

## Investigation Formulation of The Criminal Act of Theft with Justice-Based Aggravation (Case Study of Nabire Resorts Police)

Muhammad Dito Anugrah<sup>1)</sup> & Andri Winjaya Laksana<sup>2)</sup>

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

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

**Abstract.** *Indonesia is a unitary state in the form of a republic. This statement is clearly stated in Article 1 Paragraph 3 of the Fourth Amendment to the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a country of law. Based on the supremacy of law, it states that "Indonesia is a country that upholds human dignity in relation to laws and regulations, and the government must enforce the law without exception. The type of research used in this study is normative legal research. Normative legal research is research that aims to analyze and examine law as a norm or rule that applies in society. The focus of this research is legal materials, either in the form of laws and regulations, doctrines, legal principles, or relevant court decisions. 1. The current mechanism for investigating aggravated theft is carried out based on the provisions of the Criminal Procedure Code (KUHP), starting from the reporting stage, investigation, inquiry, to the transfer of the case to the prosecution stage. 2. Weaknesses in aggravated theft investigations include the limited ability of investigators to comprehensively uncover initial evidence, minimal use of supporting technology, and lack of sensitivity to the perpetrator's social background. 3. The legal formulation of the investigation of the crime of theft with aggravation based on justice should be directed at integrating the values of Pancasila justice, especially the second and fifth principles.*

**Keywords:** *Aggravation; Criminal; Investigation Formulation.*

### 1. Introduction

Indonesia is a unitary state in the form of a republic. This statement is clearly stated in Article 1 Paragraph 3 of the Fourth Amendment to the 1945 Constitution of the Republic of Indonesia, which states that Indonesia is a country of law. Based on the supremacy of law, it states that "Indonesia is a country that upholds human dignity in relation to laws and regulations, and the government must enforce the law without exception."<sup>1</sup>

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<sup>1</sup>Lailatul Nur Hasanah and Sri Endah Wahyuningisih, The Application Of Justice Principles Of Rapid Simple Fee In Criminal Justice System In The State Court (Case Study in State court of Pati), Jurnal Daulat Hukum Volume 2 Issue 4, December 2019 ISSN: 2614-560X

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As a country based on law, Indonesia states that all actions of the government and state institutions must be carried out in accordance with applicable laws. This is reflected in the principle of the supremacy of law.<sup>2</sup>, where the law has the highest power and binds all parties, including the government. In addition, equality before the law is one of the main characteristics, ensuring that every citizen is treated equally without discrimination. The rule of law also guarantees human rights, which are the foundation for justice and the welfare of society so that the law must be upheld.<sup>3</sup>

In social, national, or state life, various legal rules must be obeyed and implemented. However, in reality, there are still many violations of the supremacy of law committed by citizens and law enforcement officers. Basically, the law aims to create order and security in order to build a harmonious, peaceful, and calm society. This peace and tranquility are achieved if all components of the universe obey and comply with general laws. Therefore, the entire universe is bound by laws so that harmony, peace and tranquility are maintained.

Recognition and protection of human rights is one of the characteristics of the supremacy of law. Indonesia itself guarantees the existence of human rights as stated in the 1945 Constitution of the Republic of Indonesia. Human Rights are human rights or civil rights that are inherent in individuals since birth, which are bestowed directly by God Almighty, and upheld by the nation, law, government, and all people for the honor and protection of their dignity and values that are respected, cared for and protected. In addition, Indonesia has an international agreement to protect human rights and is therefore committed to implementing the agreement to protect and uphold human rights. This means that Indonesia also guarantees that all citizens have the right to obtain rights in the field of human rights.<sup>4</sup>

Criminal acts are a term that reflects a fundamental understanding in criminal law, where criminal acts can occur anywhere and anytime. Various motives behind criminal acts are often influenced by various interests, both from individuals and groups. In relation to this, the government has established an agency that has the authority to address every criminal problem that occurs in society, namely the criminal justice system.<sup>5</sup>

In its development, law not only functions to regulate behavior and maintain existing patterns of habits in society, but also leads to its use as an instrument. To implement the chosen and determined goals in a way that can be realized in society, several methods are needed. The right instrument is legislation with various forms of existing legislation.<sup>6</sup>The problem of crime is a social problem that attracts attention from time to time and requires serious attention.

