

## Legal Analysis of Responsibility for the Criminal Act of Aggravated Theft

La Ode Muhammad Syahrul R<sup>1)</sup> & Umar Ma'ruf<sup>2)</sup>

<sup>1)</sup> Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [laodemuhammadsyahrul.std@unissula.ac.id](mailto:laodemuhammadsyahrul.std@unissula.ac.id)

<sup>2)</sup> Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [umarmaruf@unissula.ac.id](mailto:umarmaruf@unissula.ac.id)

**Abstract.** *This thesis examines the application of criminal law to perpetrators of aggravated theft, with a specific focus on the juridical analysis of Decision Number 644/Pid.B/2024/PN Mtr. The research is motivated by the importance of fair and proportional law enforcement in cases of aggravated theft, particularly in determining criminal sanctions that align with the degree of culpability and the defendant's personal circumstances. The objective of this study is to analyze how the law is applied in sentencing the defendant and to assess the legal reasoning employed by the judge in delivering the verdict. This research adopts a normative juridical approach, emphasizing library research and analysis of relevant statutory provisions, legal doctrines, and judicial decisions. Primary data consists of the court ruling, while secondary data is obtained from legal literature related to substantive criminal law and criminal procedure. The findings of the study indicate that the legal application in this aggravated theft case refers to Article 363 of the Indonesian Criminal Code (KUHP). However, there is a discourse surrounding the proportionality of the sentence imposed. The judge considered several factors, including the socio-economic condition of the defendant, the defendant's confession and remorse, and the impact of the act on the victim. These considerations reflect the application of the principle of individualized sentencing, in which punishment is not solely retributive but also incorporates rehabilitative elements.*

**Keywords:** *Aggravated theft; Criminal sanctions; Judicial considerations; Normative juridical approach.*

### 1. Introduction

The Unitary State of the Republic of Indonesia (NKRI) is a state of law. Article 1 paragraph 3 of the 1945 Constitution states that the State of Indonesia is a state of law. This statement emphasizes that all aspects of life in society, statehood, and government must be based on applicable law. This means that every action in a country must follow the rule of law, which is an important part of the Indonesian legal system which is based on Pancasila as the main

source of law. Indonesia is a state that is not based on power (*maachstaat*). All aspects of society, statehood, and government must be regulated by law.<sup>1</sup> To realize a state of law, legal instruments are needed to regulate all aspects of people's lives to maintain justice and balance. Pancasila and the 1945 Constitution as a philosophical basis are used in national and state life, not only in terms of legislation, but also in all aspects of life.<sup>2</sup>

According to JCT Simorangkir and Woerjono Sastropranoto, law is defined as coercive regulations that regulate human behavior in society. Laws are made by official bodies that have authority and aim to create order, justice, and legal protection for every individual.

The law has binding power so that every citizen must obey it. If there is a violation of the law, there will be legal consequences that can be in the form of criminal, civil, or administrative sanctions, depending on the type of violation committed.

In addition to being a tool of social control, law also functions as a guideline for behavior in social, national, and state life. With clear and fairly enforced laws, order and justice in society can be realized. Therefore, legal certainty must be maintained so that there is no inequality in its application, and the law must continue to develop in accordance with social dynamics and the needs of society. This definition emphasizes that law not only regulates behavior, but also provides sanctions for violators, which creates order and justice in society.<sup>3</sup>

Because the law is mandatory, so every society must obey the law because violations will be subject to sanctions. There are laws in force in Indonesia, including criminal law. According to Sudarsono, criminal law is a law that regulates crimes and acts that violate the public interest and the act itself is threatened with criminal sanctions that cause suffering to him. Meanwhile, Professor Moeljatno explained that criminal law is one of the laws that apply in a country to:<sup>4</sup>

1. Determining which actions may not be carried out and are prohibited, then accompanied by threats or sanctions in the form of certain criminal penalties for anyone who violates the prohibition.
2. Determining when and in what cases those who have violated these prohibitions can be subject to or sentenced to the penalties that have been threatened.
3. Determining how criminal sanctions can be implemented if someone is suspected of violating the prohibition.

