

Legal analysis of the basis of judge's considerations in issue-making a decision in the case of theft with aggregating charges based on justice (case study of decision number: 506/pid.b/2024/pn.mks)

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Abstract. *The government as an organization that regulates and runs a country has a responsibility in efforts to realize the welfare and happiness of its people. This effort is not as easy as turning the palm of your hand. Indonesia is a developing country that is carrying out development in all fields with the main goal of providing prosperity and physical and spiritual well-being for all Indonesian people. The approach method used in this study is the normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as mere sources. Normative legal research is a legal research that places law as a normative system. The normative system in question is regarding principles, norms, rules, and regulations, court decisions, agreements and doctrines. Based on the results of the research conducted by the author and described in the previous chapter through a legal analysis of the basis for the judge's considerations in issuing a verdict in a theft case with aggravation based on justice, as well as based on a study of the legal considerations used by the judge in Decision Number 506/Pid.B/2024/PN Mks, several things can be concluded as follows: The Judge's Consideration in Handing Down a Verdict on an Aggravated Theft Case at the Makassar District Court Based on Decision Number 506/Pid.B/2024/PN.Mks.*

Keywords: *Normative; Principles; Regarding; System.*

1. Introduction

The Republic of Indonesia is a country of law, this is in accordance with the results of the IV amendment to the 1945 Constitution (UUD 1945) in Article 1 paragraph (3) of the 1945 Constitution which states that "The Republic of Indonesia is a country of law". This provision is an absolute must be

implemented because it is regulated in the 1945 Constitution which is the highest source of law in accordance with Law Number 10 of 2004 concerning the Source of Legal Order. This provision is an absolute must be obeyed and implemented, so if there is a violation or non-observance of the law, then those who violate it will be subject to sanctions in accordance with the provisions of applicable laws and regulations without regard to who the perpetrator is Indonesia as a country of law makes the law itself an ideology to create order, security, justice and welfare for every citizen. All aspects of life in this country are regulated by the rule of law, all individual behavior is regulated by law, both laws applicable in a region or customary law and laws applicable throughout Indonesia.³

This understanding means that law is inseparable from the reciprocal influence of all aspects that exist in society and is inseparable from the life of society in order to regulate the relationship between one human being and another and the relationship between humans and the state so that everything runs orderly. There are important things from a state of law, namely the existence of respect and commitment to uphold human rights and the guarantee of all citizens having the same position before the law (equality before the law).

The government as an organization that regulates and runs a country has a responsibility in efforts to realize the welfare and happiness of its people. This effort is not as easy as turning the palm of your hand. Indonesia is a developing country that is carrying out development in all fields with the main goal of providing prosperity and physical and spiritual well-being for all Indonesian people.

ese problems are caused by several factors and social symptoms, namely all behavior that is contrary to the norms of goodness, local stability, patterns of simplicity, morals, property rights, family solidarity, living in harmony with neighbors, discipline, kindness and formal law.

Social deviation can occur in the relationship between one individual and another, an individual and society, or society and other societies. One example is the problem of behavior that conflicts with a person's property rights. Crime is a human problem and a social phenomenon because it can occur anywhere and anytime in social life, while the high or low crime rate depends on the state of society, political, economic, cultural and so on.

One form of crime or criminal act that often occurs in society is theft, where seeing the current state of society allows people to find shortcuts by stealing. The crime of theft has been regulated in the Criminal Code (KUHP) Book II Chapter XXII Articles 362 to Article 367. Article 362 regulates the main factors when an act is said to be theft, Article 363 on aggravated theft, Article 364 on minor theft, Article 365 on theft with violence, Article 367 on theft in the family.

Through mass media and electronic media, it is shown that the frequent occurrence of theft crimes with various types is motivated by unmet needs. Population growth is increasing day by day, so that a population growth condition is created that greatly affects the socio-economic conditions of the community, especially concerning the problem of fulfilling the needs of life and employment, this can easily cause vulnerabilities in the field of security and peace of life of the community, such as the occurrence of crimes or criminal acts.

Lately, various forms of theft have become increasingly widespread, mushrooming, and even very disturbing in people's daily lives. Various modes of operation are carried out in theft actions ranging from hypnosis, using drugs, even gang theft using firearms, which makes the victim unable to move. The thefts carried out are also on a larger scale with the targets of theft no longer focused on houses at night but instead carried out during the day in crowded places such as banks, gold shops, pawnshops, supermarkets, with the results of the robbery being no less than a small amount.

This phenomenon shows how someone is so creative in committing crimes. Another fact is that most people tend to be accustomed to it and seem to view the crime of theft as a crime that is considered a necessity for both individuals and groups. Various methods or *modus operandi* (ways implementation of the crime) which differs between one crime and another.

