 168–190, <http://www.jatiswara.unram.ac.id/index.php/js/article/view/30>.

³ Yesmil Anwar and Adang, *Pembaharuan Hukum Pidana; Reformasi Hukum* (Jakarta: Grasindo, 2008).

⁴ Anderson, “Securing the Supply Chain-Prevent Cargo Theft,” *Security* 44, no. 5 (2007): 56–59.

⁵ Rusmiati, Syahrizal, and Mohd. Din. (2017). “Konsep Pencurian Dalam Kitab Undang-Undang Hukum Pidana Dan Hukum Pidana Islam,” *Syiah Kuala Law Journal* 1, no. 1 : 340–341, <http://jurnal.unsyiah.ac.id/SKLJ/article/view/12318>.

⁶ Berdy Despar Magrhubi, “Tinjauan Kriminologis Faktor penyebab terjadinya tindak Pidana Pencurian Kendaraan Bermotor (Studi Di Lembaga Pemasarakatan Lowokwaru Malang),” *Jurnal Hukum* 2, no. 1 (2014) : 8, <http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/538>.

The existence of new factors of theft is actually logical if it is correlated with the crime of theft as a social phenomenon which in fact will always experience changes and developments.

The development of the factors that cause the occurrence of the theft also causes changes in the crime of theft. The speed at which the criminal acts of theft has changed *de facto* has not been able to be followed by the law. The inability of law to keep up with the development of existing social phenomena is actually not a new thing, because the current law (*ius constitutum*) is often formed when an event has occurred, so events have often occurred, but the law has not yet been formed. This is actually in accordance with the classic legal adage, *het recht hink achter de feiten aan* (law will always be).⁷

One concrete example of the incomplete regulations related to theft is theft that occurs in villas. In relation to the act of theft, it is clearly regulated in Article 362 of the Criminal Code. Furthermore, there is an aggravating against the crime of theft as regulated in Article 363 of the Criminal Code. Article 363 paragraph (1) of the Criminal Code states that:

(1) A maximum imprisonment of seven years is punished: 1. cattle theft; 2. theft “when there is a fire, eruption, flood, earthquake, or sea earthquake, volcanoes erupt, shipwreck, train accident, riot, rebellion or danger of war; 3. theft at night in a house or a closed yard where there is a house, which is committed by the person who is there, unknown or unwanted by the entitled; 4.

theft committed by two or more people in an association; 5. theft which is intended to enter the place of committing a crime, or for the purpose of theft. arrived at the goods taken, done by destroying, cutting or climbing, or by using fake keys, fake orders or fake office clothes.

Based on Article 363 paragraph (1) of the Criminal Code, it can be understood that there is an aggravating of criminal sanctions if it meets one of the criteria. From these criteria, there are criteria related to theft at night in a house or a closed yard where there is a house. Therefore, the imposition of criminal sanctions on the perpetrator of theft at night in a closed house or yard is actually logical, because thefor the *legislative ratio* perpetrator to commit theft is when the person is careless (at night) and in a location that should make the person feel safe and comfortable (home or yard closed house).

If contextualizing the *ratio legis*, there is a weight related to theft at night in a house or closed yard where the house is in fact logical if theft in a villa is included as an aggravated reason, but this is not clearly illustrated in Article 363 paragraph (1) of the Criminal Code. The purpose of this article is to understand the elements in the theft offense with aggravating factors and to understand whether a villa can be considered to a “house” as an element of the theft offense with aggravating factors.

There are articles in legal journals that are similar to this article, namely:

1. Article by Rian Prayudi Saputra entitled:⁸ “The Development of The Crime Of Theft In Indonesia” published by Jurnal Pahlawan

⁷ Xavier Nugraha, Krisna Murti, and Saraswati Putri, “Third Parties’ Legal Protection over Agreed Authorized Capital Amount by Founders in Limited Liability Companies,” *Lentera Hukum* 6, no. 2 (2019) : 173, <https://jurnal.unej.ac.id/index.php/eJLH/article/view/9676>.

