

Implementation of Law Enforcement Regulations for the Criminal Act of Theft with Aggregation Through a Restorative Justice Approach

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Abstract. *The principle of the rule of law, as adopted by Indonesia, places the supremacy of law as the primary foundation for building national and state life. This means that the law should not be interpreted solely as procedural certainty, but must also reflect values of justice and benefit for the wider community. Therefore, criminal law must be directed not only at punishing perpetrators, but also at protecting the interests of victims, the community, and maintaining social order. The social legal research approach is legal research that uses primary data. The same thing is also stated that research. As socio-legal research, it views law as law in action, concerning the link between law and social institutions. Law enforcement regulations for aggravated theft in Indonesia have not yet adopted a restorative justice approach because the Criminal Code and Criminal Procedure Code are still oriented towards a retributive paradigm that emphasizes punishment, without providing a legal basis for dismissal of cases through restitution or reconciliation.*

Keywords: *Legal; Research; Social; Supremacy.*

1. Introduction

The Republic of Indonesia, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, is a state based on law (*rechtsstaat*), not a state based on power (*machtsstaat*). In a state based on law, all aspects of state life must comply with applicable law. Law is the primary guideline in the administration of the state, including in upholding justice.¹ The rule of law implies that all actions of state administrators must be limited by law, so that no power is absolute. In a *rechtsstaat* system, law functions as both a tool for limiting power and an instrument for protecting human rights. Thus, law is positioned not merely

¹Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia

as a normative instrument, but also as a tool of social engineering capable of realizing substantive justice.²

The principle of the rule of law, as adopted by Indonesia, places the supremacy of law as the primary foundation for building national and state life. This means that the law should not be interpreted solely as procedural certainty, but must also reflect values of justice and benefit for the wider community. Therefore, criminal law must be directed not only at punishing perpetrators, but also at protecting the interests of victims, the community, and maintaining social order.³

In criminal law, the principle of criminal responsibility requires that a mistake be legally accountable. A person cannot be punished if they lack the capacity to take responsibility, for example due to a specific psychological condition. Therefore, criminal penalties are not merely intended as punishment, but also as a means to restore social balance.⁴ Criminal law has three main dimensions: certainty, utility, and justice. Legal certainty is achieved through final and binding court decisions. Legal utility is evident in public compliance with legal norms. Legal justice, however, is the most complex aspect, as justice is relative and differs for each individual.

Furthermore, criminal law is not solely oriented toward inflicting suffering, but also aims to maintain social balance. Muladi emphasized that punishment must be viewed as a means to uphold norms, protect society, and reform perpetrators.⁵ Thus, the modern penal system rejects a purely retributive perspective and instead embraces an integrative approach that combines legal certainty, expediency, and justice.⁵

Satjipto Rahardjo stated that law should not only be an instrument of certainty, but also a means to achieve substantive justice. However, in practice, criminal law often emphasizes procedural certainty over substantive justice. As a result, cases arise in which the law is perceived as causing injustice, particularly for the poor.⁶ Satjipto Rahardjo's view of progressive law emphasizes that law should not be limited to merely procedural aspects, but must also encompass humanitarian values and justice. If law is positioned solely as an instrument of certainty, it loses its moral dimension. In this context, criminal law that overemphasizes formal aspects can potentially lead to injustice, as not all unlawful acts can be treated

²Philipus M. Hadjon, *Legal Protection for the Indonesian People*, Surabaya: Bina Ilmu, 1987, p. 42.

³Satjipto Rahardjo, *Progressive Law: A Synthesis of Indonesian Law*, Jakarta: Kompas, 2009, p. 21.

⁴Jimly Asshiddiqie, *The Constitution and Constitutionalism of Indonesia*, Jakarta: Konstitusi Press, 2005, p. 115

⁵Muladi, *Selected Chapters on the Criminal Justice System*, Semarang: UNDIP Publishing Agency, 1995, p. 101

⁶Sudarto, *Law and Criminal Law*, Bandung: Alumni, 1981, p. 23.

equally without considering the social background and circumstances of the perpetrator.

The phenomenon of legal cases in Indonesia demonstrates the imbalance between legal certainty and a sense of justice. The case of Mbok Minah, who was convicted for stealing three cocoa beans, or the case of AAL, who was tried for wearing flip-flops, are clear examples of how the law is often harsh on the bottom and blunt on the top. Conversely, perpetrators of corruption that cause significant state losses receive light sentences. This demonstrates that the law places more emphasis on procedural formalities than on substantive justice. The positivistic paradigm, which emphasizes only legal certainty, is considered to have failed to address the public's need for true justice.⁷

Restorative Justice(RJ) exists as an alternative to the retributive criminal justice system. RJ focuses on restoring relationships between perpetrators, victims, and the community. Its principle is not punishment, but rather restoring social balance. Historically, the principle of RJ has been recognized in Indonesian customary law, which does not differentiate between criminal and civil cases, but rather prioritizes deliberation and consensus.⁸From a normative perspective, the legal basis for RJ is found in Supreme Court Regulation Number 2 of 2012 concerning Adjustments to the Limits of Minor Crimes and the Amount of Fines in the Criminal Code and Attorney General Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, as well as the Memorandum of Understanding between the Supreme Court, the Attorney General's Office, the Indonesian National Police, and the Ministry of Law and Human Rights. However, its application is still limited to minor crimes. However, its application is still limited to minor crimes, such as minor theft or cases of children in conflict with the law. This limitation has drawn criticism, as RJ should be developed more broadly, including in certain cases that have significant social impacts but are more effectively resolved through a restorative approach.

*Restorative Justice*This is in fact in line with the values of Pancasila, which prioritize deliberation, humanity, and social justice. Therefore, RJ is not a foreign concept to the Indonesian people, but rather part of local wisdom that has long existed within society. In customary law, conflict resolution is carried out using a familial approach, so that the legal process not only targets the perpetrator but also restores community harmony.⁹

The implementation of Restorative Justice in Indonesia still faces challenges, such as resistance from law enforcement officials, low public awareness, and stigma against criminals. Restorative Justice aligns with the values of Pancasila,

⁷Ibid.

