

Master of Law, UNISSULA

Criminal Liability in the Crime of Theft with Benefit-Based Aggravation (Case Study of Criminal Case Decision No. 666/Pid.B/2024/ Pn Mks)

Mevifah De Nanda Aurelia¹⁾ & Umar Ma'ruf²⁾

¹⁾Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: mevifahdenandaurelia.std@unissula.ac.id

²⁾ Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: umarmaruf@unissula.ac.id

Abstract. *The crime of aggravated theft, as stipulated in Article 363 of the Criminal Code (KUHP), constitutes a violation of human rights, particularly the right to property. This study aims to determine and analyze the criminal liability for aggravated theft based on expediency and the weaknesses of criminal liability for perpetrators of aggravated theft based on expediency, as outlined in Criminal Case Decision No. 666/Pid.B/2024/Pn Mks, as well as the formulation of the crime of aggravated theft based on expediency. This research method uses a socio-legal (juridical-sociological) approach. The research specification used is descriptive analysis. In this study, the types of data used are divided into two main categories: primary data and secondary data. Data collection methods in this study were conducted by combining normative and empirical approaches, namely through literature studies, field observations, and in-depth interviews. The problem is analyzed using the Theory of Criminal Responsibility, Theory of Legal Systems and Theory of Legal Utilities. The results of the study indicate that the criminal liability of the perpetrator of the crime of aggravated theft based on expediency in Decision Number 666/Pid.B/2024/PN Mks indicates that the judge assessed that all elements of the crime stipulated in Article 363 of the Criminal Code, both objective and subjective, were fulfilled, so that the defendant was legally and convincingly proven guilty. Weaknesses in the application of criminal liability based on expediency in this case include the lack of adequate consideration of the defendant's social, psychological, and economic aspects, as well as the lack of consideration of the defendant's social, psychological, and economic aspects. The formulation of the crime of aggravated theft based on expediency should integrate preventive, repressive, and restorative approaches in a balanced manner, so that the objectives of punishment can be achieved comprehensively.*

Keywords: Aggravated Theft; Criminal Liability; Formulation Of The Crime Of Aggravated Theft.

1. Introduction

Such conditions can encourage some people to commit crimes, as crime can arise from the inherent evil of humankind. Deviant or illegal behavior in society is caused by various factors, including the negative impacts of rapid development, globalization, advances in communication and information, advances in science and technology, and changes in the lifestyles and ways of life of some people, which have brought about fundamental changes in human life.¹ The advancement of science in Indonesia has brought a fast and comfortable lifestyle to society. Successes in science and technology have undoubtedly brought prosperity and well-being to the nation. However, this cannot be denied, as technological and scientific progress is accompanied by an increase in economic and social deviance and crime. This can be seen in both developed and developing countries, with the types of deviance and crime becoming increasingly diverse.

According to the Criminal Code (KUHP), a crime is defined as an act of committing or failing to commit something that is prohibited by law and punishable by criminal sanctions. This concept also explains, "To be declared a crime, in addition to being prohibited and punishable by law, it must also be unlawful or contrary to the prevailing legal consciousness in society. Every criminal act is considered unlawful unless there is a justification."²

The daily lives of people are regulated by laws, both codified and uncodified, within the framework of state institutions in modern times. The term "rule of law" is often used to describe this.³ A country's legal system 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 undergone 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 guarantees that all people are treated equally before the law and the government, and everyone has an obligation to obey the law and the government without exception.⁴

A state based on the rule of law determines that its apparatus acts according to and is bound by regulations that are determined in advance by the apparatus authorized to make those regulations. The characteristics of a state based on the rule of law are:⁵

1. Recognition and protection of human rights;
2. Justice that is free from the influence of any power or other authority and impartial;
3. Legality in the sense of law in all its forms.