⁸ Rian Prayudi Saputra, “Perkembangan Tindak Pidana Pencurian Di Indonesia,” *Pahlawan* 2, no. 2 (2019) : 55, <https://journal.universitaspahlawan.ac.id/index.php/jp/article/view/573>.

wan. In this article, the focus of the discussion is online theft in the form of theft of personal data (*hacking*), while the focus of this article is related to theft in villas.

2. Article from Alan Wahyu Pratama, Umi Rozah, and AM Endah Sri entitled:⁹ “A Judicial Review of the Crime of Theft With Consequently Conducted by Children (Decision Study No.03 / PID.SUS Anak / 2015 /PN.PWD). In this article, we discuss theft related to the aggravating factors, but the focus is if the perpetrator is a child, while the focus of this article is related to theft in villas.

In this research, the formulation of the problem is what are the elements of the theft offense with aggravating factors? and can a villa be considered to a “house” as an element of the theft offense by weight?

METODE PENELITIAN

The research in this article is legal research. Legal research is a step to find a rule of law, legal principles, and legal doctrines in order to answer legal issues.¹⁰ There are several views that differentiate the types of legal research into normative and empirical legal research.¹¹

There are 3 (three) approaches used in this research, namely the statute approach, the conceptual approach, and the case approach.

⁹ Alan Wahyu Pratama, Umi Rozah, and AM Endah Sri, “Tinjauan Yuridis Terhadap Tindak Pidana Pencurian Dengan Pemberatan Yang Dilakukan Oleh Anak Secara Bersama-Sama (Studi Putusan NO.03/ PIDSUSANAK /2015 /PN.PWD),” *Diponegoro Law Journal* 5, no. 3 (2016) : 1–18, <https://ejournal3.undip.ac.id/index.php/dlr/article/view/12055>.

¹⁰ Peter Mahmud Marzuki, *Penelitian Hukum : Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2017).

¹¹ Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum*. (Bandung : PT. Citra Aditya Bakti., 2004).

UNSUR-UNSUR DELIK

The elements of the Offense of Theft with aggravating

Thieve is a verb that has the root word Theft. In Indonesian dictionary, the word theft implies an act of taking the property of another person without permission or in an illegal way, usually in secret.¹² . In this case, the word theft also means process, the act of stealing is carried out.

In the Criminal Code, actually has regulated and formulated the criminal act of theft in Chapter XXII concerning Theft, particularly in Articles 362-367. In Article 362 of the Criminal Code there is a formula related to theft, which says: “whoever takes something that belongs partly or wholly to someone else, with the intention of being illegally owned.” Article 362 of the Criminal Code can be said to be an article that describes basic theft, or by several figures such as R. Soesilo and SR Sianturi it is called “ordinary theft”.¹³ The following articles in Chapter XXII of the Criminal Code (except Article 366 of the Criminal Code) are referred to as articles of theft with qualifications or having additional elements against theft in the main form. The distinctive element in the crime of theft is “taking other people’s things to be owned.” Furthermore, the Criminal Code has classified theft into 5 (five) types, namely:¹⁴

¹² KBBI, “Kamus Besar Bahasa Indonesia (KBBI),” last modified 2020, <https://kbbi.web.id/curi>.

¹³ Rigen Mas Respati Artika, “Pencurian Antar Orang Yang Punya Hubungan Keluarga Tertentu Sebagai Delik Aduan Relatif Menurut Pasal 367 Ayat (2) KUHP,” *Lex Privatum* 8, no. 4 (2020) : 239–246, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/30987>.

¹⁴ Ahmad Syafii, “Criminal Act of Theft in Penal Code Perspective and Islamic Law,” *Tadulako Law Review* 2, no. 2 (2017): 140–158, <http://jurnal.untad.ac.id/jurnal/index.php/TLR/article/view/9259>.

