

Legal Implications of the Criminal act of Aggravated Theft Committed Together

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Abstract. *Article 1 paragraph (3) of the 1945 Constitution states that the Republic of Indonesia is a country of law, so that the law applied in Indonesia becomes a reference for Indonesian society in behaving, so that there are no violations that cause society to receive sanctions in retaliation, but it is inevitable that violations of the law and applicable rules are increasing. One of the crimes that often occur in society is the crime of theft. Theft is a crime directed against a person's property or wealth. The problem in this study is to find out and analyze the legal implications of the crime of aggravated theft committed together. And to find out and analyze the criminal responsibility of the perpetrators of the crime of aggravated theft committed together in the decision of the Surabaya District Court Number: 1454 / Pid.B / 2024 / PN Sby. The research approach used in this study is through a normative legal approach using secondary data obtained through literature studies, then data analysis is carried out using qualitative descriptive analysis. Based on the results of the study, in the legal implications of the crime of aggravated theft committed together, the crime of aggravated theft committed together is regulated in Article 363 of the Criminal Code.*

Keywords: *Aggravated; Literature; Problem; Studies.*

1. Introduction

A state based on law means that all actions taken by individuals and society must be based on applicable laws and regulations and norms recognized in society. This also applies in Indonesia, as stated in the 1945 Constitution of the Republic of Indonesia, in Article 1 paragraph (3) which states that the Republic of Indonesia is a state of law,¹so that in their daily activities, people must obey the regulations or laws in force in Indonesia. This confirms that the law has a very

¹Muhammad Baharuddin and Akhmad Khisni, Effectiveness of Pleidooi by The Supreme Of Criminal Murder, Law Development Journal, Vol. 2 No. 2, June 2020, p. 10

important function in community life as a tool to create justice, order, peace and order, but also to ensure legal certainty.² Law is formed based on the desires and awareness of each individual in society, with the intention that the law can run as desired by society itself, namely, wanting harmony and peace in social life together.

In a state of law, law is the main pillar in moving the joints of social, national and state life. One of the main characteristics of a state of law lies in its tendency to assess actions taken by society on the basis of legal regulations. This means that a state with the concept of a state of law always regulates every action and behavior of its people based on applicable laws to create, maintain and defend peaceful social life, in order to be in accordance with what is mandated in Pancasila and the 1945 Constitution, namely that every citizen has the right to a sense of security and freedom from all forms of crime.

The definition of law according to Syamsul Arifin is a set of rules to regulate human behavior, in order to achieve order and justice, which is explained as follows:³

“Before explaining what law is, first the etymology of the word law is presented. In Dutch, the word law is called recht. The word recht is related to the Latin rectum, meaning leader. From the word rechtrectum there is an element of authority, authority. In addition, it is part of the word gerechtigheid, which means justice. The word recht cannot be separated from gerechtigheid, in other words the word law carries the meaning of authority and justice.”

The law adopted by the State of Indonesia is in accordance with Article 28I Paragraph 5 of the 1945 Constitution of the Republic of Indonesia which states that in order to uphold and protect human rights in accordance with the principles of a democratic state of law, the implementation of human rights is guaranteed, regulated, and stated in statutory regulations. So that the existence of the Continental European legal system is a legal system that is codified or systematically compiled and further interpreted by judges in its application. The Continental European legal system is one form of the legal system inherited from the Dutch East Indies government which was then adopted and is still in effect today. Before the arrival of the Dutch, Indonesia had already known and empowered customary criminal law. This unwritten customary criminal law is

²Andi Hamzah, 2001, *Anthology of Criminal Law and Criminal Procedure*, Ghalia Indonesia, Jakarta, p. 3

³Syamsul Arifin, 2012, *Introduction to Indonesian Law Textbook*, Medan Area University Press, Medan, p. 5.

local in nature, meaning that it is only enforced in certain customary areas, and does not apply in other customary areas.⁴

The law applied in Indonesia is a reference in Indonesian society in behaving, so that there are no violations that cause people to receive sanctions in retaliation, but it is inevitable that violations of the law and applicable rules are increasing. This can be seen from the news, both electronic and print media. One of the functions of law is to provide order in the scope of society, in other words preventing unlawful acts, so that the problem of crime and violations is a complex and vulnerable phenomenon and is always interesting to discuss.

