

## **Legal Analysis of the Application of Criminal Sanctions Against Perpetrators of the Criminal Act of Theft with Aggravation Based on Pancasila Justice (Study of Criminal Case Decision Number: 170/Pid.B/2024/Pn.Skt)**

**Azizul Widya Syabani<sup>1)</sup> & Sri Endah Wahyuningsih<sup>2)</sup>**

<sup>1)</sup>Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: [azizulwidiasyabani.std@unissula.ac.id](mailto:azizulwidiasyabani.std@unissula.ac.id)

<sup>2)</sup>Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: [sriendahwahyuningsih@unissula.ac.id](mailto:sriendahwahyuningsih@unissula.ac.id)

**Abstract.** *This research discusses. This research uses a normative legal approach and is packaged in a systematic writing that describes the steps to be taken by a researcher in research techniques. This research collects data and analyzes the application of law from court decisions raised by the author. The results of the study showed that*

**Keywords :** *Analyzes; Discusses; Researcher.*

### **1. Introduction**

The Republic of Indonesia is constitutionally a state of law as regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "The Republic of Indonesia is a state of law". This provision confirms that all aspects of national and state life must be based on the supremacy of law. Within the framework of a state of law, law enforcement must run in line with the principles of justice, certainty, and legal benefits, all of which are rooted in the values of Pancasila as the philosophical basis of the state.

As a country of law, Indonesia does not only use law as a tool of social control, but also as a means of social engineering that upholds the values of humanity and substantive justice. Therefore, every application of criminal sanctions in criminal cases, including the crime of aggravated theft, must reflect justice that is not merely retributive, but also prioritizes moral, social, and humanitarian values as reflected in the principles of Pancasila.

The crime of theft is one of the most common crimes in society and often causes losses and harm to individuals and communities. In the context of Indonesian criminal law, theft is regulated in the Criminal Code (KUHP), specifically in Articles 362 to 367. This crime is not only an unlawful act, but also reflects

deeper social problems, such as poverty, poverty, and economic injustice experienced by some people.

Every human being has needs that must be met to live life, and along with the development of the times, these needs are increasingly varied and increasing. An individual's income level greatly affects their ability to meet their daily needs. For people with low incomes, the challenge of meeting their living needs becomes even greater. Financial limitations often force them to seek work for survival.

In this context, meeting basic needs becomes a top priority, and difficult economic conditions can push individuals to take steps that may not always be in accordance with existing legal and social norms, which can push some people to commit deviations.

The increasing number of thefts, especially with aggravating modes, shows a close relationship between the socio-economic conditions of the perpetrators and the criminal acts they commit. Many theft perpetrators come from low economic backgrounds, where daily necessities are the main driving force for them to commit crimes. Crime is a problem faced by society from time to time, even since the time of Adam and Eve, crime has been created, that is why crime is an issue that cannot be stopped from being discussed. This is why "where there are humans, there must be crime"; "Crime is eternal-as eternal as society"<sup>1</sup>reflects the reality that crime always exists in various forms and contexts. Socio-economic factors, such as poverty, poverty, and income inequality, contribute greatly to the increasing crime rate. Research shows that individuals living in economic conditions are more likely to engage in criminal acts as a way to meet their basic needs.<sup>2</sup>

This condition is further exacerbated by the flow of globalization and technological advances that create unequal access to existing and developing economic opportunities. When individuals feel excluded or do not have access to fair opportunities, they may seek shortcuts through illegal actions.<sup>3</sup>In addition, low levels of education play a very important role in increasing the risk of involvement in committing criminal acts or crimes, because good education often results in losing better job opportunities and a better understanding of the law.<sup>4</sup>

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<sup>1</sup>Yesmil Anwar, *Criminology*, Rafika Aditama. Bandung, 2010, p. 200.

<sup>2</sup>Heru Wahyudi<sup>1</sup>, Abdirrohman<sup>2</sup>, The Influence of Economic Factors and Criminal Act Resolution on the Theft Crime Rate in Sumatra Island, *Journal of Social and Political Science Studies (Jasipol)* ISSN 2776-7574, Vol 1, No 2, 2022, 129-142, University of Lampung

<sup>3</sup>Sri Priyati, 2018, Correlation of Economic Level of Criminals with Types of Crimes Committed (Case Study in the Jurisdiction of the Wonocolo Police) *Jurnal Judiciary* Vol. 1, No 2 (2018)

<sup>4</sup> [https://repository.unika.ac.id/29421/4/17.C1.0139-Josua%20Giofandy%20Gultom-BAB%20III\\_a.pdf](https://repository.unika.ac.id/29421/4/17.C1.0139-Josua%20Giofandy%20Gultom-BAB%20III_a.pdf)

Therefore, to effectively address the problem of crime, a holistic and sustainable approach is needed. This includes improving social welfare, better education, and creating adequate employment opportunities. A country's legal system has a significant influence on the birth and development of law, especially criminal law. Criminal law is a branch of positive law that includes various provisions regulated in the Criminal Code (KUHP). In Indonesia, the applicable criminal law system is a choice that has existed for a long time and has not undergone significant changes since it was first implemented.

