

## **Legal Analysis of the Application of Article 363 Paragraph (1) 5 of the Criminal Code to the Crime of Aggravated Theft from an Islamic Law Perspective (Study of Decision Number 666/Pid.B/2025/PN Dps)**

**Kadek Ayu Kartika Dewi<sup>1)</sup> & Jawade Hafidz<sup>2)</sup>**

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

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

***Abstract.*** This study aims to analyze the application of Article 363 paragraph (1) point 5 of the Indonesian Criminal Code (KUHP) in relation to the criminal act of aggravated theft as examined in Decision Number 666/Pid.B/2025/PN Dps, and to assess it from the perspective of Islamic law by reviewing the conformity of *jarīmah sariqah* elements, the *niṣāb* threshold, and the relevance of the restorative justice principle. This research employs a normative juridical method with statutory, conceptual, and comparative approaches to examine both positive legal norms and Islamic legal principles. The data sources consist of primary legal materials such as legislation and court decisions; secondary legal materials in the form of scholarly literature and legal experts' opinions; and tertiary legal materials that support the conceptual analysis. The findings indicate that the application of positive law in the decision has fulfilled the principles of legality and legal certainty, yet it has not fully reflected substantive justice according to Islamic law. From the Islamic legal perspective, the sanctions imposed on the offender should be oriented toward *ta'zīr*—a corrective and restorative punishment rather than purely retributive. Integrating Islamic justice values with the restorative justice approach represents a crucial step toward developing a national legal system that is more humanistic, equitable, and oriented toward the common good.

***Keywords:*** Aggravated; Criminal; Islamic; Law.

## 1. Introduction

Indonesia is a highly diverse archipelagic nation. Home to over 270 million people, the nation comprises hundreds of ethnic groups, regional languages, and cultural diversity stretching from Sabang to Merauke. This diversity forms a distinctive collective identity and serves as a national strength, yet simultaneously demands a legal system capable of harmoniously accommodating local values and universal norms. In this context, the law plays a central role as a means of social engineering, capable of maintaining stability and ensuring order amidst the diversity of Indonesian society.<sup>1</sup>

Historically, Indonesia's legal system was formed through a long, complex process, influenced by various legal systems worldwide. As explained by Prof. Gunarto, SH, M.Hum., the Indonesian legal system is a blend of civil law, common law, customary law, and Islamic law. The Dutch colonial process left behind a legacy of legal codes, many of which are still preserved today, such as the Criminal Code (KUHP), which serves as the basis for criminal law in Indonesia today.<sup>2</sup> However, along the way, Indonesian positive law continues to interact with customary law and Islamic law which live and develop in society, especially in upholding the values of substantive justice.<sup>3</sup>

As a country that upholds the principle of *Rechtsstaat*, Indonesia places law as the supreme commander in governing national and state life. From an academic perspective, as stated by Prof. Dr. Sri Endah Wahyuningsih, SH, M.Hum., of Sultan Agung Islamic University (UNISSULA), the existence of a state based on law implies that all government actions must be based on law, and all citizens are subject to legal norms that apply fairly and equally.<sup>4</sup> In the context of criminal law, this principle demands that law enforcement is not only repressive, but also able to provide certainty, benefit, and justice.<sup>5</sup>

One of the most common and disturbing crimes in society is theft. This crime not only violates individual property rights but also impacts the collective sense of security. According to data from various police sources, theft remains a high-ranking crime on the national crime index.<sup>6</sup> This demonstrates that theft is a

---

<sup>1</sup>Gunarto, G. (2022). *Philosophy of Law and the Dynamics of Indonesian Society*. Semarang: UNISSULA Press.

<sup>2</sup>Gunarto, G. (2021). *Criminal Law and the Indonesian Criminal Justice System*. Semarang: UNISSULA Press.

<sup>3</sup>Wahyuningsih, SE (2020). *Law Enforcement in a Rule of Law State: A Theoretical and Practical Study*. Semarang: UNISSULA Press.

