

Legal Review of Investigations into the Criminal Act of Theft with Aggravability Based on the Values of Justice (Case Study Number: Lp/08/Iv/2025/Kaltim/Reskubar/Sekmelak)

Gatot Siswanto¹⁾ & Andri Winjaya Laksana²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia,
E-mail: gatotsiswanto.std@unissula.ac.id

²⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia,
E-mail: andri.w@unissula.ac.id

Abstract. *The criminal act of theft is a form of social deviance that threatens public order, including theft cases that occurred during flooding in Melak, West Kutai, which illustrates how emergency conditions can increase vulnerability to crime. The purpose of this research is to identify and analyze the investigative process of aggravated theft and to examine the weaknesses in the implementation of investigations into such offenses. The methodological approach used in this thesis is empirical juridical research. The specification of this study is descriptive-analytical. The theories employed include the theory of Pancasila justice and the legal system theory. The findings of this research show that the investigative process in the aggravated theft case LP/08/IV/2025, originating from the loss of a Honda Mobilio wheel and tire belonging to Marlina Damayanti while the vehicle was parked on Aji Tulur Jejangkat (ATJ) Street due to flooding around her home, and later discovered to have been taken by Achmad Jahrani to replace his punctured tire—has essentially contained the element of legal certainty through the implementation of KUHAP procedures, National Police Regulation (Perkap) No. 6 of 2019, the evidence of elements under Article 363 of the Criminal Code, as well as the formal and material completeness of the case file. However, the process has not fully embodied the value of justice because investigators did not utilize the restorative justice mechanisms provided under the Perkap and Perpol, even though the case met both material and formal requirements for resolution through penal mediation, considering the relatively small loss, the absence of violence, the offender's non-recidivist status, and the fact that the act occurred during an emergency flood situation. Weaknesses in the investigation of aggravated theft at the Melak Police Sector stem from the lack of synergy among legal substance, legal structure, and legal culture, which has hindered the optimal functioning of law enforcement. The restorative justice provisions, which exist only as internal regulations, create hesitation among investigators to implement them. These challenges are*

compounded by limited personnel, facilities, and budgeting, while the legal culture of law enforcement officers, who are not yet fully professional, and a community legal culture are characterized by passivity and reluctance to report or provide statements further slow the case-disclosure process. As a result, the investigation failed to incorporate a restorative approach that would have been relevant to a theft case involving minor losses and occurring within specific social conditions such as a natural disaster.

Keywords: Criminal; Involving; Occurring; Process.

1. Introduction

Indonesia affirms itself as a state of law as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This means that every policy, decision and action of state officials and all behavior of citizens must have a valid legal basis and legitimacy.¹ As a nation governed by the rule of law, Indonesia is obligated to undertake various efforts to prevent and address criminal acts within society. The state must also uphold the supremacy of law and humanitarian values in every aspect of governance, and enforce the law fairly and impartially, in accordance with the fifth principle of Pancasila, namely, "Social justice for all Indonesian people."²

One form of deviant behavior that still frequently occurs in society is the crime of theft.³ Theft falls into the category of crimes related to the violation of another person's property rights or possessions and is an act that violates prevailing societal norms, both positive legal norms and religious norms. All religions fundamentally prohibit theft because it not only directly harms the victim but also disrupts order and harmony in society.⁴ In positive criminal law in Indonesia, the crime of theft is regulated in the Criminal Code (KUHP) Book Two Chapter XXII concerning Theft, from Article 362 to Article 367, namely, ordinary theft (Article

¹M. Tasbir Rais, The Indonesian Legal State: Ideas and Its Implementation, Unsulbar Law Journal, Vol. 5, No. 2, 2022, pp. 11-31.

²Atang Hermawan Usman, Public and Government Legal Awareness as Factors in Upholding the Rule of Law in Indonesia, Jurnal Wawasan Yuridika, Vol. 30, No. 1, 2014, pp. 26-53.

³Muhammad Dito Anugerah and Andri Winjaya Laksana, Formulation of Investigation of Criminal Acts of Theft with Justice-Based Aggravation (Case Study of Nabire Police Resort), Khaira Ummah Law Journal, Vol. 20, No. 2, pp. 661-675.

⁴Agus Suharsoyo, Characteristics of Theft Perpetrators in the Typology of Theft Crimes in the Sukoharjo Region, Jurnal Jurisprudence, Vol. 5, No. 1, 2015, pp. 64-74.

