

Analysis of Criminal Punishment for Perpetrators of The Criminal Act of Theft with Aggregating Study of Criminal Case Decision Number: 208/Pid.B/2024/Pn Jap

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Abstract. *The crime of theft is one form of crime that often occurs in society and has a significant impact, both for victims and perpetrators. In the context of law, theft is not only seen from the aspect of its criminality, but also from the broader perspective of justice. In Indonesia, Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that "the State of Indonesia is a state of law", which means that all actions, including law enforcement against criminal acts, must be based on law and uphold the principle of justice. In addition, Pancasila as the foundation of the state is an important foundation in assessing and analyzing various legal actions, including the crime of theft. The approach method used in this study is the normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as basic materials for research by conducting a search for regulations and literature related to the problems being studied. 1. The application of legal sanctions against perpetrators of the crime of theft in Decision Number 208/Pid.B/2024/PN Jap has fulfilled the elements of Article 363 paragraph (1) 3 of the Criminal Code normatively, namely theft committed at night in a house or closed yard. The court sentenced the defendant to two years in prison, which legally complies with the provisions of applicable positive criminal law. 2. The judge's considerations in making a verdict are still oriented towards legal-formal justice, without explicitly considering the social, economic, or background aspects of the defendant. This shows that the judge's considerations do not yet reflect the values of substantive justice upheld by Pancasila, especially the second principle "Just and civilized humanity" and the fifth principle "Social justice for all Indonesian people". 3. The punishment of perpetrators of aggravated theft should be based on Pancasila justice, namely by considering the humanitarian aspect, the balance between victim protection and perpetrator rehabilitation, and an orientation towards social development. An approach that only emphasizes the deterrent effect through imprisonment is not enough to realize holistic social justice.*

Keywords: *Aggregating; Criminal; Perpetrators.*

1. Introduction

The crime of theft is one form of crime that often occurs in society and has a significant impact, both for victims and perpetrators. In the context of law, theft is not only seen from the aspect of its criminality, but also from the broader perspective of justice. In Indonesia, Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that "the State of Indonesia is a state of law", which means that all actions, including law enforcement against criminal acts, must be based on law and uphold the principle of justice. In addition, Pancasila as the foundation of the state is an important foundation in assessing and analyzing various legal actions, including the crime of theft. Pancasila contains noble values that must be upheld in law enforcement, especially in providing protection to the community and ensuring justice for all parties.

Analysis of the legal impact on perpetrators of theft crimes needs to be done to understand how the justice system functions in the context of social justice. In this case, it is important to show whether the legal sanctions applied are not only repressive but also rehabilitative, so that the perpetrators can reintegrate into society after serving their sentences. This approach is in line with the principles of Pancasila which emphasize just and civilized humanity and national unity.

Every individual certainly has needs that must be met to live their daily lives. Along with the development of the era, human needs are also increasing. The income level of each person greatly affects their ability to meet these needs. People with low incomes often face difficulties in meeting their living needs, forcing some people to find alternative ways to meet their survival. This is one of the driving factors for the occurrence of theft, where individuals feel pressured to take unlawful steps to meet their basic needs.

Such conditions can encourage some people to commit crimes, because crimes can arise from the nature of human evil. Deviant behavior or illegal behavior of society is caused by various factors including the negative impact of rapid development, globalization, progress in the field of communication and information, advances in science and technology and changes in the style and way of life of some people have brought fundamental changes in human life.¹In facing various social dynamics, the state is obliged to continue to enforce the law fairly and humanely, because Indonesia is a country of law, not just a country of power.

The implementation of a country's government is not only explained in the 1945 Constitution of the Republic of Indonesia, but it is also explained that the State of Indonesia is a state based on law and not on simple power. Therefore, it can be understood that the state of Indonesia is a democratic state and upholds the law based on Pancasila and the 1945 Constitution.²Crime is a problem faced by society from time to time, even since the time of Adam and Eve, crime has been created, that is why crime is an issue that cannot be stopped from being discussed. This is why "where there are humans, there must be crime"; "Crime is eternal-as eternal as society".³

¹Pratama, RH, Sulastri, S., & Darwis, R. S, Protection of children in conflict with the law, Proceedings of Research and Community Service, 2017, p. 2

²Siregar, ARM, The Authority of the Constitutional Court in Testing Laws Against the 1945 Constitution, Responsive Law Journal, 2018, p. 5.