<sup>4</sup>Wahyuningsih, SE, & Gunarto, G. (2021). *Law and Justice in the Indonesian Criminal System*. Semarang: UNISSULA Press.

<sup>5</sup>Barizah, N. (2019). *Legal Pluralism and Integrative Justice in the Indonesian Context*. Surabaya: Airlangga University Press.

<sup>6</sup>Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations.

recurring and adaptive crime, often committed in various ways and forms. One such form is aggravated theft, as stipulated in Article 363 of the Criminal Code.

Article 363 paragraph (1) 5 of the Criminal Code regulates theft committed at night in a house or enclosed yard by means of unauthorized entry. The application of this article emphasizes the existence of aggravating circumstances that aggravate the punishment for the perpetrator. However, in practice, the enforcement of this article often gives rise to different interpretations, both in the investigation stage, prosecution, and the decision-making process by the judge.<sup>7</sup> This opens up space for discussion about how positive criminal law can transform in providing substantive justice, especially when faced with certain social contexts.

During the trial, witnesses Siprianus Judin and Danang Dwi Argo testified that the car was taken without permission, and evidence in the form of the vehicle used was also presented at the trial. The defendant himself did not deny his actions, expressed open regret, and promised not to repeat similar actions. The public prosecutor assessed that the defendant's actions fulfilled the elements of aggravated theft as regulated in Article 363 paragraph (1) 5 of the Criminal Code, and demanded a prison sentence of seven months.<sup>8</sup>

In its verdict, the Panel of Judges considered that all elements of the article charged had been fulfilled, namely: first, the element of "whoever" was fulfilled because the identity of the perpetrator was clear; second, the element of "taking another person's property unlawfully" was proven by the defendant's actions in taking the car without the owner's permission; and third, the element of "by means of damage" was proven by the defendant's admission that he damaged the car's ignition cable to start the engine. In its consideration, the judge also noted that the defendant's actions caused unrest in the community and caused material losses to the victim of Rp. 25 million. However, the defendant's polite attitude, confession of the act, and feelings of remorse were considerations that mitigated the sentence.<sup>9</sup>

On July 15, 2025, the Denpasar District Court sentenced the defendant to six months in prison for aggravated theft. The time already served was deducted from the total sentence. The defendant was also ordered to remain in custody, and the vehicle used as evidence was returned to the owner through a designated witness. The defendant was also ordered to pay court costs of Rp5,000.00. The defendant accepted this decision as a form of accountability for his actions. The panel of judges emphasized that the sanction fairly considered the defendant's remorse and the impact on the victim and society.

---

<sup>7</sup>Criminal Code (KUHP).

<sup>8</sup>Denpasar District Court Decision Number 666/Pid.B/2025/PN Dps.

<sup>9</sup>Gunarto, G. (2021). Criminal Law and the Indonesian Criminal Justice System. Semarang: UNISSULA Press.

This incident is interesting to study further from a legal perspective because it reflects the application of positive criminal law norms in a concrete situation involving social, psychological, and legal aspects. Aggravated theft itself is a form of crime with more complex characteristics than ordinary theft. This is due to the presence of aggravating elements, such as being committed at night, in a closed place, by means of damage, or using certain tools. From a national criminal law perspective, this crime is regulated in Article 363 paragraph (1) of the Criminal Code, specifically in number 5, which provides heavier sanctions as a form of protection for property and public order.<sup>10</sup>

The Islamic Qanun perspective views the crime of theft (السرقة) as a form of theft (جريمة) that has very serious legal consequences. Islamic law not only stipulates strict sanctions against perpetrators, but also requires a number of strict conditions before an act can be categorized as a crime worthy of sanctions (حد). In this context, theft can only be punished (حد) if elements such as malicious intent (قصد), theft is carried out secretly, and the value of the stolen goods exceeds a predetermined limit (نصاب) are met.<sup>11</sup>

