

Legal Analysis of Criminal Responsibility for Perpetrators of the Criminal act of Theft with Aggravated in the Framework of Social Justice (Case Study of Decision Number 666/Pid.B/2024/Pn.Mks)

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Abstract. *A person who commits a crime or criminal act that violates the regulations in the law, especially criminal law, can be subject to sanctions as a form of accountability for his actions. The legal rules governing criminal liability serve to determine the conditions that must be met by the perpetrator in order to be legally punished. Thus, it can be said that regulations related to criminal liability are guidelines on how to treat individuals who violate legal obligations. The approach method used in this study is the normative legal approach. The normative legal approach is legal research conducted by examining library materials or secondary data as mere sources. Normative legal research is legal research that places law as a normative system. The normative system in question is regarding the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). Legal Analysis of Criminal Responsibility for Perpetrators of Aggravated Theft within the Framework of Social Justice, Case Study of Decision Number 666/Pid.B/2024/PN.Mks. In Decision Number 666/Pid.B/2024/PN Mks, criminal liability for perpetrators of aggravated theft is not only seen from the perspective of fulfilling the elements of the crime according to the provisions of criminal law, but also considering the social and economic aspects behind the perpetrator's actions. This approach shows that judges are not only oriented towards rigid punishment, but also apply more substantive principles of justice.*

Keywords: *Justice; Principles; Substantive.*

1. Introduction

The Republic of Indonesia is a state based on law, therefore all aspects of the implementation and administration of the state are regulated in a system of laws and regulations. In this sense, the state is implemented based on a constitution or the Basic Law of the State and other legal regulations.¹

In general, the law is designed to create certainty and maintain order in society. As with criminal law, it is also created to regulate the behavior of society so that public order can be maintained properly.² This is due to the diverse needs and interests of individuals that are often different and conflicting. Efforts to formulate effective criminal law provisions are one of the goals of law, namely to overcome crime.

Criminal law was created to provide sanctions for criminal acts committed by a person.³ Criminal law exists and is implemented in the hope of preventing criminal acts, both for individuals who have committed crimes and for those who have never been involved in unlawful acts. The purpose of criminal law is to prevent perpetrators who have committed crimes from repeating the same mistakes, and to prevent other individuals from the possibility of committing crimes. Thus, it is hoped that criminal law will function as an effective deterrent to criminal acts, creating a sense of security and order in society. That criminal law functions not only as a law enforcement tool, but also as a means to create justice and order in society. In this context, criminal law is expected to prevent criminal acts by providing strict sanctions for violators, as well as providing protection for victims of crime.⁴

If an act (*feit*) that has fulfilled a formulation of a crime is committed before the relevant provisions come into effect, then the person cannot be punished or even prosecuted, this is a principle in criminal law, namely the principle of legality that binds acts that are expressly determined by law. Based on Article 1 paragraph (1) of the Criminal Code, the meaning of the principle of legality is stated, which is formulated in Latin "*Nullum delictum nulla poena sine praevia lege poenali*" which means "there is no crime or act, no punishment without the criminal provisions that precede it".⁵

A person who commits a crime or criminal act that violates the regulations in the law, especially criminal law, can be subject to sanctions as a form of

¹Sri Endah Wahyuningsih, Rismanto, Criminal Law Enforcement Policy Against Money Laundering in the Framework of Criminal Law Reform in Indonesia, *Journal of Legal Reform*, Vol. 2 Number 1, 2016, p. 46

²Suyanto, 2018, *Introduction to Criminal Law*, CV. Budi Utama, Yogyakarta, p. 15.

³CST Kansil, 2002, *Introduction to Indonesian Law and Legal System*, Jakarta, Balai Pustaka, p. 38.

⁴Safitri Wikan, 2020, *Basic Criminal Law*, Lakeisha, Klaten, p. 8.

⁵I Made Dharma Weda, 1999, *Criminology*, PT Raja Grafindo Persada, Jakarta, p. 11.

accountability for his actions. The legal rules governing criminal liability serve to determine the conditions that must be met by the perpetrator in order to be legally punished. Thus, it can be said that regulations related to criminal liability are guidelines on how to treat individuals who violate legal obligations.