³Yesmil Anwar, Criminology, Rafika Aditama. Bandung, 2010, p. 200.

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The daily life of society is regulated by laws, both codified and uncoded, within the framework of state institutions in modern times. The rule of law is a term often used to describe it.⁴The legal system of a country greatly influences the birth and development of law in that country, especially criminal law. Criminal law is one of the positive laws, especially serious criminal law which in this case is represented by the Criminal Code considering that the criminal law system is the legal system of choice in Indonesia, has not experienced significant changes since it was first implemented in Indonesia until now. In the general explanation of the Criminal Procedure Code, it is stated that it prioritizes human rights and ensures that everyone is treated equally before the law and government, and everyone has an obligation to obey the law and government without exception.⁵

Law is a norm or rule that contains mandatory legislation and anyone who violates the article will receive legal sanctions. The legal subjects who are to be prosecuted are not only those who have actually committed unlawful acts, but also legal acts that may arise and equip the state to act in accordance with the laws currently in force.⁶The crime of theft itself is regulated in Article 362 of the Criminal Code and the crime of aggravated theft is regulated in Article 363 of the Criminal Code. The crime of theft is one of the types of crimes in Indonesia, this violation is regulated in Article 362 of the Criminal Code. There are many ways to classify the types of theft crimes, one of which is the crime of theft with its level adjusted according to Article 363 of the Criminal Code.

Although this has been clearly regulated in the Criminal Code and the sanctions that will be imposed on the perpetrators, this does not deter the Indonesian people and prevent them from committing crimes. The proof is that these crimes still occur frequently. Usually, whether reported to the police or not, theft crimes are still widely committed. This has not been fully revealed and not infrequently the perpetrators of this crime are not revealed.⁷

Crime is an offense, namely things that are contrary to or in conflict with the legal principles that are the beliefs of human life and are not bound by law.⁸Crimes that are rampant in society today include various forms, such as embezzlement, murder, evil plans, and theft. Among these types of crimes, theft is one of the most frequently reported. The crime of theft not only harms the victim materially, but also causes deep psychological impacts.

Robbery and murder, on the other hand, are more serious crimes and often involve extreme physical violence. Fraud cases have also increased, creating fear among the community, especially women and children.

It is important to understand that every crime has complex and diverse causes, ranging from social, economic, to psychological factors. Therefore, handling this crime requires a

⁴Donald Albert Rumokoy and Frans Maramis, *Introduction to Legal Science*, Rajagrafindo Persada, Jakarta, 2014, p. 16

⁵Tolib Effendi, *Basics of Criminal Procedure Law: Development and Reform in Indonesia*, Setara Press, Surabaya, 2014, p. 2.

⁶Rosana, E., *Law and Social Development*, Tapis Journal: Journal of Islamic Political Aspiration Observation, 2013, pp. 99-118.

⁷Rezna Fitriawan and R. Sugiharto, *The Role of the Criminal Investigation Unit in Revealing Aggravated Theft in the Jurisdiction of the Demak Police Resort*, Proceedings of the Unissula Student Scientific Constellation (Kimu) 5, 2021, p. 330

⁸Bawengan, GW, *Examination Techniques and Criminal Cases*, Pradnya Paramita, Jakarta, 1974, p. 22

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comprehensive approach and involves various parties. Effective prevention and law enforcement efforts are needed to create a safe and comfortable environment for all members of society. Thus, it can contribute to efforts to reduce crime rates and advance social justice.

The crime of theft is a crime that is officially stipulated as prohibited and punishable, in this case it is an act defined as "stealing". If translated from the word "zich toeëigenen" it is "to control", because after discussing the numbers, the reader will understand that "zich toeëigenen" has a very different meaning from the meaning of "owning" which is clearly widely used and widely known until now in the Criminal Code which has been translated into Indonesian in the article, even though it is true that the statute of "ownership" itself is also included in the meaning of "zich toeëigenen" as understood in Article 362 of the Criminal Code.⁹

The crime of theft is regulated in Chapter XXII of Law Number 1 of 1946, Book 2 of the Criminal Code, Articles 362 to 367. Theft is regulated in five types, namely:

1. Ordinary theft (Article 362 of the Criminal Code);
2. Aggravated theft (Article 363 of the Criminal Code);
3. Petty theft (Article 364 of the Criminal Code);
4. Theft with violence (Article 365 of the Criminal Code);
5. Family Theft (Article 367 of the Criminal Code).