⁸Satjipto Rahardjo, *Progressive Law*, Jakarta: Kompas, 2009, p. 76.

⁹Van Vollenhoven, *Het Adatrecht van Nederlandsch-Indië*, Leiden: EJ Brill, 1931, p. 211.

particularly the fourth principle, which emphasizes deliberation and consensus. The concept of Restorative Justice, which emphasizes conferencing, reconciliation, and repair, reflects the family values that are characteristic of the Indonesian nation.¹⁰ From a Pancasila perspective, criminal case resolution should not solely emphasize retribution but also consider aspects of humanity and social justice. Therefore, the application of RJ is not simply an adoption of foreign legal concepts, but rather part of the Indonesian legal tradition, which is based on deliberation and mutual cooperation.

The limitations of RJ implementation in Indonesia are also influenced by the dominant retributive paradigm of law enforcement officials. Many officials view criminal justice as merely punishing the perpetrator, without considering the interests of victims and society. Yet, numerous studies show that RJ can reduce recidivism rates, increase victim satisfaction, and strengthen public trust in the legal system. Therefore, criminal law reform in Indonesia must be directed at expanding the application of RJ to address the prison crisis and the growing need for substantive justice.¹¹

The main problem with criminal law in Indonesia lies in the gap between *Das Sein* (reality) and *Das Sollen* (ideal). *Das Sein*: In practice, minor criminal cases are still processed formally until they result in imprisonment. This exacerbates the problem of prison overcrowding, increases recidivism rates, and adds to the burden on the state. *Das Sollen*: Ideally, minor cases are resolved using the principle of Reconciliation Justice (RJ), which emphasizes social recovery, not retribution. The legal system should provide more space for the application of Reconciliation Justice (RJ) as an embodiment of substantive justice.

This gap indicates that Indonesian law is still oriented toward formal certainty. Therefore, a reconstruction of the criminal justice system is needed that emphasizes the Restorative Justice paradigm, in line with the Pancasila values of justice.¹² In essence, it is part of a policy step (i.e., part of legal politics/law enforcement, criminal law politics, criminal politics, and social politics). Each policy also contains value considerations.

2. Research Methods

The social legal research approach is legal research that uses primary data.¹² The same thing is also stated that research.¹³ As socio-legal research, namely viewing

¹⁰Farouk Muhammad, *ADR and Restorative Justice*, Jakarta: UI Press, 2015, p. 123.

¹¹John Braithwaite, *Restorative Justice and Responsive Regulation*, Oxford: Oxford University Press, 2002, p. 75.

¹²Soemitro and Ronny Hanitijo, *Legal Research Methodology and Jurimetry*, Ghalia Indonesia, Jakarta, 1998, p. 10.

¹³Soerjono Soekanto and Sri Mamuji, *Normative Legal Research, A Brief Review*, Rajawali, Jakarta, 1986, p. 15.

law as law in action which concerns the link between law and social institutions.¹⁴ Because law is not only conceptualized as the whole of the principles and rules that regulate human life in society, but also includes the institutions and processes that make these rules apply in society.¹⁵ as the embodiment of the symbolic meanings of social actors, as manifested and observed from the actions and interactions between them.¹⁶

3. Results and Discussion

3.1. Case Study or Case Chronology

Based on Police Report Number: LP / B / 04 / V / 2025 / SPKT / NGARINGAN POLSEK / RES GROBOGAN / POLDA JATENG, dated May 27, 2025, a Criminal Act of "Theft with Mobile Phone proceeds" was committed which was known to have occurred on Monday, May 26, 2025, at approximately 04.00 WIB in the house of the Jakenan Hamlet, RT 01/04, Truwolu Village, Ngaringan District, Grobogan Regency, as referred to in Article 363 paragraph (1) to 1e and 5e of the Criminal Code, against 1 (one) iPhone 11 Pro Max unit and 1 (one) Android Realme 3 unit belonging to the victim MUHAMMAD ABDUL NAVID Bin MASRUKAN.

Then it was successfully revealed that the perpetrator or suspect was a brother: GILANG SURYA BASKARA Bin LARGONO DRS, Identity Number: 3315102508020005, Citizenship: Indonesian Citizen, Gender: Male, Place/Date of Birth: Grobogan, August 25, 2002 (22 years old), Occupation: Student, Religion: Islam, Address: Jatisemen Hamlet, RT 02/01, Tambakselo Village, Wirosari District, Grobogan Regency.

As a result of the theft incident, the victim witness/reporter suffered material losses of approximately Rp. 5,700,000 (five million seven hundred thousand rupiah), then the victim made a report about the theft incident to the Ngaringan Police.

Based on the Case Analysis above, it is found that the above act or event is a Criminal Act of Theft with the result of a Mobile Phone which is known to have occurred on Monday, May 26, 2025, at approximately 04.00 WIB in the house of the Jakenan Village, RT 01/04, Truwolu Village, Ngaringan District, Grobogan Regency, as referred to in Article 363 paragraph (1) to 1e and 5e of the Criminal Code, against 1 (one) iPhone 11 Pro Max unit and 1 (one) Android Realme 3 unit

¹⁴*Ibid*, page 20.

¹⁵Mochtar Kusumaatmadja, Legal Development in the Framework of National Development, Bandung: LPHK Faculty of Law UNPAD – Bina Cipta, 2005, p.11.

¹⁶Soetandyo Wignjosoebroto, Diversity in Legal Concepts, Types of Legal Studies and Research Methods, Basic Legal Research Methods Training and Training, Faculty of Law, University of Indonesia, Jakarta, 2004, pp. 14-17; Compare with Soetandyo Wignjosoebroto, Law: Paradigms, Methods and Social Dynamics, Ildhal Kasim, et. al (Ed.), Jakarta: Elsam and Huma, 2002, pp. 196-203

which was experienced by the victim, namely Mr. MUHAMMAD ABDUL NAVID Bin MASRUKAN, Identity Number: 3315090903010001, Citizenship: Indonesian Citizen, Gender, Male, Place / Date of Birth: Grobogan, March 9, 2001 (24 years old), Occupation: Student, Religion: Islam, Address: Jakenan Hamlet Rt 01/04 Ds. Truwolu Subdistrict Ngaringan District Grobogan Regency who was later revealed as the suspect is GILANG SURYA BASKARA Bin LARGONO DRS, Identity Number: 3315102508020005, Citizenship: Indonesian Citizen, Gender: Male, Place / Date of Birth: Grobogan, August 25, 2002 (22 years old), Occupation: Student, Religion: Islam, Address: Jatisemen Hamlet Rt 02/01 Ds. Tambakselo, Wirosari District, Grobogan Regency as referred to in "Article 363 paragraph (1) 3e and 5e of the Criminal Code".