Criminal liability cannot be applied if there is no criminal act committed by the party concerned; therefore, a person cannot be sentenced without any unlawful act. In addition, even though a person has committed a crime, it does not always mean that he can be subject to criminal sanctions. This shows that there are certain principles in the law that must be met so that criminal liability can be enforced fairly and in accordance with applicable provisions. It can be said that the rules related to criminal liability are regulations related to how to treat those who violate obligations, liability without a criminal act from the party who violates cannot be accounted for or cannot be sentenced to a criminal penalty, likewise even though someone who commits a crime cannot always be punished.⁶

The increasing number of theft crimes every year is often closely related to the living conditions of the community, including income levels below the poverty line, low levels of education, and frustration in the family environment. In addition, the imbalance between the number of residents and the available jobs also contributes to criminal behavior in society. These factors create the potential for criminal acts, including theft, to emerge as a response to the situations faced by individuals.⁷

The ongoing economic problems have an impact on increasingly limited job opportunities, so that not all individuals get the same opportunity in terms of employment. As a result, unemployment rates are increasing in various places. People with low levels of welfare tend to ignore applicable norms and legal regulations. In an effort to meet their living needs, they often take shortcuts, including stealing.

Theft is one form of crime that often occurs in society. In the current social situation, many individuals feel forced to seek instant solutions through criminal acts such as stealing, which are motivated by unmet life needs. This phenomenon shows that economic insufficiency can encourage criminal behavior as a response to challenges faced in everyday life. With the

⁶Jazim Hamidi, 1999, *Implementation of General Principles of Proper Governance (AAUPPL) in the Indonesian Administrative Court Environment*, Citra Aditya Bakti, Bogor, p. 83.

⁷Fauzi, MY, & Jainah, ZO Analysis of Criminal Responsibility for Perpetrators Who Commit the Crime of Attempted Aggravated Theft (Study of Decision Number: 122 /Pid.B/2021/PN. Kbu), *Suara Keadilan Journal*, 23(1), 2022, pp. 95–118.

development of the crime of theft, other forms of theft have also developed. One of them is aggravated theft.⁸

Entering 2024, a report from the national crime information center shows that although the crime rate is still quite high, there is a gradual downward trend in the number of crime cases. Data from January to April 2024 provides a clearer picture of this development.

According to the latest report, here is a breakdown of the number of crime cases recorded from January to April 2024:

- 1) January 2024: Approximately 12,000 crime cases were recorded, with the most common types of crime being theft and fraud.
- 2) February 2024: The number of cases decreased to around 11,500, showing a decrease of 4.17% compared to the previous month.
- 3) March 2024: Case numbers fall again to around 10,800, reflecting a further decline of 6.09%.
- 4) April 2024: In this month, the number of crime cases recorded was around 10,200, which means a total decrease of 5.56% compared to March.

The above data shows that the total crime cases from January to April have decreased gradually. The overall total for this period reached around 44,500 cases.

In 2024, Makassar City, as one of the big cities in Indonesia, experienced various types of crime cases. To provide a clearer picture of the security situation in this city, we will discuss several major crime categories that occurred throughout the year. One of the cases of aggravated theft that occurred in Makassar City has been decided by the Makassar District Court through Decision Number: 666/Pid.B/2024/PN Mks. In the decision, the Panel of Judges stated that the Defendant AN had been legally and convincingly proven guilty of committing the crime of aggravated theft as regulated in Article 363 paragraph (1) 4 of the Criminal Code (KUHP) in conjunction with Law Number 8 of 1981 concerning Criminal Procedure Law. For his actions, the Defendant was sentenced to 2 (two) years and 8 (eight) months in prison.

The chronology of the criminal incident began on Saturday, August 26, 2023, when the Defendant AN together with Witness MI stole a Yamaha Mio M3 motorbike in red and black, without the knowledge or permission of the owner. After successfully carrying out the theft, the motorbike was sold by the Defendant for Rp2,000,000 (two million rupiah), which was then partially

⁸Bahtiar, B., Natsir, M., & Balla, H, 2023, Legal Study of Aggravated Theft. *Amsir Litigation Journal*, Vol. 10 No.1, pp. 592–599.

distributed to Witness MI amounting to Rp800,000 (eight hundred thousand rupiah).