¹ Pratama, R. H., Sulastri, S., & Darwis, R. S, Perlindungan terhadap anak yang berhadapan dengan hukum, *Prosiding Penelitian dan Pengabdian kepada Masyarakat*, 2017, p. 2

² Mahrus Ali, *Dasar-dasar Hukum Pidana*, Jakarta: Sinar Grafika, 2011, p. 98

³ Donald Albert Rumokoy dan Frans Maramis, *Pengantar Ilmu Hukum*, Rajagrafindo Persada, Jakarta, 2014, p. 16

Master of Law, UNISSULA

Any act that meets the elements of a crime as clearly stated in legal provisions can provide insight into which legal interests have been violated. Therefore, acts that meet the elements of a crime can be classified as minor offenses, with punishment directed at the perpetrator. Law is a norm or rule containing coercive regulations, and anyone who violates the articles will face legal sanctions. The legal subjects to be prosecuted are not only those who have actually committed unlawful acts, but also any legal actions that may arise, equipping the state to act in accordance with currently applicable laws.

2. Research Methods

This research method uses a socio-legal approach. Essentially, law is understood not only as a collection of written norms but also as a living practice within society. Therefore, the primary data does not stop at the regulatory text but is supported by field findings, for example through directed interviews, observations, and the tracing of case documents to see how the rules are understood, implemented, and negotiated by the parties. In this way, the gap between the law on the books and the law in action can be mapped more comprehensively.⁶ This approach links doctrinal analysis (regulations, jurisprudence, and legal literature) with the surrounding social context. Triangulation techniques are applied to enhance the reliability of the findings: normative data is compared with the experiences of law enforcers, stakeholders, and affected communities. The focus is on coherence between the objectives of norms, the enforcement process, and the actual impacts on the ground, ensuring that the research conclusions are not only legally valid but also socially relevant.⁷

3. Results and Discussion

3.1. Criminal liability for perpetrators of the crime of theft with aggravation based on utility (Case Study of Criminal Case Decision No. 666/Pid.B/2024/ Pn Mks).

Criminal liability is a person's responsibility for the crime they have committed, meaning that the person is responsible for the crime they have committed and the consequences it causes. Therefore, criminal liability arises because a crime has previously been committed by the person.⁸

Criminal responsibility arises because someone has committed an offense. Criminal responsibility can only be imposed on the person who committed the crime. The capacity to assume responsibility is regulated in Paragraph 1 of Article 44 of the Criminal Code: "A person

⁴ Tolib Effendi, *Dasar-Dasar Hukum Acara Pidana Perkembangan Dan Pembaharunya Di Indonesia*, Setara Press, Surabaya, 2014, p. 2.

⁵ Bambang Tri Bawono, Tinjauan Yuridis Hak-Hak Tersangka dalam Pemeriksaan Pendahuluan, *Jurnal Hukum*, Vol XXVI, No. 2, Agustus 2011. <https://media.neliti.com/media/publications/12327-ID-tinjauan-yuridis-hak-hak-tersangka-dalam-pemeriksaan-pendahuluan.pdf>

⁶ Irianto, S. (2009). Metode penelitian hukum: Konstelasi dan refleksi. Jakarta: Yayasan Obor Indonesia.

⁷ Ibid

⁸ Andi Sofyan dan Nur Aziz, *Buku Ajar Hukum Pidana*, Pustaka Pena Press, Makassar, 2016, p. 124.

Master of Law, UNISSULA

who commits an act for which he cannot be held responsible because his soul is defective in its development or disturbed by a mental disorder cannot be charged with a crime."

Soedarto, in Teguh Prasetyo's book, mediates this with a compromise, stating that, in terms of determinism, even though humans lack free will, this does not mean that those who commit crimes cannot be held accountable. They can still be held accountable and receive a reaction for their actions, but that reaction takes the form of actions to maintain social order, rather than criminal in the sense of "suffering as a result of one's fault." Similarly, Sassen, in Teguh Prasetyo's book, argues that judges do not impose punishments, but rather take measures to force individuals to comply with societal order. According to him, criminal law is essentially a form of "social defense law".⁹