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<sup>2</sup>M. Kusnardi and Harmailly Ibrahim, *Introduction to the Legal System of the Indonesian State*, UIPress, 1983, Jakarta, p. 161

<sup>3</sup>Sri Endah Wahyuningsih, Rismanto, *Criminal Law Enforcement Policy Against Money Laundering in the Framework of Criminal Law Reform in Indonesia*, *Journal of Legal Reform*, Vol. 2 Number 1, 2016, p. 46

<sup>4</sup>Eko Hidayat, *Protection of Human Rights in the Indonesian Legal State*. Faculty of Sharia, IAIN Raden Intan Lampung, p. 80.

<sup>5</sup>Ario Husein Jayadiningrat Team, 2015, *Academic Manuscript of the Draft Law on Acceleration of Development of Underdeveloped Regions*, *Social Science in National Law Competition 2015 at the University of Indonesia*, University of Indonesia, Jakarta, p. 110.

<sup>6</sup>Bambang Sunggono, *Law and Public Policy*, Jakarta: Sinar Grafika, 2000. P.76.

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The current socio-economic conditions of society can cause problems in meeting daily needs and employment opportunities. This affects the safety and tranquility of people's lives and the potential for crime and criminality. Crime and delinquency are not hereditary phenomena or biological inheritance. Illegal acts, such as theft, are acts that are contrary to religious norms, morals, decency, and law, and endanger the lives of society, the nation, and the state.

From the structural perspective of the implementation of theft, this behavior is considered negative towards the morals of society and can have a bad effect on every victim. One type of act that violates the rules or laws and disturbs the peace and tranquility of living together in society is the crime of theft. The phenomenon of the crime of theft appears every day in electronic media and mass media. The conditions of poverty and unemployment that exist in society relatively trigger the desire to commit a crime such as theft.

The crime of theft is still a dilemma, therefore it requires efforts to overcome or at least prevent it well from all parties, both from the law enforcement and from the awareness of the community so that it can run in an orderly, directed and planned manner. All parties must work together in actualizing religious, cultural and legal values and taking firm action against perpetrators of the crime of theft in order to be able to suppress the rate of development.<sup>7</sup>

The crime of theft is one of the criminal acts or criminal acts regulated in the Criminal Code. According to Moeljatno, it states that:<sup>8</sup>These criminal acts according to their form and nature are contrary to the order or order desired by law, they are acts that are against the law. To be precise: they are detrimental to society, meaning they hinder the implementation of procedures in good and fair social interaction. It can also be said that these criminal acts are detrimental to society.

Based on Article 363 of the Criminal Code, a person who commits aggravated theft can be threatened with a maximum prison sentence of seven years. In addition to fulfilling the elements of theft regulated in Article 362 of the Criminal Code, aggravated theft must also be accompanied by certain aggravating conditions or methods. The sentence can increase to nine years in prison if the theft is committed at night in a house or closed yard that has a building, and if the perpetrators consist of two or more people.

One example of a case in this writing is a case of aggravated theft tried by the Nabire District Court. That the Defendant Albert Degei together with Brother Yuli Anaouw (DPO) and Brother Anouw (DPO) on Saturday, May 11, 2024 at around 10.10 WIT or at least at some time in May 2024 or at least in 2024 at the Moanemani Health Center, Mawotaibi Street, Kimupugi Village, Kamuu District, Dogiyai Regency or at least at a place that is still included in the jurisdiction of the Nabire District Court which has the authority to examine and try cases, "taking something, which is wholly or partly owned by another person, with the intention of being owned unlawfully which is carried out by 2 (two) or more people in an alliance who to enter the place of committing the crime or to get to the goods taken, are

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<sup>7</sup>Cut Nurita, Application of Criminal Law Sanctions Against Perpetrators of the Criminal Act of Livestock Theft, Jurnal Daulat Hukum Volume 18 Number 3 of 2020, p.4.

<sup>8</sup>Moeljatno, 2002, Principles of Criminal Law, Jakarta, Rineka Cipta, p. 3.

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carried out by damaging, cutting or climbing, or by using fake keys, fake orders or fake official clothes". committed by the defendant.