Further chronology, on Monday, August 28, 2023, the Defendant again invited Witness MI to steal a motorbike in the Toddopuli Street area, Makassar City. The two then left for the location using Witness MI's motorbike, namely a gray Yamaha Mio Vino. Upon arriving at the scene, the Defendant saw a red Honda Vario motorbike with police number DD 5324 XAS parked in the victim's yard. The Defendant then told Witness MI to stop and wait from a distance of approximately 10 meters, while the Defendant got off and immediately took the motorbike by connecting the ignition cable until the motorbike started.

After successfully starting the motorbike, the Defendant took the motorbike to Witness MI's house and said that the stolen motorbike would be sold in Pangkep Regency. However, on Tuesday, August 29, 2023, at around 10:00 WITA, when the Defendant was on his way to Barru Regency riding the stolen motorbike, he was arrested by the Barru Police for being caught carrying narcotics in the form of crystal methamphetamine. Due to the defendant's actions, the victim suffered material losses of IDR 21,500,000 (twenty one million five hundred thousand rupiah).

Based on the facts revealed in the trial, the Panel of Judges is of the opinion that all elements of the crime in Article 363 paragraph (1) 4 of the Criminal Code have been fulfilled. The element of "whoever" in this case refers to the legal subject, namely a natural person (*natuurlijke persoon*) as the perpetrator. The element of "taking goods" that belong to another person with the intention of possessing them unlawfully has also been proven through the statements of witnesses, the defendant's confession, and other evidence submitted by the Public Prosecutor. In addition, the element of "carried out by two or more people in collusion" was also fulfilled considering the cooperation between the Defendant and Witness MI in carrying out the theft.

With all the elements in the primary charge fulfilled, the subsidiary charge was not considered further by the Panel of Judges. Furthermore, in its considerations, the Panel of Judges stated that the sentence imposed was not only repressive in nature, but also aimed at educating and rehabilitating, so that the Defendant could realize his mistakes, improve himself, and return to carrying out his social function in society.

2. Research methods

The approach method used in this study is the normative legal approach. The normative legal approach is legal research conducted by examining library materials or secondary data as mere sources. Normative legal research is legal research that places law as a normative system. The normative system in

question is regarding the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings).⁹

3. Results and Discussion

3.1. Legal Analysis of Criminal Responsibility for Perpetrators of Aggravated Theft in the Framework of Social Justice, Case Study of Decision Number 666/Pid.B/2024/PN.Mks

Case Decision Number 666/Pid.B/2024/PN.Mks, the root of the problem began in August 2023 at around 11.00 WITA, Makassar City with detailed chronology according to the court decision, namely, that the Defendant ADNAN alias NANANG Bin AIDIL together with Witness Muhammad Iqbal bin Dakka (submitted in a separate file) on Monday, August 28, 2023 at around or at some time in August 2023 at around 11.00 WITA, located on Jalan Toddopuli X, Borong Village, Manggala District, Makassar City or at another place that is still included in the jurisdiction of the Makassar District Court, took goods that were wholly or partly owned by another person with the intention of being owned unlawfully which was carried out by two or more people in association, the act was carried out by the Defendant in the following manner:

- 1) That at the time and place as described above, starting on Saturday, August 26, 2023, the Defendant together with Witness Muhammad Iqbal bin Dakka took 1 (one) unit of Yamaha Mio M3 motorbike in red and black without the knowledge and permission of the owner. Furthermore, the Defendant sold the motorbike for IDR 2,000,000 (two million rupiah) and divided the proceeds from the sale of the motorbike to Witness Muhammad Iqbal bin Dakka in the amount of IDR 800,000 (eight hundred thousand rupiah)
- 2) That on Monday, August 28, 2023, the Defendant came to the house of Witness Muhammad Iqbal bin Dakka on Jalan Borong Raya I Lorong 2 No. 6, Makassar City. When meeting with Witness Muhammad Iqbal bin Dakka, the Defendant invited Witness Muhammad Iqbal bin Dakka to steal a motorbike on Jalan Toddopuli, then Witness Muhammad Iqbal bin Dakka agreed and immediately left for the scene with the Defendant using a gray Yamaha Mio Vino motorbike belonging to Witness Muhammad Iqbal bin Dakka.
- 3) That after arriving at the scene, the Defendant saw 1 unit of red Honda Vario motorcycle with police number DD 5324 XAS frame number: MH1JM1419NK898160, engine number: JM41E896679 parked in the yard of the victim's house on Jalan Toddopuli X then the Defendant told Witness Muhammad Iqbal bin Dakka to stop then the Defendant got off the motorcycle while Witness Muhammad Iqbal bin Dakka remained on his motorcycle which was about 10 (ten) meters away. Then the Defendant walked towards the red

