

## **Analysis of Criminal Punishment of Perpetrators of The Criminal Act of Theft with Aggravation from The Perspective of Legal Certainty (Study of Decision Number 126/Pid.B/2024/PN Pml)**

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**Abstract.** *This study aims to analyze the legal aspects of the crime of aggravated theft in the context of social justice, focusing on Case Number 47/Pid.B/2022/PN Lbo. This study examines the application of criminal sanctions to the perpetrator and considers the judge's perspective in issuing the verdict. The research problem formulation covers two main aspects: first, how criminal sanctions are applied in this case, and second, how the judge's considerations reflect the values of social justice. This study uses a descriptive analysis method to explore the legal aspects of the crime of aggravated theft, focusing on Case Number 47/Pid.B/2022/PN Lbo. The research findings demonstrate the importance of a social justice-based approach to law enforcement, which focuses not only on punishment, but also on rehabilitation and crime prevention, to create a fairer and more effective justice system.*

**Keywords:** *Assault; Criminal; Law.*

### **1. Introduction**

In an increasingly complex and digitalized modern society, law plays a central role as a normative instrument that regulates, disciplines, and maintains social stability. Law is not only a guideline for living together, but also a guarantor of justice and an instrument for resolving conflicts. Within the framework of a state based on law, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is emphasized that "Indonesia is a state based on law."<sup>1</sup> This principle emphasizes that every aspect of social and state life must be based on legal norms, including the process of enforcing the law against criminal violations.

The development of the times, globalization, and advances in information technology have brought about drastic changes in the structure and dynamics of society. Digitalization in various fields has not only simplified daily activities but also opened up new opportunities for the emergence of more complex forms of crime. Not only is cybercrime on the rise, but

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<sup>1</sup> The 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3).

Master of Law, UNISSULA

conventional crimes such as theft have also undergone a transformation in their modus operandi and the involvement of physical violence. Crimes that were once simple are now committed with systematic and organized planning, thus requiring an adaptive and comprehensive legal approach.<sup>2</sup>

The crime of theft is a form of conventional crime that remains a legal issue in Indonesia. Article 362 of the Criminal Code (KUHP) defines theft as the act of taking another person's property with the intent to possess it unlawfully, and carries a maximum prison sentence of five years. However, in social reality, not all thefts occur in the simple form referred to in this article. Many are committed in certain situations and ways that aggravate the crime, such as by group action, at night, or using violence.<sup>3</sup>

Aggravated theft, as defined in Article 363 of the Criminal Code, encompasses various circumstances that increase the seriousness of the crime. These aggravated thefts include thefts committed at night, with accomplices, using special tools or violence, and those that cause significant losses. The criminal penalties under this article are higher, up to seven years in prison. Even if accompanied by violence resulting in death, Article 365 of the Criminal Code can be applied, which stipulates a maximum penalty of up to the death penalty.<sup>4</sup>

The importance of discussing aggravated theft is further reinforced by empirical data. According to a report from the National Crime Information Center (Pusiknas), in 2023, more than 63,000 cases of aggravated theft were reported to law enforcement.<sup>5</sup> These figures demonstrate that this type of crime not only has a widespread impact on public order but also poses a serious challenge to the criminal justice system. In this context, a legal response to aggravated theft requires appropriate, proportional, and just handling.

Aggravated theft often involves perpetrators from vulnerable economic and social backgrounds. Poverty, unemployment, limited access to education, and a weak family and social environment are strong determinants behind these crimes. Therefore, as stated by Roscoe Pound in his theory of law as a tool of social engineering, the law must be used not only as a repressive tool but also as a mechanism to shape and engineer society towards a more just and orderly life.<sup>6</sup>

Mochtar Kusumaatmadja stated that law should not be viewed merely as static norms, but rather should be an effective means of social engineering (law as a tool of social engineering) in supporting the national development process.<sup>7</sup> Within this framework, the law must adapt to societal dynamics and address evolving justice challenges. Therefore, law

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<sup>2</sup> Soekanto, S. (2013). *Sociology of Law in Society*. Jakarta: Rajawali Pers.

<sup>3</sup> Simons, J. (1996). *Criminal Law*. Jakarta: Erlangga.

<sup>4</sup> Criminal Code (KUHP), Articles 362, 363, and 365.

<sup>5</sup> National Crime Information Center (Pusiknas). (2024). *National Crime Statistics Report 2023*. Jakarta: National Police Headquarters.

<sup>6</sup> Pound, R. (1911). "The Scope and Purpose of Sociological Jurisprudence." *Harvard Law Review*, 24(8), 591-619.

<sup>7</sup> Mochtar Kusumaatmadja, *Legal Concepts in Development* (Bandung: Alumni, 2002), p. 11.

