

Legal Analysis Of The Application Of Article 363 Paragraph (1) 5 Of The Kuhp Towards The Criminal Act Of Aggravated Theft From The Perspective Of Islamic Law (Study of Decision Number 666/Pid.B/2025/PN Dps)

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Abstract. *The problem raised in this study originated from a case of aggravated theft recorded in the Denpasar District Court Decision Number 666/Pid.B/2025/PN Dps. This case involved a defendant named Ade Muhamad Wijaya, who was charged with violating the provisions of Article 363 paragraph (1) 5 of the Criminal Code (KUHP) regarding theft committed with aggravated elements. Research methods play a central role in legal scholarly work because they are the primary instrument for answering problem formulations systematically and purposefully. In legal research, a methodological approach must be able to connect legal norms and practices in the field, while also providing space for contextual and equitable legal interpretation. Therefore, the methods used in this research are designed to depict law not only as a normative text but also as a system of values that lives within society. This research uses a juridical-normative research method, namely legal research that emphasizes the study of written legal norms, such as statutory regulations, court decisions, and the doctrines of legal experts. Juridical-normative research focuses on law as a rule that should apply (das sollen), rather than as empirical social behavior (das sein). Application of Article 363 paragraph (1) 5 of the Criminal Code in Decision Number 666/Pid.B/2025/PN Dp: The Denpasar District Court, through Decision Number 666/Pid.B/2025/PN Dps, has correctly applied the provisions of Article 363 paragraph (1) 5 of the Criminal Code, because the defendant's actions fulfill the elements of aggravated theft. The aggravating element lies in the theft being committed under certain circumstances that have more serious consequences than ordinary theft.*

Keywords: *Formulations; Problem; Purposefully; Systematically.*

1. Introduction

Indonesia is a highly diverse archipelagic nation. Home to over 270 million people, the nation comprises hundreds of ethnic groups, regional languages, and cultural diversity stretching from Sabang to Merauke. This diversity forms a distinctive collective identity and serves as a national strength, yet simultaneously demands a legal system capable of harmoniously accommodating local values and universal norms. In this context, the law plays a central role

as a means of social engineering, capable of maintaining stability and ensuring order amidst the diversity of Indonesian society.¹

Historically, Indonesia's legal system was formed through a long, complex process, influenced by various legal systems worldwide. As explained by Prof. Gunarto, SH, M.Hum., the Indonesian legal system is a blend of civil law, common law, customary law, and Islamic law. The Dutch colonial process left behind a legacy of legal codes, many of which are still preserved today, such as the Criminal Code (KUHP), which serves as the basis for criminal law in Indonesia today.² However, along the way, Indonesian positive law continues to interact with customary law and Islamic law which live and develop in society, especially in upholding the values of substantive justice.³

As a country that upholds the principle of Rechtsstaat, Indonesia places law as the supreme commander in governing national and state life. From an academic perspective, as stated by Prof. Dr. Sri Endah Wahyuningsih, SH, M.Hum., of Sultan Agung Islamic University (UNISSULA), the existence of a state based on law implies that all government actions must be based on law, and all citizens are subject to legal norms that apply fairly and equally.⁴ In the context of criminal law, this principle demands that law enforcement is not only repressive, but also able to provide certainty, benefit, and justice.⁵

One of the most common and disturbing crimes in society is theft. This crime not only violates individual property rights but also impacts the collective sense of security. According to data from various police sources, theft remains a high-ranking crime on the national crime index.⁶ This demonstrates that theft is a recurring and adaptive crime, often committed in various ways and forms. One such form is aggravated theft, as stipulated in Article 363 of the Criminal Code.

Article 363 paragraph (1) 5 of the Criminal Code regulates theft committed at night in a house or enclosed yard by means of unauthorized entry. The application of this article emphasizes the existence of aggravating circumstances that aggravate the punishment for the perpetrator. However, in practice, the enforcement of this article often gives rise to different interpretations, both in the investigation stage, prosecution, and the decision-making process by the judge.⁷ This opens up space for discussion about how positive criminal law can transform in providing substantive justice, especially when faced with certain social contexts.

In the context of Indonesia's predominantly Muslim society, it cannot be ignored that Islamic legal values (al-qānūn al-islāmī) have a significant influence on shaping public perceptions of

¹Gunarto, G. (2022). *Philosophy of Law and the Dynamics of Indonesian Society*. Semarang: UNISSULA Press.