*That* The defendant's actions resulted in the Moenamani Health Center experiencing material losses of approximately Rp. 10,000,000 (ten million rupiah). The defendant's actions are as regulated and subject to criminal penalties in Article 363 Paragraph (1) 4th and 5th of the Criminal Code, the elements of which are as follows:

1. Whoever;
2. Taking something that belongs wholly or partly to someone else;
3. With the intent to possess unlawfully;
4. Performed by 2 (two) or more people in partnership;
5. By means of damaging, cutting or climbing or by means of using false keys, false orders or false positions;

Criminal liability is defined as the continuation of the objective that exists in a criminal act and subjectively that exists that meets the requirements to be punished for the act. The basis for the existence of a criminal act is the principle of legality, while the basis for the perpetrator being punished is the principle of fault. This means that the perpetrator of a criminal act will only be punished if he has a fault in committing the criminal act. When is someone said to have a fault regarding the issue of criminal liability.<sup>9</sup>Therefore, criminal liability is the responsibility of a person for the criminal acts he/she has committed. Strictly speaking, what the person is responsible for is the criminal act he/she has committed. Criminal liability occurs because there has been a criminal act committed by a person. Criminal liability is essentially a mechanism built by criminal law to react to violations of an agreement to reject a certain act.<sup>10</sup>

Most aggravated theft is committed by more than one person or in a group and each perpetrator has a different role and task. The impact of aggravated theft is material and psychological losses, therefore aggravated theft cannot be categorized as a minor crime.

Based on these problems, the author is interested in researching and studying these problems. The selection of a case study in the Nabire area, especially related to the criminal case of aggravated theft involving the defendant Albert Degei, has very relevant and strategic reasons in the context of this research. Dogiyai Regency and the jurisdiction of the Nabire District Court are known to have quite complex socio-economic and geographical characteristics, where poverty levels and limited infrastructure are often triggers for criminal acts, especially theft. In this case, the theft incident involving the destruction and taking of property belonging to a public health facility (Moenamani Health Center) with significant material losses of Rp10,000,000,- shows legal and social dynamics that need to be studied in depth.

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<sup>9</sup>Hanafi, Reform of the Criminal Responsibility System, Journal of Law, Vol. 6 No. 11 of 1999, p. 27.

<sup>10</sup>Chairul Huda, 2006, From No Crime Without Fault Towards No Criminal Responsibility Without Fault, Second Edition, Kencana Jakarta, p. 68.

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This case not only illustrates the criminal aspect of theft, but also shows the challenges in the investigation process carried out by local law enforcement officers. Handling cases involving perpetrators with a modus operandi of collusion, using violence or destruction, and the occurrence of perpetrators who have fled (DPO), requires careful, effective, and fair investigation procedures. This is important considering that less than optimal investigations can have implications for injustice for both the accused and the victim and have the potential to weaken public trust in the criminal justice system.

Furthermore, investigations into aggravated theft crimes need special attention because this crime has the potential to have a wide socio-economic impact. The losses experienced by victims are not only material, but can also cause trauma and reduce the quality of public services, such as in the case of this health facility. Therefore, an investigation formulation is needed that is not only oriented towards rigid law enforcement, but also pays attention to the values of social justice and protection of human rights, which are in line with the principles of the Indonesian rule of law.

This research is very necessary to identify how the investigation of aggravated theft in the Nabire area is carried out, whether it has fulfilled the principles of justice and proportionality, and what is the right formulation to improve the quality of the investigation so that it is in line with the principles of the supremacy of law and protection of human rights. Thus, the results of this study are expected to contribute to the improvement of the criminal justice system in the Nabire jurisdiction in particular and Indonesia in general.

This research is very relevant because in practice, the investigation process does not only concern the technical aspects of law, but also touches on the sociological and philosophical aspects of the law itself. Investigations that do not consider the dimensions of justice have the potential to result in unequal legal treatment of suspects or defendants, especially in the context of an area such as Nabire which has unique socio-economic conditions. Therefore, it is important to review whether law enforcement officers in carrying out their investigative duties have prioritized the principles of legality, proportionality, accountability, and upholding human rights as part of the principle of due process of law.

In addition, the formulation of justice-based investigations is urgent because in the context of modern law enforcement, investigations are no longer solely aimed at proving the perpetrator's guilt, but must also pay attention to the recovery of the victim's condition and the social impact of the crime that occurred. In this case, the justice in question is not only retributive justice (retribution for wrongdoing), but also restorative justice that is oriented towards the restoration of social relations, the responsibility of the perpetrator, and protection of the wider community from the impact of crime.