Master of Law, UNISSULA

enforcement against aggravated theft must be oriented toward the principle of substantive justice, not merely a tool for state retribution against perpetrators.

In line with this thinking, Prof. Dr. Sri Endah Wahyuningsih, SH, M.Hum., Professor of Criminal Law from Sultan Agung Islamic University (UNISSULA), emphasized that the ideal criminal justice system must integrate normative and social approaches, where judges have a central role in balancing legalistic aspects with humanitarian aspects.<sup>8</sup> According to him, in certain cases such as aggravated theft, judges should not only focus on the elements of the crime in Article 363 of the Criminal Code, but also assess the objective-subjective conditions of the perpetrator as well as the potential for social recovery from the sentence imposed.<sup>9</sup>

From a global perspective, substantive justice and proportional sentencing approaches have become standard in modern criminal justice systems. Research by Ashworth and Roberts (2013) in the *Oxford Journal of Legal Studies* shows that overly repressive sentencing that fails to consider the perpetrator's socioeconomic background actually increases the risk of recidivism.<sup>10</sup> Similarly, according to a report from the United Nations Office on Drugs and Crime (UNODC), a restorative sentencing system is more effective in reducing the rate of reoffending and increasing the reintegration of offenders into society.<sup>11</sup>

Therefore, when sentencing a perpetrator of aggravated theft, the judge should fulfill his or her role as guardian of justice by holistically considering the perpetrator's background, the impact of the crime on the victim and society, and the effectiveness of the punishment in preventing similar crimes in the future. This is a clear reflection of the law as an instrument of just, progressive, and humane social change.

On the other hand, judicial practice for perpetrators of aggravated theft still faces significant challenges. Inconsistencies in judicial decisions, differing interpretations of aggravating factors, and suboptimal consideration of mitigating factors often raise questions about the sustainability of the principles of justice and legal certainty in the criminal justice system. Therefore, analysis of court decisions is crucial to assess the extent to which these principles are truly upheld by law enforcement officials.<sup>12</sup>

One relevant concrete example is the case with Decision Number 1454/Pid.B/2024/PN Sby, where the defendant committed aggravated theft in a resident's house at night. Based on the trial facts, the defendant entered the victim's house by prying open the window using a screwdriver and took valuables in the form of a laptop and two cell phones. The act was carried out at 2:00 a.m. while the homeowner was fast asleep, which legally meets the elements of aggravation because it was carried out at night and by means of damage.<sup>13</sup>

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<sup>8</sup>Sri Endah Wahyuningsih, "Reformulation of Criminal Procedure in the Draft Criminal Code Based on the Values of Justice," *IUS Law Journal*, Vol. 8, No. 2 (2020): 291.

<sup>9</sup>*Ibid*

<sup>10</sup>Andrew Ashworth & Julian Roberts, "Sentencing: Theory, Principle, and Practice," *Oxford Journal of Legal Studies*, Vol. 33, no. 2 (2013): 322–345.

<sup>11</sup>United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes*, 2nd ed. (Vienna: UNODC, 2020), p. 33.

<sup>12</sup>Andi Hamzah, *Principles of Criminal Law* (Jakarta: Rineka Cipta, 2008), p. 134.

<sup>13</sup>Surabaya District Court Decision Number 1454/Pid.B/2024/PN Sby.

Master of Law, UNISSULA

However, there are factors that could have been considered mitigating factors, such as the defendant's background as the breadwinner and his committing the crime due to financial pressure to pay for his parents' medical treatment. However, these considerations were not given sufficient weight in sentencing.<sup>14</sup>

In this context, the principle of proportionality in sentencing becomes crucial. Proportional sentencing means that the punishment imposed must reflect a balance between the seriousness of the crime, the perpetrator's personal circumstances, and its impact on society.<sup>15</sup> This approach aims not only to create a deterrent effect, but also to encourage the process of recovery and social reintegration for perpetrators who show good faith in changing.<sup>16</sup> Without consistent application of the principle of proportionality, the legal system risks losing its substance of justice.

Based on the urgency and complexity of the problem, the author considers it necessary to conduct an in-depth study of the practice of sentencing in cases of aggravated theft, specifically through a case study of Decision Number 126/Pid.B/2024/PN Pml. This decision will be analyzed legally with an emphasis on the implementation of the provisions of Article 363 of the Criminal Code, the basis for the judge's considerations in issuing the decision, and the extent to which the judicial process reflects the principles of legal certainty, justice, and expediency as mandated in the Indonesian criminal law system. This study is expected to provide a meaningful contribution to the development of criminal law literature, as well as being constructive input for improving the criminal justice system to be more responsive and just. This study is presented in the form of a thesis entitled: "Analysis of Sentencing of Perpetrators of the Crime of Aggravated Theft from the Perspective of Legal Certainty" (Study of Decision Number 126/Pid.B/2024/PN Pml).