One of the phenomena that is often encountered in today's society is aggravated theft. This crime is an act that is prohibited by law, and to protect the community, the perpetrators of the crime can be punished in accordance with applicable legal procedures. Aggravated theft has had a significant negative impact on social life, so that various efforts have been made by law enforcement officers to overcome it. In addition, religious leaders also appeal to the

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<sup>1</sup>Muntoha, *The Legal State of Indonesia after the Amendment to the 1945 Constitution*, Kaukaba Dipantara, Yogyakarta, 2013, pp. 1-2.

<sup>2</sup>Achmad Irwan Hamzani, *Initiating Indonesia as a Legal State that Makes Its People Happy*, Yustisia Journal, Edition 90, (September-December), 2014, p. 141

<sup>3</sup>CST Kansil, *Introduction to Indonesian Legal Science*, Rineka Cipta, Jakarta, 2011, pp. 33-34.

<sup>4</sup>Moeljatno, *Principles of Criminal Law*, Rineka Cipta, Jakarta, 2008, p. 1.

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community not to get involved in the crime of theft. Many thieves commit this act to meet their financial needs, either in the form of money or stolen goods. The existence of this crime shows that there is a fundamental problem in society that needs to be addressed seriously.

Strict law enforcement and public education are important steps to reduce this crime rate and create a safer environment.

The life of society is increasingly developing and always followed by changes, not only causing positive impacts but also causing negative impacts that often occur in society. In addition, society has difficulty in adapting, causing many conflicts and various problems. As a result, society behaves deviantly by committing various crimes for the benefit and satisfaction of itself without regard to the suffering of others.

Criminal acts are acts that violate the law and cannot be erased. It is still difficult for a criminal to defend himself by declaring himself not guilty by society because of the social stigma that the perpetrator will do it. repeat your actions and always harm others. Print and electronic media present certain actions that violate the law and disturb society, including theft.<sup>5</sup>

The impact of the current economic crisis is increasing, jobs are very scarce so that not everyone has them, such as jobs, happiness is the same, as a result unemployment is spread everywhere. People with low levels of happiness tend to ignore rules and regulations. To overcome this situation and meet needs, people tend to use all means to meet needs such as theft.

According to PAF Lamintang, the crime of aggravated theft (*gequalificeerde diefstal*) is theft which has elements of the act of theft in its basic form, which is then added to by other elements which cause the threat of punishment to become heavier.<sup>6</sup>

Theft as regulated in Article 363 of the Criminal Code is included in "special theft". The meaning of this term is that aggravated theft (*Curat*) has a certain method or is carried out in certain circumstances, so that it is considered more serious than ordinary theft as regulated in Article 362 of the Criminal Code.<sup>7</sup>

The aggravation in this particular theft is caused by the presence of factors that worsen the impact or increase the risk of the crime, such as:

- a. It is done at night which increases the risk that the victim will not be able to defend themselves.
- b. Conducted in a house or enclosed yard which increases the level of privacy violation.
- c. Committed by two or more people (in league) which shows the existence of planning or cooperation in the crime.
- d. This is done by dismantling, climbing, or using special tools such as fake keys or fake commands.

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<sup>5</sup>Andi Matalata, *Compensation for Victims*, (In JE Sahetapy), *Victimology, An Anthology*, Pustaka Sinar Harapan, Jakarta, 1987, p. 35.

<sup>6</sup>PAF Lamintang and Djisman Samosir, *Special Crimes*, (Bandung: CV. Nuansa Aulia, 2010), pp. 67-68.

<sup>7</sup>Sudrajat Bassar. 1986. *Certain Criminal Acts in the Criminal Code*. Second Printing. Bandung: Remadja Karya.

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e. Carried out on high-value items, including livestock.

Due to these factors, the punishment for aggravated theft is heavier than for ordinary theft, namely a maximum of 7 years in prison, and can even be higher under certain conditions.

The distinction between ordinary theft and aggravated theft aims to provide justice in criminal law, so that the punishment is commensurate with the level of seriousness of the crime committed by the perpetrator.