1. Ordinary theft (Article 362 KUHP)
2. Aggravated theft (Article 363 KUHP)
3. Mild theft (Article 364 KUHP)
4. Violent theft (Article 365 KUHP)
5. Theft in the family (Article 367 KUHP)

Of the various types of theft, one type of theft is rampant in society is theft with weight. This is because the things that are included in the “aggravating” element in theft with aggravating are the things most often in conjunction with the occurrence of a theft. To understand theft with a aggravating comprehensively, one must understand the elements of theft with a aggravated offense, but beforehand, you must first understand the elements of an ordinary theft offense which is a *lex generalis* of an offense of theft with a aggravating. The following are the elements of ordinary theft:

■he element o■whoever (hi■)

Basically the term “whoever” indicates to whom the person is a legal subject who can be held accountable according to the law for the act or incident that is accused, or at least who the person is. who must be the defendant in a case.¹⁵ Sudikno Mertokusum gave an opinion, that a legal subject is anything that can obtain, have or bear the rights and obligations of the law consisting of people (*natuurlijke persoon*) and legal entities (*rechtspersoon*), but the legal subjects known in the Criminal Code are only limited to humans or people (*natuurlijke persoon*) only.¹⁶ The Criminal Code does not recognize legal subjects in

the form of corporations or legal entities.¹⁷ This is because only humans have the ability to act, or are incapable of doing or have the ability to think.¹⁸ The definition of who is described more specifically in the Guidelines for the Implementation of Tasks and Administration Book II, 2003 Revised Edition of the Supreme Court of the Republic of Indonesia and the Decision of the Supreme Court of the Republic of Indonesia Number: 1398 K / Pid / 1994 dated June 30, 1995 affirming the word “whoever” or “*hij*.” As anyone who must be the defendant (*dader*) or everyone as a legal subject who can be held accountable for all his actions.

■he element o■taking (*wegnemen*)

According to the Big Indonesian Dictionary, taking means holding something and then carrying it (by means of being lifted, used, stored, and so on). Furthermore Moch. Anwar argued that the act of taking was an act that resulted in the goods being taken under the control of the person who did (who took it) or which resulted in the item being beyond the control of the rightful person (the owner of the item).¹⁹ That is, taking something can be interpreted as moving something from where it was originally to another place or taking an object from the control of another person (the

¹⁵ Septa Candra, “Perumusan Ketentuan Pidana Dalam Peraturan Perundang-Undangan Di Indonesia,” *Jurnal Hukum Prioris* 3, no. 3 (2013) : 111–129, <https://trijurnal.lemlit.trisakti.ac.id/prioris/article/view/371>.

¹⁶ Ibid.

¹⁷ Paulus Aluk Fajar Dwi Santo, “Tinjauan Tentang Subjek Hukum Korporasi Dan Formulasi Pertanggungjawaban Dalam Tindak Pidana,” *Humaniora* 3, no. 2 (2012) : 422–437, <https://journal.binus.ac.id/index.php/Humaniora/article/view/3342>.

¹⁸ Ibid.

¹⁹ Abi Desiano Budi Darmawan and Tegar Harbriyana Putra, “Upaya Polri Dalam Menanggulangi Tindak Pidana Pencurian Kendaraan Bermotor Roda Dua Di Wilayah Hukum Polres Salatiga,” *Jurnal Bedah Hukum* 2, no. 1 (2018) : 1–14, <https://www.ejournal.uby.ac.id/index.php/jbh/article/view/159>.

owner of the object).²⁰ Thus, the taking element is an objective element which must be proven by the actions and certain methods or conditions in obtaining said goods.

□he element o□something (*eeniggoed*)

R. Soesilo explained his opinion about something, which is “everything that is tangible, including animals (humans are not included), for example money, clothes, necklaces and so on.”²¹ In the sense of goods, “electric power and gas”, although not tangible, are transmitted by a body or pipe. This item does not need an economic price (value). Therefore, taking a few strands of woman’s hair without her permission is theft, even though two strands are worthless.”