Initially it means moving something from its original place to another place. This means bringing the item under its real control. So that the item is in its control. The sentence of taking means that the item is not in the rightful owner. It starts from when someone tries to remove an object from the owner, then the act is completed when an object has moved from its original place. It can be concluded that taking is taking from the place where the object was originally located or taking an object from the control of another person.¹⁰

The following are some elements or characteristics of theft:

1. Objective: The condition that accompanies an object, where the object in question is wholly or partly owned by someone, there is an act of taking, there is an object in the form of an object.
2. Subjective: Against the law, there is a motive to possess, there is an intention.

Aggravated theft or also known as certain theft or qualification (*gequalificeerd diefstal*) is one of the most common theft crimes. The meaning of this type of certain theft or qualification is a theft that is carried out in a certain way or under certain circumstances, so that its nature is more severe and is threatened with a heavier penalty than ordinary theft.¹¹ The term used by R. Soesilo is "aggravated theft" in his book, the Criminal Code (KUHP), because from this term it can be said that due to its nature, the theft has an aggravated criminal threat and causes material losses felt by the victim.¹²

⁹PAF Lamintang, *Basics of Indonesian Criminal Law*, PT. Citra Aditya Bakti, Bandung, 1997, p. 49.

¹⁰PAF Lamintang., *Special Offenses, Crimes Against Property*, First Edition, Bandung, Sinar Baru, 1989, p. 11.

¹¹Wirjono Prodjodikoro, *Certain Criminal Acts in Indonesia*, Bandung, Eresco, 1986, p. 19

¹²R. Soesilo, *Criminal Code (KUHP)*, Bogor: Politeia, 1988, p. 248.

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Research from case study of decision no. 208/Pid.B/2024/PN.Jab discusses a theft case that occurred in Jayapura City, on Monday, March 18, 2024 at around 14.00 WIT at that time the defendant left the defendant's house in Angkasa to hitch a ride on the side of the road to Dok 8, after arriving at Dok 8 the defendant then took a taxi to Ruko Dok 2 Bawah to meet the defendant's friend, then at around 02.00 WIT on March 19, 2024, at that time the defendant hitched a ride on a motorbike passing towards Dok 8 again, and after that the defendant got off the motorbike, then while walking in front of the Miguni Dormitory Dok 8 the defendant saw a red and white Honda Beat motorbike parked in a garage surrounded by a fence, then the defendant approached the fence and at that time the gate door was half open so the defendant dared to go in and check the condition of the motorbike, and it turned out that the motorbike was not locked, then the defendant pushed the motorbike out of the fence and pushed it towards the road leading to the complex Saemusi (near Pertamina), then the defendant parked the motorbike and then turned on the motorbike by cutting the power outlet cable using a razor blade that the defendant found on the motorbike's dashboard and after that the defendant reconnected the cable and then the defendant took the motorbike home.

That the defendant then communicated via WhatsApp chat with Mr. ANIS (PNG motorcycle receiver) and offered the motorcycle that the defendant had just stolen to Mr. ANIS, and at that time the defendant and Mr. ANIS had agreed to sell the motorcycle for Rp. 14,000,000, - (fourteen million Rupiah), then the next day at around 06.00 WIT the defendant took the motorcycle towards Dok 2 Kupang (Bangku Panjang) to meet with Mr. ANIS and when they met, Mr. ANIS asked the defendant: do you want to sell the motorcycle? Then the defendant replied: yes sir, I want to sell it, then asked again by Mr. ANIS: how much do you want to sell it for? The defendant replied: I sell it for 14 (fourteen) million rupiah, then Mr. ANIS took out Rp. 14,000,000, - (fourteen million rupiah) from his bag and handed the money to the defendant and the defendant immediately handed the motorcycle to Mr. ANIS and then the defendant walked to Ruko Dok 2 and then met the defendant's friend to buy liquor. That the items belonging to the victim witness that were stolen by the defendant were in the form of: one unit of a red and white Honda Beat motorbike with Police Number P- 03391173, this is proven by the presence of 1 (one) BPKB book for a motorbike with Number P- 03391173 and 1 (one) Honda motorbike ignition key and have been confiscated by the Police Investigator and have received a Determination of Confiscation of Evidence with Number: 227 / PenPid.B- SITA / 2024 / PN Jap dated April 04, 2024