The word "theft" in the formulation of the crime of theft with qualifications regulated in Article 363 of the Criminal Code (KUHP) has the same meaning as the term "theft" as the main act. In this context, theft refers to the act of taking someone else's property unlawfully with the intention of possessing it illegally. Thus, theft in its main form becomes the basis for the definition of aggravated theft, which includes additional elements that increase the level of seriousness and legal consequences of the act. Aggravated theft or Special Theft or Theft with Qualifications (*gequalificeerde diefstal*) regulated in Article 363 of the Criminal Code, is ordinary theft which in its implementation is accompanied by certain aggravating circumstances and has a risk of a more serious crime than ordinary theft.<sup>8</sup>

The crime of theft is regulated in Article 363 and Article 365 also means Qualification theft. Wirjono Prodjodikoro defines it as "special theft". Because theft is done in a certain way. Which is considered more appropriate to be discussed by R. Soesilo. His book (Criminal Code), namely "Aggravated Theft" for this reason stealing can be punished with a heavier sentence.<sup>9</sup>

The types of theft crimes mentioned above which are called theft crimes in the main form are ordinary theft crimes (Article 362 of the Criminal Code). While for other theft crimes, they are ordinary thefts accompanied by special circumstances. Theft crimes accompanied by special circumstances are called aggravated theft crimes.<sup>10</sup> In the criminal acts studied by the author, there are "aggravating" elements as regulated in Article 363 paragraph (1) 3 of the Criminal Code, namely:

"Theft at night in a house or an enclosed yard where a house is located, committed by someone whose presence there is unknown or not desired by the person entitled to do so."

There are several classifications of types of theft crimes, one of which is the crime of aggravated theft which is regulated in Article 363 of the Criminal Code. Although it has been regulated in the Criminal Code clearly along with the sanctions that will be imposed on the perpetrators, it does not deter the Indonesian people and not do it, the proof is that these crimes still often occur, both those reported to the police and those not, many of these

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<sup>8</sup>Wirjono Prodjodikoro, *Certain Criminal Acts in Indonesia*, (Bandung, Eresco), 1986, p. 19.

<sup>9</sup>Hediati Koeswadi Hermien, *Property Crimes, Principles, Special Issues and Problems*, First Edition, Sinar Wijaya Surabaya: Law, 1984, p. 3.

<sup>10</sup>Kusfitono, Umar Ma'ruf, Sri Kusriyah, *Implementation of Constitutional Court Decision Number 130/PUU-XIII/2015 Regarding the Investigation Process of Aggravated Theft at the Kendal Police Criminal Investigation Unit*, *Khaira Ummah Law Journal*, Vol. 12. No. 4 December, 2020, p. 37

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theft crimes are not revealed optimally and not infrequently this crime is not revealed who the perpetrator is.<sup>11</sup>

This research refers to the crime of aggravated theft in case number 644/Pid.B/2024/PN Mtr. That the Defendant GEDE ARTE WIJAYA (hereinafter referred to as the Defendant) together with Mr. Fatoni Alias Toni (DPO) on Saturday, June 29, 2024 at around 13.00 WITA or at least at another time in 2024 at the Royal Zam-zam 2 Housing Complex Block F No. 31 Dusun Labuapi Utara Ds. Labuapi Kec. Labuapi Kab. West Lombok or at least in another place that is still included in the jurisdiction of the Mataram District Court, has taken something in the form of (one) unit of Polytron brand television, size 32 inches, black, Number SN 665929A00110, wholly or partly belonging to another person, namely the witness Zainul, with the intention of possessing it unlawfully, which was carried out by two or more people in league, carried out at night in a house or closed yard, who entered the place of committing the crime, or to get to the goods taken by damaging, cutting or climbing, or by using a fake key, fake orders or fake official clothing, the act was carried out in the following ways.

That at the time and place mentioned above, it started when the Defendant and Mr. Fatoni alias Toni planned to take the items in the empty house, then riding a motorbike belonging to Mr. Fatoni alias Toni went to the Royal Zam-zam 2 Labuapi Housing Complex and precisely at Block F No. 1 saw the house was empty so Mr. Fatoni alias Toni stopped his motorbike, then the Defendant entered the house by first climbing the fence around the front, while Mr. Fatoni alias Toni remained outside to guard.

That after being inside, the Defendant entered through the unlocked door then the Defendant entered the room and opened the cupboard to look for valuables but there were none, then the Defendant saw a television unit installed on the bedroom wall which he immediately took by sliding it, after the television was successfully removed, he took it out and placed it on the front wall of the house, when he was about to climb the wall to get out of the house the Defendant saw many residents chasing Mr. Fatoni alias Toni but managed to escape, while the Defendant who did not escape was successfully secured by residents who took him to the Labuapi Police for further processing.