□lements which are wholl□or □artl□owne□ b□ other □eo□le (*dat geheel of gedeeltelijk aan een ander toebehoort*)

Regarding the element “wholly or partly belonging to someone else” means that the goods taken are part of their property, which is also the property of other people attached to the said goods or in whole. does not belong to the perpetrator.²²

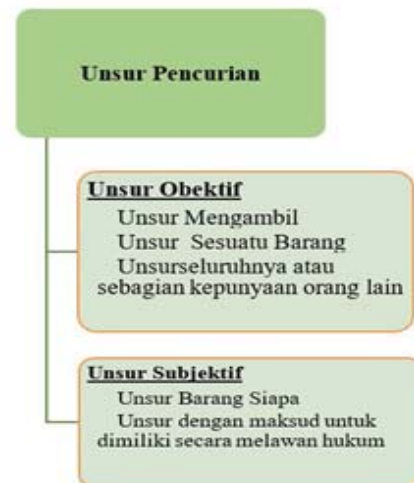
□lements with the intention to be □ossesse□ against the law (*met het oogmerk om het zich wederrechtelijk toe te eigenen*)

According to PAF Lamintang this element is a subjective element, which must be proven wrong. The definition of “with the intention of being possessed against the law” means that the perpetrator in carrying out his actions has the intention of possessing something that he has taken by violating the rights of others.²³

Based on this description, it can be understood that the elements of theft are:

Figure 2

Elements of the theft offense



Data Source: Author Management Results The

elements of the theft offense with actual aggravating factors are generally the same as the ordinary theft offense, but there is an additional element that makes the theft offense with a aggravating. is a *lex specialis* of theft offense, namely the element of aggravating. Regarding the element of aggravating it has the intention that at the time the theft was car-

²⁰ I Putu Yoga Ari Permana and Anak Agung Ngurah Wirasila, “Analisis Yuridis Tindak Pidana Pencurian Terhadap Pelaku Yang Mengidap Kleptomania,” *Kertha Wicara* 8, no. 5 (2019): 1–14, <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/52943>.

²¹ R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal* (Bogor: Politeia, 1994).

²² Bisker Manik, Mahmud Mulyadi, and Muaz Zul, “Analisis Hukum Terhadap Pertanggungjawaban Pelaku Pidana Penggelapan (Studi Kasus Pada Pengadilan Negeri Lubuk Pakam),” *ARBITER: Jurnal Ilmiah Magister Hukum* 1, no. 1 (2019) : 68–77, <http://jurnalmahasiswa.uma.ac.id/index.php/arbitrer/article/view/109>.

²³ Sandi Rakhmat Wicaksono, “Kualifikasi Oogmerk Pada Penerapan Pasal 362 KUHP,” *Journal of Law* 1, no. 1 (2019): 1–22, <http://ejurnal.untag-smd.ac.id/index.php/DD/article/view/4724>.

ried out there were things / circumstances that coincided with the theft, so that the sanctions imposed were heavier. The following will be described in relation to the weight in question:

Livestock theft

Based on Article 101 of the Criminal Code which is located in Book I Chapter IX has actually described the term livestock. Whereas, what is called livestock, it is: “all animals with one hoof, ruminant animals, and pigs.” In its development, the definition of livestock is also contained in Article 1 point 5 of Law Number 18 of 2009 concerning Animal Husbandry and Animal Health, which states that livestock are pets whose products are designated as food producers, industrial raw materials, services and / or by-products related to agriculture. Thus, what is seen as livestock in the Criminal Code are as follows:

- Animals with one-toed nails, such as horses, donkeys, and so on;
- Chewing animals, such as cows, buffalo, goats, etc.
- Pig.

The legis ratio of aggravation for people who commit theft of livestock is because livestock is owned by a farmer which incidentally belongs to the farmer which in ancient times was one of the most important things.²⁴

Theft in the event of fire, eruption, flood, earthquake or seismic earthquake, volcanic eruption, shipwreck, train accident, riot, rebellion or danger of war

Ratio legis of resistance for perpetrators who commit theft during fire, eruption, floods, earthquakes or seismic earthquakes, volcanoes, shipwrecks, train accidents, riots, rebellion or the danger of war are all because these are emergencies where people try to save their lives, but are instead taken advantage of. to snatch other people's things. It can be understood that how evil the person is, so it is logical that there is weight to the perpetrator who committed the theft at these times.²⁵

At night in a house or a closed yard where there is a house, which is carried out by the person who is there without being noticed or unwanted by the person who has the right.