This shows that even though society and social conditions continue to change, the criminal law framework maintains its basic structure. Therefore, it is important to question whether the current legal system can meet the needs of society and provide balanced justice. Effective law enforcement that is responsive to social dynamics is essential to creating a safe and prosperous environment for the entire community.

In the general explanation of the Criminal Procedure Code, it is stated that it prioritizes human rights and guarantees that everyone is treated equally before the law and government, and that everyone has an obligation to obey the law and government without exception.<sup>5</sup>

Law is a norm or rule that contains mandatory legislation and anyone who violates the article will receive legal sanctions. The legal subjects who are to be prosecuted are not only those who have actually committed unlawful acts, but also legal acts that may arise and equip the state to act in accordance with the laws currently in force.<sup>6</sup>The crime of theft itself is regulated in Article 362 of the Criminal Code and the crime of aggravated theft is regulated in Article 363 of the Criminal Code. The crime of theft is one of the types of criminal acts in Indonesia, this violation is regulated in Article 362 of the Criminal Code. There are various ways to classify the types of theft, one of which is based on the level regulated in Article 363 of the Criminal Code (KUHP). This article categorizes theft into several types, including ordinary theft and aggravated theft, each of which has different criteria and threats of punishment

Although this has been clearly regulated in the Criminal Code and the sanctions that will be imposed on the perpetrators, this does not deter the Indonesian people and prevent them from committing crimes. The proof is that these crimes still occur frequently. Usually, whether reported to the police or not, theft crimes

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<sup>5</sup>Tolib Effendi, *Basics of Criminal Procedure Law: Development and Reform in Indonesia*, Setara Press, Surabaya, 2014, p. 2.

<sup>6</sup>Rosana, E., *Law and Social Development*, Tapis Journal: Journal of Islamic Political Aspiration Observation, 2013, pp. 99-118.

are still widely committed. This has not been fully revealed and not infrequently the perpetrators of this crime are not revealed.<sup>7</sup>

Crime can be defined as an offense, namely an act that is contrary to the legal principles believed by society and is not in accordance with applicable norms. Crime reflects a violation of moral and legal values held by society.<sup>8</sup> Crimes that are rampant in society lately include robbery, murder, and rape. One type of crime that is often encountered is theft. Theft is of particular concern because of its significant impact on the security and peace of society.

The crime of theft is a crime that is officially stipulated as a prohibition and is subject to punishment. The definition is the act of "stealing," which involves taking someone else's property with the intention of possessing it unlawfully. According to the Criminal Code (KUHP), theft is defined in Article 362 as taking someone else's property with the intention of possessing it illegally. The meaning of "controlling" ("zich toeigenen") in this context means having control over the item, but this term is not entirely the same as "owning," although both are closely related in the definition of ownership. In practice, the term "controlling" is used to highlight the aspect of control and dominance over the stolen object, thus distinguishing it from the narrow meaning of "owning."

Article 362 of the Criminal Code specifically states that anyone who takes another person's property with the intention of owning it unlawfully will be subject to a maximum prison sentence of five years or a maximum fine of nine hundred rupiah. This confirms that theft is an illegal behavior and is prohibited by law, and is given serious punishment consequences.<sup>9</sup>

The crime of theft is regulated in Chapter XXII of the Criminal Code (KUHP), specifically in Articles 362 to 367. These articles explain various forms of theft, including ordinary theft and aggravated theft, as well as legal provisions governing sanctions for perpetrators of these crimes. With a deep understanding of these provisions, it is hoped that it can provide better insight into law enforcement and prevention efforts against the crime of theft in Indonesia. Five types of theft are regulated, namely:

- 1) Ordinary theft (Article 362 of the Criminal Code);
- 2) Aggravated theft (Article 363 of the Criminal Code);
- 3) Petty theft (Article 364 of the Criminal Code);

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<sup>7</sup>Rezna Fitriawan and R. Sugiharto, The Role of the Criminal Investigation Unit in Revealing Aggravated Theft in the Jurisdiction of the Demak Police Resort, Proceedings of the Unissula Student Scientific Constellation (Kimu) 5, 2021, p. 330

<sup>8</sup>Bawengan, GW, Examination Techniques and Criminal Cases, Pradnya Paramita, Jakarta, 1974, p. 22

<sup>9</sup>PAF Lamintag, Basics of Indonesian Criminal Law, PT. Citra Aditya Bakti, Bandung, 1997, p. 49.

4) Theft with violence (Article 365 of the Criminal Code);

5) Family Theft (Article 367 of the Criminal Code).

Etymologically, "taking" is defined as moving an item from its original place to another place. This process includes the act of bringing the item into someone's possession, so that the item is under his control. In a legal context, the act of taking means that the item is not in the possession of the rightful owner.

This act begins when someone tries to remove an object from its owner. The act is considered complete when the object has moved from its original location. Thus, the definition of taking includes the entire process from the attempt to move until the object is in the hands of an unauthorized party. It can be concluded that taking means taking from the place where the object was originally located or taking an object from the control of another person.<sup>10</sup>Elements of theft:

1) Objective: The condition that accompanies an object, where the object in question is wholly or partly owned by someone, there is an act of taking, there is an object in the form of an object.