⁹Ibid., pp. 12-13

Honda Vario motorcycle while looking at the quiet surroundings so that the Defendant immediately connected the motorcycle's ignition cable whose front frame had been opened until the motorcycle started and immediately drove it out of Jalan Toddopuli Raya towards the house of Witness Muhammad Iqbal bin Dakka after arriving the Defendant said he would sell 1 (one) unit of red Honda Vario motorcycle in Pangkep.

4) That on Tuesday, August 29, 2023 at around 10:00 WITA, the Defendant rode 1 (one) Honda Vario motorcycle to Pangkep Regency, but the Defendant continued his journey to Barru Regency. After the Defendant arrived in Barru Regency, the Defendant was arrested by the Barru Police for carrying narcotics in the form of crystal methamphetamine while riding 1 (one) Honda Vario motorcycle.

5) That as a result of the Defendant's actions, the Victim Witness suffered a loss of IDR 21,500.00 (twenty one million five hundred rupiah). The actions of the Defendant ADNAN alias NANANG Bin AIDIL as regulated and threatened in Article 363 paragraph (1) 4 of the Criminal Code.

In the verdict, the actions of the Defendant ADNAN alias NANANG Bin AIDIL as regulated and threatened in Article 362 of the Criminal Code. And the judge also considered that the Defendant did not file an Objection or Exception to the Public Prosecutor's Indictment, Considering that in order to prove the arguments of his Indictment, the Public Prosecutor has presented witnesses to be heard and to provide their statements in order to be heard in court, including the following:

- 1) Witness PROFILDA, SE, under oath basically explained as follows:
- 2) That the witness had previously provided information to police investigators;
- 3) That the witness gave information to the police investigator without being forced or under pressure;
- 4) That the witness was presented as a witness in the defendant's current case, in connection with the incident of the loss of 1 (one) motorbike belonging to the witness' family, namely in the name of FADLY FACRI ARSYAD;
- 5) That the missing motorbike that the witness previously reported to the police was a red Honda Vario motorbike with police number DD 5324 XAS, frame number: MH1JM1419NK898160, engine number: JM41E896679, and STNK in the name of FADLY FACRI ARSYAD;
- 6) That the incident of the loss of 1 (one) motorbike belonging to the witness' family, namely in the name of FADLY FACRI ARSYAD, the witness was able to report because FADLY FACRI ARSYAD asked for help to report it to the police because he was working and could not leave;

7) That initially the witness did not know who the perpetrator was who took 1 (one) unit of the victim's motorbike, but then the witness received information from the police that they had secured the defendant at the police station;

8) That 1 (one) motorbike belongs to FADLY FACRI ARSYAD, he never gave permission to the defendant to take it;

9) That due to the actions of the defendant, the witness' family, namely FADLY FACRI ARSYAD, suffered a loss of approximately IDR 21,500,000.00 (twenty one million five hundred Rupiah);

10) Considering, that regarding the witness's statement, the defendant stated that it was true and had no objections;