That as a result of the actions of the Defendants, witness Zainul suffered losses amounting to Rp.2,800,000,- (two million eight hundred thousand rupiah). The Defendant's actions as regulated and threatened with criminal penalties in Article 363 Paragraph (1) ke,3,4, and 5 of the Criminal Code.

## **2. Research Methods**

The type of research used is normative legal research. Normative legal is a legal research method that focuses on the study of applicable legal norms, both those contained in laws and regulations, jurisprudence, doctrine (opinions of legal experts), and legal principles used as a basis for analyzing legal problems. According to Soerjono Soekanto and Sri Mamudji, normative legal research is research that refers to written legal norms as the main material

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<sup>11</sup>Rezna Fitriawan, R. Sugiharto, The Role of the Criminal Investigation Unit in Revealing Aggravated Theft in the Jurisdiction of the Demak Police Resort, I Unissula Student Scientific Constellation (KIMU) 5, Journal of Sultan Agung Islamic University Semarang, March 23, 2021, p. 2

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for obtaining data.<sup>12</sup>This approach aims to examine law as a prescriptive normative system, namely providing guidance on what should be done in a legal context, not simply describing what happens in society.

### 3. Results and Discussion

#### 3.1. Implementation of Law on Criminal Sanctions Regarding the Crime of Aggravated Theft Case Study Case Number 644/Pid.B/2024/PN Mtr

The application of criminal law in judicial practice often faces a dilemma between legal certainty and the sense of justice that exists in society. The Decision of the Mataram District Court Number 644/Pid.B/2024/PN Mtr is a concrete reflection of the application of legal norms to the crime of aggravated theft committed by the defendant Gede Arte Wijaya and a colleague. This case is relevant for further study because it not only shows how positive law is applied formally, but also raises discourse on the need for a more humanistic approach to criminalization.

The crime of aggravated theft involving the defendant Gede Arte Wijaya occurred on Saturday, June 29, 2024, at around 13.00 WITA at the Royal Zam-Zam 2 Housing Complex, Block F No. 31, Dusun Labuapi Utara, Labuapi Village, Labuapi District, West Lombok Regency. At the time of the incident, the defendant and a friend who is still at large named Fatoni alias Toni, planned to steal from empty houses. They set off on Toni's motorbike towards the housing complex and found an unoccupied house.

Toni acted as a supervisor outside the house, while Gede Arte Wijaya entered the house by climbing the fence. Once inside, the defendant entered the house through an unlocked door, and then went into the bedroom and took a 32-inch Polytron LED television mounted on the wall. When he was about to leave, the defendant found that Toni had been chased by residents and managed to escape, while the defendant himself was caught by local residents and handed over to the Labuapi Police. As a result of this action, the homeowner, Zainul, suffered a loss of Rp2,800,000.<sup>13</sup>

During the trial, the public prosecutor charged the defendant with Article 363 paragraph (1) 3, 4, and 5 of the Criminal Code. These elements include:

- Done by two or more people in alliance (verse 3),
- Against closed or forbidden houses or places (verse 4),
- By prying, climbing, or using fake keys (paragraph 5)<sup>14</sup>.

The panel of judges stated that the elements were proven legally and convincingly. The defendant worked together with Toni, proving the element of collusion. He climbed over the fence of the victim's house which was closed, thus fulfilling the element of unlawful entry. The stolen television was found in the possession of the defendant when arrested by residents, and this was confirmed by evidence and testimony.

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<sup>12</sup>Soekanto, S., & Mamudji, S. 2001. Normative Legal Research: A Brief Review. Jakarta: RajaGrafindo Persada. p. 14.

<sup>13</sup>Mataram District Court. (2024). Decision Number 644/Pid.B/2024/PN Mtr, p. 2.

<sup>14</sup>Criminal Code (KUHP), Article 363 paragraph (1).



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The judge considered several aspects in handing down the verdict. The aggravating factor was that the defendant's actions were carried out in a planned manner and caused public unrest. The mitigating factors were the defendant's confession, his cooperative attitude during the trial, and the fact that the defendant had never been convicted before.<sup>15</sup> The panel of judges finally sentenced him to 3 years and 6 months in prison.