It is expected that with this research, a concept or formulation of investigation into the crime of theft with a more appropriate and humane aggravation can be found, and can accommodate the values of Pancasila as the basis of national legal philosophy. Moreover, this research can be a material for evaluation and recommendations for investigators in the jurisdiction of the Nabire Police to develop an investigation model that is more responsive to substantive justice.

Through a normative and empirical approach, this study not only analyzes the legal framework governing the crime of aggravated theft, but also explores the practice of



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investigation in the field carried out by the Nabire Police. In this way, this study will provide a comprehensive picture of the extent to which the current investigation formulation is able to answer the demands of public justice and guarantee legal certainty and protection for all parties involved.

The title of the thesis research that the author raised is "Investigation Formulation for Criminal Acts of Theft with Justice-Based Aggravation (Case Study of Nabire Police Resort)"

## **2. Research Methods**

The type of research used in this study is normative legal research. Normative legal research is research that aims to analyze and examine law as a norm or rule that applies in society. The focus of this research is legal materials, either in the form of laws and regulations, doctrines, legal principles, or relevant court decisions.<sup>11</sup>

## **3. Results and Discussion**

### **3.1. Current Criminal Investigation Mechanism for Aggravated Theft Perpetrators**

The case that the author raised in this study is Case Decision Number 81/Pid.B/2024/PN Nab. This decision is included in the category of aggravated theft where the defendant was sentenced according to Article 363 of the Criminal Code. The description of the case that the author raised in this study is:

Defendant Albert Degei together with Brother Yuli Anaouw (DPO) and Brother Anouw (DPO) on Saturday, May 11, 2024 at approximately 10.10 WIT or at least at some time in May 2024 or at least in 2024 at the Moanemani Health Center, Jalan Mawotaibi, Kimupugi Village, Kamuu District, Dogiyai Regency or at least at a place that is still included in the jurisdiction of the Nabire District Court which has the authority to examine and try cases,

"taking something, which in whole or in part belongs to another person, with the intention of possessing it unlawfully, carried out by 2 (two) or more people in league, who in order to enter the place where the crime was committed or to get to the item taken, do so by damaging, cutting or climbing, or by using a false key, false order or false official clothing."

The defendant committed the act in the following manner:

The defendant as per the time and place above at around 00.30 WIT, the defendant Albert Degei was consuming alcoholic beverages together with Mr. Yuli Anaouw (DPO) and Mr. Anaouw (DPO) at the intersection of the Moenamani Health Center, Kimipugi Village, Kamuu District, Dogiyai Regency. After the alcoholic beverages were finished, the defendant together with Mr. Yuli Anaouw (DPO) and Mr. Anaouw (DPO) walked towards the Moenamani Health Center with the intention of looking for alcohol which the alcohol would later be drunk by the defendant together with Mr. Yuli Anaouw (DPO) and Mr. Anaouw (DPO). Upon arriving at the Moenamani Health Center, the defendant together with Mr. Yuli Anaouw (DPO) and Mr. Anaouw (DPO) headed to the Moenamani

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<sup>11</sup> Soerjono Soekanto & Sri Mamudji, Normative Legal Research (A Brief Review), Jakarta, Rajawali Pers, pp. 13-14

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Health Center's IGD room which at that time was all locked. Then the defendant together with Mr. Yuli Anaouw (DPO) and Mr. Anaouw (DPO) went to the side door of the health center which was made of iron trellis and then damaged it by forcing open the iron trellis door using both hands by forcibly pulling the trellis door and also kicking the trellis door until it came loose.

The defendant together with Mr. Yuli Anaouw (DPO) and Mr. Anaouw (DPO) moved the iron trellis door using their hands, after that the defendant kicked the door and also pushed the door which was locked at that time together with Mr. Yuli Anaouw (DPO) and Mr. Anaouw (DPO) until the door barrier broke and the door opened.