362), aggravated theft (Article 363), minor theft (Article 364), theft with violence (Article 365), and theft within the family (Article 367).⁵

Theft can be caused by various factors, both internal and external. Internal factors include economic problems, pressing needs, and emotional urges, while external factors include weak security systems, limited supervision, environmental influences, and opportunities.⁶ For example, theft occurs when areas are hit by flooding, especially in disaster-prone areas such as West Kutai, East Kalimantan. When rivers overflow and force residents to move their belongings to higher ground to avoid inundation, certain parties often exploit this situation to commit crimes, such as theft of temporarily abandoned items. The chaotic environment caused by natural disasters often reduces the level of public and official oversight, thus providing opportunities for perpetrators to act. Theft committed during a disaster is regulated under Article 363 of the old Criminal Code, while in the new Criminal Code, aggravated theft is explained under Article 477.

The number of theft crimes in the Melak Police Sector area during the 2022–2024 period showed a stable trend with a range of 29 to 35 police reports per year. In 2022, 29 cases were recorded, increasing to 35 cases in 2023, then decreasing again to 29 cases in 2024. The most frequently reported theft cases were ordinary theft as regulated in Article 362 of the Criminal Code, followed by aggravated theft (Article 363 of the Criminal Code), while theft with violence (Article 365 of the Criminal Code) was relatively rare due to the character of the Melak area which is not densely populated and the social conditions of the community which tend to be communal. The case resolution rate over the past three years showed an increasing trend from 58.6% in 2022 to 65.5% in 2024. In addition to being influenced by the success of investigations in several repeat theft cases, this increase was also driven by the implementation of restorative justice-based settlements.

The theft case that occurred in the Melak area, West Kutai during the flood is an example of how natural factors and social conditions can influence the increase in crime in society. Based on Police Report Number LP/08/IV/2025/KALTIM/RESKUBAR/SEKMELAK, the investigation process in the theft case committed by Achmad Jahrani bin Hadi Purno, proceeded with reference to the applicable criminal procedural law procedures. This case began when on April 20, 2025, the suspect took a rim and tire of a Honda Mobilio car belonging to the reporter Marlina Damayanti, which was previously parked on Jalan Aji Tulus Jejangkat (ATJ) Melak Ilir due to the flood that hit the area. The

⁵Hamdiyah, Analysis of the Elements of the Crime of Theft: A Legal Review, *Jurnal Tahqiqa: Journal of Islamic Legal Thought*, Vol. 18, No. 1, 2024, pp. 98-108.

⁶Sherly Floresti Anin et al., Causal Factors and Efforts to Overcome the Crime of Theft Committed by Children in Kupang City, *Jaksa: Journal of Legal and Political Studies*, Vol. 2, No. 3, 2024, pp. 15-33.

reporter only realized the loss on April 21, 2025, after seeing the rim and tire on the left side of his car missing, while at the location there was still a jack and tire bolts left behind. The loss experienced was approximately Rp. 2,500,000 (Two Million Five Hundred Thousand Rupiah). The incident was then reported to the Melak Police for further investigation.

During the investigation process, an Investigation Order and a Notice of Commencement of Investigation (SPDP) dated May 5, 2025 were issued, and evidence was confiscated in the form of a car rim and a Bridgestone tire that matched the characteristics of the reporter. From the results of the examination of witnesses, namely Marlina Damayanti and Tono Purwonto, information was obtained that the car was parked in a higher location because their house was affected by the flood. Both did not know the perpetrator directly, but provided detailed explanations regarding the condition of the vehicle before and after the theft. The witness's statement was supported by the suspect's confession that he took the rim and tire to replace his flat tire and not with the intention of selling it.

The suspect's questioning proceeded without any indication of pressure or coercion from investigators. The suspect explained that his actions were spontaneous at night when the area around the flood was quiet and there was no public activity. He used his own tools, a jack and wrench, to remove the rim and tire from the complainant's car. The stolen goods were then immediately installed on his car, which had suffered tire damage. Investigators then linked these facts to the elements of Article 363 of the Criminal Code concerning theft committed during a flood disaster and concluded that the elements of the crime were legally fulfilled. After comparing the results of witness examinations, the suspect's confession, and confiscated evidence, investigators concluded that there was a match between the facts and the legal elements of the crime. Investigators stated that the case file had met the formal and material requirements to be submitted to the prosecution stage.

The administrative investigation process has fulfilled the formal requirements as stipulated in the Criminal Procedure Code, but its implementation has not fully reflected the values of justice. Procedurally, the investigation has been conducted based on a valid legal basis through the issuance of a Police Report, Investigation Order, and Notice of Commencement of Investigation (SPDP). The elements in Article 363 Paragraph (2) of the Criminal Code have also been analyzed and linked to the facts of the incident, so that legally and formally the investigator has worked in accordance with the provisions of criminal procedure law to seek and collect evidence so that the crime becomes clear and to find the perpetrator as stipulated in Article 1 Number 2 of the Criminal Procedure Code. Fulfillment of formal aspects alone does not necessarily mean that justice has been realized, because true justice must be based not only on legal certainty, but also on the values of utility and humanity.