Article 363 paragraph (1) 3e and 5e of the Criminal Code:

Elements:

1. Whoever
2. Taking something that is completely or partially owned by someone else.
3. With the intention of possessing the goods against the law.
4. Theft at night in a house or enclosed yard where a house is located, carried out by a person who is there unknown or not wanted by the person entitled to it.
5. Theft in which the crime is committed, 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.

Application of the elements of crime:

a) Whoever, according to the witness's statement, supported by evidence and the suspect's confession, the legal subject is a person who is physically and mentally healthy and capable of being responsible for his actions before the law and in this case is addressed to the suspect GILANG SURYA BASKARA Bin LARGONO DRS, Identity Number: 3315102508020005, Citizenship: Indonesian Citizen, Gender: Male, Place/Date of Birth: Grobogan, August 25, 2002 (22 years old), Occupation: Student/College Student, Religion: Islam, Address: Jatisemen Hamlet, RT 02/01 Tambakselo Hamlet, Wirosari District, Grobogan Regency

b) Taking something that is completely or partially owned by another person, this element is fulfilled according to the evidence and frank statement that the suspect GILANG SURYA BASKARA Bin LARGONO DRS has admitted to taking items in the form of 1 (one) Iphone 11 Pro Max unit and 1 (one) Android Realme 3 unit, and these items belong to the victim, MUHAMMAD ABDUL NAVID Bin MASRUKAN, and when the suspect took the items without the owner's permission.

c) With the intention of possessing the goods against the law, this element is fulfilled according to the evidence and the frank statement of the suspect GILANG SURYA BASKARA Bin LARGONO DRS who took the goods in the form of 1 (one) Iphone 11 Pro Max unit and 1 (one) Android Realme 3 unit and the goods belonged to the victim MUHAMMAD ABDUL NAVID Bin MASRUKAN, and when the suspect took the goods without the owner's permission.

d) Nighttime theft in a house or enclosed yard where there is a house, carried out by people who are there unknown or unwanted by the rightful owner, This element is fulfilled according to the testimony of witnesses, evidence and the statement of the suspect GILANG SURYA BASKARA Bin LARGONO DRS who has taken the victim's belongings MUHAMMAD ABDUL NAVID Bin MASRUKAN and when the suspect took the item without the owner's permission at night, namely around 01.00 WIB, and the victim knew at 04.00 WIB in the house belonging to the victim MUHAMMAD ABDUL NAVID Bin MASRUKAN Dsn. Jakenan Rt 01/04 Ds. Truwolu District. Ngaringan Regency. Grobogan and the suspect committed his actions unknown and unwanted by the rightful owner.

e) Theft to enter the place of crime, or to get to the goods taken, is done by damaging, cutting, or climbing, or by using fake keys, fake orders or fake official clothes, This element has been fulfilled according to the testimony of witnesses and evidence as well as the frank confession of the suspect GILANG SURYA BASKARA Bin LARGONO DRS who has taken the belongings of the victim MUHAMMAD ABDUL NAVID Bin MASRUKAN in the form of 1 (one) Iphone 11 Pro Max Unit and 1 (one) Android Realme 3 unit without the permission of the owner and the suspect has succeeded in carrying out his actions, namely taking items in the form of 1 (one) Iphone 11 Pro Max Unit and 1 (one) Android Realme 3 unit by climbing a tree then entering the victim's house through the window and after the suspect has succeeded in taking the victim's belongings, he left the victim's house through the back door. The suspect committed these acts without the knowledge and will of the entitled party.

1) Process of Handling Aggravated Theft Cases

That the entire series of Restorative Justice processes in the case of aggravated theft with the suspect named Gilang Surya Baskara Bin Largono DRS is as follows:

- a) Beginning with the receipt of the Letter of Notification of Commencement of Investigation ("SPDP") by the Grobogan District Attorney's Office on May 28, 2025;
- b) Receipt of case files (Phase I) from investigators to the Grobogan District Attorney's Office on May 4, 2025;
- c) The issuance of the Notification of Incomplete Investigation Results (P-18) by the appointed Public Prosecutor on June 25, 2025;

- d) Issuance of Instructions for Completing Case Files (P-19) by the Public Prosecutor to Ngaringan Police investigators on July 1, 2025;
- e) The Public Prosecutor has determined that the investigation results are complete (P-21) through a Notification Letter of Complete Investigation Results on July 21, 2025;
- f) Receipt of the revised case files from investigators on July 23, 2025;
- g) Receipt of the suspect and evidence (Stage II) by the Grobogan District Attorney's Office on July 23, 2025;
- h) The implementation of the case settlement outside the court through the Restorative Justice mechanism by the Facilitator Prosecutor took place at the RJ Guyub Rukun House, Grobogan District Attorney's Office on July 23, 2025.

2) Case Settlement Process

The reason that Restorative Justice can be carried out on the suspect Gilang Surya Baskara Bin Largono DRS, that in essence, the implementation of Restorative Justice in the case of aggravated theft with the suspect Gilang Surya Baskara Bin Largono DRS can be carried out because all the requirements as stipulated in Article 5 of the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice ("Regulation Number 15 of 2020") have been fulfilled, with the following description:

- a) The suspect is a perpetrator who has committed a crime for the first time, thus fulfilling the provisions of Article 5 paragraph (1) letter a of Perja Number 15 of 2020 which stipulates that Restorative Justice can only be carried out on suspects who have committed a crime for the first time;
- b) The victim's losses have been fully recovered, because the evidence that was the object of the theft was in the form of:
 - 1) 1 (one) unit of iPhone 11 Pro Max brand mobile phone, gold color, and,
 - 2) 1 (one) unit of Realme 3 brand mobile phone, black and blue combination,has been returned to the victim Muhammad Abdul Navid Bin Masrukan. This is in line with the provisions of Article 5 paragraph (1) letter c and Article 5 paragraph (6) letter a of Perja Number 15 of 2020.
- c) A peace agreement has been reached between the suspect and the victim, accompanied by a positive response from the surrounding community to the peace. This condition fulfills the provisions of Article 5 paragraph (6) letters b and c of Perja Number 15 of 2020.