Moreover, supported by the availability of facilities and infrastructure to commit crimes today, the *modus operandi* of criminals is directed towards advances in science and technology.

The methods used can be grouped, for example, ordinary theft, aggravated theft, minor theft, theft within the family, theft with violence, and others. The crime of aggravated theft where in line with the development of human civilization almost all thefts are carried out in certain ways and in certain circumstances that become aggravating in a theft case.

The crime of aggravated theft that often occurs, for example, is carried out at night against a house or closed yard, is carried out when a disaster occurs, and the theft is carried out by two or more people together by breaking and entering, disabling, climbing, using fake keys, false orders, and so on with the aim of making it easier to carry out the theft.

The factors underlying the crime of aggravated theft are economic factors, low levels of education, increasing unemployment, lack of legal awareness, loosening of family and social ties in society. There is no norm that allows theft. Aggravated theft is contrary to religious, moral, ethical and legal norms, and is dangerous to the lives and livelihoods of society, the nation and the state.

Makassar City as one of the big cities in Indonesia that experiences 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 occur throughout the year. One of the aggravated theft cases that occurred in Makassar City was decided at the Makassar District Court with decision number: 506/Pid.B/2024/PN. Mks, stating that the defendant ISMAIL PUTRA RAMADHAN BIN FREDI alias ACO has been legally and convincingly proven guilty of committing the crime of Aggravated Theft as regulated in Article 363 Paragraph (1) 3 of the Criminal Code with a prison sentence of 2 (two) years minus the period of detention that has been served by the defendant with the order that the defendant remain in detention.

The crime of aggravated theft began on Tuesday March 5, 2024 at around 03.00 WITA at Jalan Dg Tata 1 Blok IV E, Makassar City or in another place that is still included in the jurisdiction of the Makassar District Court, where the defendant entered the yard of the boarding house and took 1 (one) unit of a black Yamaha type MIO J motorbike with police number DW 5081 EK and sold it around Jalan Kerung-Kerung, Makassar City, witnessed by WANDI AGUSTIAWAN who is a member of the police, then the defendant was arrested when he was about to sell the motorbike without having proof of vehicle ownership, causing the owner of the motorbike, AINUN to suffer a loss of around Rp. 3,000,000, - (three million rupiah).

That at the time and place as mentioned above, it started when witness NABILA parked a black Yamaha type MIO J motorcycle with police number DW 5081 EK belonging to AINUN in the yard of a boarding house on Jalan Dg Tata 1 Blok IV E, Makassar City, then the defendant ISMAIL PUTRA RAMADHAN BIN FREDI alias ACO passed in front of the boarding house and saw several motorcycles parked in the yard of the boarding house and the gate was not locked, then the defendant entered the yard of the boarding house and took 1 (one) unit of a black Yamaha type MIO J motorcycle with police number DW 5081 EK by pushing the motorcycle out of the yard, then the defendant forcibly opened the motorcycle saddle, then took 1 (one) flower screwdriver, then opened the motorcycle hood using the flower screwdriver, then looked for the starter cable and disconnected the starter cable, then connected it to the cable under the motorcycle saddle so that the motorbike engine was ON (on) then the defendant revving the engine (starting) of the motorbike and then riding the motorbike to a mosque to pray at around 08.00 WITA the defendant took a black Yamaha type MIO J motorbike with police number DW 5081 EK to Jalan Kerung Kerung, Makassar City to sell it, but witness WANDI AGUSTIAWAN, who is a member of the police, secured the defendant because the defendant wanted to sell the motorbike without having proof of ownership of the motorbike.

Considering that based on the facts revealed in the trial, we have arrived at the proof regarding the elements of the criminal act charged against the defendant,

as is known, the defendant was brought before the trial under Article 363 paragraph (1) 3 of the Criminal Code, with the following elements:

- 1) Element Whoever;
- 2) The element of taking something;
- 3) Elements that are wholly or partly owned by another person;
- 4) Elements with the intent to be possessed unlawfully;
- 5) Elements that are carried out at night in a house or in a closed yard where the house is located, which are carried out by people who are there, are not known or are not desired by those entitled to do so.

As considered, that because all the elements of Article 363 paragraph 1 to 3 of the Criminal Code have been fulfilled, the Defendant must be declared proven legally and convincingly to have committed the crime as charged against him. Considering, that in the trial the Panel of Judges did not find anything that could eliminate criminal responsibility, either as a justification and/or reason forgiveness, then the Defendant must be held responsible for his actions, and considering that because the Defendant is capable of being responsible, he must be declared guilty and sentenced to a criminal penalty.