An act that is formed into a crime and/or violation is formulated in the law because the act is considered by the legislator as an act that endangers a legal interest, by establishing a prohibition to commit an act accompanied by a threat or criminal sanction for anyone who violates it or acts against the law, meaning that the law has provided legal protection for these legal interests. One of the legal protections in question is criminal law which functions to regulate and organize the life of society so that public order can be created and maintained. Human life is filled with various interests and needs, between one need and another need are not different, but sometimes conflicting. So that attitudes and actions do not harm the interests and rights of others, the law provides guidelines in the form of certain limitations so that humans are not free to act and behave in order to achieve and fulfill their interests. Such a function is found in every type of law, including criminal law. Therefore, such a function is called the general function of criminal law.

Criminal law is a set of regulations that govern actions, whether ordering someone to do or carry out something, or prohibiting someone from doing or carrying out something that is regulated in laws and regional regulations that are subject to criminal sanctions.⁵ Meanwhile, the criminal law applicable in Indonesia is divided into two types, namely criminal law known in the Criminal Code (KUHP) and Special Criminal Law which is regulated outside the Criminal Code.⁶

Criminal law is part of the entire law in force in a country, which provides the basis and rules for determining acts that may not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain criminal penalties for anyone who violates these rules, determines when and in what cases those who have violated the prohibition can be subject to or sentenced to the criminal penalties as threatened, determines in what manner the imposition

⁴Zaeni Asyhadie, 2016, *Introduction to Indonesian Law*, 2nd Edition, Rajagrafindo Persada, Jakarta, p. 131

⁵Rahman Syamsuddin, 2014, *Knitting Law in Indonesia*, Mitra Wacana Media, Jakarta, p. 192

⁶Rodliyah, 2017, *Special Criminal Law, Elements and Criminal Sanctions*, First Edition, PT. Raja Grafindo Persada, Jakarta, p. 1

of the criminal penalties can be carried out if someone is suspected of having violated the prohibition.⁷

The definition of a criminal act (*strafbare feiten*) is a person's actions (*menselijke gedraging*) which are formulated in the *wet*, are contrary to the law, deserve to be punished by criminal punishment (*strafwaarding*) and are carried out wrongly.⁸ Criminal acts can be interpreted as behavior that violates the rules that apply criminally and can cause losses to individuals or legal entities, both materially and formally. This criminal act is committed by one or more people based on a certain mode or method in implementing the behavior. If viewed from the legal subject, criminal acts are specified into two, namely criminal acts that everyone can do (*delict communia*) and criminal acts that only someone with specific qualities can do (*delict propria*).⁹

Thus it can be said that a crime is an action in a certain place, time and condition that is prohibited or required and is subject to criminal penalties by law, is unlawful and with errors, carried out by someone who is able to be responsible. One of the crimes that often occurs in society is the crime of theft. Theft is a crime that is directed against someone's property or wealth. This crime is the type of crime that most often occurs in the midst of community life. Although the crime of theft is not a crime that is classified as a serious crime like murder, it can cause unrest in society.

The increasing number of theft crimes which are increasing every year, which often occurs, is closely related to living conditions or income levels which are below the poverty line, the level of education which is still relatively low and frustration in the family, as well as a situation where the population is not balanced with the job market, this has the potential to give rise to criminal behavior in society, including theft itself.¹⁰ Criminal acts of crime are evil acts, unlawful acts and deviant acts that are reprehensible in nature so that these acts often give rise to social sanctions in society. One of the crimes that often occurs in developing countries is aggravated theft, which we can find almost every day in electronic media and mass media.¹¹

The crime of theft is still a dilemma therefore it is necessary to have a good prevention or at least prevention effort from all parties, both from the law enforcement and from the awareness of the community so that it can run in an orderly, directed and planned manner. All parties must work together in actualizing religious, cultural and legal values and take firm action against

⁷Moeljatno, 1983, *Principles of Criminal Law*, Bina Aksara, Jakarta, p. 1

⁸Moeljatno, 2009, *Criminal Code*, 28th Edition, Bumi Aksara, Jakarta, p. 97

⁹Yusril Ilza Amri, Bambang Tri Bawono and Ira Alia Maerani, *Criminal Investigation of Motorcycle Stealing Goods*, *Law Development Journal*, Vol. 3 Issue 1, March 2021, p. 8

¹⁰M. Ali Zaidan, 2016, *Criminal Policy*, Sinar Grafika, Jakarta, pp. 11-12.