That basically there are no significant obstacles or barriers in the Restorative Justice process in the case of aggravated theft with the suspect Gilang Surya Baskara Bin Largono DRS, considering that all parties involved, including the Prosecutor Facilitator, the suspect, the victim, and community leaders, have actually agreed and are of the same opinion on resolving this case through peaceful means. The support from each party can be explained as follows:

- a) From the perspective of the Facilitator Prosecutor, the Restorative Justice process is considered appropriate and can be implemented because it has fulfilled all the requirements as stipulated in the Prosecutor's Regulation Number 15 of 2020 and the Circular Letter of the Deputy Attorney General for General Crimes Number 1 of 2022 Number 01/E/EJP/02/2022 concerning the Implementation of Termination of Prosecution Based on Restorative Justice;
- b) From the suspect's side, the person concerned showed regret for his actions, promised not to repeat the crime, and apologized directly to the victim;
- c) From the victim's perspective, the victim accepted the suspect's apology, was willing to make peace, and even became the party who initiated the request to the Public Prosecutor so that this case could be resolved through a restorative justice mechanism;
- d) From the perspective of community leaders (in this case represented by the Village Head), there was a positive response to the peace efforts and full support for the resolution of the case to be carried out based on the principles of restorative justice.

3) Interview Results

- 1) Dr. Fajar Seto Nugroho, SH, MH as Head of Intelligence at the Central Jakarta District Attorney's Office

An interview with a prosecutor at the Central Jakarta District Attorney's Office revealed that the implementation of restorative justice mechanisms for aggravated theft cases has increased significantly since the enactment of Prosecutor's Regulation Number 15 of 2020. According to the informant, this regulation provides a clear legal basis for prosecutors to discontinue prosecution in certain cases that meet substantive and procedural requirements. In practice, the initial assessment process is a crucial stage because prosecutors must ensure that the aggravated theft case submitted is truly categorized as minor or socially tolerable, even though formally it is a crime that is usually considered serious.

The resource person also explained that the Deputy Attorney General's Circular Letter for General Crimes Number 1 of 2022 plays a crucial role in strengthening operational standards, particularly regarding indicators of appropriateness for restorative justice implementation. The Circular provides technical guidelines

regarding additional requirements, such as checking the perpetrator's profile, assessing the material losses, and evaluating the victim's willingness to reconcile. In the context of aggravated theft, prosecutors must carefully evaluate aggravating factors, such as those committed at night or involving a burglary, to ensure that the implementation of restorative justice does not diminish the public's sense of justice.

At the end of the interview, the prosecutor acknowledged that implementation challenges remain, particularly related to varying public perceptions of the use of restorative justice in aggravated theft. Therefore, the Prosecutor's Office continues to conduct outreach to explain that this mechanism is not a form of impunity, but rather a law enforcement effort based on restorative values. The interviewee emphasized that as long as all normative requirements are met and the victim receives appropriate reparation, then terminating prosecution based on restorative justice is an important instrument in maintaining social harmony and promoting the effectiveness of the criminal justice system.

2) Eko Febrianto, SH, MH as Head of General Crimes at the Grobogan District Attorney's Office

The resource person explained that the resolution of aggravated theft crimes still relies heavily on the substantive provisions stipulated in the Criminal Code, particularly Article 363. He emphasized that this article places aggravated theft as an offense with a higher criminal penalty due to the presence of aggravating elements, such as being committed at night, being carried out by burglary, or being committed by two or more people. According to the prosecutor, this classification of aggravated criminal penalties implies an obligation for his institution to handle cases strictly and carefully, because errors in the application of elements can affect the direction of prosecution policy.

The prosecutor explained that the case handling process is strictly regulated by the Criminal Procedure Code as a formal guideline for investigators and public prosecutors. He stated that after receiving the case files from investigators, prosecutors must conduct in-depth legal research, both on the formal and material aspects of the case, to ensure that the evidence presented is truly capable of proving the aggravating elements as referred to in Article 363 of the Criminal Code. According to him, the file research stage (P-16 and P-17) is a determining starting point for prosecutors in making decisions whether the case is worthy of being escalated to the prosecution stage or returned to investigators for completion.

The resource person explained that the implementation of restorative justice mechanisms in resolving aggravated theft cases still requires careful consideration. He noted that although restorative justice policies are increasingly being expanded in law enforcement practice, not all aggravated theft cases can be

resolved through these non-litigation mechanisms. This is due to the nature of the offense, which is essentially categorized as a crime against property that has aggravating elements and has the potential to cause public unrest.

3.2. Law Enforcement Regulations for Aggravated Theft in Indonesia Have Not Yet Adopted a Restorative Justice Approach

Law enforcement regulations for aggravated theft, as stipulated in Article 363 of the Criminal Code, are still oriented toward retributive justice, a paradigm that views punishment as a means of state retribution against the perpetrator. This retributive model is a legacy of the Dutch East Indies Criminal Code, which was designed in a colonial context and therefore fails to consider victim recovery or social relations.¹⁷ This paradigm continues to dominate law enforcement practices, as evidenced by the tendency of law enforcement officials to bring all aggravated theft cases to litigation without considering the social context of the case. This demonstrates that the Indonesian criminal justice system still prioritizes punishment, not rehabilitation.

