





1. Understand the legal comparison of criminal acts of theft and mugging or robbery based on the provisions of Indonesian criminal law
2. Know the requirements and influence of interpretation for legal determination of criminal acts as robbery from a legal perspective.

## METHODS

This type of research is normative legal research, specifically discussing theft and robbery. The data collection method used in this research is a literature review, which involves reviewing literature related to the object of this research (I Wayan Kartika Jaya Utama, 2022). Meanwhile, data analysis in this research was carried out systematically based on research problems described qualitatively.

## RESULT AND DISCUSSION

**Comparison of the Legal Crimes of Theft and Mugging or Robbery.** Theft, as regulated in Article 362 of the Criminal Code, is an act of taking an item, which wholly or partly belongs to another person, to possess it unlawfully, punishable by theft, with a maximum imprisonment of five years or a maximum fine of nine hundred rupiahs (Muhammad et al. et al., 2019). In the narrow sense, the word take (wingmen) is limited to moving the hands and fingers, holding the item, and transferring it to another place (Anny Yuserlina, 2020).

In the Criminal Code, Article 10 of the Criminal Code (KUHP) regulates various punishments, including basic penalties and additional penalties, which are explained as follows (Roby et al., 2021). Crimes consist of:

1. Primary Crime consists of:
  - Death penalty;
  - Imprisonment;
  - Criminal Cage: V;
  - Criminal fines;
  - Criminal cover-up.
2. Additional Penalty
  - Revocation of certain rights;
  - Confiscation of certain items;
  - Announcement of the judge's decision. In the case of the Crime of theft, the criminal sanctions that can be imposed on perpetrators of theft in the Criminal Code are the main penalties, namely the death penalty, imprisonment, fines and additional penalties in the form of revocation of certain rights (Article 366 of the Criminal Code).

The following are the sanctions for theft according to (Rama et al., 2022), namely:

- a. Petty theft (Article 362 of the Criminal Code)
 

The sanctions/punishments consist of:

  - Imprisonment of a maximum of 5 years or a fine of a maximum of 60 rupiah (primary Crime)
  - Revocation of Certain Rights (Additional Crime)
- b. Grand theft (Article 365 of the Criminal Code)
  - Nine years imprisonment and maximum death penalty (Primary Crime)
  - Revocation of certain rights (Additional Criminal)

In Article 365 paragraph (1) of the Criminal Code, it is determined that a maximum prison sentence of nine years is punishable for theft which is preceded, accompanied or followed by





violence or threats of violence against a person to prepare a means to facilitate theft, or in the case of being caught red-handed, to enable escape. Yourself or another participant, or to retain control of stolen items. This Crime is theft that is preceded, accompanied or followed by violence or threats against people. Therefore, in doctrine, it is often referred to as a crime of theft with violence. The main act in this article is theft.

However, the theft has additional elements, namely:

- a. Preceded by violence or threats of violence, or
- b. accompanied by violence or threats of violence, or
- c. followed by violence or threats of violence. (Riand Tambingon, 2016)

The Crime of robbery (theft with violence) is formulated in Article 365 of the Criminal Code, namely theft in the main form (ordinary theft) plus the element of violence. Among the people, violent theft is called robbery. Sanctions for criminal acts of theft with violence (robbery), as formulated in Article 365 of the Criminal Code, have various sanctions depending on the consequences committed by the perpetrator of the theft.

The sanctions can be:

- a. Nine years, twelve years, fifteen years, and the death penalty, or life imprisonment or imprisonment for a maximum of twenty years. If the theft is preceded, accompanied, or followed by violence or threats of violence against that person, a sentence or criminal sanction of nine years is threatened for perpetrators of robbery.
- b. A sanction of 12 (twelve) years is imposed on the perpetrator of robbery or theft with violence if the theft was committed at night in a closed house or yard, where the house is located on a public road or a moving train or tram. Carried out by two or more people together and carried out by dismantling, climbing, and wearing fake clothes, fake orders, and fake official clothes, this act of theft results in someone being seriously injured. R. Soesilo also explained that the threat of punishment is increased if the theft with violence is accompanied by one of these conditions, such as dismantling, climbing, fake orders, and fake clothes.
- c. The threat of a sentence of fifteen years in prison for perpetrators of violent theft if the theft results in the death of a person. The penalty is the death penalty, life imprisonment, or twenty years' imprisonment if the act of theft causes someone to suffer severe injury or death and is committed by two or more people together.

It was further explained that one of the crimes formulated in Article 365 in paragraph (3) of the Criminal Code is committing theft, which is preceded, accompanied by, and followed by violence against people. This theft results in the death of people. If this act is compared with one of the acts according to Article 339 of the Criminal Code, namely committing murder which is followed, accompanied, preceded, which can be punished and which is carried out to prepare to facilitate the act. The two articles are Article 365 of the Criminal Code and Article 339 of the Criminal Code. Two facts are the same, namely the theft and the person who died. The difference is that to apply Article 339 of the Criminal Code, death is the will of the perpetrator, whereas to apply Article 365 of the Criminal Code, the person's death is not what the perpetrator wanted. However, it results from the violent act, so the maximum criminal threat is determined. Different.