## 2. Research Methods

This research method uses a normative juridical approach. This approach was chosen because the primary focus of the research lies in analyzing applicable positive legal norms, particularly those related to the crime of aggravated theft. The normative juridical approach is based on the understanding that law is positioned as a systematic and logically structured system of norms that can be examined through various statutory provisions.

A normative legal approach is conducted by examining secondary legal materials, such as official legislative documents, expert opinions in the literature, and relevant court decisions. This research aims to gain a thorough understanding of applicable legal principles and how they are applied in judicial practice, particularly in cases of aggravated theft.

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<sup>14</sup>Lilik Mulyadi, *Courts and Judicial Power in Indonesia* (Bandung: Alumni, 2013), p. 211.

<sup>15</sup>Muladi and Barda Nawawi Arief, *Criminal Theories and Policies* (Bandung: Alumni, 2010), p. 102.

<sup>16</sup>Barda Nawawi Arief, *Problems of Law Enforcement and Criminal Law Policy in Crime Prevention* (Jakarta: Kencana, 2011), p. 75.

### 3. Results and Discussion

#### 3.1. Application of Criminal Law Principles to Perpetrators of Aggravated Theft in Decision Number 126/Pid.B/2024/PN Pml

The case contained in the Pemalang District Court Decision Number 126/Pid.B/2024/PN Pml reflects the application of fundamental principles in Indonesian criminal law to the crime of aggravated theft (theft with aggravating circumstances). In this case, two defendants, Wahyudi bin Carim and Edi Solihin alias Sholeh bin Darmuri, were charged with stealing other people's property together, at night, using tools, namely a knife and cutter, and other means in the form of fishing equipment. The act was carried out with elements of intent and premeditation, thus fulfilling the criminal elements as regulated in Article 363 paragraph (1) 4 of the Criminal Code.

The trial was led by the Panel of Judges of the Pemalang District Court, who in the process continued to uphold the principles of due process of law, justice, and legal certainty for the parties involved in the criminal case.<sup>17</sup>.

From a legal perspective, the Panel of Judges constructed a legal structure by referring to the elements contained in Article 363 paragraph (1) of the Criminal Code (KUHP), which regulates the crime of aggravated theft. Each element of the crime was carefully examined using an in concreto approach to the legal facts revealed in the trial. This approach aims to ensure that the principle of *nullum crimen sine lege* is fulfilled and to ensure that the imposition of criminal penalties is not carried out arbitrarily, but is based on valid and convincing evidence.<sup>18</sup>.

The first element analyzed in this case is the unlawful taking of another person's property. It was proven that the defendants actively took the victim's property without the owner's permission and without the owner's rights. This act was carried out with the intention of permanently controlling the property, which legally constitutes unlawful appropriation. This element confirms the violation of another person's property rights, which are expressly protected under the Indonesian criminal law system.<sup>19</sup>

The chronology of the incident is as follows: Defendant I, Wahyudi bin (Alm) Carim, together with Defendant II, Edi Solihin alias Sholeh bin (Alm) Darmuri, committed repeated thefts in May 2024 in the jurisdiction of the Pemalang District Court. First, on Sunday, May 5, 2024 at around 02.30 WIB, on the ship "Nandio" which was docked at the TPI Pier in Sugihwaras Village, Pemalang District, the defendants took 50 tin pendants weighing approximately 25 kilograms. The theft was recorded by CCTV cameras at the HNSI office and showed the two defendants using a cutter and a kitchen knife to cut the net containing the tin pendants. In the recording, the defendants were also seen using Defendant I's motorbike as a means.<sup>20</sup>

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<sup>17</sup> Andi Hamzah, *Principles of Criminal Law* (Jakarta: Rineka Cipta, 2010), p. 22.

<sup>18</sup> Simons, W. F. (1996). *The Indonesian Penal Code (KUHP) and its Commentary*. The Netherlands: Martinus Nijhoff Publishers.

<sup>19</sup> Indonesian Criminal Code (KUHP), Articles 362 and 363.

<sup>20</sup> CCTV recording of HNSI Pemalang Office, May 5, 2024.