¹¹Ende Hasbi Nassarudin, 2016, *Criminology*, CV Pustaka Setia, Bandung, p. 115.

perpetrators of the crime of theft in order to be able to suppress the rate of development. It is even impossible that the crime of theft will continue to increase where in the future it will even become a common phenomenon in society so that more and more people have to become victims of the actions of irresponsible people.¹²

The crime of theft is one of the criminal acts or criminal acts regulated in the Criminal Code. According to Moeljatno, it states that:¹³

These criminal acts according to their form and nature are contrary to the order or order desired by law, they are acts that are against the law. To be precise: they are detrimental to society, meaning they hinder the implementation of procedures in good and fair social interaction. It can also be said that these criminal acts are detrimental to society.

Based on Article 363 of the Criminal Code, a person who commits aggravated theft is threatened with a maximum sentence of 7 (seven) years, in addition to fulfilling the elements of theft usually in Article 362 of the Criminal Code, also accompanied by aggravating factors, namely carried out under certain conditions or in certain ways. The punishment will be severe, namely 9 years in prison if the theft is carried out at night against a house or closed yard where there is a house, and if the theft is carried out by 2 (two) or more people.

Theft is an act of someone taking someone else's property without permission and causing that person to suffer a loss. The legal definition of theft and the sociological definition of theft. Viewed from a legal perspective, the definition of theft is an act of behavior that is contrary to the law. Viewed from a sociological perspective, theft is an act or behavior that is not only detrimental to the sufferer, but also very detrimental to society, namely the loss of balance, peace and order.

One example of a case in this writing is a case of aggravated theft committed together which was tried by the Surabaya District Court that the Defendant ES and Defendant VA on Friday, May 31, 2024, the Defendants, two (2) people, took goods without the owner's permission at one of the shops in the Surabaya mall, namely Matahari Dept. Store Tunjungan Plaza I in the form of children's clothes, adult men's and adult women's clothes. The crime was committed by the Defendants cutting the automatic sensor device on the clothes using cutting pliers that had previously been brought from home. As a result of the actions of the Defendants, the Matahari Dept. Store Tunjungan Plaza I suffered material losses of approximately IDR 2,159,900, (two million one hundred fifty-nine thousand nine hundred rupiah).

¹²Cut Nurita, Implementation of Criminal Law Sanctions Against Perpetrators of the Criminal Act of Livestock Theft, *Jurnal Daulat Hukum*, Volume 18 Number 3, 2020, p. 4.

¹³Moeljatno, 2002, *Principles of Criminal Law*, Jakarta, Rineka Cipta, p. 3.

From the actions carried out by the defendants, the defendants have been proven legally and convincingly guilty of committing the crime of theft under aggravating circumstances, which is subject to Article 363 paragraph (1) 4 and 5 of the Criminal Code, where the elements of the article imposed are fulfilled and the evidence, the defendants are each sentenced to 10 (ten) months in prison.

Criminal liability generally provides punishment or consequences that must be given to the perpetrator or perpetrator, because what he did was a violation of the prohibition that caused the condition to be prohibited. As a responsibility to the perpetrator of a crime in connection with the law enforcement process given to the guilty person lies in what crime he committed. So for the responsibility for a person's actions can be determined based on the guilt of the perpetrator and not only fulfilled by criminal elements. The mistakes made can be placed as factors to determine responsibility according to his actions and are not limited to his mental ability alone in making the mistakes he made, but a person is declared to have a mistake if he has feelings of guilt in connection with the responsibility of the problem of the crime committed.

2. Research Methods

Legal research is a scientific activity, which is based on certain methods, systematics and thinking, which aims to... studying something or several specific legal phenomena, by analyzing them. In addition, an in-depth examination of the legal factors is also carried out, to then attempt a solution to the problems that arise in the relevant phenomena.¹⁴ Legal research is a process of finding legal rules and legal doctrines to answer the legal issues faced.¹⁵

3. Results and Discussion

3.1. Legal Implications of the Crime of Aggravated Theft Committed Together

1) The crime of aggravated theft committed together

According to the Big Indonesian Dictionary (KBBI), theft comes from the word "curi" which means the process, the act of stealing is carried out.¹⁶ Theft is an act of taking someone else's property and not desired by the owner with bad intentions. The crime of theft is included in the category of property crimes (Vermogens Delicten). As in Article 362 of the Criminal Code, theft is defined as:¹⁷

¹⁴Soerjono Soekanto, 1986, Introduction to Legal Research, Publisher University of Indonesia Press, Jakarta, p. 43.