According to Prof. Dr. Sri Endah Wahyuningsih, SH, M.Hum., from Sultan Agung Islamic University, the Islamic criminal law system is built on the principle of substantive justice rooted in the values of (تَأْدِيب) (مُصْلَحَة) and (قصاص/دية) or moral development. Therefore, before imposing a severe sanction such as (حد), the judge must consider the social context, the perpetrator's intentions, and the possibility of factors that could invalidate criminal charges, such as coercion or urgent needs.<sup>12</sup> In the case as described in Decision Number 666/Pid.B/2025/PN Dps, the defendant's actions do fulfill the elements of taking another person's property, but the assessment in Islamic law is not only limited to actus reus (action), but also considers mens rea (intention) and the complete human condition.

As emphasized by Prof. Gunarto, SH, M.Hum., criminal sanctions in Islam have three main categories, namely (حد) (fixed punishment derived from the text), (تعزير) (balanced retribution or compensation), and (عذير) (punishment at the discretion of the ruler). When a case does not fulfill the elements of (حد), then the alternative sanction (تعزير) becomes a rational choice that takes contextual justice into account.<sup>13</sup> In this case, if the accused shows remorse, returns the stolen goods, and does not cause permanent damage, then Islamic law opens up space for the imposition of more educational and proportionate sanctions.

---

<sup>10</sup>Wahyuningsih, SE (2020). Law Enforcement in a Rule of Law State: A Theoretical and Practical Study. Semarang: UNISSULA Press.

<sup>11</sup>Ma'ruf, M. (2020). Islamic Criminal Law: Theory and Practice. Semarang: UNDIP Press.

<sup>12</sup>Wahyuningsih, SE (2021). Integration of Islamic Values in National Criminal Law Enforcement. Semarang: UNISSULA Press.

<sup>13</sup>Gunarto, G. (2021). The Concept of Ta'zīr in the Enforcement of Islamic Criminal Law. Semarang: UNISSULA Press.

In the context of Indonesia's multicultural legal system, with a predominantly Muslim population, it is crucial to examine whether the application of positive criminal law aligns with the values of substantive justice held by the community. According to Prof. Dr. Nurul Barizah, SH, LL.M., Ph.D., of Airlangga University, the integration of national law and Islamic law is not a formalization of sharia, but rather a process of harmonizing values to create justice with cultural sensitivity.<sup>14</sup> Therefore, the development of the criminal law system should not only rely on the normative text of the Criminal Code, but also open up space for value approaches that originate from Islamic law and local culture.

Analysis of theft cases in Islamic law cannot be separated from the underlying moral, social, and economic principles. In an effort to build a just and inclusive national legal system, there needs to be a space for dialogue between the normative approach of positive law and the values of the Islamic *qānūn*, which reflect transcendental justice (عَدْلَةٌ), humanity (إِنْسَانِيَّةٌ), and social balance (مُوازِنَةٌ).<sup>15</sup>

The study of Denpasar District Court Decision Number 666/Pid.B/2025/PN Dps opens up a broader and more reflective legal analysis space regarding how the provisions of Article 363 paragraph (1) 5 of the Criminal Code are applied by judges in criminal justice practice. In this case, the defendant was proven to have stolen a motor vehicle that was parked unlocked, by damaging the ignition cable to start the engine. This crime was committed consciously and premeditatedly, and involved a previous working relationship between the perpetrator and the party to whom the vehicle was entrusted. This pattern of action can be categorized as aggravated theft, as determined in the formulation of the article.<sup>16</sup>

There is room for criticism of the judge's considerations, which are deemed not to fully reflect the principles of substantive justice, especially when the incident is read through the lens of the Islamic Qanun. According to Prof. Gunarto, SH, M.Hum., in the Islamic legal system, justice is not simply translated into the imposition of sanctions, but must also take into account the perpetrator's intentions (نِيَّةٌ), socioeconomic conditions, and the impact of the act on the victim and society.<sup>17</sup> Thus, justice is not rigid, but demands flexibility in responding to the complexity of the context of the criminal act that occurred.