The defendant together with Mr. Yuli Anaouw (DPO) and Mr. Anaouw (DPO) after entering the IGD room of the Moenamani Health Center then looked for the location of the alcohol storage but did not find it. Then while continuing to look for the location of the alcohol storage, the defendant saw 1 (one) blue bag containing medical equipment which the defendant then took using his hands then the defendant together with Mr. Yuli Anaouw (DPO) and Mr. Anaouw (DPO) left the IGD room of the Moenamani Health Center towards the back road of the Moenamani Health Center, precisely through the edge of the Tuka River to escape.

At around 01.00 WIT, witness Jenri Abas Arebo received a call from witness Muhamat Abrian Eko Saputro who said that there was a loud noise from the direction of the Moanemani Health Center. Witness Jenri Abas Arebo who received the information then went to the Moenemani Health Center together with witness Dejorge Yohan Frans Rumayori and the team, upon arriving in front of the Moenamani Health Center's IGD room where the door was already half open, witness Jenri and witness Dejorge saw the defendant in the IGD room. Furthermore, witness Jenri and witness Dejorge chased the defendant who fled behind the health center through the edge of the Tuka River and managed to secure the defendant Albert Degei under the Tuka River who at that time was carrying 1 (one) blue bag while Mr. Yuli Anaouw (DPO) and Mr. Anaouw (DPO) managed to escape and then the defendant Albert Degei was taken to the Dogiyai Police for further legal proceedings.

The defendant's actions resulted in the Moenamani Health Center experiencing material losses of approximately Rp. 10,000,000 (ten million rupiah). The defendant's actions are as regulated and subject to criminal penalties in Article 363 Paragraph (1) 4th and 5th of the Criminal Code;

From the description of the verdict case above, investigation is a crucial stage in the criminal justice system, especially for the crime of aggravated theft (Article 363 of the Criminal Code). The investigation process is carried out by authorized investigators, in this case investigators from the Indonesian National Police based on the provisions of the Criminal Procedure Code (KUHP), especially Article 1 number 2 and Article 7 of the Criminal Procedure Code. In general, the current mechanism for investigating aggravated theft includes several stages as follows:

#### 1. Report or Complaint

The arrest of the defendant occurred spontaneously by two eyewitnesses (Jenri Goo and Dejorge Goo) who saw the act directly at the scene of the crime (TKP). After the

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defendant was arrested by the witnesses, the defendant was handed over to the police (members of the Dogiyai Police) along with evidence for further processing. In this case, the legal process was based on direct findings and arrests by residents who witnessed the crime, not on reports or complaints in advance. This in criminal law is referred to as the crime of being caught in the act, which allows law enforcement officers or members of the public to make arrests even though there has been no formal report or complaint, in accordance with the provisions of Article 18 paragraph (1) of the Criminal Procedure Code.

## 2. Initial Research and Examination

After the handover of the suspect by witnesses Jenri Goo and Dejorge Goo to members of the Dogiyai Police, it can be assumed that an initial examination of the suspect and validation of the truth of the incident were carried out. Although not explained in detail in the verdict, this stage is a standard part of the investigation system according to the Criminal Procedure Code, namely an initial examination to determine whether a crime has actually occurred and whether the perpetrator has sufficient evidence to be detained or continued to further investigation.

## 3. Arrest and Detention

It is stated in the legal facts that the defendant was arrested at the scene and handed over to police officers, indicating that a legal arrest had been made. Although the details of the detention warrant were not explained, the defendant's presence in detention until the trial process indicates that detention was carried out in accordance with the provisions of Article 21 of the Criminal Procedure Code, namely the concern that the defendant would flee, remove evidence, or repeat the crime.

## 4. Examination of Suspects and Witnesses

The verdict explains that there are statements from witnesses, such as witnesses Jenri Goo and Dejorge Goo, who witnessed the incident directly. In addition, the defendant was also examined in court and provided information regarding his intentions and actions. This shows that previously in the investigation process, the suspect and witnesses had been asked for information, as is customary in the investigation process by investigators.

## 5. Collection of Evidence

In this Decision, the evidence collected includes:

- a. The evidence was a backpack containing medical equipment,
- b. Witness statements,
- c. The defendant's statement, and
- d. Letter of calculation of losses from the Health Service.

This evidence shows that evidence has been collected as regulated in Article 184 of the Criminal Procedure Code, which states that evidence consists of: witness statements, expert statements, letters, instructions, and statements from the defendant.