Next, considering that the evidence presented in court will be determined in the verdict. Considering that in order to impose a criminal sentence on the Defendant, it is necessary to first consider the aggravating and mitigating circumstances of the Defendant, and considering that because the Defendant was sentenced to a criminal sentence, he must also be burdened with paying the court costs.

2. Research Methods

The approach method used in this study is the normative legal approach. The normative legal approach is a legal research conducted by examining library materials or secondary data as mere sources. Normative legal research is a legal research that places law as a normative system. The normative system in question is regarding principles, norms, rules, and regulations, court decisions, agreements and doctrines. The research specification used is descriptive analysis, namely research that aims to provide an overview of the problems that occur in connection with the use of applicable laws and regulations and relevant theories which are then collected through data that is collected, processed, and arranged according to existing theories to obtain problem solving in accordance with applicable provisions.

3. Results and Discussion

3.1. The Judge's Consideration in Handing Down a Decision on the Theft and Aggravation Cases at the Makassar District Court Based on Decision Number: 506/Pid.B/2024/PN.Mks

In criminal cases, especially in cases of aggravated theft, judges are required to provide in-depth consideration in making decisions. Decision Number 506/Pid.B/2024/PN.Mks provides a clear picture of how judges apply legal principles in determining criminal penalties for defendants who are proven to have committed aggravated theft. 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 first...

will 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

aggravating the act, such as theft with violence or theft involving substantial 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 a natural person (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 a criminal act 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 criminal act 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 a natural person (*Natuurlijke Persoon*) as the supporter of rights and

obligation (*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.

The word "*Whoever*" or "*HIJ*" is anyone who must be made a father or defendant or anyone who is a legal subject (supporter of rights and obligations) who can and is able to be asked accountability 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 (*naturlijke 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 legal subjects must properly fulfill the criteria of ability and capacity to act and be legally responsible, or what is commonly referred to as subjective 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 capacity to act and be capable in the sense that his/her mind is not disturbed, and can fully understand and be aware of what he/she has done and the consequences that will arise from his/her actions;

The judge considered 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) explaining that a

criminal act is defined as an act that is prohibited and is threatened with punishment, whoever violates the prohibition. In relation to criminal responsibility for a person who commits a criminal act, it should be seen whether there is any justification or excuse for his actions, as stated by Roeslan Saleh, that responsibility criminal law, viewed 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 viewed from the characteristics of the person who committed the crime itself or in other words, it must be considered whether there is a mistake, namely the relationship between the soul and the act committed;

In Decision Number 506/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 the Punishment Based on the Level of Crime and the Motive of the Perpetrator As a crime that has an aggravating effect, theft is...

carried out 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 act crimes committed by the accused, whether for economic, social or personal reasons.

In Decision Number 506/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 increased 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 506/Pid.B/2024/PN.Mks, the judge reminded that justice is not only measured by how long the sentence is. imposed, but to what extent the punishment can help victim recovery and reintegration of the perpetrator into society. The judge considers 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

Judge's considerations in terms of giving proportional punishment It is very important to ensure that the decision taken reflects the principle of balanced justice. In this case, although there were aggravations, 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. On the other hand, a sentence that is too light will not have a deterrent effect on 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 for self-improvement.

3.2. Legal Analysis of the Judge's Basic Considerations in Handing Down a Verdict on an Aggravated Theft Case at the Makassar District Court Based on Verdict Number 506/Pid.B/2024/PN.Mks

The result of Decision Number 506/Pid.B/2024/PN.Mks began in March 2024 in Makassar City with details of the chronology according to the court decision, namely, that the Defendant ISMAIL PUTRA RAMADHAN BIN FREDI alias ACO on Tuesday, March 5, 2024 at around 03.00 WITA or at another time in 2024 at Jalan Dg Tata 1 Blok IV E Makassar City or in another place that is still included in the jurisdiction of the Makassar District Court, has taken something that

wholly or partly owned by another person with the intention of owning it against the law, at night in a house or closed yard where there is a house, carried out by a person who is there unknown or not wanted by the authorized party, which is carried out to enter the place of crime or to be able to take the stolen goods by means of breaking, breaking or climbing or using a false key, false orders or false clothing, which the defendant did in the following manner:

6) That at the time and place as described above, it started with witness NABILA parking a black Yamaha type MIO J motorbike with police number DW 5081 EK belonging to AINUN in the yard of a boarding house on Jalan Dg Tata 1 Blok IVE, Makassar City, then the defendant took the motorbike by entering the yard of the boarding house by forcing open the saddle to start the motorbike engine.

