

Legal Analysis of the Application of Criminal Sanctions for Theft with Weighting Based on Pancasila Justice (Case Study of Case Number 47/Pid.B/2023/PN Amp)

Bayu Aji Santoso

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail:

bayuajisantoso.std@unissula.ac.id

Abstract. *One of the most common crimes is aggravated theft also known as specific or qualified theft. What is meant by this special or standard type of theft is that the theft is carried out in a certain way or under certain circumstances, so that it is more severe in nature and has a greater risk of criminal acts than ordinary theft. That in essence is theft Theft is aggravated by the threat of criminal penalties and causes physical and material losses to the victim. The approach method used is sociological juridical this approach is intended to study and research the reciprocal relationship between law and other social institutions. The writing specifications use descriptive analysis, sources and types of data used are primary and secondary data sources, as well as primary and secondary data. Data collection methods by collecting data using secondary data collection methods. The problems are analyzed with the Pancasila Justice Theory, Professor BM Taverne's Theory and Legal Research Theory. Application of criminal sanctions regarding the crime of aggravated theft (Case Study Case Number 47/Pid.B/2023/PN Amp) namely based on Article 363 paragraph (1) 3 and 5 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations, the Defendant was proven legally and convincingly guilty of committing the crime of theft under aggravating circumstances as in the single indictment, therefore the Defendant was sentenced to imprisonment for 1 (one) year and 4 (four) months. The basis for the Judge's consideration in issuing a verdict against the perpetrator of the crime of Aggravated Theft (Case Study Case Number 47/Pid.B/2023/PN Amp) is based on the fulfillment of the elements of Article 363 paragraph (1) 3 and 5 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations, and by considering the existence of evidence along with criminal charges filed by the Public Prosecutor and the aggravating and mitigating circumstances of the defendant at trial. The application of criminal sanctions regarding the Crime of Aggravated Theft Based on Pancasila Justice Values in the case study case Number 47/Pid.B/2023/PN Amp The Panel of Judges does not merely apply criminal sanctions as a*

form of retaliation for the Defendant's actions, but the Panel of Judges also hopes that it will be a lesson for the defendant so that he does not repeat his actions, and as a lesson for the community to be careful not to fall into unlawful acts, as a lesson to restore social values that have been damaged by the crime.

Keywords: Criminal; Justice; Sanctions.

1. Introduction

Based on Article 1 paragraph 3 of the 1945 Constitution, the Unitary State of the Republic of Indonesia (NKRI) is a state of law. This means that Indonesia is a state that is not based on power (*maachstaat*). All aspects of society, statehood, and government must be regulated by law.¹To realize a state of law, the legal instruments needed to regulate all aspects of people's lives to maintain justice and balance are needed. Pancasila and the 1945 Constitution are used as a philosophical basis in national and state life, not only in terms of legislation, but in all aspects of life.²

According to JCT Simorangkir and Woerjono Sastropranoto, law is a mandatory rule that determines human actions in society and is made by an official institution that is responsible for violations of the rules, which causes actions, such as giving punishment.³

The law is mandatory, so every society must obey the law because violations will be subject to sanctions. There are laws in force in Indonesia, including criminal law. According to Sudarsono, criminal law is a law that regulates crimes and acts that violate the public interest and these acts are threatened with criminal sanctions that cause suffering to him. Meanwhile, Professor Moeljatno explained that criminal law is one of the laws that apply in a country to:⁴

1. Determining which actions may not be carried out and are prohibited, then accompanied by threats or sanctions in the form of certain criminal penalties for anyone who violates the prohibition.
2. Determining when and in what cases those who have violated these prohibitions can be subject to or sentenced to the penalties that have been threatened.
3. Determining how criminal sanctions can be implemented if someone is suspected of violating the prohibition.

¹Muntoha, *The Legal State of Indonesia after the Amendment to the 1945 Constitution*, Kaukaba Dipantara, Yogyakarta, 2013, pp. 1-2.

²Achmad Irwan Hamzani, *Initiating Indonesia as a Legal State that Makes Its People Happy*, Yustisia Journal, Edition 90, (September-December), 2014, p. 141

³CST Kansil, *Introduction to Indonesian Legal Science*, Rineka Cipta, Jakarta, 2011, pp. 33-34.

⁴Moeljatno, *Principles of Criminal Law*, Rineka Cipta, Jakarta, 2008, p. 1.