2) Subjective: Against the law, there is a motive to possess, there is an intention.

Aggravated theft or also known as certain theft or qualification (*gequalificeerd diefstal*) is one of the most common theft crimes. The meaning of this type of certain theft or qualification is a theft that is carried out in a certain way or under certain circumstances, so that its nature is more severe and is threatened with a heavier penalty than ordinary theft.<sup>11</sup>The term used by R. Soesilo is "aggravated theft" in his book, the Criminal Code (KUHP), because from this term it can be said that due to its nature, the theft has an aggravated criminal threat and causes material losses felt by the victim.<sup>12</sup>

In this case, it is important to analyze the criminal law responsibility for perpetrators of the crime of theft with aggravation. The aggravation of punishment for the perpetrators not only serves as a deterrent effect but must also consider the values of justice contained in Pancasila. Pancasila justice emphasizes the need for a balance between law enforcement and social recovery, so that punishment is not only retributive but also rehabilitative.

With the increasing cases of theft and the complexity of the factors behind it, this study aims to explore how the Indonesian legal system can be more effective

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<sup>10</sup>PAF Lamintang., *Special Offenses, Crimes Against Property*, First Edition, Bandung, Sinar Baru, 1989, p. 11.

<sup>11</sup>Wirjono Prodjodikoro, *Certain Criminal Acts in Indonesia*, Bandung, Eresco, 1986, p. 19

<sup>12</sup>R. Soesilo, *Criminal Code (KUHP)*, Bogor: Politeia, 1988, p. 248.

in handling the crime of aggravated theft. This study will discuss the legal and social aspects of criminal liability and its impact on social justice in Indonesia. It is hoped that the results of this study can provide recommendations for improving the criminal justice system to be fairer and more just based on the values of Pancasila.

This case began with the actions of two defendants, namely Brian Dewasta Sasongko and Kukuh Bramadhita Sasongko, who stole two PlayStation 3 units from a game business called "Senlei Syber Game" located in Joyosuran Village, Pasar Kliwon District, Surakarta City. The incident occurred on Saturday morning, May 25, 2024, at around 02.30 WIB.

After carrying out night patrol duties in their village, the defendants agreed to commit theft with the intention of obtaining money to help with family needs, including paying installments and their mother's medical expenses. In carrying out his actions, defendant Brian jumped over the fence, covered the CCTV with paper, and managed to enter the house through the bathroom ventilation. Meanwhile, defendant Kukuh was tasked with monitoring the situation around the location.

After successfully taking two PS3 units, the defendants took the stolen goods to the house of an acquaintance named Bangun. One of the PS units was then sold at the Surakarta Klithikan Market for Rp200,000, while the other unit was temporarily stored at Irfan's house, then sold via social media for Rp500,000.

The theft was finally revealed after the victim, Septia Sukmawati, reported the loss of her belongings. The defendants were then arrested by police the following day, Sunday, May 26, 2024, and processed legally.

For their actions, the defendants were charged with violating Article 363 paragraph (1) 3, 4 and 5 of the Criminal Code, namely theft committed at night, in a closed yard, and committed by two or more people in league.

Based on the description of the case and the legal issues that have been explained previously, the author feels interested and motivated to study and analyze more deeply the application of criminal sanctions against perpetrators of aggravated theft, especially in relation to the values of justice contained in Pancasila as the philosophical basis of the state. The author believes that this study is important to see the extent to which the law enforcement process, especially in criminal justice practices, is able to reflect the values of Pancasila justice that uphold human rights, social justice, and legal certainty and benefits. Therefore, the author compiled this research in the form of a thesis in which two defendants were sentenced to criminal sanctions for committing aggravated theft at a game business house in Surakarta City. This case is interesting to study because in addition to concerning the application of criminal law to the perpetrators, it is also closely related to the aspect of substantive justice in

making decisions, especially considering the economic motives and family conditions that underlie the actions of the defendants.

## 2. Research Methods

According to Soerjono Soekanto, research is a scientific activity related to analysis and construction carried out methodologically, systematically and consistently. Methodological means in accordance with a certain method or way, systematic is based on a system, while consistent means the absence of contradictory things in a certain framework.<sup>13</sup> According to Vib Hute and Ayn Alem, 'Research', in simple terms, can be defined as 'systematic investigation towards increasing the sum of human knowledge' and as a 'process' of identifying and investigating a 'fact' or a 'problem' with a view to acquiring an insight into it or finding an appropriate solution therefor. An approach becomes systematic when a researcher follows certain scientific methods.<sup>14</sup> Legal research is a process of finding legal rules and legal doctrines to answer the legal issues faced.<sup>15</sup>

## 3. Results and Discussion

### 3.1. Legal Analysis of the Application of Criminal Sanctions Against Perpetrators of Aggravated Theft Based on Pancasila Justice (Criminal Case Study Decision Number: 170/Pid.B/2024/PN.Skt)

Starting from the case that the researcher raised, related to the Criminal Act of Aggravated Theft based on Decision Number. 170/Pid.B/2024/PN.Skt discusses a Theft case that occurred in Sukoharjo City, which occurred in the jurisdiction of the Surakarta District Court, which occurred on Saturday, May 25, 2024 at around 02.30 WIB. or at least at a certain time in May in 2024 at a Playstation game business house "SENLEI SYBER GAME" still included in the village of Menangan Rt.007 Rw, 001 Kel.Joyosuran Kec.Pasar Kliwon Surakarta City or at least in the jurisdiction of the Surakarta District Court.