This case began on Saturday, August 26, 2023, when defendant Adnan alias Nanang bin Aidil and his partner Muhammad Iqbal bin Dakka stole a red and black Yamaha Mio M3 motorcycle in Makassar without the owner's permission. After successfully taking the motorcycle, the two sold it for Rp2,000,000 and divided the proceeds, with the defendant giving Rp800,000 to his partner. This action shows planning and division of roles, which in criminal law can be an indicator of intent (dolus) in the crime of theft.¹⁰

Two days later, on Monday, August 28, 2023, the defendant went to his friend's house and invited him to commit another theft. This time, the target was Fadly Facri Arsyad's red Honda Vario motorcycle, parked in the victim's yard on Jalan Toddopuli X, Makassar. Upon arrival, the defendant got off his friend's motorcycle, approached the target, and connected the ignition cable, as the front frame was already exposed. This allowed the motorcycle to be started and driven away. This modus operandi demonstrates elements of "taking another person's property" and "violating the law" as defined in Article 362 of the Criminal Code.

The stolen motorcycle was taken to his friend's house and planned to be sold in Pangkep. However, on Tuesday, August 29, 2023, the defendant decided to take the motorcycle to Barru Regency. While en route, police stopped the defendant and found methamphetamine in his possession. The discovery of narcotics is a separate case, but from a criminological perspective, the defendant's involvement in repeated criminal acts can be linked to the concept of multiple offenders or habitual offenders, which increases the urgency of firm law enforcement.¹¹

3.2. Weaknesses in Criminal Liability of Perpetrators of theft Crimes with Benefit-Based Aggravation (Case Study of Criminal Case Decision No. 666/Pid.B/2024/ Pn Mks)

Criminal liability essentially aims to ensure that every perpetrator who commits an unlawful act receives consequences commensurate with the degree of their culpability. However, in practice, particularly in the case of aggravated theft as stipulated in Article 363 of the Criminal Code, there are fundamental weaknesses when analyzed from the perspective of legal utility.

⁹ Teguh Prasetyo, *Op.Cit*, p. 84

¹⁰ Moeljatno, *Asas-Asas Hukum Pidana*, Jakarta: Rineka Cipta, 2015, p. 83

¹¹ Chairul Huda, *Op. Cit.*, p. 145

Master of Law, UNISSULA

The overly focused focus of law enforcement on retaliation and legal certainty results in the law's goal of providing benefits to society as a whole being less than fully achieved.¹²

Based on Decision No. 666/Pid.B/2024/PN Mks, the defendant was sentenced to 2 years and 8 months in prison after being found guilty of jointly stealing a motorcycle. Formally, this decision fulfills the elements of Article 363 paragraph (1) 4 of the Criminal Code. However, from a legal perspective, the sentencing was not accompanied by any effort to redress the victim's losses other than the return of evidence. No instruments were used to ensure the prevention of recidivism through productive development of the perpetrator.

Satjipto Rahardjo stated that the weakness of the Indonesian legal system is its legalistic tendency and its view of law as merely written regulations (law in books), rather than as a means of societal reform (law in action).¹³ In this context, criminal accountability in this case is limited to fulfilling the legal requirements without considering the tangible benefits that could be generated for the perpetrator, victim, and society.

Lawrence M. Friedman's legal system theory identifies three essential components: legal structure, legal substance, and legal culture. Regarding the legal structure component, law enforcement officials (police, prosecutors, and judges) in this case carried out their roles in a formalistic manner, without utilizing the opportunity for a restorative justice-based resolution as stipulated in the Indonesian Attorney General's Regulation No. 15 of 2020.¹⁴ In fact, this mechanism could be a means of achieving broader benefits.

In terms of legal substance, both the Criminal Code and the new Criminal Code (Law No. 1 of 2023) still maintain imprisonment as the primary penalty for aggravated theft. This reflects a weakness in penal policy, which neglects more constructive alternative sanctions, such as community service or skills training programs.¹⁵ According to research by a lecturer at the UNISSULA Faculty of Law, a single orientation towards imprisonment can actually lead to further problems such as prison overcapacity and high rates of recidivism.¹⁶

In terms of legal culture, both officials and the public still believe that justice will only be achieved if perpetrators are sentenced to prison. This view aligns with Friedman's findings that an overly repressive legal culture tends to hinder more humanistic legal innovation.¹⁷ In this case, even though the perpetrator expressed remorse and promised not to repeat the offense, this did not change the conventional sentencing pattern.