In the investigation it was stated that the summons for the suspect was not carried out, while the arrest and detention were carried out in another unspecified case. Where in the suspect's statement, the suspect stated that the suspect had never been convicted before. This action is not in line with the provisions of Article 112 Paragraph (1) of the Criminal Procedure Code which requires a summons before coercive action is taken, except in cases of being caught red-handed. The failure to carry out this summons indicates a violation of the suspect's right to know the charges and prepare his defense properly. This condition violates the principle of due process of law and the value of justice which is one of the manifestations of the second principle of Pancasila and Article 28D Paragraph (1) of the 1945 Constitution, which emphasizes that everyone has the right to fair and equal treatment before the law.

The investigation into suspect Achmad Jahrani has not reflected the application of the principle of justice, as investigators failed to attempt to resolve the case through penal mediation as stipulated in National Police Chief Regulation Number 8 of 2021. This case qualifies for out-of-court settlement, given the small losses, the perpetrator's first-time crime, and the non-violent nature of the action, motivated by the urgent situation of flooding. The investigators' inability to consider the humanitarian and social aspects has led to a more retributive rather than restorative approach to the investigation. This approach is inconsistent with the principles of just and civilized humanity and social justice for all Indonesians, as law enforcement should consider the perpetrator's socio-economic background and the proportionality between actions, intentions, and consequences.

2. Research Methods

The type of research that the researcher used in this study is Socio-Legal Research, namely research that initially researched secondary data which was then continued with primary data research in the field or on the community.⁷ This research is descriptive analytical, which provides a systematic and logical explanation, and then analyzes it, in order to examine materials from the literature, legislation, legal norms applicable in Indonesia associated with legal theories concerning the problems faced to describe and analyze the facts systematically, factually, logically and have a clear basis for thought. The data used for this research are primary data and secondary data. The data analysis method used is qualitative analysis, namely narrative analysis. In the analysis process, the author first presents data obtained from the field or from interviews, then interpretation and interpretation of the data are carried out by referring to theoretical references related to the research problem.⁸

⁷Soerjono Soekanto Op Cit., p. 52

⁸Bahder Johan Nasution, Legal Science Research Methods, Mandar Maju, Bandung, 2008, p. 174

3. Results and Discussion

3.1. Investigation Process for Aggravated Theft

Case Decision Number LP/08/IV/2025/Kaltim/Reskubar/SekMelak. This decision falls under the category of aggravated theft, for which the defendant was sentenced under Article 363 of the Criminal Code. The case descriptions discussed in this study are as follows:

This case began with the disappearance of a rim and tire of a Honda Mobilio car belonging to the reporter Marlina Damayanti, which was parked on Jalan Baru Aji Tuler Jejangkat (ATJ), Melak Ilir Village, because the reporter's house was flooded. The theft occurred during a flood situation, so the element of "theft during a disaster" as referred to in Article 363 of the Criminal Code. The investigation stage began when the reporter Marlina Damayanti came to the Melak Police on April 29, 2025 and made a Police Report Number LP/08/IV/2025. The report was made after on April 21, 2025 at around 07.00 WITA the reporter found the rim and front left tire of her car missing and only the jack was still attached to the vehicle. Witness Tono Purwanto, the reporter's brother, also provided information that strengthened the suspicion of theft, including that the car was parked at that location because their house was flooded.

Investigators conducted an initial investigation into the statements of the reporter and witnesses, including Tono Purwanto. The witness explained that initially on Saturday, April 19, 2025, at approximately 17.00 WITA, the witness, along with her younger sister, Ms. MARLINA DAMAYANTI, and Mr. KARHEGI JAHEN, parked their car on Jalan Baru Aji Tuler Jejangkat (ATJ), Melak Ilir Village, Melak District, West Kutai Regency, because at that time our house, which was located on Jalan 17 August, RT. 06, Melak Ilir Village, Melak District, West Kutai Regency, was experiencing flooding, so the witness and her younger sister parked the car in a higher place on Jalan Baru Aji Tuler Jejangkat (ATJ), Melak Ilir Village, Melak District, West Kutai Regency. West Kutai, then on Monday, April 21, 2025 at around 07.00 WITA when the witness started the witness's car, the witness was shocked to see the witness's younger sibling's car located behind the witness's car had a damaged tire then the witness called the witness's younger sibling whether it was true that the witness's younger sibling's car had a damaged tire after that the witness's younger sibling came to check his car and saw that the rim of the witness's younger sibling's car on the left was missing, after that the sister and her husband reported the incident to the Melak police. This initial examination aims to validate the truth of the incident and ensure the existence of suspected theft.