One of the phenomena in social life that often occurs in society today is aggravated theft. Criminal acts are acts that are strictly prohibited by law. Therefore, to protect society and perpetrators of such crimes can be punished based on applicable legal procedures. The crime of aggravated theft has caused significant negative consequences in the lives of our society, various methods used by law enforcement officers to eradicate it as well as appeals and appeals from religious leaders to the community so that it is not a crime of theft. Most thieves will do whatever they want to meet their needs for money or stolen goods.

The life of society is increasingly developing and always followed by changes, not only causing positive impacts but also causing negative impacts that often occur in society. In addition, society has difficulty in adapting, causing many conflicts and various problems. As a result, society behaves deviantly by committing various crimes for the benefit and satisfaction of itself without regard to the suffering of others.

2. Research methods

The approach used in this study is sociological juridical. This approach is intended to study and research the reciprocal relationship between law and other social institutions. Here, law is not conceptualized as an independent (autonomous) normative phenomenon, but as a social institution that is actually linked to other social variables.⁵ Once the required data has been collected, the next step is to identify the problem, which ultimately leads to solving the problem.

In the sociological juridical approach, law as law in action, is interpreted as an empirical social phenomenon. Thus, law is not only interpreted as a network of values, decisions of officials, a network of rules and norms, written positive law, but can also mean a system of teachings about reality, regular and stable behavior, or law in the sense of officials.

3. Results And Discussion

3.1. Implementation of Criminal Sanctions Regarding the Crime of Theft with Aggravation Based on Pancasila Justice Values (Case Study of Case Number 47/Pid.B/2023/PN Amp).

Justice reflects how a person views human nature and how a person treats humans. Likewise, judges have complete freedom to determine the type of punishment and the severity of a crime. Judges have the freedom to move to the minimum and maximum limits of punishment as regulated in the law for each criminal act.⁶

Justice is the most general and profound spiritual substance of a society that creates and maintains its unity. In a just society, each person performs a function that is in accordance with his basic nature, namely as an individual creature as well

⁵Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetrics*, Jakarta: Ghalia Indonesia, 1998, p. 34

⁶Soedarto, *Op.Cit.*, p. 78.

as a social creature. With justice arises an arrangement that gives a harmonious place to the parts that form society.⁷

Justice is defined as an attitude and character. The attitude and character that makes people do things and hope for justice is justice, while the attitude and character that makes people act and hope for injustice is injustice. The formation of attitudes and characters comes from observations of certain objects that have two sides. This can apply to two propositions, namely if the "good" condition is known, then the bad condition is also known; and The "good" condition is known from something that is in a "good" condition. To know what justice and injustice are clearly, clear knowledge is needed about one side to clearly determine the other side. If one side is ambiguous, then the other side is also ambiguous.⁸

Pancasila becomes the main foundation for new laws (legal regulations) and replacement of old laws (legal guidelines), so that the values of sacredness, humanity, and social (nationalism, democracy, social justice) become such legal subjects. The legal structure and legal culture built in the year take current values and the objectives of their implementation in various fields as a starting point and strengthen national integration, democratization of law, and the achievement of welfare and social justice through the instillation of Pancasila in criminal law, civil law, constitution, and others.

The law inspired by Pancasila is a law based on the spirit of harmony. Therefore, this decision is directly aimed at providing social justice that provides welfare for society (social welfare) as a whole for every citizen who realizes a direct and proportional balance. The principle of dignity is related to the principle of harmony. This foundation also regulates how the relationship between citizens and members of society is expected to act in accordance with the reality of society, including the fulfillment of legal rights and obligations expected by members of society also becomes the basis for how not to demean oneself or others. Another characteristic that characterizes Pancasila law is the principle of harmony. This principle requires the realization of harmony in community life. In addition to the aspects of truth and applicable legal principles, the resolution of concrete problems based on this principle must be able to adapt to the overall social process by paying attention to the emotions that actually exist in society.

Pancasila as a national ideology can provide basic provisions for the formation of a legal system in Indonesia, namely:⁹

1. The legal system is developed based on the values of Pancasila as its source. Thus, Pancasila does not adhere to legal positivism and relativism. The regulation

⁷Armaid Armawi, *Philosophical Reflections on Justice and National Resilience*, Journal of Philosophy Magazine, Faculty of Philosophy, Gadjah Mada University, Yogyakarta, 1996.