Master of Law, UNISSULA

After successfully taking the item, Defendant I took the tin pendulum to his house. The next day, the two defendants sold the tin pendulum to a scrapyard weighing 33 kilograms for Rp660,000. The proceeds were then divided equally, each receiving Rp330,000, which was used for family needs. The victim, Witness Muhammad Tasjuit bin (Alm) Casmad, did not give permission to the defendants to take his items and suffered material losses of Rp950,000 and net damage of Rp4,000,000.<sup>21</sup>

The second incident occurred on Sunday, May 12, 2024, at approximately 2:00 PM WIB on the ship "Putra Candra 3," which was also docked at the TPI Pier in Sugihwaras Village. At that time, Witness Durohman bin (the late) Faizin received a report from the ship's crew that 250 tin pendants weighing approximately 50 kilograms were missing. Subsequently, on Sunday, May 19, 2024, at approximately 2:00 AM WIB, Witness Durohman conducted an inspection and questioned the defendants directly, who then admitted to taking the items.<sup>22</sup>

The defendants also sold 44 kilograms of stolen tin pendulums for Rp880,000 and 39 kilograms for Rp819,000. The proceeds were divided equally, with each receiving Rp440,000 and Rp409,000, respectively, which were used to meet family needs. The victim, Witness Durohman bin (Alm) Faizin, never gave permission to the defendants to take his belongings and suffered material losses of Rp1,850,000 and net damage of around Rp5,000,000.<sup>23</sup>

Based on these facts, the element of unlawful taking of property by two or more individuals together, using unlawful means, such as damaging, cutting, or using certain tools to enter the scene, has been fulfilled in this case. This provides a strong basis for confirming the violation of property rights that occurred and fulfilling the elements of the crime of theft as stipulated in applicable law.<sup>24</sup>

Furthermore, the Panel also highlighted the aspect of mens rea, or malicious intent, as a subjective element of the crime. In this context, the defendants' intent was reflected in the planning and use of specific tools, such as knives and cutters, to support the theft. These facts demonstrate that the defendants' actions were not spontaneous, but rather carried out with full awareness and directed will, thus meeting the criteria for criminal intent in criminal law doctrine.<sup>25</sup>

Furthermore, the existence of this structured malicious intent (mens rea) demonstrates that the defendants had a clear intention in committing the crime of theft. In criminal law theory, a directed will supported by the preparation of certain tools indicates careful planning and a strong desire to violate the law. This differs substantially from crimes committed spontaneously or due to urgent circumstances, thus resulting in a higher level of criminal responsibility. Therefore, the subjective element of malicious intent is the primary determinant in assessing the perpetrator's culpability (schuld).

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<sup>21</sup> Witness Muhammad Tasjuit bin Casmad's statement in the Investigation Report, May 2024.

<sup>22</sup> Witness Durohman bin Faizin's statement in the Investigation Report, May 2024.

<sup>23</sup> Minutes of Sale of Evidence at the Junkyard, May 2024.

<sup>24</sup> Barda Nawawi Arief, *Anthology of Criminal Law Policy* (Jakarta: Kencana, 2018), pp. 123-130.

<sup>25</sup> Andi Hamzah. (2008). *Introduction to Indonesian Criminal Law*. Jakarta: Ghalia Indonesia.

Master of Law, UNISSULA

Furthermore, the presence of planning and coordination between two or more perpetrators confirms that this crime was committed collectively with a specific division of roles, known in doctrine as a form of participation (*deelneming*). Cooperation between perpetrators in planning and executing the crime adds complexity and indicates a deeper intent. This aspect further strengthens the panel's belief that the defendant's actions not only reflect an element of malicious intent but also demonstrate a deliberate organization of behavior to achieve criminal goals.

In addition to *mens rea* and the form of involvement, the motive behind the crime cannot be ignored in the assessment process. Although motive is not a formal element of the crime, it does influence the determination of the severity of the sentence. In this case, no justification or excuse was found that could mitigate the defendant's culpability. There was no compelling reason (*noodtoestand*) or emergency defense (*noodweer*) that could be used as a basis for the removal of the sentence, so the defendants' criminal responsibility remains legally intact.

The aggravating circumstances are an important element in determining the level of seriousness of a crime. In this case, several aggravating conditions are simultaneously met, namely the act was committed at night, carried out by two or more people together, and using an aid. These three aspects are explicitly regulated in Article 363 paragraph (1) of the Criminal Code as a form of aggravation for the crime of ordinary theft.<sup>26</sup> The existence of this aggravating element indicates the potential for greater harm to the victim, and indicates a higher level of difficulty and threat in efforts to prevent and enforce the law against this crime.<sup>27</sup>

With all elements of the crime fulfilled, the Panel of Judges has a strong legal basis to declare that the defendants' actions have been legally and convincingly proven to qualify as aggravated theft. This reflects the proportional and rational application of the principle of criminal liability and ensures that sentencing is carried out based on the principles of justice and legal certainty.<sup>28</sup>

The first element analyzed is the act of unlawfully taking another person's property. In the case *a quo*, it was proven that the defendants had actively taken the victim's property without the owner's permission and without the right. This act was carried out with the intent to permanently control the property, which is legally classified as unlawful appropriation. This element confirms the violation of another person's property rights, which are expressly protected under the Indonesian criminal law system.