²Gunarto, G. (2021). *Criminal Law and the Indonesian Criminal Justice System*. Semarang: UNISSULA Press.

³Wahyuningsih, SE (2020). *Law Enforcement in a Rule of Law State: A Theoretical and Practical Study*. Semarang: UNISSULA Press.

⁴Wahyuningsih, SE, & Gunarto, G. (2021). *Law and Justice in the Indonesian Criminal System*. Semarang: UNISSULA Press.

⁵Barizah, N. (2019). *Legal Pluralism and Integrative Justice in the Indonesian Context*. Surabaya: Airlangga University Press.

⁶Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations.

⁷Criminal Code (KUHP).

justice. Islamic law serves not only as a religious norm but also as a moral and social guideline. In Islamic law, theft, or as-sariqah, is explicitly regulated in the Qur'an and Sunnah, with an emphasis on prevention, restorative justice, and deterrence. Allah says: "وَالسَّارِقُ وَالسَّارِقَةُ" (QS Al-Māidah: 38).⁸

Comparative studies of the application of positive criminal law and Islamic law in the context of theft are crucial, particularly in assessing the extent to which the national legal system can accommodate the values of justice in sharia. In her various writings, Prof. Dr. Nurul Barizah, SH, LL.M., Ph.D., emphasizes that legal pluralism in Indonesia must be directed toward creating integrative justice, namely justice that is not only legal and formal, but also considers the moral and cultural aspects of society.⁹

The problem raised in this study originated from a case of aggravated theft recorded in the Denpasar District Court Decision Number 666/Pid.B/2025/PN Dps. This case involved a defendant named Ade Muhamad Wijaya, who was charged with violating the provisions of Article 363 paragraph (1) 5 of the Criminal Code (KUHP) regarding theft committed with aggravated elements.¹⁰ The incident began on March 23, 2025, when a resident named Soeharsono entrusted his white Mitsubishi pickup truck to Siprianus Judin because he had to return to Malang. The vehicle had been used for project operations, and on April 1, 2025, it was parked unlocked on the side of the road near the Jimbaran Asri Housing Complex.

The following day, April 2, 2025, defendant Ade Muhamad Wijaya, who was previously known to have worked with Siprianus, needed a vehicle for his new job, which offered higher wages. Without the owner's or the party entrusted with the vehicle's safety, the defendant then took the vehicle by damaging the ignition cable to start the engine. The car was used for his personal use and returned that evening to its original location. However, when he attempted to return the vehicle, the police had received a report and immediately secured it.

During the trial, witnesses Siprianus Judin and Danang Dwi Argo testified that the car was taken without permission, and evidence in the form of the vehicle used was also presented at the trial. The defendant himself did not deny his actions, expressed open regret, and promised not to repeat similar actions. The public prosecutor assessed that the defendant's actions fulfilled the elements of aggravated theft as regulated in Article 363 paragraph (1) 5 of the Criminal Code, and demanded a prison sentence of seven months.¹¹

In its verdict, the Panel of Judges considered that all elements of the article charged had been fulfilled, namely: first, the element of "whoever" was fulfilled because the identity of the perpetrator was clear; second, the element of "taking another person's property unlawfully" was proven by the defendant's actions in taking the car without the owner's permission; and third, the element of "by means of damage" was proven by the defendant's admission that he

⁸Al-Qur'an Surah Al-Māidah Verse 38.

⁹Nurfauzi, A. (2023). Implementation of Islamic Law in the National System: A Reorientation. Semarang: UNDIP Press.

¹⁰Criminal Code (KUHP). (2022). Article 363 paragraph (1) point 5. Jakarta: Ministry of Law and Human Rights of the Republic of Indonesia.

¹¹Denpasar District Court Decision Number 666/Pid.B/2025/PN Dps.

damaged the car's ignition cable to start the engine. In its consideration, the judge also noted that the defendant's actions caused unrest in the community and caused material losses to the victim of Rp. 25 million. However, the defendant's polite attitude, confession of the act, and feelings of remorse were considerations that mitigated the sentence.¹².

The progressive legal perspective, as developed by Prof. Satjipto Rahardjo and in line with Islamic values, ideally law enforcement should not be trapped in normative textualism, but rather should be based on the principles of utility and social justice. The law must be able to act as an instrument of liberation, not merely as a means of punishment. Therefore, this study is highly relevant to assess whether the legal approach used in Decision Number 666/Pid.B/2025/PN Dps truly reflects a balance between procedural and substantive justice.