The Criminal Code, as a material criminal law, is inherited from the colonial *Wetboek van Strafrecht*, which considered aggravated theft (Article 363) a serious offense punishable by imprisonment with a high penalty. This normative structure is based on the classical philosophy that crime is a violation of the state and must be repaid through punishment. This paradigm contradicts the philosophy of restorative justice, which views crime as a violation of social relations and emphasizes healing for the harm caused to victims, perpetrators, and society. Because the Criminal Code still uses the old paradigm, the formal space for restorative resolution in the crime of aggravated theft remains normatively closed. This indicates that Indonesia's material legal foundation is not yet conceptually ready to accommodate a restorative approach.¹⁸

In terms of criminal procedure law (KUHAP), mechanisms supporting the implementation of RJ are also lacking, so law enforcement continues to operate on an adjudicative basis. The KUHAP recognizes only two mechanisms for resolving cases: formal legal proceedings through the courts, and case termination through a SP3 (if there is insufficient evidence, the incident is not a crime, or the suspect has died). There is no mechanism for case termination due to reconciliation or restitution, as is known in the RJ approach. Consequently, every public report of aggravated theft must be processed through investigation, prosecution, and trial, regardless of the social circumstances underlying the incident or the possibility of restoring the relationship between the perpetrator and victim. This rigid procedural law structure hinders the flexibility of authorities in choosing a humane approach, even though contemporary research shows that RJ is more effective in

¹⁷Andi Hamzah, *Indonesian Criminal Law*, Jakarta: Sinar Grafika, 2017, p. 45.

¹⁸Adami Chazawi, *Criminal Procedure Law Lessons*, PT Rajagrafindo Persada 2016, p. 87.

certain cases involving perpetrators from vulnerable groups, small losses, and close social relationships between the perpetrator and victim.¹⁹

Restorative justice Normatively, it prioritizes the principles of dialogue, admission of guilt, compensation, and restoration of social relations between victims, perpetrators, and society.²⁰ This principle emphasizes that resolving a crime lies not solely in imposing sanctions, but also in reparating the victim's losses and reintegrating the perpetrator. However, provisions in the Criminal Code and other laws and regulations do not provide normative space for the implementation of restorative resolution for aggravated theft. Article 363 of the Criminal Code classifies this crime as a serious crime, thus formal proceedings are considered the only legally valid resolution mechanism.

In fact, from a criminological perspective, crimes against property, especially theft, are one of the crimes that are empirically most often resolved through restorative methods in many countries.²¹ This is due to the nature of the offense, which is generally individual, non-violent, and involves compensable material losses. However, when aggravating factors such as nighttime, two or more people, causing damage, or occurring in a public place are involved, Indonesia categorizes it as a serious crime. This limits the flexibility of authorities in determining whether a case is still worthy of restorative resolution.

Internal regulations issued by the Prosecutor's Office, such as Prosecutor's Office Regulation Number 15 of 2020 and Circular Letter of the Deputy Attorney General for General Crimes No. 01 of 2022, have indeed opened up opportunities for the implementation of Restorative Justice (RJ), but these are very limited and lack strong legal standing. The Prosecutor's Office Regulations apply only within the Prosecutor's Office and are not binding on investigators (police) or the courts. Furthermore, these regulations do not explicitly state that aggravated theft can be accommodated through RJ, as the guidelines use a five-year prison sentence, while Article 363 of the Criminal Code carries a sentence exceeding five years. This has led to disparities in practice: some prosecutors continue to apply restorative justice contextually, but most reject it as it is deemed inappropriate to the criminal penalty. The lack of legal legitimacy makes the application of RJ to aggravated theft unstable, inconsistent, and vulnerable to legal challenges.²²

Ultimately, the legal culture of the public and authorities remains a factor contributing to the failure to apply RJ to aggravated theft. Many officials view aggravated theft as a crime that threatens public safety and therefore does not deserve to be resolved through peaceful means. The public often believes that

¹⁹Ridwan Mansyur, 'Restorative Justice in the Indonesian Justice System' *Journal of Law Enforcement*, 2020, p. 112.

²⁰Tony F. Marshall, "Restorative Justice: An Overview," Home Office Research Report, 1999.

²¹John Braithwaite, *Crime, Shame and Reintegration*, Cambridge University Press, 1989, p. 66.

²²Ridwan Mansyur, *Op. Cit.*,

perpetrators of such crimes must be punished harshly to provide a deterrent effect.²³ Without a change in legal culture, the implementation of RJ will always face moral resistance, even if the harm is small or the perpetrator is from a vulnerable group. This view also indicates the lack of internalization of progressive legal values that prioritize individuals, social context, and recovery over mere retaliation. As long as the legal culture remains oriented toward punishment, RJ regulations will remain on the fringes of the criminal justice system, rather than becoming a primary alternative.

Barda Nawawi Arief emphasized that the effectiveness of law enforcement is not solely measured by the severity of the punishment imposed, but by the extent to which punishment is able to fulfill the community's sense of substantive justice.²⁴ An overemphasis on punishment is ineffective in reducing crime if it isn't accompanied by rehabilitation efforts. The repressive nature of prison often severs offenders' social connections and even increases the likelihood of recidivism, as offenders enter new deviant environments. This demonstrates that the goal of punishment for aggravated theft fails to address the principle of long-term community protection.

In many cases, victims of aggravated theft actually need compensation and security guarantees more than a prison sentence for the perpetrator.²⁵ However, the formal criminal justice system does not provide a dialogic mechanism for victims to express their specific needs. The restitution procedure under the Witness and Victim Protection Law is rarely used due to strict administrative requirements and a lack of public awareness. This situation prevents victims from obtaining compensation quickly, while perpetrators continue to be prosecuted retributively, providing no direct benefit to the victims.

Dogmatically, the crime of aggravated theft is seen as a *malum in se* crime, namely an act that is considered reprehensible by the morality of society and therefore the state must intervene repressively.²⁶ However, this approach fails to consider the varying contexts of cases occurring in the field. In many cases, aggravating factors arise not from strong criminal intent, but from situational factors, such as the incident occurring at night when the perpetrator is active. The use of rigid aggravating factors serves as a justification for rejecting restorative resolution without considering the facts proportionally.