The judge's decision in this case does fulfill the formal elements as formulated in the Criminal Code, but when reviewed further from the perspective of Islamic law, questions arise regarding whether the act qualifies as جُرِيمَةُ السَّرِقَةِ (which can be

<sup>14</sup>Barizah, N. (2019). Legal Pluralism and Integrative Justice in the Indonesian Context. Surabaya: Airlangga University Press.

<sup>15</sup>Wahyuninggsih, SE, & Gunarto, G. (2022). Criminal Law and the Spirit of Islamic Justice in the Indonesian Legal State. Semarang: UNISSULA Press.

<sup>16</sup>Criminal Code. (2022). Criminal Code. Jakarta: Ministry of Law and Human Rights of the Republic of Indonesia.

<sup>17</sup>Gunarto, G. (2021). The Concept of Justice in Islamic Criminal Law. Semarang: UNISSULA Press.

subject to (حدّ) or merely a sanction (تعزير). As explained by Prof. Dr. Sri Endah Wahyuningsih, SH, M.Hum., the Islamic legal approach in deciding theft cases emphasizes the principle of high caution in assessing the elements of the crime, such as legal ownership, the value of the stolen goods, and the motivation and condition of the perpetrator.<sup>18</sup> If there is an element of doubt or a strong mitigating reason, then the punishment (حدّ) is not applied, and is replaced with (تعزير) which is more proportional and educational.

The progressive legal perspective, as developed by Prof. Satjipto Rahardjo and in line with Islamic values, ideally law enforcement should not be trapped in normative textualism, but rather should be based on the principles of utility and social justice.<sup>19</sup> The law must be able to act as an instrument of liberation, not merely as a means of punishment. Therefore, this study is highly relevant to assess whether the legal approach used in Decision Number 666/Pid.B/2025/PN Dps truly reflects a balance between procedural and substantive justice.

## 2. Research Methods

This research uses a juridical-normative research method, namely legal research that emphasizes the study of written legal norms, such as statutory regulations, court decisions, and the doctrines of legal experts. Juridical-normative research focuses on law as a rule that should apply (das sollen), rather than as empirical social behavior (das sein).<sup>20</sup> This model is commonly used in legal studies which require analysis of applicable principles, principles and norms, both in positive law and Islamic law.

## 3. Results and Discussion

### 3.1. Application of Article 363 Paragraph (1) 5 of the Criminal Code in Decision Number 666/Pid.B/2025/PN Dps

#### 1) Chronological Description in Decision Number 666/Pid.B/2025/PN Dps

On Tuesday, April 1, 2025, witness Siprianus Judin inspected a white Mitsubishi pickup truck with license plate number DK 8371 DD parked in the Jimbaran Asri Housing Complex on Accounting Street, South Kuta, Badung. The inspection revealed that the doors were unlocked, although the windows were tightly closed.

Then, on Wednesday, April 2, 2025 at around 07.15 WITA, the defendant Ade Muhammad Wijaya planned to go to work in the Munggu area. The defendant's reason was because he received a higher wage there compared to working with

---

<sup>18</sup>Wahyuningsih, SE (2021). Integration of Islamic Values in National Criminal Law Enforcement. Semarang: UNISSULA Press.

<sup>19</sup>Rahardjo, S. (2006). Progressive Law: Law for Humanity. Jakarta: Kompas.

<sup>20</sup>Soekanto, S., & Mamudji, S. (2006). Normative Legal Research: A Brief Review. Jakarta: Rajawali Pers.

Siprianus Judin. Because he did not have a vehicle, the defendant then intended to use a white Mitsubishi pickup truck DK 8371 DD which was usually used for project activities. The defendant went to the location where the car was parked, then damaged the ignition cable located under the steering wheel. After the cable was disconnected, the defendant reconnected it so that the car engine could be started without using the ignition key. Next, the defendant took the car away without permission from the rightful owner.