As a country that adheres to a mixed legal system with Islamic values inherent in the life of society, Indonesia should encourage the integration of positive law and Islamic values of justice (الْعَدَالَةُ الْإِسْلَامِيَّة). As stated by Prof. Dr. Nurul Barizah, SH, LL.M., Ph.D., legal pluralism in Indonesia opens up space for the development of a more inclusive and humanistic legal approach, by making Islamic values a source of ethics and morals in criminal law enforcement. Thus, the study of this decision is not only important from a normative perspective, but also as a reflection of how justice in a broader sense should be realized in judicial practice.

From an Islamic legal perspective, the crime of theft is classified as part of jarimah ḥudūd (الْجُرَيْمَةُ الْحُدُودِيَّة), a type of crime for which the threat of punishment has been determined by Sharia. One form is (حَدَّ السَّرِقَةِ), which is a strict punishment for perpetrators of theft who meet the elements and conditions outlined in the Qur'an and as-Sunnah. However, it is important to emphasize that the implementation of this punishment (حَدّ) cannot be carried out immediately. In practice, Islamic law sets out strict conditions before such punishment can be applied, such as the value of the stolen goods must reach (نِصَاب), not be under duress, and be done intentionally and without justification.

The fundamental difference between the Indonesian positive legal system and Islamic law lies in their approaches. Indonesian criminal law tends to emphasize formal legality and proof based on the elements of the article, while Islamic law provides more room to consider moral aspects, intent (نِيَّة), and the social conditions of the perpetrator. According to Prof. Dr. Sri Endah Wahyuningsih, SH, M.Hum., the Islamic criminal system aims not only to punish but also to improve and rehabilitate the perpetrator for the benefit of society as a whole. Therefore, the principle of justice in Islam is integral, namely combining strict rules and contextual wisdom.

The study of the application of Article 363 paragraph (1) 5 of the Criminal Code relating to aggravated theft becomes important when confronted with an Islamic legal approach. In the view of Prof. Gunarto, SH, M.Hum., the national legal system should not operate dichotomously towards Islamic values that live in society, but rather encourage harmonization as a form of recognition of living law in Indonesia. This is relevant considering that the majority

¹²Gunarto, G. (2021). Criminal Law and the Indonesian Criminal Justice System. Semarang: UNISSULA Press.

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of Indonesian people are Muslim and use sharia teachings as a moral reference in daily life, including in assessing the fairness of a criminal decision.

Considering the complexity of the law and the social context of society, this study aims to critically assess the extent to which court decisions in aggravated theft cases reflect the spirit of substantive justice, not only based on the Criminal Code but also in light of Islamic norms. As stated by Prof. Dr. Barda Nawawi Arief, the integration of Islamic values into national criminal law can enrich the Indonesian legal system with strong spiritual and ethical dimensions. Therefore, this study is important as a scientific contribution in encouraging a national legal system that is more inclusive and responsive to the norms developing in society.

It's time for national legal development to focus not only on formal unification of the legal system, but also on integrating the values of justice derived from Islamic law as part of local wisdom and living values. In the context of criminal justice, particularly in cases of aggravated theft, Islamic values can provide an alternative approach that is more restorative and oriented toward balance between the perpetrator, the victim, and society.

Based on the description, the purpose of this study is to analyze the application of Article 363 paragraph (1) 5 of the Criminal Code to the crime of aggravated theft based on the study of Decision Number 666/Pid.B/2025/PN Dps and examine it from an Islamic law perspective. Therefore, the preparation of this paper proposal is entitled "Juridical Analysis of the Application of Article 363 Paragraph (1) 5 of the Criminal Code to the Crime of Aggravated Theft in an Islamic Law Perspective (Study of Decision Number 666/Pid.B/2025/PN Dps)".

A conceptual framework that systematically explains the basic meanings of the terms used in the title is necessary. The conceptual framework aims to clarify the direction of the analysis and define the scope of meaning used in the discussion. In this study, the conceptual framework was designed to outline the main concepts that are the focus of the study, namely theft from the perspective of positive law and Islamic law, as well as the application of legal analysis to this crime.

1) The Concept of Theft in Positive Law

In Indonesia's positive legal system, the crime of theft is regulated in Article 362 of the Criminal Code, which states that:

"Anyone who takes something, which belongs wholly or partly to another person, with the intention of possessing it unlawfully, shall be punished for theft, with a maximum imprisonment of five years or a maximum fine of sixty rupiah."