¹² Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*, Jakarta: Kompas, 2009, p. 55.

¹³ Satjipto Rahardjo, *Ilmu Hukum*, Bandung: Citra Aditya Bakti, 2006, p. 120.

¹⁴ Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif, Pasal 8 ayat (2)

¹⁵ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Jakarta: Kencana, 2010, p. 43

¹⁶ Umar Ma'ruf, "Kebijakan Kriminalisasi dan Dekriminalisasi dalam Pembaruan Hukum Pidana", *Jurnal Hukum Khaira Ummah* Fakultas Hukum UNISSULA, Vol. 17, No. 1, 2021, p. 59-60. <https://j-innovative.org/index.php/Innovative/article/download/13530/8983/22445>

¹⁷ Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, New York: Russell Sage Foundation, 1975, p. 15

3.3. Formulating the Criminal Act of Theft with Benefit-Based Aggravation

Criminal formulation is the stage of formulating legal provisions that define an act as a crime and its sanctions in statutory regulations. According to Moeljatno, this formulation stage is the most strategic phase in criminal law policy because errors at this stage will have implications for the application and enforcement of the law in subsequent stages.¹⁸ In the context of aggravated theft, this formulation is evident in Article 363 of the old Criminal Code and Articles 477–479 of the new Criminal Code (Law No. 1 of 2023), which stipulate increased penalties if the theft is committed under certain circumstances or methods.

According to P.A.F. Lamintang, aggravated theft (gekwalificeerde diefstal) is ordinary theft accompanied by special circumstances that increase the reprehensible nature of the act.¹⁹ In the new Criminal Code, the formulation of the articles has been expanded to accommodate evolving modes of theft, including aggravating factors when committed during a disaster or with violence. A utility-based formulation must ensure that the affirmation of these aggravating elements not only guarantees legal certainty but also provides tangible benefits to the victim and society.

Jeremy Bentham's utility theory teaches that the purpose of law is to create the greatest happiness for the greatest number of people. Therefore, the formulation of the theft article with utility-based aggravation must include norms that allow for alternative or additional punishments that restore the victim's losses, such as restitution or community service, rather than simply imprisonment.

Eddy O.S. Hiariej emphasized that the formulation of the offense must contain a clear formulation to avoid multiple interpretations.²⁰ Within the framework of expediency, a clear formulation of the elements of the crime of aggravated theft will facilitate law enforcement's consistent application and open up opportunities for the application of restorative justice principles in eligible cases.

Romli Atmasasmita, in his theory of an integrated criminal justice system, states that a good criminal offense formulation must be in sync with the law enforcement and implementation mechanisms. This means that the aggravated theft article must be structured in such a way that its implementation allows for synergy between law enforcement officials and social institutions to provide optimal benefits.

Sri Endah Wahyuningsih, through her research, asserts that a criminal offense formulation that accommodates expediency will reduce disparities in sentencing and facilitate judges in balancing legal certainty with justice. This is relevant for aggravated theft, which is prone to receiving different sentences despite the same modus operandi and consequences.

¹⁸ Moeljatno, *Op. Cit.*, p. 15

¹⁹ P.A.F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, Bandung: Citra Aditya Bakti, 2013, p. 215.

²⁰ Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana*, Yogyakarta: Cahaya Atma Pustaka, 2016, p. 92

Master of Law, UNISSULA

A expediency-based formulation must also consider criminogenic factors such as poverty, unemployment, and low education. Lamintang argues that criminal law should be used selectively and rationally, especially against perpetrators motivated by economic factors rather than professional criminal motives. Therefore, the law can provide for conditional sentences or social development.