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

¹⁶Ridwan Hasibuan, Criminology in the Narrow Sense and Forensic Sciences, (Medan: USU Press, 1994), p. 8.

¹⁷Andi Hamzah, Criminal Code & Criminal Procedure Code Revised Edition, (Jakarta: Rineka Cipta, 2008), p. 140.

"Anyone who takes something, which in whole or in part belongs to another person, with the intention of possessing it unlawfully, is threatened with theft, with a maximum prison sentence of five years or a maximum fine of nine hundred rupiah."

The core part of the crime of theft in Article 362 of the Criminal Code which is the definition of all types of theft is:¹⁸

- a. Taking an item (enig goed)
- b. Which is wholly or partly owned by another person
- c. With the intention of having it in
- d. Against the law

Theft is regulated in Article 362 to Article 367 of the Criminal Code. According to Cleiren, the crime of theft is also called a formal or ordinary crime. How to take the goods is not a heavy (absolute) requirement in the indictment. Time and place in certain cases are also aggravating factors for the crime, for example at night in a house or closed yard. In addition, taking (wegnemen) means intentionally with the intention of having. Theft is the most common crime listed in all Criminal Codes in the world because it occurs and is regulated by all countries.¹⁹

One type of theft is aggravated theft. According to M. Sudrajat Bassar, aggravated theft is included in special theft because this theft is carried out in a certain way or circumstances so that it is more severe.²⁰As in Article 363 of the Criminal Code, it reads as follows:²¹

(1) Threatened with a maximum prison sentence of seven years:

- a. Livestock theft;
- b. Theft during fire, explosion, flood, earthquake or seaquake, volcanic eruption, shipwreck, stranded ship, train accident, riot, rebellion or danger of war;
- c. Theft at night in a house or enclosed yard where a house is located, carried out by a person who is there without the knowledge or consent of the person entitled to do so;
- d. Theft committed by two or more people in collaboration;

¹⁸Andi Hamzah, *Certain Offences (Speciale Delicten) in the Criminal Code*, (Jakarta: Sinar Grafika, 2011), p. 100.

¹⁹Andi Hamzah, *Loc. Cit.*, p. 101-102.

²⁰PAF Lamintang and Theo Lamintang, *Special Offenses in Crimes Against Property*, (Jakarta: Sinar Grafika, 2nd ed., 2009), p. 56.

²¹Moeljatno, *Loc. Cit.*, pp. 128-129.

e. Theft in which the entry into the place of the crime, or in order to obtain the goods taken, is carried out by damaging, cutting or climbing, or by using a false key, false order or false official clothing.

(2) If the theft described in point 3 is accompanied by one of the things in points 4 and 5, then the threat of imprisonment is a maximum of nine years.

Aggravated theft is inseparable from the aggravating elements contained in this theft. The elements contained in aggravated theft include the following:

1) The elements of theft in the main form contained in Article 362 of the Criminal Code;

2) The aggravating elements are contained in Article 363 of the Criminal Code, including:

a. Livestock theft

Article 101 defines livestock as all animals with one hoof, ruminant animals and pigs. Animals that have one hoof, for example, are horses and those that chew the cud, for example, are cows and buffalo.²² Livestock is a burdensome element because in Indonesia itself, livestock is a pet for the people and an important asset.

b. Theft during fire, explosion, flood, earthquake or seaquake, volcanic eruption, shipwreck, stranded ship, train accident, riot, rebellion or danger of war

The impact of the chaos and chaos due to the disaster then the goods are not guarded and not noticed by the owner also makes it very easy for the perpetrator to commit theft. This is a reason for aggravating the crime because it was done during a natural disaster.

c. Theft at night in a house or enclosed yard where a house is located, carried out by a person who is there without the knowledge or consent of the person entitled to do so.