Normatively, theft has the following basic elements:

- a. the act of taking;
- b. objects in the form of goods;
- c. the item belongs to someone else;

d. there is an intention to possess illegally.

Theft is a crime against personal property and is one of the most common conventional crimes in modern society. .

2) The Concept of Aggravated Theft (Article 363 of the Criminal Code)

Aggravated theft is regulated in Article 363 of the Criminal Code, namely theft committed under certain circumstances or in certain ways that increase the seriousness of the crime. Article 363 paragraph (1) 5 specifically regulates:

"Theft committed at night in a house or enclosed yard where there is a house, committed by a person who is there without permission or by entering without permission."

The aggravating elements in this article include:

- a. time of implementation (night),
- b. place (house or enclosed yard),
- c. how to enter (without permission),
- d. means (by damaging, using fake keys),
- e. or done together.

This aggravation is the basis for imposing a heavier sentence because it is considered to cause social unrest and threaten the public's sense of security. .

3) Concept of Juridical Analysis

Juridical analysis is an approach in legal science used to examine a legal event based on applicable norms. In this context, juridical analysis encompasses the interpretation of legal provisions, their application to specific cases, and an assessment of the arguments and legal considerations used by judges in rendering decisions.

The legal analysis in this study is directed at assessing Decision Number 666/Pid.B/2025/PN Dps, which imposed a sentence on the perpetrator of aggravated theft. The study was conducted to see whether the decision was in accordance with the provisions of Article 363 paragraph (1) 5 of the Criminal Code and reflected the principle of substantive justice. .

4) The Concept of Theft in Islamic Law (جريمة السرقة)

The crime of theft is categorized as jarimah hudūd (الْجَرَائِمُ الْحُدُودِيَّةُ), namely a crime whose sanctions have been expressly determined in sharia. Theft (السَّرِقَةُ) has a sanction in the form of (حَدّ), namely the cutting off of the hand as mentioned in the word of Allah:

"وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنْ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ" (QS Al-Māidah: 38)

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It means "The man who steals and the woman who steals, cut off the hands of both (as) retribution for what they did and as a punishment from Allah. And Allah is All-Mighty, All-Wise." (QS Al-Maidah: 38)

This verse shows that the punishment of hand amputation (qat' al-yad) is a form of sanction directly determined by Allah as hudūd, namely a punishment that is permanent and cannot be changed unless there is a valid reason for cancellation according to sharia. This punishment is intended as a form of appropriate retribution (jazā'an bimā kasabā) as well as a deterrent effect (nakālan minallāh) for the perpetrator and the wider community.

According to the ulama, Jarimah sariqah is categorized as a hudūd crime if the following conditions are met :

- a. The stolen item must reach the nisab, the minimum value of an item determined to be punishable by hudūd. Most scholars set the nisab at a quarter of a gold dinar (approximately 1.06 grams of pure gold).
- b. Items are taken from a secure storage place (ḥirz), such as a locked house, safe, or a securely locked vehicle.
- c. Taken secretly and with the intent to possess unlawfully.
- d. There is no doubt about ownership, that is, there is no doubt about the ownership status of the goods which can nullify the hudūd punishment.
- e. The perpetrator is of sound mind and has reached puberty, so he can be held criminally responsible.

In Case Decision Number 666/Pid.B/2025/PN Dps, theft was committed against a motor vehicle by damaging the ignition cable to start the engine without the original key. When analyzed using Islamic law, this act fulfills the elements of jarimah sariqah because it involves taking goods of economic value from a secure place (hirz), carried out unlawfully, and without the owner's permission. However, the application of the punishment of amputation of hands (hudūd) in Indonesia is not enforced because the applicable positive legal system is the Criminal Code. Therefore, the sanctions given to the perpetrator are in the category of ta'zīr, namely punishments determined by the government based on the public interest. .

5) The Concept of Harmonization between Positive Law and Islamic Law

In a country like Indonesia, which adheres to a mixed legal system and has a predominantly Muslim population, harmonization between positive law and Islamic law is crucial. According to Prof. Dr. Sri Endah Wahyuningsih, SH, M.Hum., legal pluralism in Indonesia creates space for synergy between the national legal system and the Islamic values that exist and thrive in society.

Aggravated theft, when analyzed through these two legal systems, demonstrates different approaches but shares the same goal: maintaining order and providing justice. In Islamic law, the approach to theft places greater emphasis on the dimensions of morality, intention, and

benefit (مَصْلَحَة), which should serve as inspiration in the process of reforming national criminal law. .