⁸Euis Amalia, *Distributive Justice in Islamic Economics*, Raja Grafindo Persada, Jakarta, 2009, pp. 115-116.

⁹Soerjanto Poespowardojo, *Pancasila Philosophy: A Socio-Cultural Approach*, Jakarta: LPSP and PT Gramedia, 1989, p. 29.

of community life finally gets its meaning and basic aspirations in the orientation of Pancasila which longs for a humane, just, and prosperous life atmosphere.

2. The legal system shows its meaning, as far as it realizes justice. Thus, law is not merely a tool of power, not a legitimacy to carry out exploitation which can be injustice itself. Law is not identical to justice, but aims to realize it for the benefit of the people.

3. The legal system has a function to maintain the dynamics of national life. Thus, the function of law in maintaining social order is not realized solely in maintaining the status quo, but in opening up the possibility of progress reflected in the process of change and renewal. Thus, the law also needs to provide a perspective for the future.

2. The legal system guarantees the process of self-realization for citizens in the development process. The development of society needs to be directed, so as not to fall into alienation, technocracy, or dependency.

The application of criminal sanctions based on Pancasila justice in Indonesia is carried out by considering the values and principles contained in Pancasila. Here are some important aspects in the application of criminal sanctions based on Pancasila justice:

1. Recognition of Humans as God's Creatures: Criminal sanctions must not conflict with religious beliefs or beliefs held by the Indonesian people. Punishment must be directed at raising the awareness of the faith of the convict so that he can repent and become a faithful and obedient human being.¹⁰

2. Recognition of the Nobleness of Human Dignity: Criminalization must not harm the most basic human rights and the guarantee of the right to life. This right is a right that cannot be reduced under any circumstances (non-derogable right).¹¹

3. National Solidarity and Citizenship Maturity: Perpetrators must be directed towards efforts to increase tolerance with others, foster concern for the interests of the nation, and direct them not to commit crimes. Criminalization needs to be directed towards instilling a sense of love for the nation.

4. The Concept of Community Service: Community service is in line with the fifth principle of Pancasila which contains the value of working hard in serving a sentence. Hard work is one of the main means to achieve social justice. Community service is also in line with the values of the second principle which recognizes human dignity.

5. The Purpose of Punishment Based on Pancasila: The purpose of punishment in the reform of criminal law has shown conformity with the Pancasila Ideology. This purpose includes:

¹⁰Tommy Leonard, Reform of Criminal Sanctions Based on Pancasila Philosophy in the Criminal Law System in Indonesia, UNS Journal, Yustisia. Vol. 5 No. 2 May - August 2016.

¹¹Ibid.

- a. Prevention (based on the 2nd Principle of Pancasila);
 - b. Socializing convicts (based on the 5th Principle of Pancasila);
 - c. Conflict resolution (guided by the 3rd and 4th Principles of Pancasila);
 - d. Giving a sense of regret (reflection of the 1st Principle of Pancasila).
6. Implementation of Pancasila Values in the Criminal Justice System: Pancasila is the fundamental basis for formulating and implementing legal rules. Pancasila values such as Belief in the One Almighty God, Just and Civilized Humanity, Unity of Indonesia, Democracy Guided by the Wisdom of Deliberation for Consensus, and Social Justice for All Indonesian People are the moral compass in realizing a criminal justice system that is just, dignified, and reflects the identity of the nation.¹²

The Theory of Pancasila Justice in the book *Negara Paripurna* by Yudi Latif examines in depth the concept of Pancasila as the philosophical basis of the Indonesian state. This book not only discusses Pancasila in a theoretical context, but also explores the historical roots and rationality behind it, as well as its relevance in a modern context.