Furthermore, the Panel also highlighted the aspect of *mens rea*, or malicious intent, as a subjective element of the crime. In this context, the defendants' intent was reflected in their planning and use of specific tools, such as knives and cutters, to support the theft. These facts demonstrate that the defendants' actions were not spontaneous, but rather carried

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<sup>26</sup> R. Soesilo. (1996). *The Criminal Code and its complete article-by-article comments*. Jakarta: Politeia.

<sup>27</sup> Sudarto. (1986). *Law and Criminal Law*. Bandung: Alumni.

<sup>28</sup> Muladi & Arief, BN (1992). *Criminal Theories and Policies*. Bandung: Alumni.

Master of Law, UNISSULA

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The application of aggravating elements in the crime of aggravated theft is a concrete manifestation of the state's efforts to protect individual property rights and maintain public order in society. Aggravating elements, as formulated in Article 363 of the Criminal Code, reflect a form of increased criminal liability due to the existence of certain conditions that exacerbate the nature and impact of the crime committed.<sup>29</sup>. Therefore, the aggravating element is not only formalistic, but also contains substantive meaning in upholding justice and providing a proportional deterrent effect on perpetrators of crimes.

In its deliberations, the panel of judges determined that all elements of the crime had been met formally and materially. The evidence presented was valid according to criminal procedure law, including stolen goods, tools used in the crime, witness statements, and confessions from the defendants that were consistent with the facts at trial.<sup>30</sup> With the fulfillment of this evidence, the panel of judges has a strong legal basis to conclude that the elements of the crime of aggravated theft have been proven legally and convincingly.

The panel of judges' legal considerations also demonstrated a deep understanding of the principles of justice, legal certainty, and legal expediency. The judges adhered not only to the textual legal rules but also considered the social and psychological context underlying the defendants' actions. In this regard, the principle of proportionality was the primary basis, namely that the severity of the sentence imposed must be commensurate with the seriousness of the act committed.<sup>31</sup>.

The sentence of one year and six months imprisonment for each defendant reflects the principle of proportionality. This sentence is neither too light to be an effective deterrent, nor excessive to maintain the values of substantive justice.<sup>32</sup>. This decision is also in line

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<sup>29</sup> Moeljatno. (2002). Principles of Criminal Law. Jakarta: Rineka Cipta.

<sup>30</sup> Andi Hamzah. (2008). Introduction to Indonesian Criminal Law. Jakarta: Ghalia Indonesia.

<sup>31</sup> Muladi & Arief, BN (1992). Criminal Theories and Policies. Bandung: Alumni.

<sup>32</sup> Simons, W. F. (1996). The Indonesian Penal Code (KUHP) and its Commentary. The Netherlands: Martinus Nijhoff Publishers.



Master of Law, UNISSULA

with the basic principle of *nullum crimen sine lege*, that a person can only be punished if his actions have been expressly regulated in the applicable legal provisions.<sup>33</sup>

In addition, the panel of judges also considered mitigating factors when imposing sentences. These factors included the defendants' confessions to their actions, their cooperative attitude during the trial, their demonstrated remorse, and the fact that the defendants had not previously served time. These considerations are part of a sentencing approach oriented toward corrective justice and humanitarian values, as mandated by the modern criminal law system.<sup>34</sup>

Thus, the verdict can be seen as a balance between retributive and restorative justice. Criminalization is not merely punitive but also contains elements of education, recovery, and prevention in social life. This reflects the Indonesian criminal justice system, which is increasingly evolving toward a more humanistic and responsive approach to the values of social justice.<sup>35</sup>

In its verdict and deliberations, the panel of judges firmly applied several fundamental principles of classical criminal law that serve as the basis for fair and consistent law enforcement. First, the principle of legality, or *nullum crimen, nulla poena sine lege*, serves as the primary foundation. This principle affirms that no act can be categorized as a crime or punished without a clear and predetermined legal rule. Therefore, the panel of judges cannot apply norms or provisions that are retroactive or outside the applicable provisions of the Criminal Code, thereby ensuring legal certainty and protecting the defendant's rights from arbitrary application of the law.<sup>36</sup>

Furthermore, the principle of fault or culpability also serves as a reference in determining the criminal responsibility of defendants. This principle asserts that a person can only be subject to criminal sanctions if proven to have fulfilled the elements of fault, namely the intent and desire to commit the crime. In other words, the subjective aspect of the crime is given great attention, so that criminal responsibility is based not only on the objective act itself, but also on the perpetrator's awareness and will in carrying out the act.<sup>37</sup>

Furthermore, the application of the principle of criminal accountability ensures that defendants are held fully accountable for their actions based on evidence and facts that have been legally tested in court. This principle requires valid and convincing evidence for a person to be sentenced, while also ensuring that no criminal convictions are imposed without a strong legal basis that can be scientifically and objectively justified.<sup>38</sup>

Finally, the principle of proportionality is a crucial pillar in balancing the severity of the punishment with the seriousness of the crime committed. This principle encourages the

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<sup>33</sup> Sudarto. (1986). *Law and Criminal Law*. Bandung: Alumni.