Investigators also questioned suspect Achmad Jahrani, who was already detained in another case. The questioning yielded a full confession. The suspect stated that on Sunday, April 20, 2025, at approximately 8:00 PM WITA, he was driving around Jalan Baru ATJ Melak Ilir, Melak District, Kab. West Kutai not long after one of the

suspect's car tires was punctured so that the suspect could not continue the suspect's journey, after that the suspect saw behind the suspect's car there was 1 (one) white HONDA MOBILIO car parked, then the suspect checked the surrounding conditions to ensure safe conditions and immediately installed a jack to the HONDA MOBILIO car, the suspect jacked the car and immediately opened 1 (one) Honda Mobilio car rim along with its Brightstone type tire on the left side of the front of the car, after that 1 (one) Honda Mobilio car rim along with its Brightstone type tire that the suspect had stolen was immediately installed by the suspect to the suspect's car which had previously been punctured when the suspect replaced the suspect's car tire, the suspect used wood while the suspect's jack was left to hold it in the Honda Mobilio car.

Investigators secured the main evidence in the form of a Honda Mobilio car rim and tire with the Bridgestone EP150 185/65 R15 brand which was confiscated through a confiscation warrant, and recorded it in the Confiscation Report. The evidence is in accordance with the characteristics mentioned by the reporter, namely there are scratches and green dots. Witness statements, suspect statements, and the objective conditions of the scene of the incident are a series of valid evidence according to Article 184 of the Criminal Procedure Code.

The investigator then compiles a case discussion, which contains:

1) Case Position

On Saturday, April 19, 2025, at approximately 17.00 WITA, the witness and his younger sister, Ms. MARLINA DAMAYANTI, along with Mr. KARHEGI JAHEN, parked on Jalan Baru Aji Tuler Jejangkat (ATJ), Melak Ilir Village, Melak District, West Kutai Regency because at that time our house, which was located on Jalan 17 August, RT. 06, Melak Ilir Village, Melak District, West Kutai Regency, was experiencing flooding, so the witness and his younger sister parked the car in a higher place on Jalan Baru Aji Tuler Jejangkat (ATJ), Melak Ilir Village, Melak District, West Kutai Regency. West Kutai, then on Monday, April 21, 2025 at approximately 07.00 WITA when the witness started the witness's car, the witness was shocked to see the witness's younger sibling's car which was located behind the witness's car had a damaged tire, then the witness called the witness's younger sibling to see whether it was true that the witness's younger sibling's car had a damaged tire, after that the witness's younger sibling came to check his car and saw that the rim of the witness's younger sibling's car on the left was missing, the loss experienced was ± Rp. 2,500,000 (Two million five hundred thousand rupiah) after that the sister and her husband reported the incident to the Melak police.

2) Legal Analysis

The discussion of the elements of the crime above is linked to the facts that were successfully obtained as follows:

a. The element of "whoever" or every person is that what is meant here is the Suspect According to the identity of the resident identity card Name ACHMAD JAHRANI Bin HADI PURNO, Nik 6407060109990002, Age 25 years, born in Datah Bilang, September 1, 1999, Gender Male, Nationality/Ethnicity, Indonesia/Java, Religion Islam, Last education SMK (Graduated), Private Occupation, Address Jl. Dimbak RT.09 Kel. Melak Ilir Kec. Melak Kab. Kutai Barat, therefore this element has been fulfilled.

b. The element of "Taking something" that is referred to in this article is that in the statement of the reporting witness on Saturday, April 19, 2025 at approximately 17.00 WITA, the reporting witness Ms. MARLINA DAMAYANTI together with Mr. KARHEGI JAHEN parked on Jalan Baru Aji Tuler Jejangkat (ATJ) Kel. Melak Ilir District, West Kutai Regency because at that time the house on Jalan 17 August Rt.06 Kel. Melak Ilir District, West Kutai Regency was experiencing flooding so the witness parked the car in a higher place on Jalan Baru Aji Tuler Jejangkat (ATJ) Kel. Melak Ilir District, West Kutai Regency. West Kutai, then on Monday, April 21, 2025 at around 07.00 WITA when the witness was about to get into the car and then saw that the car rim on the left side was missing, where the tire and rim were taken by the suspect AHMAD JAHRANI on Saturday, April 19, 2025 at 20.00 WITA, therefore the elements of this article have been fulfilled.

c. The element "Wholly or partly belongs to another person" that what is meant here is the reporter Ms. MARLINA DAMAYANTI together with Mr. KARHEGI JAHEN has 1 unit of Honda Mobilio car which is parked on Jalan Baru Aji Tuler Jejangkat (ATJ) Kel. Melak Ilir District. Melak Regency. West Kutai because at that time the house on Jalan 17 August Rt. 06 Kel. Melak Ilir District. Melak Regency. West Kutai was experiencing flooding so the witness parked the car in a higher place on Jalan Baru Aji Tuler Jejangkat (ATJ) Kel. Melak Ilir District. Melak Regency. West Kutai, then on Monday, April 21, 2025 at approximately 07.00 WITA when the witness was about to get into the car and then saw that the car's rim on the left side was missing, where the tire and rim were taken by the suspect AHMAD JAHRANI, therefore the elements of this crime have been fulfilled.