## 6. Transfer of Files to the Public Prosecutor



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Although not outlined in the verdict, the fact that this case was referred to the court and tried by a panel of judges indicates that the case file is complete (P-21) and has been transferred by the investigator to the Public Prosecutor (JPU) according to the procedure in the Criminal Procedure Code. This is a normative stage before the case is transferred to the court (Article 139 of the Criminal Procedure Code).

The mechanism of investigation into perpetrators of aggravated theft as regulated in the Indonesian criminal procedure system is a series of integral and systematic legal processes carried out by law enforcement officers in order to seek and collect evidence to clarify a criminal event and find the suspect. In the case of Decision Number 81/Pid.B/2024/PN Nab, the stages of investigation have been carried out in accordance with the principles of criminal procedure law as regulated in the Criminal Procedure Code, although not all of them are explicitly explained in the verdict.

The process begins with the occurrence of a crime of being caught red-handed, which in practice can replace the need for a report or complaint as the initial basis for investigation, in accordance with Article 18 of the Criminal Procedure Code. Furthermore, research and initial examination of the suspect are carried out to ensure that the elements of the crime are fulfilled, which are the basis for subsequent legal actions such as arrest and detention. Detention is carried out not only as a repressive effort, but also as a preventive measure to ensure the smooth running of the investigation process and avoid the risk of repeating the crime. The next stage, namely the examination of the suspect and witnesses, is crucial in exploring the facts and motives behind the crime, as well as strengthening the structure of evidence. In addition, the collection of evidence is the heart of the investigation process, because from here the public prosecutor will determine the eligibility to continue the case to the prosecution stage. Finally, the transfer of case files to the Public Prosecutor (JPU) which are declared complete (P-21) is an indicator that the investigation process has met the formal and material standards as determined by law.

Thus, it can be concluded that the investigation mechanism for aggravated theft crimes has currently been comprehensively regulated in the Criminal Procedure Code, and in practice, as seen in this case, investigators generally follow these stages in stages and procedurally. However, in the context of further evaluation, there needs to be an effort to increase transparency and documentation of the investigation process in court decisions so that all stages of the investigation can be monitored and analyzed more academically and systematically for the sake of fair and accountable law enforcement.

### **3.2. Weaknesses in Investigations in Aggravated Theft and Solutions to Overcome Them**

Although it has been regulated in the Criminal Procedure Code and applied in concrete cases such as aggravated theft, the practice in the field still leaves a number of weaknesses that impact the effectiveness and fairness of the law enforcement process. Based on the analysis of Decision Number 81/Pid.B/2024/PN Nab, several weaknesses in the investigation can be identified as follows:

#### **1. Lack of Written Documentation of Investigation Stages**

The investigation process is a crucial stage in determining whether an incident can be qualified as a crime and then escalated to the investigation stage. Based on Decision

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Number 81/Pid.B/2024/PN Nab, it was found that the investigation process into the crime of aggravated theft committed by the defendant AA and his colleagues was not comprehensively described in the decision document. Information regarding when the investigation began, the method of collecting initial information, and the mechanism for identifying suspects were not reflected in writing, either in the chronology of events or in the judge's considerations.

This shows the weakness of formal documentation from investigators regarding the initial steps in handling criminal incidents. In fact, written and systematic documentation is an important element in the principle of due process of law and the accountability of law enforcement institutions. Disorder in procedural recording risks raising doubts about the legality of the legal process being carried out, as well as opening up opportunities for potential violations of the suspect's rights, especially in the context of the presumption of innocence. In Decision Number 81/Pid.B/2024/PN Nab, the arrest of defendant AA was carried out after being caught red-handed by the public, without any explanation as to whether the action was the result of developing information from the initial investigation or was purely coincidental. This raises the assumption that the investigation in this case had not been carried out effectively and systematically before the perpetrator was arrested. If the investigation mechanism had been carried out in an orderly and documented manner, then the identification of other perpetrators who now have DPO status should have been revealed more quickly.