<sup>34</sup> Luhut MP Pangaribuan. (2010). *Principles of Criminal Law*. Jakarta: Erlangga.

<sup>35</sup> Barda Nawawi Arief. (2007). *Problems of Law Enforcement and Criminal Law Policy in Crime Prevention*. Jakarta: Kencana.

<sup>36</sup> Sudarto. (1986). *Law and Criminal Law*. Bandung: Alumni.

<sup>37</sup> Andi Hamzah. (2008). *Introduction to Indonesian Criminal Law*. Jakarta: Ghalia Indonesia.

<sup>38</sup> Moeljatno. (2002). *Principles of Criminal Law*. Jakarta: Rineka Cipta.

Master of Law, UNISSULA

panel of judges to impose rational and balanced sentences, neither excessive nor too light, so that the sanctions imposed can provide a deterrent effect and substantive justice. This demonstrates the panel of judges' understanding that they are not solely oriented towards retribution, but also consider the deterrence and rehabilitation aspects of the modern criminal justice system.<sup>39</sup>

These principles form the foundation for the practice of criminal law that is humanistic and responsive to the needs of society, while maintaining a balance between the protection of individual rights and the public interest in just law enforcement.<sup>40</sup>

Decision Number 126/Pid.B/2024/PN Pml reflects that the Indonesian criminal law system, although still based on the *Wetboek van Strafrecht voor Nederlandsch-Indië* or Criminal Code which is a legacy of the colonial era, has undergone a process of adaptation and transformation towards a more contextual and responsive approach to the values of substantive justice.<sup>41</sup> This indicates that even though written legal norms are still rigid, the legal interpretation used by the panel of judges shows flexibility and courage in prioritizing more humane justice.<sup>42</sup>

In practice, law enforcement in aggravated theft cases does not solely rely on a rigid, formalist legal reasoning approach. Instead, the panel of judges strives to consider non-legal aspects rooted in humanitarian values, including the protection of individual property rights as part of human rights that must be upheld in a state governed by the rule of law.<sup>43</sup> This approach reflects the application of the principle of substantive justice, namely a concept of justice that focuses not only on the validity of norms, but also on their meaning, impact, and alignment with social values in society.<sup>44</sup>

Furthermore, this ruling provides a reflective space for the future development of criminal law. The attention paid to the balance between victims' rights, crime prevention, and social recovery demonstrates that the orientation of criminal punishment is not solely focused on retribution but also encompasses rehabilitative and preventive dimensions.<sup>45</sup> In this context, the role of judges as legal interpreters is crucial in aligning legal texts with the actual needs of justice in a society that is constantly changing.<sup>46</sup>

Furthermore, this ruling underscores the importance of sentencing that is responsive to the social context and circumstances of the perpetrator, thereby supporting social reintegration efforts and reducing recidivism rates. Thus, sentencing is not solely oriented toward deterrence but also considers aspects of rehabilitation and restoration that can bring long-term benefits to society.

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<sup>39</sup> Barda Nawawi Arief. (2007). *Problems of Law Enforcement and Criminal Law Policy in Crime Prevention*. Jakarta: Kencana.

<sup>40</sup> Muladi & Arief, BN (1992). *Criminal Theories and Policies*. Bandung: Alumni.

<sup>41</sup> Andi Hamzah. (2008). *Principles of Criminal Law*. Jakarta: Rineka Cipta.

<sup>42</sup> Muladi & Arief, BN (1992). *Anthology of Criminal Law*. Bandung: Alumni.

<sup>43</sup> Simons, W.F. (2017). *The Netherlands-Indies Criminal Code*. The Hague: Martinus Nijhoff.

<sup>44</sup> Ashworth, A. (2015). *Sentencing and Criminal Justice* (6th ed.). Cambridge University Press.

<sup>45</sup> Marzuki, PM (2005). *Legal Research*. Jakarta: Kencana Prenada Media.

<sup>46</sup> Hart, H.L.A. (2008). *The Concept of Law* (2nd ed.). Oxford: Oxford University Press.

Master of Law, UNISSULA

Thus, Decision Number 126/Pid.B/2024/PN Pml not only serves as a resolution to a specific legal incident, but also serves as a potential precedent to establish a new direction for more adaptive and equitable criminal law enforcement. This decision also emphasizes that social stability can only be achieved if punishment is implemented proportionally and continues to respect the dignity and rights of all parties involved—including perpetrators, victims, and the wider community.<sup>47</sup>.