Defendantin this case namely:

- 1) BRIAN DEWASTA SASONGKO alias Brian Bin Sasongko Eko Purnomo and
- 2) KUKUH BRAMADHITA SASONGKO aka BRAMA Bin Sasongko Eko Purnomo,

The defendants "jointly and in collusion have taken something that partly or wholly belongs to another person with the intention of taking it unlawfully,

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<sup>13</sup>Soerjono Soekanto, Introduction to Legal Research, Third Edition, Publisher of the University of Indonesia (UI Press), Jakarta, 2008, p. 42

<sup>14</sup>Khushal Vibhute and Filipos Aynalem, Legal Research Methods, Teaching Materials, Prepared Under The Sponsorship Of The Justice And Legal System Research Institute, 2009, p. 2

<sup>15</sup>Salim HS, Application of Legal Theory in Thesis and Dissertation Research, Jakarta: Rajawali Pers, 2014, p. 5



which was done at night in a house or closed yard where the house is, which was done by a person who was not known or wanted by the person who had the right, which was done by two or more people in collusion, to enter the place of committing the crime, or to get to the goods they took, carried out with the urge to damage, or climb." The defendants carried out the actions in the following manner:

At the time and place as in the indictment, initially the defendants had a night patrol shift in their village, then the defendants after finishing the night patrol at around 02.15 WIB, the defendant BRIAN DEWASTA SASONGKO continued to invite KUKUH BRAMADHITA SASONGKO to agree to take other people's goods without the owner's permission to get money to help pay off his parents' debt installments and treat his mother., then the defendants headed to the intended target, namely a Playstation game business house "SENLEI SYBER GAME" still included in the village. Menangan Rt.007 Rw, 001 Kel. Joyosuran, Pasar Kliwon District, Surakarta City, then after arriving at the intended target at a house in a Playstation game business house "SENLEI SYBER GAME" the defendant BRIAN DEWASTA SASONGKO immediately jumped over the fence of the house and climbed to cover the installed CCTV equipment by covering it with paper so that it could not be seen on the CCTV monitor screen. After finishing covering the CCTV, the defendants then divided the tasks, for the defendant BRIAN DEWASTA walked into the yard and the defendant. KUKUH BRAMADHITA SASONGKO also checked the windows, it turned out that the windows of the house were using iron bars so that entry could not be made through the windows, then the defendant BRIAN DEWASTA SASONGKO invited the defendant KUKUH BRAMADHITA SASONGKO to share the tasks so that the defendant KUKUH BRAMADHITA SASONGKO could monitor the situation and conditions so that they remained safe.

Then the defendant BRIAN DEWASTA SASONGKO managed to break into the bathroom and then the defendant BRIAN DEWASTA SASONGKO climbed up to the bathroom ventilation then the defendant BRIAN DEWASTA SASONGKO went down and walked towards where the equipment was, there were 2 (two) Playsation (PS) units, Sony PS 3 SLIM cfw, then the defendant BRIAN DEWASTA SASONGKO immediately took it; and took the PS out through the side door then took the 2 PS then went out and gave 1 PS to be taken by KUKUH BRAMADHITA SASONGKO who was waiting on duty to guard security, then the defendants continued to the witness's house. BANGUN who at that time met and witness BANGUN asked where the 2 PS units came from and the defendants answered that they were the defendants took them from inside someone else's house, then the defendant BRIAN DEWASTA SASONGKO asked for help from the witness. BANGUN to store the 2 PS at his house, witness BANGUN, then the defendant. BRIAN DEWASTA SASONGKO. conveyed to witness BANGUN that 2 PS were stored under the chair in front of Mr. BANGUN's house;



That then at around 06.30 WIB in the morning the defendant BRIAN DEWASTA SASONGKO invited Mr. BANGUN, the defendant KUKUH to sell 1 unit of PS Sony PS 3 SLIM cfw brand to Pasar Klithikan Surakarta, while 1 other PS unit was still stored at Mr. BANGUN's house. That 1 (one) unit of Playsation device was sold to a trader at Pasar Klithikan Solo by the defendant BRIAN together with KUKUH and accompanied by Mr. Bangun selling 1 PS for Rp. 200,000.