7) That at around 08.00 WITA, the defendant brought a black Yamaha type MIO J motorbike with police number DW 5081 EK to Jalan Kerung-Kerung, Makassar City to sell it, but witness WANDI AGUSTIAWAN, who is a member of the police, secured the defendant because the defendant wanted to sell the motorbike without having proof of ownership of the motorbike.

8) That due to the defendant's actions in taking 1 (one) unit of Yamaha MIO J type black motorcycle with police number DW 5081 EK without the permission and knowledge of the owner, namely AINUN, AINUN suffered a loss of around Rp. 3,000,000,- (three million rupiah).

In Decision Number: 506/Pid.B/2024/PN Mks, the panel of judges sentenced the defendant Ismail Putra Ramadhan Bin Fredi alias Aco by qualifying his actions as a criminal act of aggravated theft as regulated in Article 363 paragraph (1) 3 of the Criminal Code. This provision provides a legal basis for judges to impose heavier criminal sanctions compared to ordinary theft as regulated in Article 362 of the Criminal Code.

Normatively, Article 363 of the Criminal Code stipulates that theft can be subject to a heavier penalty if it is carried out under certain conditions that aggravate the act. In this case, the panel of judges found that the theft was carried out at night in a house or closed yard where there is a house, which was carried out at

around 03.00 WITA in the yard of the witness Ainun's boarding house without the knowledge and permission of the owner who was sleeping.

1) Fulfillment of the Elements of the Crime in Article 363 of the Criminal Code

This element explicitly fulfills the formulation of Article 363 paragraph (1) 3 of the Criminal Code which states that if the theft is committed at night in a house or closed yard where there is a house, and the perpetrator is not known or is not wanted by the homeowner.

2) Facts Revealed in the Trial

Based on the trial facts reviewed by the Panel of Judges, several legal reasons were found which were the basis for qualifying the defendant's actions as aggravated theft, namely:

- a. The defendant took a motorbike that was not his from the boarding house yard where the fence was not locked.
- b. The defendant used a flower screwdriver to open the door.
- c. The act was carried out without the permission and knowledge of the boarding house owner, and was carried out in the early hours of the morning (around 03.00 WITA), which shows the elements of hidden intentions and planning. The Panel of Judges firmly stated that the three elements in Article

Article 363 paragraph (1) 3 of the Criminal Code has been fulfilled:

- a. The act of taking someone else's property.
- b. With the intent to possess unlawfully.
- c. It is carried out at night in a house or enclosed yard where there is a house.

According to the panel of judges in Decision Number: 506/Pid.B/2024/PN Mks, the evidence in the form of witness statements, evidence in the form of a flower screwdriver, and the defendant's confession have proven legally and convincingly that the theft was carried out with an unusual *modus operandi*, namely by entering a closed yard at night. This action has fulfilled the elements of aggravation as referred to in Article 363 paragraph (1) 3 of the Criminal Code, namely "carried out at night in a closed house or yard."

3) Legal Reasons for Strengthening the Underlying Qualification of "Aggravation"

Before deciding, the judge also considered referring to the doctrinal interpretation that "aggravation" does not only lie in the value of the loss or the place, but more in the way the crime was carried out which shows a strong evil

intention and a method which makes it difficult for the victim or authorities to prevent or uncover the crime.

This legal assessment shows that the judge does not only use a formal normative approach, but also applies a systematic and grammatical interpretation of criminal norms. Systematic interpretation is carried out by placing Article 363 of the Criminal Code in the context of the criminal law system as a whole, including paying attention to the hierarchy of crimes from ordinary theft to aggravated theft. Meanwhile, grammatical interpretation is seen from the way the judge interprets the phrase "done at night in a closed house or yard" based on the concrete fact that the defendant committed the theft in the early hours of the morning and in the yard of the house.

In criminal law theory, the higher the level of error and the social impact caused, the stronger the justification for applying norms containing elements of aggravation. As stated by PAF Lamintang, aggravation in criminal acts does not solely lie on the value of the stolen goods, but also on the manner and conditions the implementation of the criminal act which contains greater danger to protected legal interests.

The judge in this case also considered the aspect of social protection as part of the function of criminal law. Therefore, the classification of the act as aggravated theft is not only a textual application of the article, but also an attempt by the judge to uphold substantive justice and provide a preventive effect on similar crimes that have the potential to occur in the future.

Based on the doctrine of criminal law, the aggravating element in Article 363 of the Criminal Code is an objective condition that aggravates the criminal act, because the theft is carried out in ways that increase the degree of danger or impact on the victim and society which causes a criminal act to be considered more serious. Doctrine in the context of criminal law refers to the opinions of legal scholars which are used as references and guidelines in interpreting legal norms, especially if the text of the law is general, vague, or requires practical elaboration in its application.