The imposition of the sanctions shows how the criminal justice system in Indonesia is still oriented towards a retributive approach. Despite considering mitigating factors, the verdict does not show any consideration to prioritize a restorative approach or alternative sentencing such as rehabilitation or conditional sentences.

Article 363 of the Criminal Code regulates theft in aggravated form. This provision provides a basis for judges to give a heavier sentence than ordinary theft (Article 362 of the Criminal Code). In this case, the elements of association and the method of implementation (climbing the fence) are indicators of an increase in the quality of the crime and the level of seriousness of the act.

The element of association means that the crime is planned and carried out together, so that the potential for loss and psychological impact on the victim is greater. The element of climbing the fence as an unauthorized means of entry is a form of violation of a person's exclusive rights to his property. This behavior, according to Simons, can be categorized as *gekwalficeerde diefstal* because of its nature which disturbs public order and security<sup>16</sup>.

This decision also shows that judges still adhere to normative texts even though the perpetrator's social and economic context can be used as a basis for considering more contextual sentencing. In an ideal law enforcement framework, judges should not only be the mouthpiece of the law (*la bouche de la loi*), but also be able to assess substantive justice based on the concrete conditions of the perpetrator and the social environment in which the crime occurred. Often, perpetrators of aggravated theft are not only driven by deep evil intentions (severe *mens rea*), but also by economic pressure, limited access to decent work, and pressing family situations. In this context, a rigid approach to sentencing that does not consider the perpetrator's background can result in injustice hidden behind formal legality. Therefore, sentencing should not only be based on fulfilling the elements of the articles in the Criminal Code, but also consider the principle of equity before the law and the principle of corrective justice, so that the decision is not only legally valid, but also socially just.

When viewed from the theory of the purpose of punishment according to Sudarto, criminal sanctions should not only aim to repay evil deeds (retributive), but also create a deterrent effect, prevent crime, and direct the perpetrator towards self-improvement. In this case, the defendant who has never been convicted before and acts as the main breadwinner in the family can be seen as an individual who needs guidance, not just punishment.

This is where the restorative justice approach becomes relevant. Restorative justice, as stipulated in the Chief of Police Regulation No. 8 of 2021, aims to resolve criminal cases through deliberation to achieve recovery, both for victims, perpetrators, and the community. Unfortunately, this approach has not been taken into consideration in the

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<sup>15</sup>Mataram District Court Decision No. 644/Pid.B/2024, pp. 7–8.

<sup>16</sup>Simons, WF (1992). *The Dutch War*. (Translated by R. Soesilo). Jakarta: Politeia, p. 254.

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decision. In fact, if the victim is willing to reconcile and the losses have been replaced, then the restorative approach should be an alternative that is considered.

It is also important to pay attention to the opinions of criminologists who believe that structural factors such as poverty, unemployment and the social environment play a major role in encouraging someone to commit a crime.<sup>17</sup> Therefore, the state's response should not only be with severe criminalization, but also by strengthening social protection, access to education, and social reintegration programs for prisoners.

Decision Number 644/Pid.B/2024/PN Mtr is a reflection of the implementation of formal criminal law that runs according to the provisions of the Criminal Code. However, in the context of modern law enforcement that emphasizes the protection of human rights and a corrective justice approach, there is great room to increase judges' sensitivity to the social aspects of the perpetrators and the potential for implementing restorative justice.

As a recommendation, law enforcement officers need to be given special training on the restorative justice approach, as well as the importance of considering the socio-economic background of the perpetrator as part of the legal considerations. On the other hand, the establishment of a monitoring system for the implementation of criminal decisions is also important so that the social reintegration of prisoners can take place effectively.