In Article 98 of the Criminal Code, night means between sunset and sunrise. A house is a building used as a place to live by humans. Then a residence or woning is any building used by humans as a place to live. Furthermore, what is meant by a closed yard is a piece of land that has boundaries that can be seen and which boundaries separate the land from the surrounding land. Unknown or beyond the knowledge is that the maker has entered the house or yard without the knowledge of the person entitled to the house or yard while unwanted or beyond

²²PAF Lamintang and C. Djisman Samosir, Loc.Cit., p. 111.

the desire is that the maker has been in the house or yard without asking permission in advance from the person entitled to the house or yard.²³

d. Theft committed by two or more people in collusion. The perpetrators of theft are people who do it together by taking other people's property according to a common goal and have a deliberate intention. In this case, the perpetrator is not just one person or is also called Participating (*deelneming*).

e. Theft in which the entry into the place of the crime, or in order to obtain the goods taken, is carried out by damaging, cutting or climbing, or by using a false key, false order or false official clothing.

a) Climbing

Article 99 of the Criminal Code defines climbing as including entering through a pre-existing hole but not entering or going through a hole in the ground that has been deliberately dug, as well as crossing a ditch or trench that is used as a boundary.²⁴

b) Damage

According to Prof. Mr. Satauchid Kartanegara, vandalism is an act that only causes minor damage.²⁵

c) Fake Key

Article 100 of the Criminal Code defines fake keys as including tools that are not intended to open locks.²⁶ So, in the sense of fake keys, it also includes objects such as wire, nails, screwdrivers and so on.²⁷

d) Fake Order

This false command only concerns a false command to enter another person's residence and yard.²⁸

e) Fake Uniform

What is meant by a fake uniform is a uniform worn by bad people, for example to enter someone else's residence or house to commit a crime wearing a police or prosecutor's uniform.

²³PAF Lamintang and C. Djisman Samosir, *Loc.Cit.*, pp. 113-114.

²⁴Andi Hamzah, *Loc. Cit.*, p. 104-105.

²⁵PAF Lamintang and C. Djisman Samosir, *Loc.Cit.*, p. 139

²⁶Irfan Iqbal Munthahhari, *Criminal Code & Criminal Procedure Code*, (Jakarta: Prestasi Pustaka, 2011), p. 44.

²⁷PAF Lamintang and C. Djisman Samosir, *Loc.Cit.*, p. 141.

²⁸PAF Lamintang and C. Djisman Samosir, *Loc.Cit.*, pp. 141-142

2) Inclusion of Criminal Acts in the Criminal Code

a. Definition of Participation

Accompaniment or what is known as *deelneming* is an act that refers to a person's participation and assistance in committing a crime. According to Kanter and Sianturi, accompaniment is an act carried out by two or more people who commit a crime by taking part in realizing a crime.²⁹

According to Satochid Kartanegara, involvement in a criminal act is when it involves several or more people who have a relationship with the criminal act that occurred.³⁰ Based on its nature, inclusion or *deeleneming* can be divided into two, namely as follows:³¹

a. The form of inclusion stands alone

The responsibility of each perpetrator is assessed or valued individually for all actions or deeds carried out by him. Included in this form are those who commit and those who participate in committing criminal acts.

b. A form of inclusion that does not stand alone

The responsibility of the perpetrator is dependent on the actions of other perpetrators. Included in this form are persuaders, assistants and also those who order a crime to be committed.

Unavoidable Complicity (*Noodzakelijke Deelneming* or Necessary Complicity) cannot occur if the crime is committed without the involvement of another person. So, a crime can occur if there is another person as an accomplice. The following are crimes that fall into this category:³²

- 1) Bribing or persuading others not to exercise their right to vote (Article 149);
- 2) Persuading others to enter the military service of a foreign country (Article 238);
- 3) Bigamy, namely having two wives or husbands (Article 279);
- 4) Adultery (Article 284);
- 5) Having sexual intercourse with a girl under 15 years of age (Article 287);
- 6) Helping another person to commit suicide (Article 345).

²⁹SR Sianturi and EY Kanter, *Principles of Criminal Law*, (Jakarta: Stora Grafika, 2002), p. 338.

³⁰Satochid Kartanegara, *Criminal Law: Collection of Lectures Part Two*, (Jakarta: Student Lecture Center, 1998), p. 497.

³¹Teguh Prasetyo, *Criminal Law Revised Edition*, (Jakarta: PT. RajaGrafindo Persada, 2012), p. 204.