If you pay attention, actually the perpetrators who can be subject to the aggravation of this sanction, in fact, must fulfill 3 (three) elements which are cumulative in nature, namely:²⁶

At night

Based on the Big Indonesian Dictionary, the meaning of night is the time after sunset until the sun rises, while what is meant is: with “at night” according to Article 98 of the Criminal Code is the time between the previous sun and sunrise.

²⁴ Brylian MT Berhimpong, “Pencurian Ternak (Pasal 363 Ayat (1) Ke-1 KUHP) Sebagai Pemberatan Terhadap Tindak Pidana Pencurian,” *Lex Crimen* 6, no. 10 (2017): 115–120, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/18878>.

²⁵ Virsa Ferasari, “Tindak Pidana Pencurian Yang Dilakukan Pada Saat Bencana Alam Ditinjau Dari Sudut Kriminologi (Studi Kasus Di Polisi Sektor Rumbai),” *JOM Fakultas Hukum* 1, no. 2 (2014): 1–15, <https://jom.unri.ac.id/index.php/JOMFHUKUM/article/view/4372>.

²⁶ Ravinska Audina Zhasadoma and Budi Setiyanto, “Tinjauan Terhadap Pemidanaan Tindak Pidana Pencurian Dengan Pemberatan Yang Dilakukan Oleh Anak (Analisis Putusan Nomor : 15/Pid.Sus/2014/PN.SKH.),” *Recidive* 4, no. 1 (2015): 95–103, <https://jurnal.uns.ac.id/recidive/article/view/40553/26726>.

In a house or a closed yard where there is a house

In this element there is actually an option, which is a house or a closed yard where there is a house. R. Soesilo argues that what is meant by house (*woning*) is a place that is used to stay in silence day and night, meaning to eat, sleep and so on, whereas regarding a closed yard is a yard around which there are visible boundary signs, such as a ditch, fence, bamboo, wire fence, and so on.

Conducted by a person who is there without the knowledge or will of the person entitled to

this element has a consequence, that the person must actually be in a closed house / yard where the house is located. For example, someone outside the house uses a hook to pick up the mangoes inside the house, it cannot be said to fulfill this element.

Performed by two or more people in an alliance

This refers to two or more people who cooperate in committing the crime of theft, for example, they collect things together with the will of them.

The element of entry to the place of committing a crime, or to be able to retrieve the item to be stolen, is done by destroying, cutting or climbing, or by using a false key, false order or fake office dress.

Related to “dismantling and breaking” is any act of violence. which causes the breaking of the unity of something, either to dismantle or break the need for a door binding item

to be broken, or the lock of a chest is damaged.²⁷

The element of aggravating in the criminal act of theft as regulated in Article 363 paragraph (1) numbers 1 to 5 is not cumulative, but an alternative. This implies that a person can be declared to have committed a criminal act of theft with a ,if one of the elements in the offense as referred to in Article 363 paragraph (1) has been fulfilled, and is subject to a maximum imprisonment of 7 (seven) years. Meanwhile, if the theft is committed in the circumstances according to number 3 and accompanied by methods number 4 and 5, then the act is punishable by a maximum imprisonment of 9 (nine) years as regulated in Article 363 paragraph (2).

□□ansion o□the Meaning o□a Villa that □an □e □uate□ with a □ouse as an □le□ ment of the Offense of Theft with aggravat□ ing□

RP Soeroso, using a socio-economic approach, periodized the praaksara era (the era before the introduction of writing) into:²⁸

1. Age of hunting and gathering;
2. Age of agriculture / farming; and the
3. Age of Negotiation (technical ability)

In the era of hunting and gathering food, humans lived by hunting and gathering food.²⁹ When the food in the area runs out, humans

²⁷ Ibid.

²⁸ Aulia Novemy Dhita SBK, Mutiara Kencana Dewo, and Raficko Deny Marantika, “Tinjauan Historis Bekarang: Warisan Budaya Untuk Alam Di Kecamatan Kikim Timur, Kabupaten Lahat,” *Journal of Indonesian History* 9, no. 1 (2020): 55–63, <http://journal.unnes.ac.id/sju/index.php/jih/article/view/40651>.