2. Research Methods

Research methods play a central role in legal scholarly work because they are the primary instrument for answering problem formulations systematically and purposefully. In legal research, a methodological approach must be able to connect legal norms and practices in the field, while also providing space for contextual and equitable legal interpretation. Therefore, the methods used in this research are designed to depict law not only as a normative text but also as a system of values that lives within society. This research uses a juridical-normative research method, namely legal research that emphasizes the study of written legal norms, such as statutory regulations, court decisions, and the doctrines of legal experts. Juridical-normative research focuses on law as a rule that should apply (*das sollen*), rather than as empirical social behavior (*das sein*).¹³ This model is commonly used in legal studies which require analysis of applicable principles, principles and norms, both in positive law and Islamic law.

3. Results and Discussion

3.1. Application of Article 363 Paragraph (1) 5 of the Criminal Code in Decision Number 666/Pid.B/2025/PN Dps

1) Chronological Description in Decision Number 666/Pid.B/2025/PN Dps

On Tuesday, April 1, 2025, witness Siprianus Judin inspected a white Mitsubishi pickup truck with license plate number DK 8371 DD parked in the Jimbaran Asri Housing Complex on Accounting Street, South Kuta, Badung. The inspection revealed that the doors were unlocked, although the windows were tightly closed.

Then, on Wednesday, April 2, 2025 at around 07.15 WITA, the defendant Ade Muhammad Wijaya planned to go to work in the Munggu area. The defendant's reason was because he received a higher wage there compared to working with Siprianus Judin. Because he did not have a vehicle, the defendant then intended to use a white Mitsubishi pickup truck DK 8371 DD which was usually used for project activities. The defendant went to the location where the car was parked, then damaged the ignition cable located under the steering wheel. After the cable was disconnected, the defendant reconnected it so that the car engine could be started without using the ignition key. Next, the defendant took the car away without permission from the rightful owner.

At around 9:00 a.m. WITA on the same day, witness Siprianus Judin intended to use the car to purchase iron. However, when he arrived at the parking lot, the car was gone. Siprianus then tried to find out information by asking local residents, and was told that the car had been taken away. He then contacted Soeharsono, the owner of the car who had given him the

¹³Soekanto, S., & Mamudji, S. (2006). Normative Legal Research: A Brief Review. Jakarta: Rajawali Pers.

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authority to use it, but Soeharsono stated that he did not know the car's whereabouts. Siprianus then reported the incident to the South Kuta Police.

On Wednesday evening, April 2, 2025, at approximately 9:30 PM WITA, defendant Ade Muhammad Wijaya returned to the Jimbaran Asri Housing Complex, where his car was usually parked. He then went to Siprianus Judin's house to pick up his wife. However, he was immediately apprehended by authorities and taken to the South Kuta Police Station for further investigation.

2) Legal Facts Description

a. Vehicle Condition Before the Incident

On the day Tuesday, April 1, 2025 at approximately 17.15 WITA, witness Cyprianus Judin saw a 2013 white Mitsubishi pickup truck with a police number plate DK 8371 DD parked on the side of the road in the Jimbaran Asri Housing Complex, Accounting Street, South Kuta, Badung. When inspected, the car doors were unlocked, although the windows were tightly closed.

b. Defendant's Actions

On Wednesday, April 2, 2025, at approximately 7:15 a.m. WITA, defendant Ade Muhammad Wijaya, who was going to work in the Munggu area (for a higher wage than working with Siprianus Judin), intended to use the pickup truck. The truck had previously been used by the defendant for project purposes.

owned by Siprianus Judin.

The defendant then walked to the car, parked in front of the Perum Bumi Jimbaran Asri project building. Using his hands, he pulled the ignition cable under the steering wheel until it broke, then reconnected it, allowing the car to start without a key. He then drove away without the owner's permission.

c. Discovery of Missing Car

On the same day, at around 9:00 a.m. WITA, witness Siprianus Judin intended to use the car to purchase iron. However, the car was no longer in the parking lot. After asking local residents, he learned that the car had been taken out, possibly by a worker named Suhar. Siprianus then contacted the car owner, Soeharsono, but he also did not know the vehicle's whereabouts. Siprianus reported the incident to the South Kuta Police.