³²Teguh Prasetyo, *Op. Cit.*, p. 212.

b. Forms of Participation

The forms of participation are regulated in the Criminal Code in Chapter V Article 55 and Article 56 of the Criminal Code. In Article 55 of the Criminal Code which reads as follows:

(1) Convicted as a perpetrator of a crime

- 1) Those who do it, who order it to do it, and who participate in doing it;
- 2) Those who, by giving or promising something, by abusing power or dignity, by violence, threats or deception, or by providing an opportunity, means or information, intentionally encourage another person to commit an act.

(2) With respect to the proponent, only actions that are deliberately recommended are taken into account, along with their consequences.

Meanwhile, Article 56 of the Criminal Code reads as follows:

Convicted as an accessory to a crime:

- 1) Those who intentionally provide assistance at the time the crime is committed;
- 2) Those who intentionally provide the opportunity, means or information to commit a crime.

Based on these articles, participation is divided into two large divisions, namely:

1) Maker or Dader (Article 55) consisting of:

a. The perpetrator (pleger);

The perpetrator is the person who carries out the act himself which fulfills the formulation of the crime and is considered most responsible for the crime.³³ According to Mahrus Ali, the perpetrator or pleger is a person who materially actually carries out an act that perfectly fulfills all the elements of the formulation of the crime contained in the criminal law that is violated, therefore in principle he is a person who, either alone or in connection with other people, can be subject to criminal sanctions.³⁴

b. The one who orders to do it (doenpleger);

The Doenpleger is a person who does an act through another person, while the intermediary is only used as a tool. Therefore, there are two parties, namely the

³³Mahrus Ali, Basics of Criminal Law, (Jakarta: Sinar Grafika, 2012), p. 124.

³⁴Teguh Prasetyo, Loc. Cit., p. 207.

direct maker (*manus ministra* or *auctor physicus*) and the indirect maker (*manus domina* or *auctor intellectualis*).³⁵

According to *Memorie van Toelichting* (MvT), the element of ordering to do is a person, namely a human being. To be categorized as *doen pleger*, there must be at least two people where one person acts as an intermediary because *doen pleger* is someone who commits a crime but he does not do it himself but orders someone else on the condition that the person who is ordered does not refuse the wishes of the person who ordered to do it.

c. Those who participate (*medepleger*);

The definition of participating is committing a crime together, namely by cooperating with each perpetrator in a different role and task and this has been planned in advance. According to *Memorie van Toelichting* (MvT), participating or *medepleger* is a person who intentionally participates in doing or also participates in making something happen. Participating in doing something.³⁶

d. Organizer (*job organizer*).

According to Article 55 paragraph (1) number 2 of the Criminal Code, what is meant by an instigator is a person who encourages another person to commit a crime by using means determined by law, namely giving or promising something, abusing power or dignity, violence, threats or misleading, by providing an opportunity, means or information.³⁷

There are at least two or more actors involved in the recommendation and their positions are that there are two parties respectively, namely the party recommending and the party making the recommendation. However, the person who makes the recommendation is not a tool that cannot be held accountable, but the person who makes the recommendation can be punished and held accountable.³⁸

2) Assistants or *Medeplichtige* (Article 56) consisting of:

- a. An accomplice at the time the crime was committed;
- b. Helper before the crime was committed.

³⁵Herman Sitompul, Participation in Criminal Acts of Corruption, *Journal of Law and Justice*, Volume 6, Number 2, (September 2019), p. 113.

³⁶Teguh Prasetyo, *Loc. Cit.*, p. 208.

³⁷Teguh Prasetyo, *Loc. Cit.*, pp. 208-209.

³⁸R. Soesilo, *Criminal Code (KUHP) and its Complete Commentaries Article by Article*, (Bogor: Politeia, 2013), p. 74.

3) Factors underlying the occurrence of aggravated theft carried out together

According to the Big Indonesian Dictionary (KBBI)³⁹, what is meant by a factor is a thing or condition that contributes to the occurrence of something. While aggravated theft itself is theft whose punishment is increased because this type of theft is carried out under aggravating circumstances. Based on statistical data from the Indonesian National Police (Polri)⁴⁰, in 2020 the crime rate in Indonesia increased, one of which was aggravated theft with 616 cases.

Researchers argue that economic factors are very dominant or influential factors in the occurrence of a crime. This factor makes someone have the desire to get money quickly and in a short time without thinking about the loss to the victim. Crime in Indonesia, one of which is driven by the economic crisis including income inequality and economic injustice.⁴¹In relation to the socialist theory, this theory states that the emergence of crime is caused by unbalanced economic pressure in society, therefore it can be seen from the economic difficulties experienced by Defendant ES and Defendant VA and he took a shortcut by committing theft in order to meet his family's needs.