²⁹ Ibid.

will move to another area, so that humans at that time were called nomads (a group of people who did not have a permanent residence or traveled from one place to another). During its development, in the era of agriculture / farming, humans began to have a place to live. At that time, when the resources in the area started to run out, they would move to another place. In its development, in the era of negotiation, humans have started to recognize better tools, so that they can start to maintain their life without the need to move around, even houses at that time have played an important role as a shelter for humans.

Based on this historical approach, it can be seen that the house has a very important role for humans. Home can be said to be a place for someone to come home after doing activities all day, so that the place must provide a sense of security and comfort, especially at night which incidentally is the time for that person to rest. This is actually in accordance with Rully's opinion which states that:³⁰ "The house functions as a container for the smallest institution of human society, which at the same time can be seen as a "*shelter*" for the growth of a sense of security or social protection in society." The importance of the house, especially at night, then became the *ratio legis* for the birth of Article 363 paragraph (1) 3rd of the Criminal Code.

In its development, there are places whose functions can be said to be similar to houses, because people use them as "shelters" at night, such as apartments, hotels, villas, and so on. From the existing places, one of the places that often becomes the *locus delicti*

of theft is a villa. Villas, which are actually chosen as a place to rest on weekends or during the holiday season, are often targeted by thieves, because people who vacation usually bring a lot of money or valuables with them, so there are frequent thefts of villas at night, when people is resting.

If you contextualize the criminal act of theft in a villa at night with Article 363 paragraph (1) of the 3rd Criminal Code, grammatically it will cause debate, because the phrase in Article 363 paragraph (1) 3rd of the Criminal Code is a house or yard on the basis of this, it can be said that in connection with this there is still a lack of law.

In the context of legal obscurity, to resolve these problems, legal discovery is required. Sudikno Mertokusumo explained that legal discovery is a process of legal formation by judges or other legal officers who are assigned the task of implementing the law or applying legal regulations for concrete legal events.³¹ Paul Scholten has also an consistent opinion, that is the discovery of the law is something other than just the application of regulations in the event, for which a concrete event, the rules have to be found, either by way of interpretation or by way of analogy or *rechtsvervi-jning* (legal refinement/concreting).³²

Based on the opinions of these experts, it can be concluded that legal discovery is a process of legal formation by judges when there is a legal vacuum, legal conflict or obscure law by carrying out legal construction to fill the legal vacuum or making legal interpretations if legal or legal conflicts are obscure in

³⁰ Rully, "Merencanakan Dan Merancang Rumah Tinggal Yang Optimal," *Jurnal Teknik Sipil dan Arsitektur* 15, no.19 (2014): 1–8, <http://ejournal.utp.ac.id/index.php/JTSA/article/view/414>.

³¹ Sudikno Mertokusumo, *Penemuan Hukum: Suatu Pengantar* (Yogyakarta: Liberty, 2007).

³² Achmad Ali, *Menguak Tabir Hukum (Suatu Kajian Filosofis Dan Historis)* (Jakarta: Chandra Pratama, 1996).

order to be able to applied in concrete events.

In the event of theft of villas at night to answer legal obscurity related to theft of villas at night whether it is included in Article 363 paragraph (1) 3rd of the Criminal Code, the legal findings that can be used are legal interpretations. As for the kinds of legal interpretations, among others are:³³

- a) Grammatical interpretation;
- b) Historical interpretation;
- c) Systematic interpretation;
- d) Theological / sociological interpretation;
- e) Comparative interpretation;
- f) Futuristic / anticipatory interpretation;
- g) Restrictive interpretation;
- h) Extensive interpretation;
- i) Authentic interpretation;
- j) Interdisciplinary interpretation; and
- k) Multidisciplinary Interpretation.

In order to resolve the legal confusion regarding the villa concept with Article 363 paragraph (1) of the Criminal Code, the correct interpretation is the socio-historical interpretation and the extensive interpretation of the Interpretation.