That the motorcycle stolen by the defendant was taken without the permission and knowledge of the rightful owner, namely the victim witness YEMI MORIB because at that time the motorcycle was parked in a garage surrounded by a fence and not locked and the victim witness's house had a fence. That due to the actions of the defendant KARONIA GILBERTO LOD WENDA, the victim YEMI MORIB suffered a loss estimated at Rp. Rp. 20,000,000, - (Twenty Million Rupiah).;

It should be noted that in Jayapura there are many cases of motorcycle theft, and this condition is a serious challenge in law enforcement and protection of citizens' property rights. Therefore, the sentence imposed on the defendant must consider the value of the loss of Rp20,000,000, the modus operandi of the theft, and the fact that the defendant intentionally sold the stolen goods for personal gain.

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If the sentence is imposed in accordance with the provisions of Article 363 paragraph (1) 3 of the Criminal Code, then it is legally appropriate. However, it is important to analyze whether the sentence has fulfilled a sense of justice, both for the victim and the defendant. The principle of justice demands that the sentence imposed be proportional to the impact of the act. In this case, the victim's loss of Rp. 20 million and the defendant's profit of Rp. 14 million indicate an imbalance. If the punishment only focuses on imposing sanctions without any effort to return the loss to the victim, then the aspect of justice can be said to have not been fully fulfilled.

2. Research Methods

The approach method used in this study is the normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as basic materials for research by conducting a search for regulations and literature related to the problems being studied.¹³

3. Results and Discussion

3.1. Application of Legal Sanctions Against Perpetrators of Theft Crimes in the Context of Justice Based on Pancasila in the Decision of Case Number 208/Pid.B/2024/PN Jap

1. Case Description Decision Case Number 208/Pid.B/2024/PN Jap

That the defendant KARONIA GILBERTO LOD WENDA, on Tuesday, March 19, 2024 at approximately 03.00 WIT, or at least at other times in 2024 at the Miguni Dormitory Motor Garage located at Jalan Asrama Miguni, Imbi Village, North Jayapura District, Jayapura City or at least at a place that is still included in the jurisdiction of the Jayapura Class IA District Court which has the authority to examine, try and decide this case,

"taking something, which in whole or in part belongs to another person, with the intention of possessing it unlawfully, at night in a house or in an enclosed yard where there is a house, carried out by a person who is there without the knowledge or will of the person entitled to it,"

The offences were committed by the defendants in the following manner:

Initially on Monday, March 18, 2024 at around 14.00 WIT, the defendant left the defendant's house in Angkasa to hitch a ride on the side of the road to Dok 8, after arriving at Dok 8, the defendant then took a taxi to Ruko Dok 2 Bawah to meet the defendant's friend, then at around 02.00 WIT on March 19, 2024, at that time the defendant hitched a ride on a motorbike that passed towards Dok 8 again, and after that the defendant got off the motorbike, then while walking in front of the Miguni Dormitory Dok 8 the defendant saw a red and white Honda Beat motorbike parked in a garage surrounded by a fence, then the defendant approached the fence and at that time the gate door was half open so the defendant dared to go in and check the condition of the motorbike, and it turned out that the motorbike was not locked, then the defendant pushed the motorbike out of the fence and pushed it towards the road leading to the Saemusi complex (near Pertamina), then the

¹³Soerjono Soekanto & Sri Mamudji, Normative Legal Research (A Brief Review), Rajawali Pers, Depok, 2019, pp. 13-14.

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defendant parked the motorbike and then turned on the motorbike by cutting the power outlet cable using a razor that the defendant get on the motorbike dashboard and after that the defendant reconnected the cable and then the defendant took the motorbike home.