That after successfully selling 1 unit of PS Sony PS 3 SLIM cfw to Pasar Klithikan Surakarta, the defendant BRIAN DEWASTA SASONGKO together with the defendant KUKUH BRAMADHITA SASONGKO and Mr. BANGUN returned to Mr. BANGUN's house, then Mr. BANGUN told the defendants 1 and 2 to move 1 (one) PS unit from Mr. BANGUN's house, then the 1 PS item was left at Mr. IRFAN's house, then Mr. BANGUN returned to his house alone. That after the defendants 1 and 2 were at Mr. IRFAN's house, the defendant BRIAN DEWASTA SASONGKO and also the defendant KUKUH were asked by Mr. IRFAN about where the 1 PS item came from and the defendants 1 and 2 answered that the item in the form of 1 PS unit belonged to a friend of the defendants to help sell it and then the defendant BRIAN DEWASTA SASONGKO borrowed Mr. IRFAN's cellphone to post 1 PS unit, then the defendant BRIAN DEWASTA SASONGKO asked the defendant KUKUH to enter his Facebook account into Mr. IRFAN's cellphone, then the defendant BRIAN asked Mr. IRFAN ABOUT THE PRICE of 1 PS unit, then Mr. IRFAN did not know the price of 1 PS unit. That then Mr. IRFAN asked the defendants whether the goods belonged to them, then the defendants answered that 1 PS unit belonged to the defendants, finally 1 PS unit that was still being kept at Mr. IRFAN's house was handed over by Mr. IRFAN to the defendants TO be sold by the defendants, then the defendant BRIAN borrowed Mr. IRFAN's cellphone to open a Facebook account "KUKUH BRAMA" and at that time it was offered through the account there was a buyer and an agreement was made for a price of Rp. 500,000,-00 (five hundred thousand rupiah) then the defendant BRIAN DEWASTA SASONGKO together with the defendant KUKUH delivered 1 PS unit to a seller in Karanganyar. That after successfully selling 1 PS unit, the defendant BRIAN DEWASTA SASONGKO together with the defendant KUKUH BRAMADHITA SASONGKO returned home at around 20.30 WIB. That finally on Sunday, May 26, 2024, they were caught by the authorities because of a report of the loss of 2 (two) PS units from the witness. SEPTIA SUKMAWATI (victim), then the defendants were arrested and handed over to the police to be processed legally.

The actions of the Defendant. BRIAN DEWASTA SASONGKO alias Brian Bin Sasongko Eko Purnomo and KUKUH BRAMADHITA SASONGKO alias BRAMA Bin Sasongko Eko Purnomo as regulated and threatened with criminal penalties in Article 363 paragraph 1 3, 4 and 5 of the Criminal Code.

a) Legal Facts in Decision Number 170/Pid.B/2024/PN.Skt

The Legal Facts in this Decision explain the actions of the defendants in the case which were proven legally and convincingly to fulfill the elements in Article 363 paragraph (1) 3, 4, and 5 of the Criminal Code (KUHP), which regulates aggravated theft. The explanation that the author can describe is as follows:

a. Background of the Incident

The criminal act of aggravated theft that is the focus of Decision Number 170/Pid.B/2024/PN.Skt occurred on Saturday, May 25, 2024, at around 02.30 WIB. This incident took place at a PlayStation game rental business called "Senlei Syber Game", located in Kampung Menangan RT 007 RW 001, Joyosuran Village, Pasar Kliwon District, Surakarta City. The place is legally within the jurisdiction of the Surakarta District Court. This theft was carried out at night when the surrounding environment was relatively quiet. The business was targeted because it was suspected of not having maximum security, making it easier for the perpetrators to carry out their actions. This incident was then reported by the victim to the police after learning that two PlayStation units had been lost, which then became the basis for the investigation and arrest of the perpetrators.

b. Defendant

The defendant in this decision is a sibling who has conspired to commit the crime of theft, namely:

a) Brian Dewasta Sasongko alias Brian, and

b) Kukuh Bramadhita Sasongko alias Brama

c. Modus Operandi

a) The defendants had just done a night patrol in their village. After the patrol, they agreed to commit theft with the motive of helping to pay their parents' debts and their mother's medical treatment.

b) They targeted the gaming business house Senlei Syber Game.

c) Brian climbed the fence and covered the CCTV camera with paper so that their actions would not be recorded.

d) Next, Brian broke into the bathroom, entered through the ventilation, then took 2 (two) PlayStation 3 Slim units from inside the house.

e) Kukuh is tasked with monitoring the surrounding conditions during the action.

f) After succeeding, they fled carrying the stolen goods, each carrying one PS unit.

b. Evidence

a) 2 (two) PlayStation 3 Slim units (Sony brand), the result of theft.

b) Implementation of Pancasila Principles in Decision Number 170/Pid.B/2024/PN.Skt

The case of aggravated theft involving defendants Brian Dewasta Sasongko and Kukuh Bramadhita Sasongko is a legal incident that occurred in Surakarta City, where the defendants jointly and in cahoots took other people's property in an unlawful manner and with aggravating acts which the author describes above citing the court decision. Based on decision number 170/Pid.B/2024/PN.Skt, the Surakarta district court imposed criminal sanctions in accordance with Article 363 paragraph 1 of the Criminal Code. In the verdict of the case of aggravated theft as regulated in Article 363 of the Criminal Code, the judge imposed criminal sanctions on the defendants based on the legal facts found during the trial. However, in the sentencing process, the judge did not merely consider the formal legal aspects in the form of the provisions of the Criminal Code. but also prioritized the principles contained in Pancasila.