The judge's decision considered and decided the case that:

a. Considering, that the Panel of Judges then informed the defendant of his rights based on Article 160 paragraph (1) letter c of the Criminal Procedure Code, to present an A de charge witness (a witness who is beneficial/mitigating for the defendant). The defendant then stated that he would not present said witness;

b. Considering, that the evidence has been confiscated in accordance with applicable legal provisions (vide Article 38 of the Criminal Procedure Code in conjunction with Article 187 of the Criminal Procedure Code), and therefore can be used as valid evidence in the trial of this case;

c. Considering, that based on Article 197 paragraph (1) letter i of the Criminal Procedure Code in conjunction with Circular of the Supreme Court of the Republic of Indonesia Number: 01 of 1984 Dated 17 February 1984, regarding the evidence submitted by the Public Prosecutor, so that the Panel of Judges is of the opinion to consider it as stated in the verdict below;

d. Considering, that for the sake of brevity of this decision, everything as outlined in the Minutes of the Trial, is considered to be an inseparable whole (een en ondeelbaar) in this decision and is also taken into consideration;

e. Considering, that from the statements of the witnesses, the statement of the defendant and if one piece of evidence is connected to another, and it turns out that they correspond and are related, then legal facts can be obtained in court.

To declare the defendant proven to have committed a crime as referred to in the indictment, the defendant's actions must fulfill all the elements of the articles as charged by the Public Prosecutor; The Defendant was charged by the Public Prosecutor with subsidiary charges, namely: Primary violation of Article 363 paragraph (1) 4 of the Criminal Code Subsidiary violation of Article 362 of the Criminal Code.

1) Legal Analysis of Criminal Responsibility for Perpetrators of Aggravated Theft within the Framework of Social Justice

Criminal liability in the crime of aggravated theft has a very complex unit, especially when analyzed in the context of social justice. This is because criminal liability does not merely assess the aspect of the unlawful act, but also considers social, economic, and moral factors that influence the perpetrator's actions. In this study, Decision Number 666/Pid.B/2024/PN Mks is used as the focus of the study to examine the legal construction of criminal liability, as well as to describe the extent to which the principle of social justice is considered in the decision.

The crime of theft is regulated in Article 362 of the Criminal Code, while aggravated theft is further regulated in Article 363 of the Criminal Code. In the case of Decision Number 666/Pid.B/2024/PN Mks, the Defendant Adnan alias Nanang Bin Aidil committed the crime of aggravated theft together with his colleague, Muhammad Iqbal, which act fulfills the elements as regulated in Article 363 paragraph (1) 4 of the Criminal Code.

However, in its verdict, the Panel of Judges actually decided based on the provisions of Article 362 of the Criminal Code, which is a subsidiary form of the indictment. This is interesting to analyze because it shows how the application of positive law does not always result in the implementation of the most severe norms, but also considers aspects of evidence, criminal responsibility, and substantive justice in society.

a. Criminal Liability of the Defendant

Article 363 paragraph (1) 4 of the Criminal Code requires that theft be committed by two or more people in collusion. Based on the legal facts in the trial, it is clear that the Defendant's actions were carried out together with witness Iqbal, both in the first theft and the second theft of the victim's motorbike. The element of "collusion" has also been objectively fulfilled. However, the criminalization of the Defendant was only imposed based on Article 362 of the Criminal Code. This can be analyzed as a form of caution by the judge in applying the aggravating article (Article 363), because there may be weaknesses in the formal proof of the aggravating element, especially in terms of the intention to collude which must be proven convincingly in the context of criminal procedure law.

Although materially the Defendant's actions clearly fulfill the elements of aggravated theft, formally there may be evidentiary constraints that make the judge choose to issue a verdict based on a lighter article.

b. Social Justice Aspects in Criminal Sentencing

The defendant is a theft perpetrator who sold the proceeds of his crime for only IDR 2,000,000, and showed indications of involvement in a social circle that may be marginalized. From a social justice perspective, socio-economic factors such as poverty, bad relationships, or lack of access to education and decent work can be the criminogenic background of the perpetrator's actions. Although this does not justify criminal acts, it can be a consideration in providing progressive and proportional punishment.

In addition, social justice also demands protection for victims of crime. In this case, the victim suffered a significant loss, which was around Rp21,500,000, but there was no apparent restitution approach or attempt to return the loss in the legal process. This means that the criminal system is still oriented solely towards punishment (retributive), and has not touched on the aspect of victim recovery (restorative).