4) Application of criminal penalties for the crime of aggravated theft committed together

a. Accountability for Participation in Criminal Acts

According to law, responsibility is the result of an act related to ethics or morals in carrying out an action.⁴²Meanwhile, according to Simon, a criminal offense is a suffering inflicted on someone. The suffering is linked by the Criminal Code to a violation of a norm, with a judge's decision that has been handed down to someone who is guilty or in this case called the perpetrator.⁴³Furthermore, criminal liability is the responsibility of a person for a crime committed by him. Criminal liability can occur because a crime has been committed.⁴⁴The condition for criminal responsibility or for someone to be subject to criminal penalties is that there must be an element of error, namely intent or negligence.⁴⁵

³⁹Big Indonesian Dictionary (KBBI), Factor, accessed from <https://kbbi.web.id/faktor>, on April 12, 2025.

⁴⁰ Farouk Arnaz, Crime Rate Increases Including Theft, accessed from <https://www.beritasatu.com/nasional/655089/angka-kriminal-naik-masuk-pencurian>, on April 12, 2025.

⁴¹Anang Priyanto, *Criminology*, (Yogyakarta: Ombak Publisher, 2012), p. 77.

⁴²Soekidjo Notoatmojo, *Health Ethics and Law*, (Jakarta: Rineka Cipta, 2010), p. 45.

⁴³Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*, (Bandung: Alumni, 2005), p. 13.

⁴⁴Chairul Huda, *From No Crime Without Fault Towards No Criminal Responsibility Without Fault*, (Jakarta: Kencana, 2nd ed., 2006), p. 70.

⁴⁵Hamzah Hatrik, *Principles of Corporate Responsibility in Indonesian Criminal Law*, (Jakarta: RajaGrafindo, 1996), p. 11.

The social interests contained in criminal law must be applied to all people without exception with the aim of maintaining the social system, namely through the enforcement of legal norms. Based on these rules, everyone who commits a prohibited act will be subject to these rules (punishment).⁴⁶ When viewed from the formulation of the crime contained in the Criminal Code (KUHP), it is generally formulated singly, namely that only individuals are held responsible for the crimes they commit. With the illustration of the word "whoever" which shows that only one person can be held responsible for violating the formulation of the crime. Therefore, everyone is responsible for their actions that violate the law.⁴⁷

The types of criminal acts of theft are contained in Article 362 in Book 2 of the Criminal Code (KUHP) which are regulated in Articles 362 to 367 of the Criminal Code as follows:

- a.) Ordinary theft is regulated in Article 362 of the Criminal Code;
- b.) Aggravated theft is regulated in Article 363 of the Criminal Code;
- c.) Petty theft is regulated in Article 364 of the Criminal Code;
- d.) Theft with Violence is regulated in Article 365 of the Criminal Code; and
- e.) Theft within the Family is regulated in Article 367 of the Criminal Code.

In this case, the author emphasizes on the type of aggravated theft. Aggravated theft is a type of theft, and in its main form, the threat of crime is aggravated by adding other elements to the main theft in a certain way and through certain aggravating situations.

Aggravated theft is regulated in Article 363 paragraph (1) of the Criminal Code, namely, it is punishable by imprisonment for a maximum of 7 (seven) years, so that theft in this article is called "aggravated theft" and the threat of punishment is heavier.

Regarding Decision Number: 1454/Pid.B/2024/PN Sby, regarding the articles suspected by the investigators that have been stated in Decision Number 1454/Pid.B/2024/PN Sby. The Defendants have been charged by the Public Prosecutor with a single charge as regulated in Article 363 paragraph (1) 4th, 5th of the Criminal Code concerning the crime of aggravated or qualified theft, the elements of which are:

- a) Elements of whoever;

⁴⁶Muhammad Ainul Syamsu, Loc. Cit., p. 113.