The Second and Fifth Principles of Pancasila in the context of the application of criminal law, especially in relation to cases of aggravated theft as the author raises, namely:

a. Second Principle "Just and Civilized Humanity"

The second principle of Pancasila emphasizes that every action, including legal action, must be based on the principle of just and civilized humanity. In the context of criminal law, this principle implies that law enforcement should not be carried out rigidly and merely formally without considering human values. Thus, in the context of the application of criminal law, especially related to cases of aggravated theft, it has the following meaning:

1) Humane treatment: The accused shall be treated with respect and without arbitrary treatment. Punishment shall not be contrary to the human dignity and human rights of the accused.<sup>16</sup>

2) Consideration of social conditions: Factors such as the defendant's economic background, education, motivation, and the situation behind the crime need to be taken into consideration when imposing sanctions.<sup>17</sup> In this case, it was stated

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<sup>16</sup>Hamzah, A. 2013. Criminal Law: Theory and Policy. Jakarta: Raja Grafindo Persada. p. 120.

<sup>17</sup>Soerjono Soekanto. 2011. Principles of Legal Sociology. Jakarta: Raja Grafindo Persada. p. 98

that the defendant's purpose in stealing was to help pay installments and treat his sick mother, which was a humanitarian reason.

3) Fair and civilized approach: Law enforcement must balance between justice and humanity. Punishment is not just about retribution, but also contains the goal of rehabilitation and social reintegration so that the accused can return to being a good member of society.<sup>18</sup> However, the Panel of Judges did not develop this consideration in the verdict substantially, but only mentioned it as part of the facts of the defendant's testimony at the trial. The judge's considerations only emphasized formal aspects such as the defendant's confession and regret, not the socio-economic conditions or human values that drove the criminal act.

This decision does not fully reflect the Second Principle, because even though the defendant's social facts are presented, they are not integrated into real considerations of humane justice. The law is still enforced with retributive logic without touching on the aspect of civilized treatment of perpetrators from vulnerable backgrounds.

#### b. Fifth Principle "Social Justice for All Indonesian People"

The fifth principle demands the establishment of comprehensive and equal social justice for all Indonesian people without discrimination. In the criminal law system, this means that the sanctions imposed must take into account the socio-economic background of the perpetrator so that the law does not become a tool of oppression against disadvantaged groups in society. The meaning contained in the fifth principle is:

1) Justice without discrimination: All citizens, whether rich or poor, must receive fair legal treatment. In this case, there was no indication of discrimination in the application of the law.

2) Protection for the underprivileged: The law must be sensitive to the conditions of vulnerable communities, not increasing the punishment for those who commit crimes due to desperate circumstances. In cases where there is no social approach to viewing the defendant as a citizen who has the potential to experience social inequality. For example, there is no consideration that the perpetrator's actions were triggered by basic economic needs, and there is no exploration of the possibility of alternative or rehabilitative sanctions.

3) Fulfillment of substantive social justice: Social justice is not only about giving the same punishment, but also accommodating the real needs and conditions of society in order to create social balance. In this decision, it is purely oriented towards imprisonment, without considering the long-term impact on the social reintegration of the defendant, or the social recovery of the victim.

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<sup>18</sup>Satjipto Rahardjo. 2010. *Law and Society: An Introduction*. Bandung: Citra Aditya Bakti. p. 152

This decision also does not fully reflect the Fifth Principle, because it does not present substantive considerations of social justice. Sanctions are imposed without touching on the issue of social inequality or inequality of access to justice.

c) Conformity of the Decision with the Purpose of Punishment

Viewed from the perspective of the purpose of punishment, this decision seems to emphasize more on the purpose of retributive (revenge) and general prevention. This can be seen from the imposition of a prison sentence of 1 year and 6 months on each defendant, which reflects the desire to provide appropriate punishment for the unlawful acts that have been committed and to warn the public not to commit similar acts. The act of theft carried out together and at night is considered a form of action that disturbs public order and creates a sense of insecurity in the community.

However, when viewed from a more comprehensive criminal purpose, namely resocialization of the perpetrator and protection of the victim, this approach has not been significantly apparent in this decision. There were no efforts in the form of social development programs, skills training, or supervision of the defendants after serving their sentences, even though both were still young and came from poor economic backgrounds. This shows that criminalization has not been used as a means to change the perpetrator's behavior for the better, but rather merely as a means of revenge.

The Pancasila Justice Perspective, especially the second and fifth principles, criminalization should not only be repressive, but also contain the values of humanity and social justice. The second principle demands respect for human dignity, including defendants who have the potential to change and improve themselves. On the other hand, the fifth principle requires law enforcement to create a balance between rights and obligations, between protection of victims and rehabilitation efforts for perpetrators.