### **3.2. Judge's Considerations in Handing Down a Verdict Against a Perpetrator of the Crime of Aggravated Theft Case Study Case Number 644/Pid.B/2024/PN Mtr**

The judge's considerations in handing down a criminal sentence are not only focused on the normative application of the article, but also reflect efforts to realize substantive justice that takes into account the values of humanity and the social contextuality of the perpetrator of the crime. In criminal cases, especially the crime of aggravated theft, the judge does not only act as a mouthpiece of the law (*la bouche de la loi*), but also as a guardian of justice who is able to balance the interests of the victim, the perpetrator, and the wider community.<sup>18</sup> Therefore, judges have the freedom to explore legal values and a sense of justice that exist in society, as stated in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power.<sup>19</sup> This shows that in deciding a case, the judge is not merely bound mechanically to the normative text, but is also responsible for considering the sociological and psychological aspects of the accused as part of the principle of corrective justice.<sup>20</sup>

In the context of the criminal justice system in Indonesia, the principle of due process of law and the principle of presumption of innocence are the main principles underlying a fair trial process. Judges in deciding cases must ensure that the entire trial process takes place in accordance with criminal procedure law, and guarantee that the accused receives proportional defense rights.<sup>21</sup> In addition, in imposing criminal penalties, the principle of

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<sup>17</sup>Kartono, K. (2009). *Social Pathology*. Jakarta: Rajawali Press, pp. 116–117.

<sup>18</sup>Satjipto Rahardjo, *Legal Science* (Bandung: Citra Aditya Bakti, 2000), 54.

<sup>19</sup>Law Number 48 of 2009 concerning Judicial Power, Article 5 paragraph (1).

<sup>20</sup>Muladi and Barda Nawawi Arief, *Criminal Theories and Policies* (Bandung: Alumni, 2010), 135.

<sup>21</sup>Lilik Mulyadi, *Criminal Procedure Law: A Theoretical, Practical and Implementation Study* (Jakarta: Sinar Grafika, 2015), 102.



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proportionality is an important guideline so that the punishment given is not excessive, but rather in accordance with the level of guilt and the condition of the accused.<sup>22</sup> In case number 644/Pid.B/2024/PN Mtr., this approach is important considering the defendant's socio-economic condition, which is relatively weak and has never committed a crime before, so that the judge is expected not only to uphold legal certainty, but also to reflect social justice as mandated by the fifth principle of Pancasila.<sup>23</sup>

As in handing down the verdict against the defendant Gede Arte Wijaya for the crime of aggravated theft as regulated in Article 363 paragraph (1) 3, 4, and 5 of the Criminal Code, the judge took various legal and factual considerations which were the basis for the decision to sentence him to 3 years and 6 months in prison. In this case, the act was committed together, in a closed yard, by climbing, and during the day when the house was empty.

The judge's considerations were not solely focused on the elements of the crime and proof of the defendant's guilt, but also considered the mitigating and aggravating aspects in this case. This is reflected in the consideration that the defendant has been legally and convincingly proven together with another person (Fatoni alias Toni who is still a fugitive) to have committed theft in an empty house by climbing the fence wall and taking a 32-inch Polytron television belonging to witness Zainul.

The judge also considered that the defendant's actions were carried out at night in a closed yard in a destructive manner, namely by climbing over the fence wall and entering through an unlocked door. However, in terms of aggravation, there was no element of violence against people or direct threats that caused physical harm to others, so this factor was taken into consideration for not imposing the most severe sentence.

Furthermore, the judge also assessed the value of the loss suffered by the victim at Rp2,800,000,-, which can be categorized as a moderate loss. The loss is seen as a direct impact of the defendant's actions, but does not reach a very large loss which usually implies a heavier sentence. In this case, the judge also saw the defendant's attitude during the trial which was cooperative and filed a request for leniency. This attitude shows remorse and legal awareness from the defendant, so the judge considered this as a mitigating factor in handing down the verdict. In addition, the period of detention that the defendant has served is also a consideration in reducing the sentence.

Another consideration that is no less important is the aspect of the existence of the co-defendant (Fatoni alias Toni) who has not been caught (DPO), so that the judge can only pass a verdict on the defendant who is present at the trial without increasing the burden of punishment on the grounds that the co-defendant has not been legally processed. By considering all the legal facts, the evidence presented, and the attitude of the defendant, the judge decided to grant the public prosecutor's demands with a prison sentence of 3 years and 6 months, which proportionally reflects justice between the protection of the victim's rights and the punishment of the defendant.

In making this decision, the judge applied the principles of proportionality and humanity in criminal law, namely giving a sentence that is in accordance with the level of guilt and the

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<sup>22</sup>Andi Hamzah, *Principles of Criminal Law* (Jakarta: Rineka Cipta, 2008), 145.