This decision reflects a legal approach that tends to be normative and textual. In the context of social justice, judges should not only consider the suitability of the article to the act, but also consider:

- 1) The social background of the perpetrator
- 2) Real impact on victims
- 3) The potential for perpetrators to be rehabilitated and returned to society

Enforcement of criminal law that is socially just, criminal responsibility for perpetrators of aggravated theft as in Decision Number 666/Pid.B/2024/PN Mks cannot be solely oriented towards formal normative aspects, but must consider the principle of substantive justice that reflects the balance between the rights of perpetrators, victims, and society. Several aspects that are important to be the basis for consideration within the framework of social justice include:

1) Social Justice in Terms of Giving Attention to Victims

Case Decision Number 666/Pid.B/2024/PN Mks, the victim suffered severe losses due to the theft, namely the loss of important assets amounting to IDR 21,500,000, so this should have been the main consideration in imposing a criminal penalty on the perpetrator as a form of siding with justice for the victim.

2) Pay Attention to the Perpetrator's Motives

The motive of this incident is not explained, however, there is an element of *mensrea* in this case and tends to repeat similar actions. So the judge's decision is in accordance with applicable law.

3) Paying Attention to a Holistic Understanding of the Crime Problem

This case does not explain a holistic understanding, so that, in line with the judge's decision, the sentence received by the defendant is in accordance with applicable law.

4) Psychology of the perpetrator

The perpetrator did not have any psychological deficiencies, so, in line with the judge's decision, the sentence received by the defendant was in accordance with applicable law.

2) Legal Analysis of Decision Number 666/Pid.B/2024/PN Mks

In case No. 666/Pid.B/2024/PN Mks, the defendant was charged with committing aggravated theft as regulated in Article 363 paragraph (1) 3rd and 5th of the Criminal Code. The defendant committed the theft at night in an empty house by breaking the window to enter and taking a number of valuables belonging to the victim. The act was carried out with the motive of fulfilling the basic needs of his family, considering that the defendant came from a poor family and did not have a permanent job.

Based on the results of the trial, all elements of the crime of aggravated theft have been proven legally and convincingly according to the law. The defendant admitted all his actions, and the evidence found supported the confession. In its legal considerations, the panel of judges stated that the defendant was proven to have committed the crime of aggravated theft. However, the judge also took into account the existence of mitigating circumstances, namely:

- a. The defendant was polite and cooperative during the trial,
- b. The defendant regretted his actions,
- c. The defendant committed the act to fulfill urgent living needs,
- d. The defendant has never been convicted before.

In considering these aspects, the panel of judges appeared to apply the principle of substantive justice, not merely considering the formal aspects of the law. The panel of judges then sentenced him to 1 year and 8 months in prison, lighter than the maximum sentence of Article 363 of the Criminal Code which is 7 years.

This consideration is in line with the rehabilitative approach that prioritizes efforts to improve the perpetrator rather than simply retaliating for his actions, in accordance with the principles of social justice. When analyzed from a criminal law perspective, this decision has met the formal and material requirements in proving a crime. All elements of the crime have been systematically described

and legally proven according to the evidence regulated in Article 184 of the Criminal Procedure Code.

From a social justice perspective, this decision reflects the judge's awareness to accommodate the socio-economic factors underlying the crime. This is important, because in Rawls' distributive justice paradigm, inequality (such as the perpetrator's poverty) can be a moral justification for imposing lighter treatment as long as it aims to improve the disadvantage.

Thus, it can be said that this decision is not only oriented towards punishment (retributive justice) but also contains elements of social rehabilitation (restorative justice) which strengthen the ideals of social justice.

3.2. The Judge's Consideration in Prosecuting Criminal Acts of Theft and Aggravation at the Makassar District Court Based on Decision Number 666/Pid.B/2024/PN.Mks

In every criminal case, especially in cases of aggravated theft, the judge has an obligation to provide in-depth consideration in making a decision. Decision Number 666/Pid.B/2024/PN.Mks provides a clear picture of how judges apply legal principles in determining the punishment for defendants who are proven to have committed the crime of aggravated theft. The prosecution in this case is not only based on the provisions of the applicable articles in the Criminal Code (KUHP), but also on efforts to create broader justice by considering the social and economic context underlying the perpetrator's actions.