The defendant in this case committed theft for economic reasons, namely to meet daily living needs. Although economic reasons do not justify criminal acts, these circumstances should be the basis for judges to further encourage the application of corrective and restorative approaches in sentencing. For example, through conditional sentences, coaching outside of correctional institutions, or social work programs, which in addition to providing a deterrent effect, also support social recovery.

Thus, this decision does not fully reflect the purpose of criminalization within the framework of Pancasila justice, because it is more dominant in the aspects of punishment and general prevention, and does not touch on the aspects of social development of the accused and the restoration of social relations with victims and society. In the future, strengthening the justice approach based on Pancasila

values is very important so that criminal law can truly become a means of realizing civilized and humane substantive justice.

### **3.2. Legal Analysis of Judges' Considerations in Imposing Criminal Sanctions on Perpetrators of Aggravated Theft Based on Pancasila Justice (Criminal Case Study Decision Number: 170/Pid.B/2024/PN.Skt)**

Judges have the authority to assess legal facts, prove elements of a crime, and impose criminal sanctions that are considered fair and proportional. The judge's considerations must not only be based on applicable positive legal norms, but must also reflect the values of justice that live in society. This is very important in the context of the Pancasila state, where law cannot be separated from moral, social, and humanitarian dimensions. The following is the author's analysis that the author has written:

#### **1) Judge's Considerations in Handing Down a Verdict**

In the criminal case of aggravated theft registered in Decision Number 170/Pid.B/2024/PN.Skt, the Panel of Judges sentenced each defendant to 1 year and 6 months in prison. Both defendants were proven legally and convincingly to have violated Article 363 paragraph (1) 4th and 5th of the Criminal Code, which regulates the crime of aggravated theft committed at night and together, or in the form of a conspiracy.

The Panel of Judges in its considerations refers to the legal elements of the crime proven in the trial process. These elements include:

##### **a. Element "take the goods"**

The defendant's action of taking the victim's belongings without permission and without rights has been proven in court. The items taken were a number of scrap metals and project tools that have economic value.

Fulfilled: The goods were taken from another person's storage place. The defendant has actually taken the goods, namely 2 PS3 units.

##### **b. Element "wholly or partly owned by another person"**

The stolen items belonged to the victim, not the defendants, so the taking constituted a seizure of another party's property.

Fulfilled: The goods do not belong to the defendant.

##### **c. Element "with the intent to possess unlawfully"**

The defendants had the intention to take and possess the goods in an unlawful manner (no permission or legal ownership), and this intention was evident from their actions in taking away and hiding the stolen goods.

Fulfilled: The defendant intended to take possession of the goods unlawfully.

d. Element4th weighting: "done at night"

Legal facts show that the theft was committed at night, namely at around 23.00 WIB, which shows hidden intentions and a method to avoid supervision.

Fulfilled: The act was done at night.

e. Element5th weight: "carried out by two or more people in alliance"

The theft was committed by two defendants together, which means there was an agreement and division of roles in committing the crime. This falls into the category of collusion or conspiracy.

Fulfilled: The action was carried out by two actors together.

f. Element6th aggravation: "Performed by damaging, climbing or using tools"

In this case, the actions of the defendant Brian fulfill the 6th element of aggravation as referred to in Article 363 paragraph (1) 4 of the Criminal Code, namely that the actions were carried out in special ways which showed a deeper evil intention and actions which made prevention or arrest difficult, such as climbing, damaging or using tools to carry out the theft.

1) Brian climbed the fence and the bathroom vent. The defendant Brian first climbed the victim's fence to enter the yard, then climbed towards the bathroom ventilation as access into the house. This action shows that the theft was not carried out in a normal way, but with extra effort involving certain risks and techniques, namely climbing as an effort to avoid legal or easy access.

2) Covering CCTV with paper, Although not explicitly using tools such as screwdrivers or crowbars, covering the CCTV with paper shows the defendant's preparation and caution so that his actions are not recorded. This reflects the element of planning and active action to avoid surveillance - something that can be considered as part of a method that aggravates the nature of the crime.

3) Breaking into the bathroom to get into the house, which is not a normal entry point is used as an entry point by breaking or damaging it. This is clearly included in the act of damaging as part of the way to enter a legally protected place. Damaging home facilities to access private spaces indicates a more serious criminal intent than just ordinary theft.

Fulfilled: The action was carried out in aggravating ways such as climbing and damaging.



Taking someone else's property, done with the intention to own it unlawfully, done at night, and done together. After the elements that the author describes above are proven, the judge then turns to the consideration of punishment, namely aspects that mitigate or aggravate the sentence for the defendant. The circumstances that are considered are:

- a. The aggravating circumstances in this case are the fact that the act was committed at night, and together (two people), which legally has increased the seriousness of the crime because it shows the existence of planning and cooperation to commit the crime. In addition, the actions of the defendants caused unrest and concern in the community, especially because they targeted the property of residents in residential areas.
- b. Mitigating circumstances include that both defendants are young, behaved politely during the trial, admitted and regretted their actions, and had no previous convictions. The defendants also come from poor economic backgrounds, which, although not a justification for the crime, can be taken into consideration in a more proportional sentence.