The New Criminal Code (Law No. 1 of 2023) actually begins to recognize the principles of restorative justice in a limited way, especially in Article 52 concerning the objectives of punishment.²⁷ However, for aggravated theft, lawmakers

²³Romli Atmasasmita, *Criminal Law Reform*, PT Gramedia, 2019, p. 204.

²⁴Barda Nawawi Arief, *Anthology of Criminal Law Policy*, Jakarta: Kencana, 2014, p. 112.

²⁵Muladi, *Selected Chapters on the Criminal Justice System*, Semarang: UNDIP Press, 2010, p. 75.

²⁶Moeljatno, *Principles of Criminal Law*, Jakarta: Rineka Cipta, 2002, p. 34.

²⁷Law Number 1 of 2023 concerning the Criminal Code.

retained the same article structure as the old Criminal Code, categorizing it as a serious crime. This demonstrates that Indonesian legal policy still views crimes against property as a serious threat, and thus normative reform has not been accompanied by a paradigm shift.

From a victimology perspective, the non-involvement of victims in the case resolution process results in secondary victimization, namely continued suffering due to the legal process.²⁸Victims need real justice, not just symbolic justice through punishment. When victims are denied the opportunity to be heard or receive compensation, the judicial process only adds to their suffering. Therefore, the lack of restorative mechanisms in aggravated theft deepens the gap between the law and the victims' needs.

From a research perspective, the restorative justice model has been shown to reduce recidivism rates. Braithwaite's study showed that offenders who met with victims in a mediation forum were better able to understand the impact of their actions and were less likely to reoffend.²⁹Prisons, on the other hand, function as a criminal subculture that increases the risk of reoffending. Therefore, law enforcement in aggravated theft cases should consider long-term effectiveness rather than mere punishment.

From a philosophical perspective, the values of restorative justice are deeply rooted in Indonesian legal culture, which prioritizes deliberation and relationship restoration, as reflected in customary law. Therefore, the application of restorative justice does not conflict with the nation's cultural values. When the state fails to accommodate these values in cases of aggravated theft, a dissonance arises between written law and local values embedded within society.

3.3. Weaknesses of Restorative Justice Regulations for Aggravated Theft in Indonesia Today

Restorative justice (RJ) has become a new paradigm in criminal law enforcement in Indonesia, particularly following the issuance of Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice and the 2022 Circular Letter of the Deputy Attorney General for General Crimes. However, the application of RJ to aggravated theft still faces various structural, substantial, and cultural weaknesses that undermine its effectiveness. First, the weakness in legal substance is evident in the lack of harmonization between the prosecutor's internal regulations and the provisions of the Criminal Code as material law. The Criminal Code, particularly Article 363 concerning aggravated theft, has historically been constructed with a retributive paradigm, viewing aggravated theft as a serious offense that must be

²⁸Arif Gosita, *Problems of Crime Victims*, Jakarta: PT Bhuana Ilmu Populer, 1999, p. 91.

²⁹John Braithwaite, *Restorative Justice and Responsive Regulation*, Oxford University Press, 2002, p. 101.

dealt with repressively. This paradigm does not provide normative space for a restorative approach. As a result, the RJ regulations at the prosecutorial level are philosophically "contradictory" to the substantive criminal law framework, often making authorities hesitant to implement them for fear of being perceived as contradictory to the principle of legality and the retributive purpose of punishment. This disharmony between internal regulations and national law creates legal uncertainty, weakening the consistency of RJ's application to serious crimes such as aggravated theft.

The weakness of the RJ regulation is also evident in the unclear normative boundaries regarding the categories of aggravated theft that can and cannot be processed through restorative mechanisms. Prosecutor's Office Regulation Number 15 of 2020 provides general criteria that RJ can be applied to crimes with a maximum penalty of 5 years and minor material losses. However, aggravated theft carries a penalty of up to 7 or even 9 years, depending on the aggravating elements. The prosecutor's office's internal regulations do not specifically provide exceptions or limiting provisions regarding which aggravating elements still allow the use of RJ. This lack of clarity creates disparities, as some regional prosecutors use contextual interpretations and continue to apply RJ, while others reject all peace requests for aggravated theft offenses. In other words, the RJ regulation lacks sufficient normative depth to provide consistent guidance and prevent abuse of authority.

Regulatory weaknesses are also evident in the lack of risk assessment procedures in determining the suitability of aggravated theft cases for restorative resolution. Aggravated theft offenses can involve a variety of methods, from simple theft with aggravating elements (nighttime) to organized theft, recidivism, or minimal use of violence. However, RJ regulations only provide very general assessments such as "the perpetrator is not a recidivist" or "does not cause public unrest." The absence of measurable assessment instruments leads authorities to rely solely on subjective judgments, which are prone to controversy, abuse of authority, and injustice to victims. In the context of restorative justice, the lack of detailed assessment guidelines weakens the assurance that decisions to discontinue prosecution truly meet the principles of community safety and restorative capacity.

The RJ regulation also faces structural weaknesses (legal structure) that impact its practical implementation. The regulation only positions prosecutors as the central actor without addressing coordinating relationships with the police, courts, and other social institutions. This is despite the fact that aggravated theft is a crime typically handled seriously and involves intensive investigation. The unclear roles between institutions often result in delays in the RJ process because investigators lack the explicit authority to initiate restorative processes before the case is transferred. Furthermore, the regulation does not address psychological, social, or

professional support mechanisms such as certified mediators, so the mediation process is often conducted solely by prosecutors, who do not possess all mediation competencies. These structural weaknesses deprive RJ of its quality as an inclusive, impartial, and restorative process.

Regarding legal culture, RJ regulations have not been able to change the mindset of officials and the public regarding the resolution of serious crimes. Many law enforcement officers still hold the paradigm that aggravated theft must be resolved through criminal penalties to provide a deterrent effect and maintain social order. On the other hand, the public often rejects peaceful resolutions because they view this offense as a crime that endangers environmental security. RJ regulations do not provide educational guidelines or outreach approaches to the community regarding the values of restorative justice. When the legal culture of the community and officials does not yet support it, the application of RJ to aggravated theft cases tends to be considered "violating the community's sense of justice," even though in many cases the perpetrators are poor and suffer minor material losses.