The defendant communicated via WhatsApp chat with Mr. ANIS (PNG motorcycle receiver) and offered the motorcycle that the defendant had just stolen to Mr. ANIS, and at that time the defendant and Mr. ANIS had agreed to sell the motorcycle for Rp. 14,000,000, - (fourteen million Rupiah), then the next day at around 06.00 WIT in the morning the defendant took the motorcycle towards Dok 2 Kupang (Bangku Panjang) to meet with Mr. ANIS and when they met the following conversation took place:

Brother ANIS: "Do you want to sell your motorbike?"

The defendant replied: "Yes sir, I want to sell it."

Brother ANIS: "How much do you want to sell?"

The defendant replied: "I sold it for 14 (fourteen) million rupiah."

Then Mr. ANIS took out Rp. 14,000,000,- (fourteen million rupiah) from his bag and handed the money to the defendant and the defendant immediately handed the motorbike to Mr. ANIS and then the defendant walked to Ruko Dok 2 and then met the defendant's friend to buy liquor. - That the items belonging to the victim witness that were stolen by the defendant were in the form of:

a. one unit of red and white Honda Beat motorbike with Police Number P- 03391173, this is proven by the presence of:

1 (one) motorcycle BPKB book with Number P- 03391173 and

1 (one) Honda motorcycle ignition key and

The evidence has been confiscated by the Police Investigator and has obtained a Determination of Confiscation of Evidence with Number: 227 / PenPid.B- SITA / 2024 / PN Jap dated April 04, 2024 - That the motorbike stolen by the defendant was taken without the permission and knowledge of the rightful owner, namely the victim witness YEMI MORIB because at that time the motorbike was parked in a garage surrounded by a fence and was not locked and the victim's house had a fence. -

As a result of the actions of the defendant KARONIA GILBERTO LOD WENDA, the victim YEMI MORIB suffered losses estimated at Rp. 20,000,000,- (Twenty Million Rupiah). The actions of the defendant KARONIA GILBERTO LOD WENDA as regulated and threatened with criminal penalties in Article 363 paragraph (1) 3 of the Criminal Code.

Considering, that the Defendant has been charged by the Public Prosecutor with a single charge as regulated in Article 363 paragraph (1) 3, Criminal Code, the elements of which are as follows:

1. Elements of Whomever;
2. The element of taking something, either wholly or partly belonging to another person, with the intention of controlling it unlawfully;
3. Elements, carried out at night in a house or closed yard where there is a house, carried out by people who are there unknown or not wanted by the authorized party, theft carried out by two or more people;

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Considering, that with regard to these elements, the Panel of Judges considered the following:

Ad.1. Elements of Whom:

Considering, that the definition of "whoever" here is any person or legal subject who commits a criminal act and can be held responsible for his actions. The formulation of the element "whoever" in the Criminal Code refers to the legal subject as the perpetrator of a crime, namely "every person" who is considered capable of being held responsible for his actions according to the law;

Considering, that the person who was brought to trial as the perpetrator of the crime (defendant) in this case is a "person" named KARONIA GILBERTO LOD WENDA who in the examination based on the facts revealed in the trial in the form of witness statements, clues, and the defendant's statement, has been proven that the defendant is a physically and mentally healthy person and therefore there are no "reasons for forgiveness" or "reasons for justification" that can erase the unlawful nature and the defendant's guilt;

Considering, that based on the description of the considerations above, the element of "Whoever" as referred to in the Public Prosecutor's indictment has been fulfilled;

Ad.2. Elements of taking something, wholly or partly belonging to another person, with the intention of unlawfully controlling it:

Considering, based on the facts in the trial from the statements of witnesses, the Defendant's statement and connected with the evidence it has been revealed that on March 19, 2024 at around 02.00 WIT at that time the defendant hitched a ride on a motorbike passing towards Dok 8 again, and after that the defendant got off the motorbike, then while walking in front of the Miguni Dormitory Dok 8 the defendant saw a red and white Honda Beat motorbike parked in a garage surrounded by a fence, then the defendant approached the fence and at that time the gate door was half open so the defendant dared to enter and check the condition of the motorbike, and it turned out that the motorbike was not locked, then the defendant pushed the motorbike out of the fence and pushed it towards the road leading to the Saemusi complex (near Pertamina), then the defendant parked the motorbike and then turned on the motorbike by cutting the power outlet cable using a razor that the defendant found on the motorbike's dashboard and after that the defendant reconnected the cable and then the defendant took the motorbike home;