Regarding the judge's decision, it appears that the Panel of Judges focused more on the legal-formal aspect in handing down the verdict, and has not explicitly touched on the philosophical values of justice or considered in depth the socio-economic dimensions of the defendants. There was insufficient exploration of the defendants' social backgrounds, including the economic pressures that motivated the theft, as well as their potential for resocialization as part of a corrective and restorative justice approach. In the context of Pancasila justice, legal considerations should not only focus on fulfilling the elements of the article, but also consider the values of humanity, social justice, and the common good, as reflected in the second and fifth principles of Pancasila. Criminalization should also be a means to improve the perpetrator and protect society, not merely as a form of retaliation for unlawful acts.

Although the judge's considerations are legally in accordance with positive legal norms, from the perspective of substantive justice and Pancasila justice, there is still room for criticism regarding the lack of a holistic and humanistic approach in sentencing the accused.

## 2) Weaknesses of Judges' Considerations in Handing Down Decisions

When analyzed from the perspective of Pancasila justice, especially those based on just and civilized humanitarian values (second principle) and social justice for all Indonesian people (fifth principle), the legal considerations used by the Panel of Judges in Decision Number 170/Pid.B/2024/PN.Skt still show several fundamental weaknesses. These weaknesses are especially evident from the legal approach that prioritizes normative-legalistic aspects rather than a holistic

and contextual approach to the social realities of perpetrators and victims, namely:

a. There is no in-depth study of the motives of the criminal acts committed by the defendant as a whole. In this case, there was no in-depth analysis of the defendant's socio-economic background which could potentially be a driving factor in the crime. In fact, in a just legal system, understanding the motives and context of the perpetrator's actions is very important for formulating sanctions that are not only retributive, but also preventive and corrective. Pancasila demands that the law not only function as a means of control, but also as a means of protecting and empowering humans.

b. The restorative justice approach is not at all apparent in the judge's considerations. Given that the crime committed did not contain elements of violence against the victim, but rather theft of property, there should be room to pursue a restorative resolution, for example through penal mediation or compensation. Restorative justice is in line with the philosophy of Pancasila which prioritizes deliberation, humanity, and the restoration of social relations, not just punishment.

c. Lack of utilization of alternative sentencing that is oriented towards education and development. The defendant in this case is still of productive age, has never been convicted before, and has shown a cooperative attitude and regret for his actions. However, the Panel of Judges still sentenced him to prison, without considering other options such as conditional sentences, development in social institutions, or social work programs that can provide a deterrent effect and improve the defendant's behavior. This shows that the sentencing system is still rigid and not yet open to more progressive and humane options.

The Panel of Judges' considerations in imposing criminal sanctions on the defendants are normatively in accordance with the provisions of positive law, namely Article 363 paragraph (1) 4 and 5 of the Criminal Code. The elements of the crime have been proven legally and convincingly, and the judges have considered the aggravating and mitigating aspects in imposing the verdict. However, when viewed from the perspective of Pancasila justice, the verdict still does not fully reflect the values contained in the second and fifth principles of Pancasila, namely just and civilized humanity and social justice for all Indonesian people. The approach used by the Panel of Judges is more legal-formal and has not touched deeply on the social, economic, or psychological aspects of the defendant which are actually important in creating substantive justice.

The Panel of Judges did not delve further into the defendant's background and motives holistically, and did not adopt a restorative justice approach or alternative sentencing that is more rehabilitative and educational. In fact, in the context of Pancasila justice, sentencing does not only function as a means of

retribution (retributive), but also as an effort to improve society and protect society in a civilized manner. Thus, it can be concluded that the judge's considerations in this decision are not fully in line with the principles of Pancasila justice. This shows the need for a paradigm shift in the criminal justice system in Indonesia, in order to better integrate the noble values of Pancasila as a philosophical and moral basis for enforcing the law in a fair and civilized manner.

Therefore, it is necessary to change the mindset among law enforcement officers, especially judges, so that in making decisions they are not only fixated on the legal-formal aspects, but also consider the substantial values that exist in society. The application of justice rooted in the values of Pancasila must be an ethical and normative framework in every criminal justice process, so that it can produce decisions that are not only legally valid, but also socially just, humane, and dignified. A more contextual legal approach that is oriented towards social recovery needs to be put forward in order to create a criminal justice system that truly sides with humanity and social justice as mandated by the nation's ideology.

#### **4. Conclusion**

Legal Analysis of the Application of Criminal Sanctions Against Perpetrators of Aggravated Theft Based on Pancasila Justice? (Criminal Case Study Decision Number: 170/Pid.B/2024/PN.Skt). The application of criminal sanctions against perpetrators of aggravated theft in Decision Number 170/Pid.B/2024/PN.Skt has fulfilled the elements as regulated in Article 363 of the Criminal Code. The panel of judges has correctly assessed all objective and subjective elements of the crime of aggravated theft, including the existence of aggravating elements such as being carried out by two or more people together, being carried out at night, and being carried out by climbing and damaging to enter the scene. The sentence was imposed considering that the defendant's actions had disturbed the community, caused losses to the victim, and were contrary to legal norms and community morals.

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