### **3.2. Analysis of Criminalization of Perpetrators of the Crime of Aggravated Theft from the Perspective of Legal Certainty" in Decision Number 126/Pid.B/2024/PN Pml?**

An analysis of Decision Number 126/Pid.B/2024/PN Pml from the perspective of legal certainty shows that the Indonesian criminal justice system has evolved from merely the formal implementation of positive law to a more contextual application of justice values. Although still rooted in the Dutch East Indies Code of Conduct, a colonial legacy, the criminal justice system in practice has demonstrated interpretive and progressive efforts by law enforcement officials to balance legal certainty and substantive justice.<sup>48</sup>.

This development reflects the dynamics within the justice system, which seeks to align legal norms with social values and the needs of society for justice. Judges, as the primary actors in formulating criminal decisions, no longer rely solely on rigid legal texts but also consider the sociological, psychological, and moral context of the defendant's actions. This approach aligns with Gustav Radbruch's thinking, which emphasized that an unjust law is no law (*unrecht ist kein recht*).<sup>49</sup> Therefore, law is not only interpreted as a certainty of rules, but also as an instrument of justice that lives in society.

Furthermore, the orientation of contemporary criminal law demands a synthesis between the principle of legality and the values of humanity and morality. In this regard, Decision Number 126/Pid.B/2024/PN Pml serves as a concrete example of how the law is applied contextually without ignoring its legitimate legal foundation. The judge in this decision attempted to uphold the rule of law objectively while still allowing for humanistic considerations, such as the defendant's social background, the extent of the harm, and the defendant's potential for rehabilitation as part of society.

This decision reflects the judge's awareness of the importance of the application of the principles of *nullum crimen sine lege* and *nulla poena sine lege*, namely the principle of legality which guarantees that no one can be punished except on the basis of previously applicable law.<sup>50</sup> The application of this principle provides protection for the defendant's human rights and guarantees a legal system that is not arbitrary. In this case, the defendant was sentenced based on Article 363 paragraph (1) of the Criminal Code because he was proven to have committed aggravated theft, with legal considerations based on formal and material elements that were comprehensively fulfilled.

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<sup>47</sup> Sudarto. (1986). Law and Criminal Law. Bandung: Alumni.

<sup>48</sup> Arief, BN (2008). Problems of Law Enforcement and Criminal Law Policy in Crime Prevention. Jakarta: Kencana Prenada Media.

<sup>49</sup> Radbruch, G. (2006). Gesetzliches Unrecht und übergesetzliches Recht (Unjust Laws and Supra-Legal Laws). In Hattenhauer, H. (Ed.), Rechtsphilosophie. Heidelberg: CF Müller.

<sup>50</sup> Simons, PAF (1999). Principles of Criminal Law. Jakarta: Ghalia Indonesia.

Master of Law, UNISSULA

The panel of judges in this case demonstrated their consistency in applying the principle of culpability as the primary basis for determining criminal responsibility. This principle implies that a person can only be held criminally responsible if there is inherent fault in that person, whether in the form of intent or negligence. In this context, the judges considered that the elements of *mens rea* (evil intent) and *actus reus* (unlawful act) had been legally and convincingly proven. Proof was carried out through a number of pieces of evidence, including recovered stolen goods, tools used during the crime, and witness statements that provided detailed explanations of the defendant's role and involvement in the crime.

This principle of fault is in line with the basic principle in criminal law which emphasizes personal accountability, namely that not every person who causes a result prohibited by law can be punished unless it can be proven that there is a psychological relationship between the perpetrator and his actions. This view is also emphasized by Prof. Dr. Barda Nawawi Arief, who stated that in the national criminal law system, criminal responsibility may not be imposed on a person unless it is proven that he actually made a mistake consciously and is legally responsible.<sup>51</sup> Thus, the criminal justice system not only prioritizes the objective elements of a crime, but also considers the subjective condition of the perpetrator as a basis for determining the type and severity of punishment.

This approach reflects the orientation of the Indonesian criminal justice system, which is not solely repressive but also contains corrective and educational elements. Punishment is aimed at providing a deterrent effect while also providing opportunities for perpetrators to reflect on their mistakes and undergo social rehabilitation. Therefore, judges not only consider whether the elements of the offense as stipulated in Article 363 of the Criminal Code have been fulfilled but also conduct a thorough analysis of the defendant's personal circumstances, motives, and likelihood of repeating similar actions in the future.

Considerations for aggravating the sentence in this case included the nighttime incident, the involvement of more than one perpetrator, and the use of tools in the theft. These elements are in accordance with Article 363 of the Criminal Code. However, the judge also considered mitigating factors, such as the defendant's cooperative attitude, confession of the crime, and prior criminal record. This demonstrates the court's effort to apply the principle of proportionality, which balances the severity of the sentence with the seriousness of the crime and the defendant's personal circumstances.