- a. **Historicity:** Yudi Latif explains that Pancasila was born from a long historical process, reflecting the values of justice desired by the nation's founders. In this context, Pancasila serves as a foundation for creating social justice for all Indonesian people, which is the main ideal of a complete state.¹³
- b. **Rationality:** This book emphasizes the importance of rationality in the application of Pancasila. Latif argues that a deep understanding of the principles of Pancasila must be balanced with a rational and critical approach. This is important so that the values of Pancasila can be applied effectively in the life of the nation and state.¹⁴
- c. **Current:** In the current context, Latif shows that the challenges of globalization and social change require a reinterpretation of Pancasila to remain relevant. He invites readers to see Pancasila as a solution to various social and political problems currently facing Indonesia, including issues of injustice and economic disparity.¹⁵

The application of criminal sanctions based on Pancasila justice in Indonesia prioritizes the values contained in Pancasila as a philosophical and moral foundation in the criminal law system. Criminal sanctions are not only intended to punish perpetrators of crimes, but also to provide guidance and rehabilitation, so that convicts can return to being productive members of society. In this context,

¹²Erlangga, *Pancasila Values in the Indonesian Criminal Justice System*, Journal of Justice Nalar, Volume 4 No. 1, June 2024.

¹³Yudi Latif, *The Perfect State: Historicity, Rationality, and Actuality of Pancasila*, Jakarta, Gramedia Pusaka Utama, 2012, p. 115.

¹⁴Ibid.

¹⁵Ibid.

punishment must consider aspects of humanity and individual dignity, and serve as a means to encourage awareness of social responsibility and compliance with the law.

In the renewal of criminal sanctions, Pancasila plays an important role in formulating the objectives of retributive, corrective, rehabilitative, and restorative punishment. These objectives include prevention of criminal acts, social reintegration of convicts, peaceful resolution of conflicts, and instilling a sense of regret for the actions taken. Thus, the application of criminal sanctions must reflect the values of social justice and national solidarity that are at the core of Pancasila.

The application of Pancasila-based criminal sanctions also requires special attention to vulnerable groups, such as the elderly, so that punishment is not discriminatory and still pays attention to aspects of justice. This shows that the criminal law system in Indonesia must be adaptive to social change and the development of human values, while still upholding the principles contained in Pancasila as the state ideology.¹⁶

Based on Case Number 47/Pid.B/2023/PN Amp, the Panel of Judges decided on a criminal sanction against the defendant whose verdict reads "The Panel of Judges states that Defendant I NENGAH TIRTA YANA alias KOMANG ADI alias LUTIR, has been legally and convincingly proven guilty of committing the crime of theft under aggravating circumstances as in the single indictment, imposing a sentence on the Defendant therefore with a prison sentence of 1 (one) year 4 (four) months, determining evidence in the form of, 1 (one) white wallet, 1 (one) pair of black shoes and 1 (one) Honda Scoopy motorcycle, white, year of manufacture 2015, registration number DK 8064 SS, frame number MH1JFW111FK118031, engine number JFW1E-1120544, BPKB in the name of I Komang Gede Hastina returned to Witness I Komang Gede Hastina, and charges the Defendant to pay court costs in the amount of Rp. 2,500.00 (two thousand five hundred rupiah)."

The Panel of Judges in applying criminal sanctions is based on the Judge's considerations which assess that all elements of Article 363 paragraph (1) points 3 and 5 of the Criminal Code have been fulfilled, so the Defendant is declared proven to have committed a crime as charged in the single indictment.

The Panel of Judges considered the Defendant's oral application which in essence asked for leniency in terms of sentencing for the reasons as mentioned, and will be a separate consideration for the Panel of Judges in determining the severity of the Defendant's punishment. The Panel of Judges is of the opinion that every decision to be handed down by the Judge will always be based on efforts to fulfill a sense of justice for the Defendant and for the community, and is also expected to be in line with the purpose of punishment, namely not only as retribution for

¹⁶Irvino Rangkuti, Study of Pancasila Norms on the Implementation of Death Penalty Sanctions in Positive Law in Indonesia, *Res Nullius Law Journal*, Vol. 5 No. 1 January 2023.

the Defendant's mistakes, but also as a lesson for the Defendant so that he no longer repeats his actions, a lesson for the community to be aware and not fall into actions that are contrary to the law and for the restoration of social values that have been damaged due to the criminal acts that have occurred.

The author strongly agrees with the Panel of Judges by making legal considerations related to the Criminal Act of Theft committed by the Defendants, by outlining the elements of Article 363 paragraph (1) 3 and 5 of the Criminal Code. Aggravating and mitigating factors are also listed in the Panel's Considerations before deciding on the Criminal Theft case, this is done because it is the *ijtihad* of the Judges in deciding on the Criminal Case, in addition to the facts revealed in the trial. However, in terms of the severity of the sentence, the author does not agree, because with a prison sentence of 1 (one) year and 4 (four) months it is considered relatively light, the maximum sentence should be imposed, so that the defendant is deterred and does not repeat his actions again. Considering that the stolen items were quite a lot, in addition to 1 (one) white wallet and 1 (one) pair of black shoes, there was also 1 (one) Honda Scoopy motorbike unit which resulted in the victim witness being unable to carry out his daily activities as usual.