To overcome these weaknesses, it is necessary:

a. Standardization of Investigation Process Documentation

Police officers must refer to the Regulation of the Chief of Police Number 14 of 2012 concerning the Management of Criminal Investigations, which requires each stage of the investigation to be recorded in official documents such as the Investigation Result Report (LHP), the Minutes of the Crime Scene Examination (BAP TKP), and the Investigator's Assignment Letter. This is important so that the legal process can be traced and formally audited by the court.

b. Internal and External Supervision of Strengthening

The internal oversight function through the Propam Division and external oversight by the National Police Commission (Kopolnas) or the Indonesian Ombudsman need to be maximized. Both institutions must be able to conduct investigative audits of the investigation process, especially if there are indications of procedural irregularities.

c. Digitalization and Police Investigative Training

It is necessary to build an integrated digital documentation system, where every investigation activity is recorded in a database that can be monitored by direct superiors and external auditors. In addition, investigator training must include technical aspects of writing and reporting accurate and accountable investigation results.

d. Improving the Culture of Transparency and Accountability

Changes in the legal culture within the police institution are needed so that investigators do not only focus on the results of arresting perpetrators, but also on the legal process that is carried out legally and correctly. A legitimate legal process will not only strengthen the

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legitimacy of court decisions, but also guarantee that the constitutional rights of citizens remain protected.

## 2. Development Limitations Against Other Actors (DPO)

The verdict mentions that two other perpetrators are on the Wanted List (DPO), but no further investigations are explained. The incomplete disclosure of all perpetrators shows the weakness of the investigation development aspect.

Solution: Law enforcement officers need to optimize follow-up investigation strategies, including cross-regional cooperation, utilization of information technology, and increasing investigative capacity to pursue and uncover other perpetrators who have not been caught.

## 3. Lack of Criminological Motive Investigation

The motive of the perpetrators involved in the theft after consuming alcohol was not further investigated in the investigation. The absence of exploration of the perpetrators' social, economic, and psychological backgrounds made the investigation shallow and formalistic.

Solution: Investigators should work together with assistant investigators, PPA unit investigators (if the perpetrator is a child or vulnerable), or related parties such as psychologists and criminologists to understand the sociological and psychological dimensions of crime, which are important for just and preventive legal policies.

## **Legal Formulation of Investigation of Criminal Acts of Theft with Justice-Based Aggravation**

Investigation is not merely an administrative stage to collect evidence and determine suspects. Investigation is also an instrument to uphold the principles of justice, both legal justice, moral justice, and social justice. In the context of aggravated theft, the formulation of investigative law must be able to reflect the values of justice, especially when associated with perpetrators from vulnerable groups, such as the poor or perpetrators who commit crimes due to life's needs.

### 1. Principles of Justice in Criminal Procedure Law

The Criminal Procedure Code (KUHP) normatively emphasizes protection of the rights of suspects and defendants, as in Article 1 number 2 and Articles 50–68 of the Criminal Procedure Code. However, in practice, justice is often only understood as an effort to impose punishment on the perpetrator, without considering his socio-economic background. In the case of Decision Number 81/Pid.B/2024/PN Nab, the investigation of the defendant AA and his colleague has not shown any approach that considers the principle of substantive justice. The defendant came from a poor family, worked as a construction worker, and committed theft in desperate conditions. However, the investigation proceeded conventionally with a focus solely on punishment, without any restorative efforts or penal mediation with the victim.

### 2. Pancasila Justice as the Basis for Formulating Investigation Law

Justice according to Pancasila is not only retributive, but also corrective and restorative. The Second Principle "Just and civilized humanity" and the Fifth Principle "Social justice for all Indonesian people" require the law to side with humans as a whole, both perpetrators and victims. Therefore, the formulation of investigative law should ideally not only prioritize legalistic aspects, but also pay attention to humanitarian values and the objective conditions

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of the perpetrators. According to Satjipto Rahardjo, the law must side with substantive justice (law as a tool of social engineering), not just uphold the text. Thus, the investigation of aggravated theft can be directed at finding a fair and proportional solution, for example through a restorative justice approach, especially in cases of minor theft or those committed under duress.

### 3. Justice-Based Investigation Formulation

To realize a fair and humane investigation, several legal reformulation steps are required, namely:

#### a. Flexible and Responsive Legal Instruments

Investigators must be equipped with legal discretion that is responsible for assessing whether or not a case is appropriate to proceed to the prosecution stage. This can be based on the principle of opportunity which provides space for termination of investigation for the sake of justice Article 139 of the Criminal Procedure Code in conjunction with Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

#### b. Implementation of Restorative Justice at the Investigation Stage

In cases of aggravated theft that do not result in fatalities, insignificant losses, and the perpetrator is cooperative and remorseful, investigators should open the option of restorative dialogue between the perpetrator and the victim. This is in line with the corrective justice approach that encourages recovery, not just revenge.