□ocio□historical

interpretation Socio-historical interpretation is the interpretation of the meaning of law which focuses on the historical context of society which influences the formulation of the text of a statutory regulation.³⁴ As described above, that the *ratio legis* with Article 363 paragraph (1) 3 of the Criminal Code is to guarantee legal protection for a person in order to feel safe

and comfortable while resting in his place of residence at night. With the *ratio legis*, the villa, which is actually a temporary residence, can be considered to be included in the definition of 'house' in Article 363 paragraph (1) of the Criminal Code, because it is the same place as a house which is actually used to live at night.

□□tasi□e Inter□retation

Extensive interpretation is an interpretation by expanding the scope of a norm, but still adhering to the existing rules.³⁵ In the context of criminal law, especially the criminal act of theft, the use of this extensive interpretation has also been applied for a long time. This can be seen in the Decision on *Hoge Raad* May 23, 1921 or what is known as the *electricities-arrest* which provides an extensive interpretation of the concept of objects as: 1) everything that has a certain value, 2) to obtain it requires energy and costs, 3) people-People use it for their own purposes, it can also be transferred to other people in exchange or paying a certain amount of money. With the expansion of the concept of objects, which is everything that fulfills the 3 (three) elements makes electricity then qualifies as an object.³⁶ *arbitration* This later became permanent jurisprudence (*faste jurisprudence*) and is still relevant to be used by

³³ Afif Khalid, "Penafsiran Hukum Oleh Hakim Dalam Sistem Peradilan Di Indonesia," *Al' Adl* 6, no. 11 (2014): 9–36, <https://ojs.uniska-bjm.ac.id/index.php/aldli/article/view/196>.

³⁴ Ibid.

³⁵ Sitti Mawar, "Metode Penemuan Hukum (Interpretasi Dan Konstruksi) Dalam Rangka Harmonisasi Hukum," *Jurnal Justitia* 1, no. 1 (2016): 1–18, <https://jurnal.ar-raniry.ac.id/index.php/Justisia/article/view/2558>.

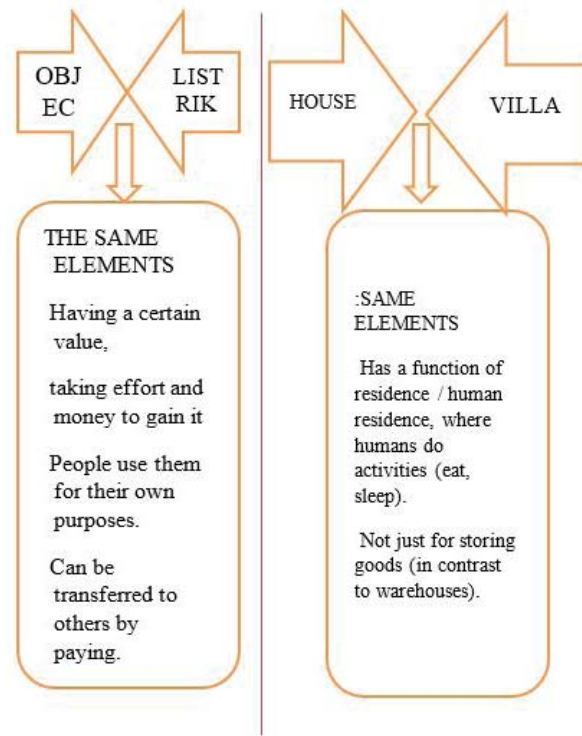
³⁶ Yuli Vandiwina, "Penyelesaian Tindak Pidana Pencurian Aliran Listrik Di Luar Pengadilan Berdasarkan Undang-Undang Nomor 30 Tahun 2009 Tentang Ketenagalistrikan Di Wilayah Hukum Tapung Kabupaten Kampar," *JOM Fakultas Hukum* 5, no. 2 (2018): 5., <https://jom.unri.ac.id/index.php/JOMFHUKUM/article/view/22089>.

Indonesian judges in examining and deciding theft offenses to date, as applied in the consideration of several decisions including, Padang District Court Decision Number: 634 / Pid. B / 2018 / PN. Pdg or No. 181 / Pid.B / 2019 / PN.Pdg and the Sanggau District Court Decision No, 7 / Pid. Sus-Anak / 2020 / PN Sag.