Another weakness lies in the lack of robust oversight and accountability mechanisms. Regulations do not address how to evaluate the use of RJ, monitor abuses of discretion, or provide sanctions for officers who abuse their authority during the peace process. In cases of aggravated theft, abuse of authority is highly likely because the penalties are high, and the peace process can use the excuse of "social proximity" or "minor losses" without clear metrics. The absence of an internal audit system makes RJ implementation highly dependent on individual integrity, rather than a standardized system.

The application of restorative justice in handling aggravated theft crimes is a new phenomenon in the Indonesian criminal justice system. Although this idea aligns with global developments that emphasize restoration over punishment, its implementation cannot be separated from the dynamics of national regulations that are still based on a retributive paradigm. The application of restorative justice to aggravated crimes such as theft committed at night, committed together, breaking into a house, or accompanied by vandalism, certainly gives rise to legal and social debate. Therefore, this analysis examines in depth the three fundamental dimensions of law according to Lawrence M. Friedman: legal substance, legal structure, and legal culture, to assess the extent to which restorative justice mechanisms can be applied legitimately and effectively in this context.

1) Weaknesses of Legal Substance

The substantive legal weakness in the application of restorative justice to aggravated theft arises because current regulations do not provide clear boundaries regarding the scope of offenses that can be resolved through a

restorative approach. Prosecutor's Regulation Number 15 of 2020 only provides general requirements such as small losses, first-time offenders, and a peace agreement, without providing specific parameters for aggravated offenses as formulated in Article 363 of the Criminal Code. This normative vacuum creates broad room for interpretation for law enforcement officials and has the potential to create disparities in case handling practices.³⁰

Regulatory disharmony also exists between the prosecutor's internal regulations and the provisions of the Criminal Code (KUHP) and the Criminal Procedure Code (KUHPA). Both laws remain oriented toward a retributive paradigm and do not recognize the principle of terminating prosecution based on restorative justice. The KUHPA explicitly grants prosecutors the authority to prosecute and does not provide for terminating prosecution based on restorative justice.³¹ This inconsistency raises legal doubts regarding the legitimacy of terminating prosecution in cases with aggravating circumstances that are traditionally considered serious crimes.

The existing legal framework also fails to provide adequate protection for victims. There are no minimum standards for restitution, limits on compensation, mechanisms for monitoring the implementation of agreements, or procedures to ensure that victims' consent is not obtained through social pressure. This contradicts the principles of restorative justice, which places the victim at the center of recovery (a victim-centered approach), as Van Ness and Strong emphasize, stating that victim protection is the primary foundation of restorative justice.³²

Furthermore, the legal substance does not yet regulate a risk assessment mechanism for perpetrators of aggravated theft. In practice, there are no standard instruments to assess the risk of recidivism, the perpetrator's character, or the level of threat to the victim. Yet, risk assessment is a crucial component of restorative justice, as Kathleen Daly's research emphasizes, emphasizing that restitution cannot be granted to perpetrators with the potential to reoffend without clear mitigation mechanisms.

2) Weaknesses of Legal Structure

From a legal structural perspective, the primary weakness lies in the uneven capacity of law enforcement officials. Not all prosecutors, investigators, or mediators possess a thorough understanding of restorative justice principles, mediation techniques, and empathetic communication. The quality of law enforcement officers impacts the effectiveness of the recovery and victim protection process. This limited capacity often results in restorative justice

³⁰Moeljatno, *Principles of Criminal Law*, Jakarta: PT Rineka Cipta, 2002, p. 57.

³¹Andi Hamzah, *Indonesian Criminal Procedure Law*, Jakarta: Sinar Grafika, 2008, p. 112.

³²Howard Zehr, *The Little Book of Restorative Justice*, Good Books, 2002, p. 29–31

implementation being an administrative formality rather than a substantial restoration process.

The lack of oversight mechanisms for prosecutorial discretion is another structural weakness. The use of discretion without multiple layers of oversight opens up opportunities for abuse of authority and transactional practices. Satjipto Rahardjo has long warned that a weak legal structure for oversight of discretion can lead to abuse of power in case resolution.³³ In cases of aggravated theft, the risk of unaccountable use of discretion increases given the more serious nature of the offense.

Disparities in implementation between district attorneys' offices are also a structural issue. One unit may have very strict standards for assessing case eligibility, while another may have very lax standards. This irregularity contradicts the principle of equality before the law, and the divergence in the implementation of criminal policies undermines the consistency of criminal law.

The legal structure is also weak in providing supporting facilities for the penal mediation process. Many prosecutors' offices lack victim-friendly mediation rooms, psychological counselors, or trained social workers. This is despite global literature showing that the availability of Furthermore, the lack of data integration between law enforcement agencies is a significant weakness. The absence of an integrated information system makes it difficult to identify offenders' histories. This situation opens up the opportunity for restorative justice to be provided to repeat offenders, who are not eligible for a restorative approach. The results of penal mediation are highly dependent on a neutral and safe environment.

3) Weaknesses of Legal Culture

The legal culture of law enforcement officials is still dominated by a retributive perspective. Many officials view restorative justice as a form of "weakening the law" rather than a means of restoration. Friedman defines legal culture as "the values, perceptions, and attitudes of society toward the law," which is the most important element in effective law enforcement. When officials do not fully embrace the value of restoration, the implementation of restorative justice will be suboptimal.³⁴

The weakness of legal culture is also evident in the public's understanding that still emphasizes revenge and deterrence. In the context of aggravated theft, the public often rejects peaceful resolutions because they believe the perpetrator has disturbed the community. Public perception of the law significantly determines

³³Satjipto Rahardjo, *Law and Social Change*, Bandung: Alumni, 1979, p. 54.

³⁴Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, New York: Russell Sage Foundation, 1975, p. 76.

the level of acceptance of new policies. This public resistance makes restorative justice difficult to implement in areas with high crime rates.

Furthermore, a "transactional" culture in criminal case resolution misinterprets restorative justice as a forum for compensation negotiations, rather than a mechanism for restoration. Restorative justice fails when the victim's role is reduced to that of the "paid" party without a genuine dialogue about healing.¹² This distorted understanding still frequently occurs in cases of aggravated theft involving community actors or local figures.