d. The element "With the intention to possess unlawfully" that what is meant here is that the reporter Ms. MARLINA DAMAYANTI as the owner of a Honda Mobilio car parked on Jalan Baru Aji Tuler Jejangkat (ATJ) Melak Ilir Village, Melak District, West Kutai Regency did not give permission to the suspect AHMAD JAHRANI to open and take 1 tire and rim of the Honda Mobilio car parked on Jalan Baru Aji Tuler Jejangkat (ATJ) Melak Ilir Village, Melak District, West Kutai Regency, therefore the elements of the article have certainly been fulfilled.

e. The element of "Theft during fire, erosion, flood, earthquake, or seaquake, volcanic eruption, submarine, stranded ship, train accident, riot, rebellion or misery during war" that what is meant here is that the suspect AHMAD JAHRANI on Saturday, April 19, 2025 at approximately 20.00 WITA when taking 1 tire and

rim of a Honda Mobilio car belonging to the reporter Ms. MARLINA DAMAYATNI which was parked on Jalan Baru Aji Tulur Jejangkat (ATJ) Kel. Melak Ilir District. West Kutai Regency because at that time the witness's house was flooded so the reporter parked his vehicle to a higher place on Jalan Baru Aji Tulur Jejangkat (ATJ) Kel. Melak Ilir District. Melak Regency. West Kutai, therefore the elements of the article have certainly been fulfilled.

Based on the results of the discussion above, both in terms of case analysis and legal analysis, there is a match between the statements of the witnesses and the confession of the suspect, and strengthened by the existence of evidence, the investigator and assistant investigator concluded that the suspect AHMAD JAHARANI's actions took 1 tire and rim of a Honda Mobilio car that the reporter parked on Jalan Baru Aji Tulur Jejangkat (ATJ) Kel. Melak Ilir Kec. Melak Kab. West Kutai because the river water was rising so that the reporter parked his vehicle in a higher place, there is sufficient evidence to be suspected in the case of anyone who takes something, in whole or in part, belonging to another person with the intention of possessing it unlawfully, theft during a fire, erosion, flood, earthquake, or seaquake, volcanic eruption, submarine, stranded ship, train accident, riot, rebellion or misery during war, is punished for theft as regulated in Article 363. Thus, the case file of suspect AHMAD JAHARANI has fulfilled the formal and material requirements and has fulfilled the elements of the alleged crime so that it is worthy to be submitted to the trial.

The investigation into suspect Achmad Jahrani is considered not to reflect the application of the Pancasila principle of justice, because investigators did not attempt to resolve the case through penal mediation as stipulated in the National Police Chief Regulation Number 8 of 2021, even though this case meets the requirements for an out-of-court settlement considering the small value of the loss, the perpetrator was a first-time criminal, and his actions were carried out without violence and were motivated by urgent conditions due to flooding. The suspect's condition, as newly married with a small child, and without a permanent job, places him in a weak socio-economic situation, the crime he committed has the potential to have a serious impact on the stability of the family he is responsible for.

Legal provisions in Regulation of the Chief of the Republic of Indonesia National Police Number 6 of 2019 concerning Criminal Investigations. Article 1, number 27, mentions Restorative Justice. Restorative justice is the resolution of criminal cases involving the perpetrator, the victim, and/or their family, as well as related parties, with the goal of achieving justice for all parties.

Investigators' inability to address humanitarian and social aspects has led to a retributive rather than restorative approach to the investigation process. This approach is inconsistent with the principles of just and civilized humanity and social justice for all Indonesians, as law enforcement should consider the

perpetrator's socioeconomic background and the proportionality between the act, intent, and consequences.⁹

Gustav Radbruch's theory of the purpose of law, states that the law must balance three basic values, namely legal certainty (Rechtssicherheit), justice (Gerechtigkeit), and social utility or purpose (Zweckmäßigkeit).¹⁰ Investigators have indeed fulfilled the legal certainty aspect by carrying out all formal investigative procedures in accordance with the Criminal Procedure Code and Police Regulation No. 6 of 2019, and successfully proved the elements of Article 363 of the Criminal Code through valid evidence. However, the fulfillment of the other two values, justice and expediency, is not balanced. From a justice perspective, the investigation emphasizes a retributive approach without considering the socio-economic conditions of suspect Achmad Jahrani, who was in a desperate situation when his car tire burst in the middle of a flood. This action was carried out without violence, the material losses were minimal, and the suspect is not a repeat offender. Ignoring this humanitarian aspect makes the investigation process move away from justice. From a utility perspective, an investigation that does not open the option of restorative justice has the potential to cause greater social impacts, such as disrupting the suspect's family stability and increasing the burden of punishment in the criminal justice system. The investigation in this case demonstrates the imbalance in the values of the objectives of law according to Radbruch. Legal certainty is implemented, but justice and expediency have not received proportional attention, so the final result does not reflect ideal law from the perspective of legal objectives.