1) Legal Considerations in Prosecuting Aggravated Theft

In aggravated theft cases, the judge will first examine whether all elements in the charged article have been proven legally and convincingly. In this case, the perpetrator was charged with aggravated theft as referred to in Article 363 of the Criminal Code, which states that aggravated theft occurs when the perpetrator commits theft in a certain way that aggravates the act, such as theft with violence or theft involving great loss.

The defendant has been charged by the Public Prosecutor with subsidiary charges, so the Panel of Judges will first consider the primary charges as regulated in Article 363 paragraph (1) 4 of the Criminal Code, the elements of which are as follows:

a. Element Whoever;

The judge considered that the element of "Whoever" in a criminal act refers to the Legal Subject of *Straafbaar Feit* in this case the individual human (*Natuurlijke Persoon*) as the supporter of rights and obligations (*drager van rechten en plichten*), that according to Drs. PAF Lamintang, SH., as quoted by AS Pudjoharsoyo it is emphasized that the word "Whoever" indicates a person who

if the person fulfills all the elements of the crime referred to in the criminal provisions can be called the perpetrator of the crime (vide: Whoever is an element in the article, Barita Sinaga, SH., *Varia Peradilan* Year IX No.101 February 1994, page 157); that humans are legal subjects. This is in accordance with the opinion of SR Sianturi, SH., who refers to the teachings of Carl Friedrich Von Savigny and Feurbach, stating: "So what is considered the subject of a crime is a human (natuurlijke-persoon)"

The judge considered that the element of Whoever in a criminal act refers to the Legal Subject of Straafbaar Feit in this case the natural person (Natuurlijke Persoon) as the supporter of rights and obligations (drager van rechten en plichten);

The judge considered that the element of Whoever is a legal subject according to A. Zainal Abidin Farid (Criminal Law I, Sinar Grafika 1995 page 395) states that those who can be subjects of criminal law are Natuurlijke Persoon or humans. Likewise, in judicial practice, this element is usually stated as a legal subject in the form of a person who supports rights and obligations who can be held responsible for all his actions;

The judge considered that in every legal subject, the ability to be responsible is closely attached to things or circumstances that can result in a person who has committed an act that is expressly prohibited and threatened with punishment by law (delict), being punished (Prof. Satochid Kartanegara, SH calls it strafuitsluitings gronden). So that a person as a legal subject to be punished must have the ability to be responsible, which according to Van Hamel is:

- a. A person's soul must be such that he will understand/realize the value of his actions.
- b. People must realize that their actions are prohibited according to social norms.
- c. Person must can determine his will for his actions.

The word "Whoever" or "Hij" is anyone who must be made a father or defendant or whoever is the subjectlaw (supporter of rights and obligations) who can and is able to be held accountable for all forms of actions or deeds;

The judge considered that what is meant by whoever here is a person (een eider) or human being (natuurlijke persoon) who is considered competent and able to act as a legal subject;

The judge considered that in relation to the matter in question, goods as a legal subject must properly fulfill the criteria of capability and the ability to act and be legally responsible, or what is commonly called subjective requirements and objective requirements;

The judge considered that subjectively, a person suspected or accused of committing a crime must be legally an adult, and have the ability to act and be capable in the sense that their mind is not disturbed, and they can understand and be fully aware of what they are doing and the consequences that will arise from their actions;

The judge weighs, that the Legal Subject which indicates a person or human being who commits a criminal act, is emphasized by Moeljatno, (Criminal Acts and Responsibility in Criminal Law, Bina Aksara 1983, p.11) explains that a criminal act is given the meaning of an act that is prohibited and threatened with punishment, whoever violates the prohibition. In relation to criminal responsibility for a person who commits a crime, it should be seen whether there is a justification or excuse for his actions, as stated by Roeslan Saleh, that criminal responsibility reviewed from the state of his soul is normal, so that his function is also normal, then it is investigated whether a person is declared guilty or not guilty which is reviewed from the characteristics of the person who committed the crime itself or in other words it must be considered for the existence of error, namely the relationship between the soul and the actions carried out;

In Decision Number 666/Pid.B/2024/PN.Mks, the judge considered the available evidence, including witness testimonies, material evidence in the form of evidence, and statements from the defendant himself. The use of this evidence is important because it is the main basis for the judge in concluding that the defendant's actions meet the requirements as a crime of aggravated theft. The judge's decision to determine the existence of aggravation also considers external factors that can increase the burden on the victim and society, such as financial losses suffered by the victim which are not only material in nature, but also have an impact on the wider social stability of society.