Furthermore, in the context of Pancasila-based criminal justice theory, the judge's approach in this case can be linked to the thinking developing within the academic community of Sultan Agung Islamic University (Unissula). Varrel Avanda Womsiwor emphasized that criminal justice in the national legal system must balance legal certainty, substantive justice, and social benefit. This aligns with the five principles of Pancasila, which not only serve as the philosophical foundation of the Indonesian nation but also serve as a source of values for the formation and implementation of law. Therefore, criminal justice should not be

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<sup>51</sup> Arief, BN (2015). *Anthology of Criminal Law Policy: Developments in the Drafting of the New Criminal Code*. Jakarta: Kencana.

solely retributive, but should also contain educational, corrective, and rehabilitative dimensions that support humanitarian values.<sup>52</sup>

This Pancasila-based approach requires law enforcement officials, particularly judges, to enforce the law not only textually and rigidly, but also contextually and wisely. In practice, this requires an assessment of the perpetrator's social background, the impact of the act on the victim and society, and the perpetrator's potential to return to being a productive citizen. In other words, criminal justice must be designed as an instrument capable of harmonizing the functions of protecting society, punishing wrongdoing, and developing the perpetrator. This reflects the integral principle of Pancasila, which places the interests of the individual and society within a harmonious framework.

Furthermore, the implementation of criminal justice based on Pancasila values requires a criminal law policy that does not simply imitate foreign legal systems but reflects the character of the Indonesian nation. In this context, substantive justice is as important as legal certainty. Judges must not only consider whether the formal elements of a crime have been fulfilled but must also assess the extent to which a criminal sentence achieves justice that touches the conscience of society. Thus, the courts become a space for articulating the nation's noble values, not merely a formal legal forum.

Sensitivity to the perpetrator's social circumstances and their impact on societal dynamics is crucial in determining a criminal sentence. Therefore, the panel of judges' decision in this case deserves praise, as it not only upholds legal certainty but also considers the humanitarian and rehabilitative aspects of sentencing. This indicates that the Indonesian criminal justice system is transforming toward a more restorative and responsive system.

Thus, Decision Number 126/Pid.B/2024/PN Pml can be considered a concrete form of integration between positive law and substantive justice values. This decision deserves to be a precedent for future law enforcement, as it demonstrates the judiciary's courage to transcend rigid positivism to achieve justice in context—that is, justice that aligns with local, national, and universal humanitarian values.<sup>53</sup>

#### 4. Conclusion

Based on the analysis of Decision Number 126/Pid.B/2024/PN Pml, it can be concluded that the criminal justice system in Indonesia continues to show dynamics towards a more progressive direction. This development is reflected in the shift in approach from merely applying the law textually and normatively to a more contextual, just, and responsive approach to sentencing that is responsive to social values. This decision demonstrates the panel of judges' concrete efforts to integrate the principle of legality with the principle of culpability and proportionality in determining the type and level of punishment for perpetrators of aggravated theft. In this decision, the panel of judges relied not only on

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<sup>52</sup> Womsiwor, VA (2023). Pancasila Justice-Based Criminalization from the Perspective of the Indonesian National Legal System. Thesis, Faculty of Law, Sultan Agung Islamic University (Unissula). Retrieved from <https://repository.unissula.ac.id>

<sup>53</sup> Imani, SC (2023). Criminal Law Policy in Efforts to Overcome the Crime of Aggravated Theft in the New Criminal Code [Thesis, Sultan Agung Islamic University]. <http://repository.unissula.ac.id/>



Master of Law, UNISSULA

formal legal aspects but also considered the perpetrator's social and psychological factors as part of a substantive justice framework. Consideration of the perpetrator's background and humanitarian values demonstrates that the decision-making process was not carried out mechanically, but rather based on a holistic understanding of the case's context. This illustrates the effort to achieve harmony between legal certainty and justice within society. Moreover, the approach adopted in this decision reflects a trend in the criminal justice system that increasingly favors restorative and humanistic values. This approach is not solely oriented toward punishment, but also creates space for the rehabilitation and reintegration of perpetrators into society. This view aligns with the thinking of academics from Sultan Agung Islamic University (Unissula), who emphasize the importance of a criminal justice approach grounded in Pancasila values and aimed at promoting justice that is not merely repressive but also transformative. Thus, this decision can serve as a reference in developing a more inclusive and adaptive criminal justice model to social realities. This is crucial as a foundation for reformulating criminal law policy in Indonesia, which places greater emphasis on human rights protection, social justice, and a balance between the rights of victims and perpetrators.

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