<sup>23</sup>Jimly Asshiddiqie, *Introduction to the Science of Constitutional Law* (Jakarta: Rajawali Pers, 2017), 221.

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personal circumstances of the defendant, and considering mitigating factors such as remorse and the time already served. This shows that the judicial process does not merely enforce the law rigidly, but also considers the social and humanitarian context of the defendant.

In conclusion, the judge's considerations in the decision of case number 644/Pid.B/2024/PN Mtr are as follows:

- a. It was legally and convincingly proven that the defendant committed aggravated theft together;
- b. The victim suffered a loss of Rp. 2,800,000;
- c. Absence of violence or serious physical threats;
- d. Cooperative attitude and request for leniency from the accused;
- e. The period of detention that has been served as a reduction in sentence;
- f. Condition of co-defendants who are still DPO;
- g. Application of the principles of proportionality and humanity in sentencing.

All these considerations result in a balanced and fair legal decision, providing a deterrent effect for the accused while taking into account humanitarian values in the criminal justice process.

In its considerations, the panel of judges referred to the principle of *in dubio pro reo*, namely the principle that if there is doubt in the proof of a criminal case, then the decision must be taken in the interests of the accused. This principle is part of the protection of human rights in the criminal justice process, especially to ensure that no one is sentenced without valid and convincing proof. Although in this case the evidence in the form of witness statements, evidence, and the defendant's confession was strong enough to prove the perpetrator's guilt, the judge still showed a cautious attitude by continuing to place the principle of *in dubio pro reo* as the moral basis in assessing the proof of the case. This reflects the integrity of the criminal justice system which respects the principle of the presumption of innocence as guaranteed in Article 8 of Law Number 39 of 1999 concerning Human Rights.<sup>24</sup>

In addition, the judge also carefully considered the socio-economic conditions of the defendant who during the trial process was proven to have no permanent job and came from a family with a weak economy. The defendant was known to have difficulty in meeting his daily needs. In this context, the judge positioned these factors as mitigating circumstances, without making them a justification for the criminal acts committed. This is in line with the corrective justice approach, which places the judge in an active role in assessing the context of the individual perpetrator in order to achieve substantive justice, not just procedural justice.<sup>25</sup>

The approach used by the judge reflects an effort to maintain a balance between protection of the victim and the rights of the accused as an equal legal subject in the eyes of the law. On the one hand, the panel of judges acknowledged the material and psychological losses experienced by the victim due to the theft committed by the accused. However, on the oth-

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<sup>24</sup>Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights.

<sup>25</sup>Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*, (Bandung: Alumni, 2010), p. 89.

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er hand, the accused was also given space to convey an apology and demonstrate a cooperative attitude during the trial process. This approach shows that the Indonesian criminal justice system, ideally, is not only oriented towards revenge (retributive justice), but also opens up space for rehabilitative and restorative values.<sup>26</sup>

If reviewed further, the judge in this case applied a multidimensional theory of punishment. Not only the retributive theory, but also the preventive and proportional theory. The prison sentence of 3 years and 6 months imposed on the defendant is considered a proportional form of punishment that is not too light so as to ignore the interests of the victim, but also not excessive so as to limit the defendant's rights to be socially rehabilitated. This proportional approach is consistent with Andrew von Hirsch's theory of proportional justice, which emphasizes that the severity of the punishment must be balanced with the level of error and the impact of the criminal act.<sup>27</sup>

Another important aspect that the judge also considered was the effectiveness of the punishment in disciplining the defendant so that he would not commit similar acts again. In this case, the defendant showed cooperative behavior, had no previous criminal history, and expressed regret for his actions. There were no indications of mental disorders or high criminal tendencies, which could be the basis for increasing the sentence. Therefore, the sentence imposed was more directed at encouraging the defendant's social reintegration after serving his sentence, not to send him into a cycle of recidivism.<sup>28</sup>

The panel of judges also indirectly emphasized the importance of the integrity of law enforcement in prosecuting other perpetrators who still have DPO (Wanted List) status. In this case, the name Fatoni alias Toni was mentioned, who participated in the criminal act with the defendant. The emphasis on efforts to search for and arrest other perpetrators reflects the spirit of upholding the principle of comprehensive criminal responsibility (individual criminal responsibility), as well as avoiding the impression of discrimination or neglect of perpetrators who have not been caught.<sup>29</sup>

From the legal procedural side, this decision also shows the judge's attention to the principle of due process of law, where the defendant is guaranteed the right to obtain legal assistance, submit a defense, and follow a fair and transparent trial process. No violations of the defendant's legal rights were found during the investigation or trial process. This is an indicator that the criminal process was carried out in accordance with the principles of legality and fair trial as regulated in Article 14 paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR)<sup>30</sup>.