In casu a quo, the element of the house in Article 363 paragraph (1) 3rd of the Criminal Code according to R. Soesiloe is a place to stay day and night, which in fact the meaning of the house is in accordance with the meaning in the Big Indonesian Dictionary, which is a building for humans to live in, so it is appropriate if a villa is also a place. to stay day and night is a form of extension of the element of the house. This grammatical and doctrinal understanding shows the main elements of a house related to its function which is used for human habitation and where humans perform activity, not just for storing objects. Based on the elements of this same function, a villa can also be considered to a house. Extensive interpretation is not prohibited in this case, because no new offense is formed or the form of the act remains the same, the theft, only the object of the criminal act with an expanded aggravating condition. Comparison between the extensive interpretation of objects with electricity and houses and villas can be described in the following scheme:

Figure □

The Equation of Extensive Interpretation of Objects and Electricity and Houses and Villas in the Theft



Offense of Cum adsunt testimonia rerum, quid opus est verbis, a legal adage that has depth, the meaning that once the evidence and facts are there, then words are useless. The interpretation regarding villas which is included as an aggravating reason in Article 363 paragraph (1) 3rd of the Criminal Code has actually also been used by judges in several court decisions.

One example of a judge who interpreted the villa as one of the ballast reasons in Article 363 paragraph (1) 3rd of the Criminal Code can be seen in the Gianyar District Court Decision Number: 117 / Pid.B / 2017 / PN.Gin. This case started with Alda Intan and Ardi who planned to take other people's belongings in the Ubud area. The two men then arrived in front of

Villa Alam Mandi. Ardi is on duty to guard on the motorbike, while Alda Intan is in charge of picking up items in the villa.

Alda Intan saw that it was quiet and safe and the villa entrance was locked (padlocked), then felt confident and entered the villa through the window using a screwdriver that had been prepared. Meanwhile, the items taken are in the form of 1 (one) black Nokia brand cellphone, 1 (one) white-silver combination iPhone 6 with broken LCD condition, 1 (one) black-silver Numark headphones, 1 (one) black Canon Powershot SX110 IS type camera and bag, 1 (one) black Canon PowerShot G12 Type Camera along with a bag on the work table.

In their legal considerations, the panel of judges in the Gianyar District Court Decision Number: 117 / Pid.B / 2017 / PN.Gin. states: "... during the trial Defendant Alda Intan and Defendant Ardi without the permission of witness victim Tomohiro Hamakawa as the owner of the items in the Villa room, to be precise in front of Villa Alam Mandi in Banjar Katik Lantang, Singakerta Village, Ubud, Gianyar has taken goods in the form of ..." Further: "... Thus, the sub-elements in the" At night in a house or closed garden where there is a house or by people who are there without the knowledge / permission of the rightful "have been legally fulfilled according to law. " (Thickening of the author) From the decision, it can be seen that the panel of judges in the Gianyar District Court Decision Number: 117 / Pid.B / 2017 / PN.Gin. interpreting theft in a villa at night can qualify as theft with a aggravating in accordance with Article 363 paragraph (1) 3rd of the Criminal Code.

A similar case also occurred in the Cianjur District Court Decision Number 209 / Pid.B / 2016 / PN.Cjr. In that case, the *locus delicti* was Villa at Yayasan Tunas Bangsa Kp. Baru 3rd neighbourhood, 01th hamlet, Village Rawabelut, Sukaresmi sub-district.

on the legal consideration of the Cianjur District Court Decision Number 209 / Pid.B / 2016 / PN.Cjr., the judge also qualified the robbery at the villa at night as theft with a aggravating in accordance with Article 363 paragraph (1) 3rd of the Criminal Code.

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The theft in a villa at night can be qualified for theft with an aggravation factor as stipulated in Article 363 paragraph (1) of the Criminal Code, on the basis of socio-historical interpretation and extensive interpretation . The qualification of theft in villas at night as theft with aggravation as regulated in Article 363 paragraph (1) of the Criminal Code can also be seen in the Gianyar District Court Decision Number: 117 / Pid.B / 2017 / PN.Gin and Court Decisions. Negeri Cianjur Number 209 / Pid.B / 2016 / PN.Cjr

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