Legal culture is also influenced by low public trust in law enforcement officials. This distrust often leads the public to view restorative justice agreements as an attempt by officials to "protect the perpetrator," especially if the perpetrator has certain social connections. Public trust is determined by perceptions of fairness, not by the final outcome of the case.¹³ When this trust is low, restorative justice is difficult to implement.

An analysis of legal substance, legal structure, and legal culture shows that the application of restorative justice to aggravated theft still faces serious obstacles. A lack of norms, legal disharmony, low institutional capacity, weak oversight, and a resistant legal culture are interrelated factors that hinder the effectiveness of restorative justice.

Therefore, comprehensive legal reconstruction is needed through improvements to statutory regulations, strengthening the capacity of law enforcement, establishing transparent oversight mechanisms, and more extensive public education on the value of restoration. Without these fundamental improvements, restorative justice will remain merely a procedural approach that fails to provide substantive justice for victims or the community.

4. Conclusion

Law enforcement regulations for aggravated theft in Indonesia have not adopted a restorative justice approach because the Criminal Code (KUHP) and the Criminal Procedure Code (KUHP) are still oriented towards a retributive paradigm that emphasizes punishment, without providing a legal basis for case termination through restoration or reconciliation. The provisions of Article 363 of the Criminal Code, which views aggravated theft as a serious offense with a high penalty, make it incompatible with the principles of restorative justice, while internal regulations such as Prosecutor's Office Regulation Number 15 of 2020 lack the hierarchical power to amend provisions in the law. Furthermore, the law enforcement system is not yet institutionally integrated, and the legal culture of society and officials is still predominantly retributive, resulting in very limited acceptance of restorative solutions. The weaknesses of restorative justice regulations for aggravated theft in Indonesia are primarily due to the national legal framework, which remains retributive and does not provide a normative or procedural basis for a recovery

mechanism. The high penalty imposed by Article 363 of the Criminal Code makes this offense unsuitable for restorative justice, while Prosecutor's Regulation No. 15 of 2020 lacks the hierarchical authority to address these limitations. Furthermore, the law enforcement structure is not yet integrated, and the legal culture of the community and authorities remains punishment-oriented. Consequently, existing regulations, overall, are unable to effectively support the application of restorative justice to aggravated theft.

5. References

Journals:

- Ahmad, Zainal. "Restorative Justice dalam Sistem Peradilan Pidana Indonesia." *Jurnal Hukum dan Pembangunan*, Vol. 51, No. 3 (2021): 412–430.
- Afandi, D. "Penerapan Keadilan Restoratif dalam Perkara Pencurian di Indonesia." *Jurnal Hukum Ius Quia Iustum*, Vol. 25, No. 3 (2018): 402–421.
- Irwansyah, M. "Restorative Justice dan Relevansinya terhadap Penyelesaian Perkara Pidana Pencurian." *Jurnal RechtsVinding*, Vol. 10, No. 2 (2021): 211–227.
- Marlina. "Rekonstruksi Penanganan Anak Berhadapan dengan Hukum melalui Restorative Justice." *Jurnal Hukum dan Peradilan*, Vol. 4, No. 1 (2015): 56–75.
- Rahmawati, Fitri. "Implementasi Restorative Justice terhadap Tindak Pidana Ringan di Indonesia." *Jurnal Yustisia*, Vol. 9, No. 2 (2020): 157–168.
- Siregar, Andi. "Kebijakan Penegakan Hukum Pidana dalam Perspektif Restorative Justice." *Jurnal RechtsVinding*, Vol. 10, No. 1 (2021): 23–37.
- Yunus, N. "Keadilan Restoratif sebagai Alternatif Penyelesaian Perkara Pidana: Analisis Yuridis dan Filosofis." *Jurnal Hukum Yudisia*, Vol. 11, No. 2 (2018): 245–260.

Books:

- Arief, Barda Nawawi. *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Kencana, 2008.
- Arief, Barda Nawawi. *Mediasi Penal: Penyelesaian Perkara Pidana di Luar Pengadilan*. Semarang: Pustaka Magister, 2012.
- Asshiddiqie, Jimly. *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Konstitusi Press, 2005.

Atmasasmita, Romli. *Reformasi Hukum, Hak Asasi Manusia dan Penegakan Hukum*. Bandung: Mandar Maju, 2001.

Braithwaite, John. *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press, 2002.

Liebmann, Marian, *Restorative Justice: How It Works*, London: Jessica Kingsley Publishers, 2007.

Muladi. *Kapita Selekta Sistem Peradilan Pidana*. Semarang: Badan Penerbit UNDIP, 1995.

Muladi & Arief, Barda Nawawi. *Teori-Teori dan Kebijakan Pidana*. Bandung: Alumni, 1992.

Rasjidi, Lili. *Filsafat Hukum: Apakah Hukum Itu?* Bandung: Remaja Rosdakarya, 2001.

Rasjidi, Lili & Putra, I.B. Wyasa. *Hukum Sebagai Suatu Sistem*. Bandung: Remaja Rosdakarya, 1993.

Rahardjo, Satjipto. *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*. Jakarta: Kompas, 2009.

Santoso, Topo. *Kriminalisasi dan Penalisasi dalam Hukum Pidana*. Jakarta: Rajawali Pers, 2011.

Regulation:

The 1945 Constitution of the Republic of Indonesia.

The Criminal Code (KUHP).

Law Number 11 of 2021 concerning Job Creation.

The current law governing the Attorney General's Office of the Republic of Indonesia is Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

Supreme Court Regulation of the Republic of Indonesia Number 2 of 2012 concerning Adjustments to the Limits of Minor Crimes.

Memorandum of Understanding between the Supreme Court, the Attorney General's Office, the Indonesian National Police, and the Ministry of Law and Human Rights concerning the Implementation of Restorative Justice, 2012.

Attorney General Regulation of the Republic of Indonesia Number 15 of 2020
concerning Termination of Prosecution Based on Restorative Justice.

Circular Letter of the Deputy Attorney General for General Crimes Number 1 of
2022