In considering the context of local values and state ideology, this decision also reflects the application of the values of Pancasila justice, especially the second and fifth principles. The second principle emphasizes just and civilized humanity, which requires humane treatment

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<sup>26</sup>Andi Hamzah, *Indonesian Criminal Procedure Law*, (Jakarta: Sinar Grafika, 2015), p. 202.

<sup>27</sup>Andrew von Hirsch, *Past or Future Crimes: Deservedness and Dangerousness in the Sentencing of Criminals*, (New York: Routledge, 1985), p. 56.

<sup>28</sup>Romli Atmasasmitha, *Legal Reform, Human Rights and Law Enforcement*, (Bandung: Mandar Maju, 2001), p. 132.

<sup>29</sup>M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code*, (Jakarta: Sinar Grafika, 2016), p. 246.

<sup>30</sup>International Covenant on Civil and Political Rights (ICCPR), Article 14.

of the accused, including in the criminalization process. Meanwhile, the fifth principle on social justice requires that the legal system must pay attention to the social conditions of the community and not provide discriminatory treatment. Therefore, the punishment of perpetrators with a weak economic background must pay attention to the principles of social justice and rehabilitation, not just punishment alone.<sup>31</sup>.

Thus, the judge's consideration in this case not only shows the application of legal norms procedurally, but also shows a deep understanding of the social, psychological, and philosophical dimensions of criminal punishment. This decision can be a precedent in building criminal justice that not only emphasizes legal certainty, but also substantive justice and legal benefits for all parties, victims, perpetrators, and the wider community.

#### **4. Conclusion**

1. Application of Law on Criminal Sanctions Regarding the Crime of Aggravated Theft Case Study Case Number 644/Pid.B/2024/PN Mtr: The application of the law in this case was carried out appropriately and proportionally based on the provisions of Article 363 paragraph (1) 3, 4, and 5 of the Criminal Code. The defendant Gede Arte Wijaya was proven to have committed theft together with another person (Fatoni alias Toni, DPO), in an empty house in a closed yard, and by climbing over the fence to enter the scene. These three elements have been cumulatively fulfilled and are legally valid. Although the theft occurred during the day, the condition of the empty house is considered to fulfill the elements of aggravation according to jurisprudential practice. Based on the evidence in the trial, the panel of judges sentenced him to 3 years and 6 months in prison, which reflects the fair application of criminal law by considering the legal facts, the defendant's confession, and the impact of the losses caused to the victim. The sanctions imposed did not reach the maximum limit, indicating that the judge also took into account mitigating factors such as the defendant's cooperative attitude, remorse, and request for leniency.

2. Judge's Considerations in Sentencing the Perpetrator of the Crime of Aggravated Theft Case Study Case Number 644/Pid.B/2024/PN Mtr: In passing the sentence, the judge considered the elements of the crime that had been proven legally and convincingly, and paid attention to the legal and humanitarian aspects. The judge considered that the defendant's actions met all the elements of aggravated theft, without being accompanied by violence or threats against the victim. In addition, the loss value of IDR 2,800,000 is categorized as a moderate loss, which also became the basis for making the decision on the sentence. The defendant's cooperative attitude, apology, and never having been convicted before are mitigating factors. Meanwhile, the aggravating factor is that the actions were carried out together and disturbed the community. The judge also applied the principles of proportionality and humanity, where the sentence was imposed by considering the defendant's personal condition and the period of detention that had been served. Thus, the sentence of 3 years and 6 months imprisonment reflects substantive justice which not only enforces the law formally, but also pays attention to the balance between protection of victims and social recovery of the perpetrators.

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<sup>31</sup>Kaelan, Pancasila Education, (Yogyakarta: Paradigma, 2013), p. 108.

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