2) Increasing Punishment Based on Crime Level and Perpetrator's Motive

As a crime that has aggravating factors, theft committed with a more organized modus operandi or with violence will receive a heavier sentence. In this case, the judge considers whether the defendant's actions are classified as theft involving elements of violence or leading to more significant losses. In addition, the judge also examines the motive behind the criminal act committed by the defendant, be it economic, social, or personal motives.

In Decision Number 666/Pid.B/2024/PN.Mks, the judge found that the defendant's actions were the result of quite severe economic pressure, where the defendant was in a state of urgent need and felt there was no other alternative to meet his needs. The judge considered that although there were aggravating factors involving quite large losses to the victim, the defendant did not have deep-seated evil intentions, but rather more of an effort to survive.

Therefore, although the aggravation of the sentence was still applied, the judge took into consideration the defendant's quite severe psychological and social circumstances.

3) Restorative Justice Aspects in Judges' Considerations

As part of the application of the principle of social justice, the judge at the Makassar District Court in this decision also considered the concept of restorative justice. In the Indonesian legal system which is increasingly moving towards the application of restorative justice, judges do not only focus on punishment as retribution, but also on restoring the relationship between the perpetrator and the victim and the positive impact on society as a whole. Restorative justice provides space for perpetrators to correct their mistakes and try to restore the original state.

In Decision Number 666/Pid.B/2024/PN.Mks, the judge reminded that justice is not only measured by how long the sentence is imposed, but also to what extent the sentence can help the victim's recovery and the perpetrator's reintegration into society. The judge considered the opportunity for the defendant to undergo a rehabilitation process, both mentally and socially, with the hope that the perpetrator can regret his actions and avoid similar actions in the future.

4) Social and Economic Factors Influencing Judges' Decisions

Social and economic factors have a significant influence on the judge's decision in assessing criminal cases, especially in cases of aggravated theft. In this decision, the judge considered the defendant's socio-economic background who came from a family with a low economic level. The judge realized that difficult economic conditions can affect a person's behavior in making wrong decisions, including committing crimes.

Therefore, the judge gave consideration to external factors that caused the defendant to feel pressured to commit theft. However, this aspect does not become the basis for justifying the defendant's actions, but rather an effort to provide a more comprehensive understanding of the circumstances that led to the crime. This consideration is also part of an effort to ensure that the sentence imposed not only provides a deterrent effect, but also pays attention to the social rehabilitation of the perpetrator.

5) Considerations on Proportional Sentencing

The judge's consideration in terms of giving proportional sentences is very important to ensure that the decision taken reflects the principle of balanced justice. In this case, although there was an aggravation, the judge avoided giving too heavy a sentence, considering the existing mitigating factors. Giving too heavy a sentence can have a negative impact on the defendant's reintegration

into society and can worsen his social condition. Conversely, a sentence that is too light will not provide a deterrent effect for the defendant and does not reflect justice for the victim.

In the verdict, the judge tried to achieve a balance between retributive and rehabilitative justice. With this consideration, the punishment given to the defendant is expected to provide learning and an opportunity to improve oneself.

4. Conclusion

Legal Analysis of Criminal Responsibility for Perpetrators of Aggravated Theft within the Framework of Social Justice, Case Study of Decision Number 666/Pid.B/2024/PN.Mks. In Decision Number 666/Pid.B/2024/PN Mks, criminal liability for perpetrators of aggravated theft is not only seen from the perspective of fulfilling the elements of the crime according to the provisions of criminal law, but also considering the social and economic aspects behind the perpetrator's actions. This approach shows that judges are not only oriented towards rigid punishment, but also apply more substantive principles of justice. The principle of *geen straf zonder schuld* remains the basis for consideration, but is accompanied by an understanding that the perpetrator is part of a society that has certain structural problems. Thus, the application of criminal liability in this case reflects a balance between legal certainty and the values of social justice that emphasize rehabilitation and opportunities for social reintegration for the perpetrator.

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