3.2. Weaknesses in the Implementation of Investigations into the Crime of Aggravated Theft

1) Weaknesses of Legal Substance

Although restorative justice (RJ) is regulated through Police Regulation Number 6 of 2019 and Police Regulation Number 8 of 2021, these regulations are fundamentally weak. Both are internal police regulations that lack the standing of laws, thus lacking strong legal certainty for investigators. This weak position makes investigators hesitant, as their RJ decisions are not guaranteed to be accepted by prosecutors, judges, or internal oversight bodies that assess investigator performance based on legal-formal parameters.

The RJ law in the Chief of Police Regulations (Perkap) and Police Regulations (Perpol) only provides space for the investigation phase before the SPDP is sent,

⁹Jemmy Dedi Rengku, Alternative Solutions for Human Rights Violations in Indonesia, Journal Scientific of Mandalika (JSM, Vol. 6, No. 5, 2025, pp. 1305-1342.

¹⁰Bun Joko Sudarmono et al., Juridical Analysis of Pretrial Based on Article 83 of the Criminal Procedure Code (Case Study of Denpasar District Pretrial Decision Case Number: 20/Pid. Pra/2023/Pn. Dps), Almuji Journal of Social and Humanities, Vol. 2, No. 2, 2025, pp. 1-14.

thus limiting investigators' scope and making it irrelevant to cases that only become apparent after witness or suspect examinations have taken place. This limited scope for implementation means that investigators can no longer use the RJ route once the case file has begun to reach formal completion. The norm also does not stipulate that cases involving minor losses, first-time offenders, and non-violent actions must require the RJ mechanism, so investigators have the option of not using it even if all material requirements are met, as in the case of the theft of car rims during flooding in Melak. When the regulation only states "may," not "mandatory" in Article 12 of Perkap Number 6 of 2019, investigators' discretion is directed more toward procedural prudence, rather than the principle of social benefit. The Chief of Police Regulations (Perkap) and Police Regulations also do not stipulate a time limit for implementing the agreement, verifying the settlement results, or sanctions if one party fails to fulfill its obligations, leading investigators to worry that the settlement could fail midway and create new problems.

2) Weaknesses of Legal Structure

Legal structure includes law enforcement officers, organizations, work mechanisms, human resources, and infrastructure that determine how the law works.¹¹

As conveyed by Mr. AIPTU Renson Sinaga, SH, MH, as the Head of Criminal Investigation Unit of the Melak Sector Police of West Kutai Police, in an interview conducted by the author in August 2025, limited structural conditions are indeed an obstacle in handling cases, including in the case of aggravated theft LP/08/IV/2025. He explained that, "the number of personnel in the criminal investigation unit is never truly ideal, because most personnel have to carry out other duties such as patrols, SPKT services, to handling sudden incidents that often increase during floods. According to him, on many occasions, investigators know that restorative justice can be an option, but the lack of time, the high caseload, and the absence of special facilitators make this mechanism difficult to implement."¹²

The obstacles or barriers faced by the Melak Police in investigating aggravated theft cases include the following:

a. The Number of Investigators is Not Balanced with the Number of Cases

The structural capacity of the Melak Police Sector shows an imbalance between the number of aggravated theft cases and the number of available investigators.

¹¹Yusuf Daeng et al., Criminal Law Enforcement from a Human Resources Aspect, Innovative: Journal of Social Science Research, Vol. 4, No. 4, 2024, pp. 981-989.

¹²Results of the Interview with Mr. AIPTU Renson Sinaga, SH, MH, as Head of Criminal Investigation Unit of the Melak Police, West Kutai Police, on August 28, 2025

Most police stations in the interior of Kalimantan have only 15–20 personnel, with an average of only 2–4 active investigators to handle all cases. This situation is also experienced by the Melak Police Sector, given the vast nature of its territory, the distance between villages, and the increased intensity of cases during floods, as was the case with the theft case LP/08/IV/2025.

b. Overlapping Duties of Investigators

A single investigator often handles multiple cases simultaneously, limiting the time available for in-depth investigation. This situation forces investigators to opt for quick and administratively secure formal procedures rather than restorative justice, which requires more extensive coordination.