4. Conclusion

The criminal liability of the perpetrator of the crime of theft with aggravation based on utility in the Decision of Case Number 666/Pid.B/2024/PN Mks shows that the judge considered that all elements of the crime regulated in Article 363 of the Criminal Code were fulfilled, both objective and subjective elements, so that the defendant was legally and convincingly proven guilty. The decision reflects the application of the theory of criminal liability while still considering the principle of legal utility, where criminal sanctions are imposed not only to provide a deterrent effect for the defendant, but also to protect the interests of the wider community, maintain public order, and restore the victim's sense of justice. The weakness in the application of criminal liability based on utility in this case is the lack of adequate consideration of the social, psychological, and economic aspects of the defendant, which should have influenced the judge's consideration in imposing a proportional sentence. In addition, the application of the legal system theory has not been fully optimal because the legal substance used tends to emphasize a repressive approach rather than a restorative approach, so that the principle of legal utility has not been implemented optimally in maintaining a balance between legal certainty, justice, and utility. The formulation of the crime of theft with a utility-based aggravation should integrate preventive, repressive, and restorative approaches in a balanced manner, so that the objectives of punishment can be achieved comprehensively. The ideal formulation not only strengthens criminal sanctions for perpetrators but also regulates mechanisms for restitution of victims' losses and social reintegration of perpetrators. Thus, criminal law policy can be aligned with the values of utility, where the law functions not only as an instrument of punishment but also as a means of social renewal and sustainable crime prevention.

5. References

Journals:

Bambang Tri Bawono, Tinjauan Yuridis Hak-Hak Tersangka dalam Pemeriksaan Pendahuluan, *Jurnal Hukum*, Vol XXVI, No. 2, Agustus 2011.
<https://media.neliti.com/media/publications/12327-ID-tinjauan-yuridis-hak-hak-tersangka-dalam-pemeriksaan-pendahuluan.pdf>

Umar Ma'ruf, "Kebijakan Kriminalisasi dan Dekriminalisasi dalam Pembaruan Hukum Pidana", *Jurnal Hukum Khaira Ummah Fakultas Hukum UNISSULA*, Vol. 17, No. 1, 2021, p. 59-60.
<https://j-innovative.org/index.php/Innovative/article/download/13530/8983/22445>

Books:

Andi Sofyan dan Nur Aziz, Buku Ajar Hukum Pidana, Pustaka Pena Press, Makassar; 2016.

Master of Law, UNISSULA

Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana, Jakarta: Kencana; 2010

Donald Albert Rumokoy dan Frans Maramis, Pengantar Ilmu Hukum, Rajagrafindo Persada, Jakarta; 2014

Eddy O.S. Hiariej, Prinsip-Prinsip Hukum Pidana, Yogyakarta: Cahaya Atma Pustaka; 2016

Irianto, S. (2009). Metode penelitian hukum: Konstelasi dan refleksi. Jakarta: Yayasan Obor Indonesia.

Lawrence M. Friedman, The Legal System: A Social Science Perspective, New York: Russell Sage Foundation; 1975

Mahrus Ali,.Dasar-dasar Hukum Pidana, Jakarta: Sinar Grafika; 2011

Moeljatno, Asas-Asas Hukum Pidana, Jakarta: Rineka Cipta; 2015

P.A.F. Lamintang, Dasar-Dasar Hukum Pidana Indonesia, Bandung: Citra Aditya Bakti; 2013

Pratama, R. H., Sulastri, S., & Darwis, R. S, Perlindungan terhadap anak yang berhadapan dengan hukum, Prosiding Penelitian dan Pengabdian kepada Masyarakat; 2017

Satjipto Rahardjo, Hukum Progresif: Sebuah Sintesa Hukum Indonesia, Jakarta: Kompas; 2009

Satjipto Rahardjo, Ilmu Hukum, Bandung: Citra Aditya Bakti; 2006

Tolib Effendi, Dasar-Dasar Hukum Acara Pidana Perkembangan Dan Pembaharuan Di Indonesia, Setara Press, Surabaya; 2014

Regulation:

Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, Article 8 paragraph (2)