Considering, that the defendant then communicated via WhatsApp chat with Mr. ANIS (PNG motorcycle receiver) and offered the motorcycle that the defendant had just stolen to Mr. ANIS, and at that time the defendant and Mr. ANIS had agreed to sell the motorcycle for Rp. 14,000,000, - (fourteen million Rupiah), then the next day at around 06.00 WIT the defendant took the motorcycle towards Dok 2 Kupang (Bangku Panjang) to meet with Mr. ANIS and when they met, Mr. ANIS asked the defendant: do you want to sell the motorcycle? Then the defendant replied: yes sir, I want to sell it, then asked again by Mr. ANIS: how much do you want to sell it for? the defendant replied: I sell it for 14 (fourteen) million rupiah, then Mr. ANIS took out Rp. 14,000,000, - (fourteen million rupiah) from his bag and handed the money to the defendant and the defendant immediately handed the motorcycle to Mr. ANIS and then the defendant walked to Ruko Dok 2 and then met the defendant's friend to buy liquor;

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Considering, that the Defendant took 1 (one) motorbike without the permission and knowledge of the legitimate owner, namely the victim witness YEMI MORIB, because at that time the motorbike was parked in a garage surrounded by a fence and not locked and the victim witness's house had a fence;

Considering, that due to the actions of the defendant KARONIA GILBERTO LOD WENDA, the victim YEMI MORIB suffered a loss estimated at Rp. 20,000,000,- (Twenty Million Rupiah).;

Considering, that based on the above considerations, the element of "taking something, all or part of it belonging to another person, with the intention of controlling it unlawfully", has been fulfilled according to the law;

Ad.3. Elements, carried out at night in a house or closed yard where there is a house, committed by people who are there who are unknown or not wanted by those entitled to it, theft committed by two or more people:

Considering, that based on the facts at the trial, the Defendant took it on Tuesday, March 19, 2024 at around 03.00 WIT, at the Miguni Dormitory Motorbike Garage located at Jalan Asrama Miguni, Imbi Village, North Jayapura District, Jayapura City;

Considering, that when the Defendant took the motorbike it was parked in a garage surrounded by a fence, then the defendant approached the fence and at that time the gate door was half open so the defendant dared to enter and check the condition of the motorbike, and it turned out that the motorbike was not locked, then the defendant pushed the motorbike out of the fence and pushed it towards the road leading to the Saemusi complex (near Pertamina) without the owner's permission, then the defendant parked the motorbike and then turned on the motorbike by cutting the power outlet cable using a razor that the defendant found on the motorbike's dashboard and after that the defendant reconnected the cable and then the defendant took the motorbike home;

Considering, that the defendant then sold the motorbike for Rp. 14,000,000,- (fourteen million Rupiah) to Mr. ANIS and the money from the sale of the motorbike was used by the defendant and his friend to buy alcoholic drinks and other necessities;

Considering, that due to the actions of the defendant KARONIA GILBERTO LOD WENDA, the victim YEMI MORIB suffered a loss estimated at Rp. 20,000,000,- (Twenty Million Rupiah).; that based on the description of the considerations above, the elements

"committed at night in a house or enclosed yard where there is a house, committed by a person who is there without the knowledge or will of the person entitled to do so, theft committed by two or more people",

Has been fulfilled according to law;

Considering, that because all the elements of Article 363 paragraph (1) 3, Criminal Code, have been fulfilled, the Defendant must be declared to have been legally and convincingly proven to have committed the crime as charged in the single indictment;

2. Application of Legal Sanctions Against Perpetrators in the Context of Justice Based on Pancasila

The application of legal sanctions against the defendant Karonia Gilberto Lod Wenda in this decision shows that the Indonesian criminal justice system is still based on a normative legalistic approach, namely referring to Article 363 paragraph (1) 3 of the Criminal Code

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concerning aggravated theft. In the context of Pancasila, justice does not only mean imposing criminal sanctions according to written law, but also considering humanitarian values, balance between perpetrators and victims, and social recovery.