c. Investigator Skills and Competencies Are Still Limited

The analytical abilities, creativity and skills of investigators in handling theft crimes are still not evenly distributed.

d. The Extent of the Legal Area of the Melak Police

Melak's vast geography makes it difficult for investigators to carry out rapid investigations, especially when the perpetrators move.

e. Investigation Facilities and Infrastructure Are Still Limited

Limited supporting equipment such as operational vehicles, documentation facilities, and evidence examination equipment hampers effective investigations. With limited facilities, investigators tend to use simpler formal channels rather than the RJ mechanism, which requires location arrangements, assistance, and mediation facilitation.

f. Minimal Investigation Budget

Limited investigative funding impacts investigators' inability to carry out optimal investigative steps. RJ requires additional time, effort, and coordination, while investigators must work within a tight budget, deprioritizing the RJ process.

The structural obstacles experienced by the Melak Police in investigating the theft case illustrate the weakness of the legal structure, where limitations in resources, investigator capacity, infrastructure, and budget directly hamper the implementation of just investigations, as well as hinder the implementation of restorative justice which is actually very possible in the case of LP/08/IV/2025.

3) Weaknesses of Legal Culture

a. Legal Culture of the Apparatus

Based on an interview the author conducted with Mr. AIPTU Renson Sinaga, SH, MH, Head of Criminal Investigation Unit of the Melak Sector Police, West Kutai Police, he explained that the issue of work culture among Polri members also affects the investigation of theft cases in the Melak area. According to him, most members have actually tried to provide the best service, but the high workload and limited number of personnel often cause some members to be unable to respond to reports quickly. He also acknowledged that there are still individuals who do not fully understand the ethical standards of service, including asking for financial assistance from reporters or delaying the filing of police reports. This condition not only reduces public trust but also burdens the task of investigators who must maintain good relations with residents to expedite the process of solving theft cases. He emphasized that changing work culture requires consistent internal guidance and strong supervision so that law enforcement at the Melak Sector Police can be carried out more professionally and gain public trust.¹³

b. Community Legal Culture

According to Moch. Sanusi, crime prevention efforts cannot be limited to law enforcement alone. Success in controlling crime is largely determined by our ability to organize social life holistically, including eliminating various triggers for crime (criminogenic factors) that develop within society.

In the process of investigating aggravated theft cases, the legal culture of society that becomes an obstacle in the investigation process is as follows:

- 1) Community behavior when experiencing the loss of property due to theft is generally quite supportive of law enforcement, as most victims attempt to report the incident to the police. However, some communities remain reluctant or delay filing a report directly with the police. Some choose to search for lost items themselves before reporting them to the police. This habit of delaying reporting significantly impacts the investigation process, as the longer the time between the theft and the receipt of the report, the greater the opportunity for the perpetrator to cover their tracks, move the stolen items, or leave the scene. This situation also makes it difficult for investigators to secure the crime scene, locate witnesses, and accurately connect evidence, making solving the case much more challenging for members of the Police Criminal Investigation Unit.
- 2) The public tends to be less helpful to the police in providing information regarding aggravated theft cases due to the ingrained perception that dealing with the police is a long, complicated, and time-consuming process, leading many to avoid them even if they possess important information. This negative perception is reinforced by the experiences of some who feel they have not received easy or certainty when questioned, resulting in a reluctance to re-engage in the legal

¹³Results of the Interview with Mr. AIPTU Renson Sinaga, SH, MH, as Head of Criminal Investigation Unit of the Melak Police, West Kutai Police, on August 28, 2025

process. In areas like Melak, close social ties also cause residents to fear being perceived as cornering neighbors or relatives of the perpetrators, even fearing revenge, so they choose to remain silent even though they know about the incident or the perpetrators. The combination of the stigma of complicated bureaucracy and fear of social consequences causes investigators to lose the public participation that is crucial for expediting case resolution. This passive legal culture in the community is a major obstacle in investigating aggravated theft cases.

3.3. Implementation of Investigations into Criminal Acts of Theft with Weighting Based on Justice Values

Investigations should not be understood solely as an administrative process to gather evidence and identify suspects. This stage serves as a means to achieve justice. In cases of aggravated theft, the investigative mechanism should ideally be structured to reflect these three dimensions of justice, especially when the perpetrator comes from a socially or economically disadvantaged group, such as the poor or individuals committing the act out of necessity.¹⁴

The Criminal Procedure Code (KUHAP) essentially guarantees the protection of the rights of suspects and defendants as stipulated in Article 1 Number 2 and Articles 50-68 of the KUHAP. Justice is often reduced to merely the process of imposing punishment, without considering the perpetrator's social and economic conditions. This is evident in the investigation of the theft case LP/08/IV/2025 at the Melak Police Station, where suspect Achmad Jahrani came from a modest family, had no permanent job, and committed the theft under duress when his car tire was punctured during a flood in the Melak area. Although his actions met the elements of aggravated theft, the investigation continued with a focus on criminal punishment, without any consideration or attempts at restorative resolution such as penal mediation with the victim. In fact, materially, the characteristics of the case and the suspect's social background greatly allow for a resolution through a more humane and proportional approach.