Van Bemmelen, a Dutch criminal law expert who influenced the Indonesian criminal law system, stated that aggravating circumstances in criminal offences are the basis for increasing the threat of punishment, because the act was carried out in a manner or in a way circumstances that disrupt the wider sense of security and trust in society.

In line with that, according to PAF Lamintang, aggravated theft is not only assessed from the magnitude of the loss or the perpetrator's success in taking the goods, but more on the method and conditions of the theft that indicate a greater level of risk and destruction to the social order. He stated that aggravation should be seen as an indicator that the perpetrator committed the

act with a more structured level of planning, intention, and technique, such as the use of tools, destruction, or the involvement of several people, thus requiring a higher and firmer criminal response.

From the perspective of the criminal justice system, the aggravating element functions as a tool for judges to adjust the weight of the punishment to the weight of the error. Thus, legal doctrine provides a theoretical basis and legal rationalization so that punishment is not solely based on normative texts, but also based on academic considerations that have been tested in legal science.

The application of Article 363 of the Criminal Code cannot be separated from the understanding of the criminal law doctrine regarding the aggravating elements inherent in the formulation of the article. This criminal provision not only functions as a norm prohibiting the act of taking someone else's property, but also as an instrument of law enforcement against acts that considered to be more dangerous to legal interests and the public's sense of security. In criminal law, this shows that the perpetrator acted with free will (*vrije wil*) and full awareness of the consequences of his actions, so that theoretically it can be considered to have a higher level of guilt (*schuld*) than ordinary theft.

This kind of approach emphasizes that judges in aggravated theft cases are not sufficient to only conduct formal proof of the elements of the crime in the article, but also need to assess the quality of the criminal act substantively. Aspects such as the way the perpetrator committed the crime (*modus operandi*), the tools used (flower screwdriver), and the damage and material and psychological consequences caused to the victim are important factors in forming the judge's belief that the crime is indeed worthy of being qualified as aggravated theft.

This is in accordance with the principle of legality in criminal law, namely that punishment can only be imposed if the act is explicitly regulated by law. However, in its application, this principle does not stand alone, but rather goes hand in hand with the principle of proportionality, namely that the punishment imposed must be proportional to the level of error and the consequences of the criminal act.⁵⁵ In this case, proportionality is not only a moral principle, but also a legal principle that functions as a controller. criminal authority, so that judges do not impose arbitrary or unfair sanctions.

Thus, the judge's legal reasoning in assessing the defendant's actions as a crime of aggravated theft is not only based on the normative formulation in Article 363 of the Criminal Code, but also considers the structure and impact of the act in concrete terms, within the framework of the fundamental principles of criminal law. This approach shows the application of the principles of legality and proportionality simultaneously in criminal justice practice, which is essentially a form of law enforcement that is not only rule-abiding, but also fair.

a. Social Justice Aspects in Criminal Sentencing

The defendant is a theft perpetrator who caused a loss to the motorcycle owner of around IDR 3,000,000, 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 loss of around IDR 3,000,000, but there was no apparent restitution approach or efforts to recover losses in the legal process. This means that the system Criminal law is still solely oriented 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) Potential for perpetrators to be rehabilitated and returned to society
- Enforcement law criminal Which fair social, criminal responsibility for perpetrators of the crime of theft with weighting as in Decision Number 506/Pid.B/2024/PN Mks cannot solely be oriented towards formal normative aspects, but must consider the principle of substantive justice that reflects the balance between the rights of the perpetrator, victim, and society. Several important aspects to be the basis for consideration within the framework of social justice include:

- 1) Social Justice in Terms of Providing Attention to Victims of Case Decision Number 506/Pid.B/2024/PN Mks, the victim suffered a loss due to the theft of around IDR 3,000,000, 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 for this incident is not explained, however, there are elements *mens rea* in this case and tend to repeat similar actions. So the judge's decision is in accordance with applicable law.

3) Paying Attention to Holistic Understanding of the Problem of Crime This case does not explain 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.

4. Conclusion

Based on the results of the research conducted by the author and described in the previous chapter through a legal analysis of the basis for the judge's considerations in issuing a verdict in a theft case with aggravation based on justice, as well as based on a study of the legal considerations used by the judge in Decision Number 506/Pid.B/2024/PN Mks, several things can be concluded as follows: The Judge's Consideration in Handing Down a Verdict on an Aggravated Theft Case at the Makassar District Court Based on Decision Number 506/Pid.B/2024/PN.Mks.

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