The values of justice in Pancasila, especially the second principle "Just and civilized humanity" and the fifth principle "Social justice for all Indonesian people", should encourage the criminalization process not only to be oriented towards retribution, but also towards development and recovery. In this case, the 2-year prison sentence for the defendant can be criticized as to whether it is commensurate with the values of substantive justice, considering that the defendant committed theft under conditions of clear intent, but with economic motives that have not been revealed in depth in the verdict.

When viewed from the perspective of distributive justice in Pancasila, the judge should have considered the socio-economic conditions of the defendant, considering that many cases of theft are motivated by inequality and poverty. The application of criminal law should not only be a repressive tool, but also educational and preventive. In this decision, there was no in-depth consideration from the judge regarding the defendant's social background, so that the aspect of Pancasila justice has not been fully implemented.

3.2. Judge's Considerations in Handing Down Criminal Verdicts Against Perpetrators of the Crime of Theft with Aggravation Based on Pancasila Justice Values in Decision on Case Number 208/Pid.B/2024/PN Jap

The judge's consideration in imposing a sentence is an important part of the judicial process that must reflect the principles of legality, justice, benefit, and legal certainty. In Decision Number 208/Pid.B/2024/PN Jap, the defendant Karonia Gilberto Lod Wenda was found legally and convincingly proven to have committed the crime of aggravated theft as regulated in Article 363 paragraph (1) 3 of the Criminal Code. The judge sentenced him to 2 (two) years in prison, minus the detention period.

Legally, the judge's considerations in this decision were based on the fulfillment of the elements of the crime of aggravated theft, namely:

1. Taking something,
2. The goods are wholly or partly owned by another person,
3. With the intent to possess unlawfully,
4. Done at night in a house or closed yard,
5. Carried out by people unknown or unwanted by those entitled to do so.

From the chronology outlined in the trial facts, all of these elements have been fulfilled. The judge considered that the defendant's actions in entering a fenced garage, taking the victim's motorbike without permission, and selling it to someone else constituted a form of criminal intent that fulfilled the elements of aggravated theft. The act was carried out with malicious intent, and showed elements of planning because the defendant had modified the motorbike's cables and sold them to another party. However, in terms of other legal considerations, the judge also has the authority to consider mitigating and aggravating factors for the defendant. In this decision, it was not explicitly detailed in the verdict or the panel's considerations regarding the defendant's personality, social, or economic conditions.

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In fact, according to Sudarto, in imposing a sentence, the judge should consider the balance between the perpetrator, victim, and society as a system of values in fair sentencing.

In the context of substantive justice, the judge should also see that the defendant is the sole perpetrator, the evidence was successfully returned to the victim, and there were material losses that can be calculated with certainty. Furthermore, this decision has not shown any support for the principle of restorative justice that has been introduced in the national criminal law system, as emphasized in the Regulation of the Chief of Police Number 8 of 2021 and the Circular of the Attorney General Number 15 of 2020. There does not appear to be any consideration of whether the perpetrator has the opportunity to be rehabilitated, or whether the victim is willing to resolve the case outside the court through a peaceful approach.

From the constitutional side, Pancasila as the foundation of the state places social justice and just and civilized humanity as the main values in the judiciary. Therefore, the judge's considerations should ideally not stop at fulfilling the elements of the criminal article, but must also explore the values of substantive justice that live in society and the factual conditions of the defendant. Thus, the judge's considerations in this case can be said to be legally valid, but are still oriented towards formal justice. It has not fully accommodated the values of Pancasila justice such as social empathy, coaching, and restoration of social relations. So, although the verdict to impose a two-year prison sentence does not violate the law, it has not touched on the holistic and humanistic dimensions of justice as should be applied in the framework of Indonesian law that is based on Pancasila.

Criminalization of perpetrators of theft crimes should be based on Pancasila justice

Case Number 208/Pid.B/2024/PN Jap, Karonia Gilberto Lod Wenda was sentenced to two years in prison for taking a motorbike from a garage at night, then selling it for Rp14,000,000 to a fence. This action fulfills the elements of Article 363 paragraph (1) 3 of the Criminal Code because it was carried out at night in a closed yard without permission. However, to assess the justice of the sentence, it is not enough to only review the fulfillment of the formal elements of the crime.