Justice from the perspective of Pancasila is not merely understood as retribution against the perpetrator, but includes corrective and restorative dimensions. The Second Principle on Just and Civilized Humanity and the Fifth Principle on Social Justice for All Indonesian People emphasize that the law must view humans as a whole, both perpetrators and victims, and consider the circumstances underlying the criminal event. Investigations should not stop at the textual application of the rules, but need to open up space for humanitarian values and the socio-economic conditions of the perpetrator. In cases of aggravated theft, especially cases involving small losses or committed under duress, such as the case of

¹⁴Reimon Supusepa, *Penal Mediation in the Settlement of Criminal Cases* - Jejak Pustaka, Jejak Pustaka, Jakarta, 2024, p. 42

LP/08/IV/2025 at the Melak Police, investigations can actually be directed towards a more proportional resolution through restorative justice mechanisms, so that the law does not only punish but also restores and balances justice for all parties.

4. Conclusion

The investigation process of the aggravated theft case in LP/08/IV/2025 has actually fulfilled the aspect of legal certainty through the application of the Criminal Procedure Code procedure, Perkap Number 6 of 2019, and proof of the elements of Article 363 of the Criminal Code, however law enforcement has not utilized the opportunity for resolution through restorative justice which should be applied considering the small losses, the absence of violence, the perpetrator is not a recidivist, and the action occurred in a flood emergency situation. Weaknesses in the aspects of substance, structure, and legal culture, starting from the position of RJ regulations which are only internal, minimal resource support, to the culture of officials and the community that does not support the recovery approach, indicate that the investigation has not been running optimally and still ignores a more proportional resolution and reflects the justice that should be presented in theft cases with such special social conditions.

5. References

Journals:

Agus Suharsoyo, Karakter Pelaku Tindak Pidana Pencurian Dalam Tipologi Kejahatan Pencurian di Wilayah Sukoharjo, *Jurnal Jurisprudence*, Vol. 5, No. 1, 2015

Atang Hermawan Usman, Kesadaran Hukum Masyarakat dan Pemerintah Sebagai Faktor Tegaknya Negara Hukum di Indonesia, *Jurnal Wawasan Yuridika*, Vol. 30, No. 1, 2014

Bun Joko Sudarmono et al., Analisis Yuridis terhadap Praperadilan Berdasarkan Pasal 83 Kitab Undang-Undang Hukum Acara Pidana (Studi Kasus Putusan Praperadilan Negeri Denpasar Perkara Nomor: 20/Pid. Pra/2023/Pn. Dps), *Almuhi Jurnal Sosial dan Humaniora*, Vol. 2, No. 2, 2025

Hamdiyah, Analisis Unsur-Unsur Tindak Pidana Pencurian: Tinjauan Hukum, *Jurnal Tahqiqa: Jurnal Pemikiran Hukum Islam*, Vol. 18, No. 1, 2024

Jemmy Dedi Rengku, Alternatif Penyelesaian Pelanggaran Hak Asasi Manusia di Indonesia, *Journal Scientific of Mandalika (JSM*, Vol. 6, No. 5, 2025

M. Tasbir Rais, Negara Hukum Indonesia: Gagasan Dan Penerapannya, *Jurnal Hukum Unsulbar*, Vol. 5, No. 2, 2022

Muhammad Dito Anugerah dan Andri Winjaya Laksana, Formulation of Investigation of Criminal Acts of Theft with Justice-Based Aggravation (Case Study of Nabire Police Resort), *Jurnal Hukum Khaira Ummah*, Vol. 20, No. 2, 2022

Sherly Floresti Anin et al., Faktor Penyebab dan Upaya Penanggulangan Kejahatan Pencurian yang Dilakukan Anak di Kota Kupang, *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik*, Vol. 2, No. 3, 2024

Yusuf Daeng et al., Penegakan Hukum Pidana Dari Aspek Sumber Daya Manusia, *Innovative: Journal of Social Science Research*, Vol. 4, No. 4, 2024

Books:

Bahder Johan Nasution, 2008, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung

Reimon Supusepa, 2024, *Mediasi Penal dalam Penyelesaian Perkara Pidana-Jejaka Pustaka*, Jejak Pustaka, Jakarta

Interview:

Results of the interview with Mr. AIPTU Renson Sinaga, S.H., M.H., as Head of Criminal Investigation Unit of the Melak Police, West Kutai Police