⁴⁷Aknes Susanty Sambulele, Responsibility of the Participant in a Criminal Act, Lex Crimen Journal, Volume II, Number 7, (November 2013), p. 88.

b) Elements of taking something that is wholly or partly owned by another person with the intention of owning it unlawfully;

c) The element is carried out by a person who is there without the knowledge or will of the person entitled, which is carried out by two or more people in collusion, who in order to enter the place where the crime was committed, or to get to the goods taken, do so by damaging, cutting or climbing, or by using a fake key, a fake order or fake official clothing;

Whoever here is to determine who the perpetrator of the crime is as a legal subject who has committed the crime and has the ability to be responsible for his actions according to the law, there is no reason or things that eliminate the prosecution/criminal. that the facts revealed in this case the public prosecutor has submitted Defendant I: Ekalia Setya Adi Bin Eko Sulistyo and Defendant II: Vivi Ayu Widyawati Binti Muryadi, where at the beginning of the trial the defendant has stated that he is the person whose identity is completely as stated in the Public Prosecutor's indictment. The defendant's statement at the trial was strengthened by the statements of witnesses who basically stated that they knew the defendant as the person referred to in the Public Prosecutor's indictment, so that there was no error in the legal subject between the person referred to as the defendant in the Public Prosecutor's indictment and the person submitted as the defendant at the trial, therefore the defendant can be categorized as physically and mentally healthy and can be held criminally responsible. Based on the above considerations, the first element of the single indictment (whoever) of the public prosecutor has been fulfilled.

3.2. Taking something that is wholly or partly owned by another person with the intention of owning it illegally.

The definition of taking an item is moving an item from its original place to another place, in other words the item becomes the real owner's power, in this case based on witness statements and the defendant's own confession at trial in connection with the evidence presented at trial that the items are in the form of:

- 1) 1 (one) pair of adult men's shorts, green, Nevada brand;
- 2) 1 (one) pcs of Minnie children's jacket in pink with the Disney brand;
- 3) 1 (one) pcs purple children's dress with Little M brand;
- 4) 1 (one) pcs of children's dress in white - pitch with the My Melodi brand;
- 5) 1 (one) pair of children's floral patterned trousers with the Little M brand;
- 6) 1 (one) pair of cream colored children's trousers, Little M brand;
- 7) 1 (one) pcs adult women's dress in cream color with the Details brand;

- 8) 1 (one) pcs cream colored adult men's shirt with Nevada brand;
- 9) 1 (one) pcs of white and blue children's t-shirt with the Nevada brand;
- 10) 1 (one) pcs of cream color adult women's clothing with the Conexion brand;

What was taken by the Defendants on Friday, May 31, 2024 at around 20:00 WIB, belonged to Matahari Dept. Store Surabaya. Based on the above considerations, the second element of the Public Prosecutor's single indictment has been fulfilled.

In making his decision, the judge must cover all elements of evidence as stated above, namely based on Articles 183 and 184 of the Criminal Procedure Code and Law No. 48 of 2009 concerning Judicial Power. The collection of evidence is carried out by investigators who in this case have special authority and have been regulated in Law No. 2 of 2002 concerning the Indonesian National Police and Article 1 paragraph (1), Articles 4-6 of the Criminal Procedure Code, while the prosecutor's task is to make an indictment against the defendant in accordance with his crimes and the evidence obtained by the investigator, the prosecutor's authority in this case is based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia and Article 1 paragraph (1) and (2), Articles 13-15 of the Criminal Procedure Code to carry out prosecution and implement the judge's decision. Regarding the decision of the Surabaya District Court in the Criminal Case Decision Number: 1454/Pid.B/2024/PN Sby, the application of the law by the panel of judges in the trial facts in accordance with the demands of the public prosecutor violated Article 363 paragraph (1) 4, 5 of the Criminal Code (KUHP) by imposing a sentence on the Defendants in the form of imprisonment for 10 (ten) months.

4. Conclusion

The legal implications of the crime of aggravated theft committed together, regulated in Article 363 paragraph 1, 4th and 5th of the Criminal Code concerning Aggravated Theft. In the trial, the defendant was sentenced to 10 (ten) months in prison and paid court costs of Rp. 2,000 (two thousand rupiah). The sanctions imposed by the Panel of Judges on the defendant were lighter, compared to the criminal threat of Article 363 of the Criminal Code with a maximum imprisonment of 7 (seven) years, this is in accordance with the application of the theory of punishment which contains a combined theory, namely not only giving revenge to the perpetrator of the crime but there must be a deterrent effect for the perpetrator so that he does not repeat the crime and guarantees legal order so that the interests of society are protected.

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