#### c. Participatory and Contextual Inquiry

Investigations should not be separated from the social context of the perpetrator. Therefore, investigators should ideally involve social workers or community leaders in providing social information about the perpetrator, such as background of poverty, age, family responsibilities, or previous criminal history. This will enrich the perspective of justice in making legal decisions.

#### d. Strengthening Educational and Preventive Aspects

A fair investigation must also contain educational aspects for the perpetrator and the community. For example, by providing social guidance, job training, or referrals to social welfare institutions as part of non-penal efforts to combat crimes due to economic factors.

In this case, the defendant and his partner committed theft by stating that the evidence was in the form of:

1. 1 (one) COMRON brand Nebulizer bag in blue;
2. 1 (one) unit of COMRON brand Nebulizer, white in color;
3. 1 (one) set of COMRON brand Nebulizer Hood;
4. 1 (one) ONEMED brand oxygen hose;
5. 2 (two) Impus sets, GEA MEDICAL brand, ONE MED;
6. 1 (one) ONE MED brand blood pressure measuring device;
7. 1 (one) SMART CARE mark Stethoscope);
8. 1 (one) set of GENERAL CARE brand SUNCTION;

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The legal process runs from the investigation stage, prosecution, to trial. However, if viewed from the content of the decision, there are several indications that the formulation of the investigation law does not fully reflect substantive justice, including:

1. Lack of information in the decision regarding the detailed investigation process, such as the perpetrator's social background, mediation efforts with the victim, or other social considerations.
2. The investigative approach is formalistic and is directed directly at criminalization, without opening up space for options such as terminating the investigation based on restorative justice, even though the losses incurred are not significant and the perpetrators come from weak economic backgrounds.
3. There was no attempt by investigators to explore the sociological or psychological reasons for the defendant's actions, such as economic pressure, life burdens, or emergency conditions.

In Decision 81/Pid.B/2024/PN Nab, this approach has not been seen. There has been no effort from law enforcement officers to see the possibility of adult diversion, restorative justice, or a humanitarian and rehabilitation-based approach. If the legal formulation of justice-based investigations is applied, then in this case it should be:

1. Investigators investigate the economic and social background of the accused before deciding to proceed with the prosecution stage.
2. The victim's minor losses, as well as the possibility of returning the goods, can be used as a basis for terminating the investigation through a restorative justice approach based on the Chief of Police Regulation and the Attorney General's Regulation on RJ.
3. Law enforcement officials consider non-litigation solutions such as penal mediation, with an emphasis on restoring the relationship between the perpetrator and the victim.

#### **4. Conclusion**

Based on the results of research and analysis of the investigation mechanism as well as the weaknesses and legal formulations related to the crime of aggravated theft, the following conclusions can be drawn: 1. The current mechanism for investigating aggravated theft is carried out based on the provisions of the Criminal Procedure Code (KUHP), starting from the reporting stage, investigation, inquiry, to the transfer of the case to the prosecution stage. The investigation process includes activities to collect evidence, examine witnesses and suspects, confiscate evidence, and coordinate with the public prosecutor. Although it has been carried out according to legal procedures, its implementation has not fully reflected the values of substantive justice, especially in the social context of the perpetrator. 2. Weaknesses in aggravated theft investigations include the limited ability of investigators to comprehensively uncover initial evidence, minimal use of supporting technology, and lack of sensitivity to the perpetrator's social background. In addition, limited inter-agency cooperation and low community participation also hamper the effectiveness of investigations. The solutions that can be offered are improving the quality of human resources of law enforcement officers, utilizing modern technology, and implementing a humanistic and restorative approach in the investigation process. 3. The legal formulation of the investigation of the crime of theft with aggravation based on justice should be directed



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at integrating the values of Pancasila justice, especially the second and fifth principles. This includes the need for more flexible regulations for diversion efforts and restorative justice approaches, so that the investigation process is not only oriented towards punishment, but also towards restoring social relations, rehabilitating perpetrators, and protecting the rights of victims. Thus, the law is not only a repressive tool, but also an instrument for realizing civilized social justice.

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