d. The Defendant was arrested

On Wednesday, April 2, 2025, at approximately 9:30 PM WITA, the defendant returned to his original location in the Jimbaran Asri Housing Complex and then went to Siprianus Judin's house to pick up his wife. At that time, the defendant was detained and taken to the South Kuta Police Station for further investigation.

e. Losses Due to the Defendant's Actions

The defendant took 1 (one) unit of white Mitsubishi pick up car year 2013 No. Pol DK 8371 DD, No.Ka MHMU5TU2EDK112121, No. Engine 4G15J76524, STNK in the name of Yuhanafi David Rustiawan, address Jalan Gerya Nambi 1/22, Ubung Kaja, Denpasar, without the permission or knowledge of the legal owner Soeharsono, who previously gave power of attorney to Siprianus Judin. The defendant used the car for personal interests, namely working elsewhere with higher pay. As a result of this action, the victim Soeharsono suffered material losses of Rp. 25,000,000 (twenty five million rupiah).

3) Description of the Analysis of Fulfillment of the Elements of Article 363 Paragraph (1) 5 of the Criminal Code

Article 363 paragraph (1) 5 of the Criminal Code reads:

"Theft committed against animals, motor vehicles, or goods which are partly or wholly on a public road or in a public place, is punishable by a maximum prison sentence of 7 (seven) years."

To be able to enter Article 363 Paragraph (1) 5 of the Criminal Code, there must be elements that are fulfilled, namely:

a. The element of "Whoever"

This element refers to the legal subject, namely any person who can be held criminally responsible. In this case, the person who committed the act is Ade Muhammad Wijaya. The defendant's identity is clear, and he is a physically and mentally healthy adult, thus he can be held criminally responsible. This element has been fulfilled.

b. The element "Taking something"

This element means the act of controlling goods that are wholly or partially owned by another person with the aim of transferring control of the goods from the rightful owner to the perpetrator without rights. In this case, the defendant took a 2013 white Mitsubishi pickup truck with license plate number DK 8371 DD parked at the Jimbaran Asri Housing Complex. The defendant's actions were carried out by damaging the car's ignition cable so that it could be started without a key, then driving the car away. Thus, the element of taking something has been proven.

c. The element "The goods are wholly or partly owned by another person"

The property the defendant took was not his. The vehicle's vehicle registration (STNK) was registered under Yuhanafi David Rustiawan, who then authorized Soeharsono to use it for the project. The defendant had no ownership rights whatsoever to the car; he had merely used it for project operations. Therefore, the property property element was also met.

d. The element "With the intent to possess unlawfully"

The act of taking another person's property is only criminally punishable if it is done with the intention of unlawfully controlling or possessing it. In this case, the defendant took the car

with the intention of using it for personal gain, namely to work elsewhere for higher pay. The defendant did not seek permission from the rightful owner or the authorized representative, making this act clearly unlawful. The element of unlawful intent to possess is fulfilled.

e. The element "Committed against motor vehicles"

Article 363 paragraph (1) point 5 specifically emphasizes that the theft was committed against a motor vehicle. The item taken by the defendant was a 2013 Mitsubishi pick-up truck, which is included in the category of motor vehicles as referred to in Law Number 22 of 2009 concerning Traffic and Road Transportation. Therefore, this element is completely fulfilled.

With all elements of the article proven, there is no doubt that the defendant Ade Muhammad Wijaya can be held criminally responsible for his actions. As a result of this crime, the victim, Soeharsono, suffered significant material losses, amounting to Rp 25,000,000. In addition to causing economic losses, the defendant's actions have also been socially detrimental because they have created a sense of insecurity in the community, especially in terms of trust in workers who were previously entrusted with using project operational vehicles.

On that basis, the defendant deserves to be sentenced according to the provisions of Article 363 paragraph (1) 5 of the Criminal Code, with a maximum prison sentence of 7 (seven) years. The imposition of a sentence on the defendant not only serves as retribution for his actions, but also as a means of prevention (deterrent effect) so that similar actions are not committed again by either the defendant or other members of society.

It can be emphasized that all elements in Article 363 paragraph (1) 5 of the Criminal Code have been completely fulfilled, and the defendant Ade Muhammad Wijaya can be held criminally responsible for the crime of aggravated theft of a motor vehicle.

3.2. Legal Analysis of the Decision in the Context of Indonesian Positive Law

The Denpasar District Court Decision Number 666/Pid.B/2025/PN Dps which tried a case of aggravated theft, is one of the implementations of Article 363 paragraph (1) 5 of the Criminal Code (KUHP). From the perspective of Indonesian positive law, analysis of this decision is important to assess the extent to which the panel of judges has been consistent with the principles of legality, the principle of legal certainty, and the objectives of punishment in the criminal justice system.