In the framework of justice based on Pancasila values, punishment for Karonia should be carried out with an integrative approach between legal justice and social justice. This means that the judge does not only sentence based on proven guilty actions, but also explores the socio-economic, psychological, and structural backgrounds that may have caused the defendant to commit the crime. Based on the chronology, Karonia is someone who does not have a permanent job, wanders around at night, and sells stolen goods to buy alcohol. This indicates social alienation and limited moral guidance, which should be taken into consideration in sentencing.

According to Notohamidjojo, Pancasila law is based on the principle of justice which unites law and morals, law and personality, and law and social balance.¹ Punishment in this context should not be merely retribution, but a means to educate and improve the perpetrator so that he can return to society as a whole person. In this case, the stolen vehicle has been successfully returned to the victim, and the estimated economic loss of Rp20,000,000 can be compensated or restored. The fact that the evidence was returned should be a mitigating factor. This approach is in accordance with the principles of

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proportionality and restorative, as emphasized by Muladi, that punishment should consider the extent to which the consequences of the crime can be restored and not merely punish for the sake of a deterrent effect.²

In addition, Pancasila as the state ideology places the second and fifth principles as the main basis for treating fellow citizens. Prison sanctions for perpetrators from lower economic groups, without providing access to rehabilitation or social recovery, can lead to systemic discrimination, which is contrary to the spirit of Pancasila. Alternative punishments in the form of social development, the obligation to pay compensation to victims, or social work better reflect the principle of restoring relations between perpetrators and victims, and reintegrating perpetrators into society. This is in line with the spirit of restorative justice which is now being promoted through Indonesian criminal justice policy, as regulated in the Regulation of the Chief of Police No. 8 of 2021 and the Circular of the Attorney General Number 15 of 2020, although it is not yet mandatory in all serious cases.

Justice according to Pancasila is not only about enforcing the law, but also about how the law is able to humanize humans, balance the rights of victims and the future of the perpetrators, and avoid long-term social stigma that can worsen the perpetrator's condition. So, in the case of Karonia, the ideal punishment is not just a two-year prison sentence, but a sanction that opens up space for reflection, moral development, and social responsibility towards the victim and society. This kind of punishment would be more in line with the concept of distributive and corrective justice. In corrective justice, the perpetrator is given the opportunity to repair the loss and improve himself, not just being locked up without any results for moral development.

Therefore, in the context of Pancasila justice, the punishment for Karonia should not only be a prison sentence, but also be designed as an instrument of social rehabilitation and education of moral values rooted in the values of mutual cooperation, brotherhood, and shared responsibility. This will provide greater benefits for the perpetrator, victim, and society, than just a prison sentence that separates without a solution.

4. Conclusion

Based on the results of the analysis of Decision Number 208/Pid.B/2024/PN Jap concerning the crime of aggravated theft committed by the defendant Karonia Gilberto Lod Wenda, and viewed from the perspective of Pancasila justice, the following conclusions can be drawn: 1. The application of legal sanctions against perpetrators of the crime of theft in Decision Number 208/Pid.B/2024/PN Jap has fulfilled the elements of Article 363 paragraph (1) 3 of the Criminal Code normatively, namely theft committed at night in a house or closed yard. The court sentenced the defendant to two years in prison, which legally complies with the provisions of applicable positive criminal law. 2. The judge's considerations in making a verdict are still oriented towards legal-formal justice, without explicitly considering the social, economic, or background aspects of the defendant. This shows that the judge's considerations do not yet reflect the values of substantive justice upheld by Pancasila, especially the second principle "Just and civilized humanity" and the fifth principle "Social justice for all Indonesian people". 3. The punishment of perpetrators of aggravated theft should be based on Pancasila justice, namely by considering the humanitarian aspect, the balance between victim protection and perpetrator rehabilitation, and an orientation

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towards social development. An approach that only emphasizes the deterrent effect through imprisonment is not enough to realize holistic social justice. Therefore, the application of the principles of corrective and restorative justice needs to be an integral part of the national criminal justice system to ensure civilized and inclusive justice.

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