Based on the description above, the author is of the opinion that the application of criminal sanctions stated by the Panel of Judges has fulfilled the principles of the application of criminal sanctions based on Pancasila Justice. Proven by the imposition of criminal sanctions based on the fulfillment of the elements of Article 363 paragraph (1) 3 and 5 of the Criminal Code. The Panel of Judges also considered the Defendant's oral request which in essence asked for leniency in terms of the imposition of criminal penalties for the reasons as mentioned by taking into account the aggravating and mitigating circumstances of the Defendant. The Panel of Judges applied criminal sanctions not merely as retribution for the Defendant's mistakes, but also as a lesson for the Defendant so that he no longer repeats his actions, a lesson for the community to be aware and not fall into actions that are contrary to the law and for the restoration of social values that have been damaged due to the criminal acts that have occurred. Although the author does not agree with the imposition of the Defendant's sentence which was only sentenced to 1 (one) year and 4 (four) months in prison. In addition to the criminal acts that have been committed, the Defendant has also been previously convicted, indicating that the criminal sanctions previously imposed on the Defendant did not have a deterrent effect.

Legal System Theory is an approach that views law as a system consisting of various components that interact with each other and function to achieve certain goals. According to Sudikno Mertokusumo, the legal system is a unity of interacting elements, where each element has a role in creating an orderly legal order. Lawrence Meir Friedman emphasized that the legal system consists of three main components: structure, substance, and legal culture. The structure includes law enforcement institutions, the substance includes legal norms and rules, while legal culture relates to the values and attitudes of society towards the law.

In the Indonesian context, the legal system reflects a mix of various sources of law, including customary law, religion, and positive law inherited from the Dutch colonial era. This creates complexity in the application and enforcement of law in society. Criticism of the legal system in Indonesia often arises in relation to implementation that is considered inconsistent or unfair, where the community feels that the law is not enforced evenly. Therefore, to improve the legal system, a change in attitude is needed from all parties, both law enforcers and the community, in order to create justice and order in community life.

Based on the description above, the application of criminal sanctions regarding the Crime of Aggravated Theft Based on Pancasila Justice Values in the case study case Number 47/Pid.B/2023/PN Amp has reflected the principles of the Legal System Theory, as evidenced by the fulfillment of the elements of Article 363 paragraph (1) 3 and 5 of the Criminal Code and the Panel of Judges did not merely apply criminal sanctions as a form of retribution for the Defendant's actions, but the Panel of Judges also hopes that it will be a lesson for the defendant so that he does not repeat his actions, and as a lesson for the community to be careful not to fall into unlawful acts, as a lesson to restore social values that have been damaged by the crime.

4. Conclusion

Implementation of criminal sanctions regarding the crime of aggravated theft (Case Study Case Number 47/Pid.B/2023/PN Amp) namely based on Article 363 paragraph (1) 3 and 5 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations, the Defendant was proven legally and convincingly guilty of committing the crime of theft under aggravating circumstances as in the single indictment imposing a sentence on the Defendant therefore with a prison sentence of 1 (one) year 4 (four) months, determining evidence in the form of, 1 (one) white wallet, 1 (one) pair of black shoes and 1 (one) Honda Scoopy motorbike, white, year of manufacture 2015, registration number DK 8064 SS, frame number MH1JFW111FK118031, engine number JFW1E-1120544, BPKB in the name of I Komang Gede Hastina was returned to Witness I Komang Gede Hastina, and the Defendant was charged with paying court costs of Rp. 2,500.00 (two thousand five hundred rupiah). The basis for the judge's considerations in issuing a verdict against the perpetrator of the crime of aggravated theft (Case Study Case Number 47/Pid.B/2023/PN Amp) is based on the fulfillment of the elements of Article 363 paragraph (1) 3 and 5 of the Criminal Code and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations, and by considering the existence of evidence along with the criminal charges submitted by the Public Prosecutor and the aggravating and mitigating circumstances of the defendant at trial.

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