First, from a formal aspect, the decision fulfills the principle of legality as stated in Article 1 paragraph (1) of the Criminal Code, namely "no act can be punished except by virtue of criminal regulations in legislation that existed before the act was committed." The defendant's actions have been clearly regulated in Article 363 paragraph (1) 5 of the Criminal Code, which regulates aggravated theft if it is committed by two or more people together. Thus, the judge in this decision has based his considerations on applicable legal norms.

Second, from a material perspective, the analysis of the fulfillment of the elements of the article shows that all elements of the crime are met. The element of "taking something" is proven because the defendant and his partner took someone else's property. The element of

"partially or wholly belonging to someone else" is also fulfilled because the goods taken do not belong to the defendant. The element of "with the intent to possess unlawfully" is proven because there is no right or permission from the legal owner. Meanwhile, the aggravating element of "committed by two or more people together" is proven based on trial facts that confirm a joint role in the commission of the crime.

Third, from the aspect of criminal responsibility, the defendant can be held criminally responsible because it meets the requirements of fault in the form of intent (*dolus*). The defendant consciously collaborated with his partner to commit the theft, so there is no excuse or justification that can eliminate his criminal responsibility. This is in line with Moeljatno's theory of criminal responsibility, which emphasizes that a person can only be punished if their actions are unlawful and carried out with error.

Fourth, in terms of sentencing, the panel of judges imposed a sentence in accordance with Article 363 of the Criminal Code, which carries a maximum prison sentence of 7 years. This decision can be considered proportional because it takes into account the aggravating and mitigating circumstances of the defendant. Aggravating circumstances include the defendant's actions harming the victim, causing public unrest, and being carried out through joint planning. Meanwhile, mitigating circumstances include the defendant's polite behavior during the trial, admitting his actions, and regretting them. This is in accordance with the principle of individualization of punishment adopted in Indonesian criminal law, where punishment not only considers legal certainty but also takes into account aspects of justice and expediency.

Fifth, the legal implications of this decision show that the application of Article 363 paragraph (1) 5 of the Criminal Code is still consistent in judicial practice. The judge has examined the legal facts based on valid evidence as regulated in Article 184 of the Criminal Procedure Code, namely witness statements, the defendant's statement, and physical evidence. The judge's considerations demonstrate a balance between normative aspects and concrete facts, so that the decision can be deemed to fulfill the principle of substantive justice.

Thus, the legal analysis of Decision Number 666/Pid.B/2025/PN Dps shows that the application of Indonesian positive law in this case has been carried out in accordance with the provisions of statutory regulations, the principles of criminal law, and the principles of justice in sentencing.

3.3. Islamic Law's View on the Crime of Aggravated Theft as in the Case

In Islamic law, theft is referred to *assariqah*, namely taking another person's property secretly without the owner's permission with the intention of possessing the property illegally. Theft is a crime (*jarimah*) that is categorized *ashudud* crimes, namely criminal acts whose punishment has been determined with certainty by Allah SWT in the Qur'an and Sunnah.

The legal basis is found in the words of Allah SWT:

"The man who steals and the woman who steals, cut off the hands of both of them as a reward for what they did and as a punishment from Allah. And Allah is Mighty, Most Wise." (QS. Al-Maidah: 38).

This verse emphasizes that theft is a haram act and is strictly prohibited, and has strict sanctions if all the hudud conditions are met.

From an Islamic criminal law perspective, the defendant Ade Muhammad Wijaya's actions clearly fall under the category of jarimah sariqah (theft). Theft in Islam is defined as the act of secretly taking another person's property without permission and without right, with the intention of unlawfully possessing it. In this case, the defendant took a valuable Mitsubishi pickup truck and used it for personal gain. Because the stolen item was a motor vehicle with significant economic value, the act can be classified as sariqah kubra (major theft).

The elements of theft in Islamic law can be analyzed as follows:

1) Al-Akhzu (the act of taking)

This element refers to the perpetrator's actual actions in taking another person's property. In this case, the defendant intentionally damaged the car's ignition cable to enable the engine to start, then drove the vehicle away without the owner's permission. This element was proven to have been met.