**Requirements and Influence of Interpretation for Legal Determination of Criminal Acts as Robbery According to a Legal Perspective.** The act of robbery is an act that contains elements of using violence or threats of violence and elements relating to property, namely, in order to obtain goods or money from other people (Tambingon).





The Crime of theft in the Criminal Code is regulated in a separate chapter, namely in chapter XXII, which consists of 6 articles, namely Article 362, Article 363, Article 364, Article 365, Article 366, and Article 367. R. Soesilo states that according to law, theft is divided into five types of theft, (Duwi Handoko, 2019), namely:

- a. Ordinary theft (Article 362 of the Criminal Code);
- b. Aggravated theft (Article 363 of the Criminal Code);
- c. Theft with violence (Article 365 of the Criminal Code);
- d. Petty theft (Article 364 of the Criminal Code); And
- e. Theft within the family (Article 367 of the Criminal Code).

The perpetrator of theft (thief) in society is usually called a thief, whereas, in Dutch, theft is known as *diefstal*. According to Tim Ikadin, in several existing decisions, in theft cases, it is stated that the element of taking in the offense of theft does not have to be fulfilled by the act of taking away. However, It is sufficient if the goods that are the object of the perpetrator's actions are under the complete control of the perpetrator. What can differentiate the punishment for theft, according to the Ikadin Team, is the reason a person steals, namely because of habit, because it is their job or because certain conditions are forced. The definition of the Crime of robbery in the Criminal Code is also called the Crime of theft with violence or aggravation (*gequalificeerde diefstal*), which is regulated in Articles 363 and 365 of the Criminal Code. Article 365 Paragraph (4) of the Criminal Code is the fourth form of violent theft. This theft is the most severe because it is punishable by the death penalty, life imprisonment or temporary imprisonment of up to 20 years. This penalty is imposed if the following elements are combined:

1. All elements of primary forms of theft (Article 362);
2. All elements of theft with violence (Article 365 paragraph (1));
3. The element of consequence: severe injury or death of a person;
4. Carried out by two people in alliance;
5. Plus, one of:
  - a. The time of the theft is night, plus the element of place, namely in a residence or closed yard where the residence is located or
  - b. Elements of the methods for entering or arriving at the place of committing a crime are breaking, climbing, using fake keys, using fake orders, and wearing fake official clothes. The location of the severity of the Crime in this last form of violent theft, from a maximum penalty of 12 years in prison (365 paragraph 2) to the death penalty or life imprisonment or a maximum of twenty-20 years, is due to the combination of the elements mentioned above. Mentioned in points 3, 4 and 5 above (Setiyono & Nabela, 2023)

In the journal "Judicial Review of the Crime of Theft with Violence Based on Article 365 of the Criminal Code," legal interpretation plays a vital role in understanding and applying Article 365 regarding theft with violence. Legal interpretation includes understanding and interpreting the provisions in Article 365 of the Criminal Code and their relationship to concrete cases related to the criminal act (Asmak et al., 2023).

The following is an explanation of legal interpretation in the context of the journal (Hosnah et al.)

1. Meaning and Elements of Article 365 of the Criminal Code: Legal interpretation is carried out to understand the meaning and elements contained in Article 365 of the Criminal Code. This includes understanding the concepts of theft, violence, possession, and threats, as well as the relationship between these elements in the context of criminal acts of theft with violence.



2. The Role of the Court in Legal Interpretation: Legal interpretation related to Article 365 of the Criminal Code also involves the court's role in interpreting and applying the law in actual cases. The court has the authority to interpret legal provisions related to the Crime of violent theft and make decisions based on that interpretation.
3. Legal Precedent: Legal interpretation includes legal precedent or previous court decisions relevant to Article 365 of the Criminal Code. Legal precedent can be a reference or basis for understanding and applying the law in similar cases.
4. Consistent and Fair Interpretation: The legal interpretation carried out in the context of this journal aims to achieve a consistent and fair interpretation of Article 365 of the Criminal Code. This is important to ensure that the law is applied fairly and consistently for all parties involved in criminal acts of violent theft.
5. Relevance to Legal Developments: Legal interpretations in the journal also reflect relevance to related legal developments. Legal interpretation can follow policy changes, social changes, and legal developments that influence the implementation and interpretation of Article 365 of the Criminal Code. Legal interpretation is expected to provide a clear and consistent understanding of Article 365 of the Criminal Code and guide parties involved in law enforcement and judicial processes related to criminal acts of theft with violence. (Utama & Wiryani, 2023)

## CONCLUSION

The comparison between the Crime of theft and the non-crime of robbery lies in using the article regulations. Suppose the Crime of theft is regulated in Article 362 of the Criminal Code. Meanwhile, Article 365 of the Criminal Code regulates the Crime of robbery. The Crime of theft with violence or robbery is severe in the form of confiscation of property with violence or intimidation directed at the victim. Article 365 of the Criminal Code provides a solid legal basis for criminalizing and punishing perpetrators of criminal acts of theft with violence. Correct legal interpretation of Article 365 of the Criminal Code is crucial to ensure fair and effective law enforcement against perpetrators of these criminal acts.

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