2) Al-Mal (objects in the form of valuable assets)

Property in Islam encompasses anything of economic value, recognized by sharia, and legally usable. A Mitsubishi pickup truck is clearly a valuable asset, qualifying as an object of theft.

3) Al-Hirz (storage/protection of assets)

The condition for theft to be punishable by hudud is that the property be in a state of proper security (mahfuzh) according to customary law. In this case, the car was parked on the side of the road with the windows rolled up, but the doors unlocked. This raises doubts because the condition of perfect security is not fully met.

4) As-Sirr (done secretly)

Theft must be committed covertly, not openly. The defendant committed his crime in the early morning when it was quiet, by tampering with electrical wiring without anyone noticing. This element is met.

5) Nisab (minimum limit of asset value)

Under Islamic law, theft is punishable by hudud if the stolen item reaches the nisab (the legal minimum), which is $\frac{1}{4}$ of a gold dinar, or approximately 1.06 grams of gold. A car valued at Rp 25,000,000 certainly exceeds the nisab. This element is met.

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6) Without Syubhat (without legal doubt or justification/excuse) In this case there is a possibility of syubhat, namely negligence of guarding by the owner because the car door was unlocked. In the rules of fiqhiyah it is stated:

"Idra'ul hududa bisy-syubuhat" (hudud is aborted by the presence of syubhat).

This means that even though the defendant's actions materially fulfill the requirements of sariqah kubra, the hudud punishment (cutting off the hand) cannot be carried out because there are doubtful factors.

Thus, even though the elements of a crime of felony are generally met, the hudud punishment is waived due to doubts surrounding the protection of property (al-hirz). Therefore, from an Islamic legal perspective, the defendant is not subject to hudud punishment but may be subject to ta'zir punishment.

Ta'zir punishment in this case is the punishment determined by the judge when hudud or qisas punishment cannot be imposed, but the act is still considered reprehensible and detrimental to society. Ta'zir can take the following forms:

- a. Prison,
- b. Fine,
- c. Light caning,
- d. Or other forms of social punishment that have a deterrent effect.

In the context of this case, imprisonment is the most appropriate form of ta'zir because it protects the victim's interests, provides a deterrent effect for the defendant, and deters others from committing similar acts. In Islamic law, criminal punishment is not solely intended to punish, but rather to uphold the five main principles of the maqasid sharia, namely:

- a. Hifzh ad-din (protecting religion),
- b. Hifzh an-nafs (guarding the soul),
- c. Hifzh al-'aql (guarding reason),
- d. Hifzh an-nasl (looking after offspring),
- e. Hifzh al-mal (guarding wealth).

The defendant's actions clearly violate the principle of hifzh al-mal (protection of property), thus criminal penalties must be enforced. This is not only to provide a deterrent effect (zajr) for the perpetrator, but also to maintain public safety, uphold justice, and redress the victim's losses.

4. Conclusion

Application of Article 363 paragraph (1) 5 of the Criminal Code in Decision Number 666/Pid.B/2025/PN Dp: The Denpasar District Court, through Decision Number 666/Pid.B/2025/PN Dps, has correctly applied the provisions of Article 363 paragraph (1) 5 of the Criminal Code, because the defendant's actions fulfill the elements of aggravated theft. The aggravating element lies in the theft being committed under certain circumstances that have more serious consequences than ordinary theft. The judge in this decision considered the formal aspects (article elements) and material aspects (trial facts) before imposing a sentence. Juridical analysis of the decision in the context of Indonesian positive law: From a positive legal perspective, this decision aligns with the principles of legality and legal certainty. The judge based his decision on valid evidence as stipulated in Article 184 of the Criminal Procedure Code and imposed a sentence taking into account both aggravating and mitigating circumstances. However, in the context of substantive justice, criticism remains regarding the extent to which the sentence imposed provides a deterrent effect while protecting the rights of the defendant and the victim. Islamic law's view on aggravated theft in this case: In Islamic law, theft (*sariqah*) is a *hudūd* crime which is in principle punishable by amputation of the hand, provided that all elements are met (*niṣāb*, storage place, intentional, unauthorized taking, and clear evidence). However, if there is *syubhat* (doubt) or certain circumstances, then the *hudūd* punishment cannot be carried out and is replaced with *ta'zīr* according to the judge's discretion. Thus, aggravated theft in this case from an Islamic perspective can be qualified as a crime that can be subject to *ta'zīr* punishment, so that the judge has the discretion to determine the type and severity of sanctions for the purpose of public welfare.

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