At around 9:00 a.m. WITA on the same day, witness Siprianus Judin intended to use the car to purchase iron. However, when he arrived at the parking lot, the car was gone. Siprianus then tried to find out information by asking local residents, and was told that the car had been taken away. He then contacted Soeharsono, the owner of the car who had given him the authority to use it, but Soeharsono stated that he did not know the car's whereabouts. Siprianus then reported the incident to the South Kuta Police.

On Wednesday evening, April 2, 2025, at approximately 9:30 PM WITA, defendant Ade Muhammad Wijaya returned to the Jimbaran Asri Housing Complex, where his car was usually parked. He then went to Siprianus Judin's house to pick up his wife. However, he was immediately apprehended by authorities and taken to the South Kuta Police Station for further investigation.

## 2) Legal Facts Description

### a. Vehicle Condition Before the Incident

On the day Tuesday, April 1, 2025 at approximately 17.15 WITA, witness Cyprianus Judin saw a 2013 white Mitsubishi pickup truck with a police number plate DK 8371 DD parked on the side of the road in the Jimbaran Asri Housing Complex, Accounting Street, South Kuta, Badung. When inspected, the car doors were unlocked, although the windows were tightly closed.

### b. Defendant's Actions

On Wednesday, April 2, 2025, at approximately 7:15 a.m. WITA, defendant Ade Muhammad Wijaya, who was going to work in the Munggu area (for a higher wage than working with Siprianus Judin), intended to use the pickup truck. The truck had previously been used by the defendant for project purposes.

owned by Siprianus Judin.

The defendant then walked to the car, parked in front of the Perum Bumi Jimbaran Asri project building. Using his hands, he pulled the ignition cable under the steering wheel until it broke, then reconnected it, allowing the car to start without a key. He then drove away without the owner's permission.

### c. Discovery of Missing Car

On the same day, at around 9:00 a.m. WITA, witness Siprianus Judin intended to use the car to purchase iron. However, the car was no longer in the parking lot. After asking local residents, he learned that the car had been taken out, possibly by a worker named Suhar. Siprianus then contacted the car owner, Soeharsono, but he also did not know the vehicle's whereabouts. Siprianus reported the incident to the South Kuta Police.

d. The Defendant was arrested

On Wednesday, April 2, 2025, at approximately 9:30 PM WITA, the defendant returned to his original location in the Jimbaran Asri Housing Complex and then went to Siprianus Judin's house to pick up his wife. At that time, the defendant was detained and taken to the South Kuta Police Station for further investigation.

e. Losses Due to the Defendant's Actions

The defendant took 1 (one) unit of white Mitsubishi pick up car year 2013 No. Pol DK 8371 DD, No.Ka MHMU5TU2EDK112121, No. Engine 4G15J76524, STNK in the name of Yuhanafi David Rustiawan, address Jalan Gerya Nambi 1/22, Ubung Kaja, Denpasar, without the permission or knowledge of the legal owner Soeharsono, who previously gave power of attorney to Siprianus Judin. The defendant used the car for personal interests, namely working elsewhere with higher pay. As a result of this action, the victim Soeharsono suffered material losses of Rp. 25,000,000 (twenty five million rupiah).

3) Description of the Analysis of Fulfillment of the Elements of Article 363 Paragraph (1) 5 of the Criminal Code

Article 363 paragraph (1) 5 of the Criminal Code reads:

*"Theft committed against animals, motor vehicles, or goods which are partly or wholly on a public road or in a public place, is punishable by a maximum prison sentence of 7 (seven) years."*

To be able to enter Article 363 Paragraph (1) 5 of the Criminal Code, there must be elements that are fulfilled, namely:

a. The element of "Whoever"

This element refers to the legal subject, namely any person who can be held criminally responsible. In this case, the person who committed the act is Ade Muhammad Wijaya. The defendant's identity is clear, and he is a physically and mentally healthy adult, thus he can be held criminally responsible. This element has been fulfilled.

b. The element "Taking something"

This element means the act of controlling goods that are wholly or partially owned by another person with the aim of transferring control of the goods from the rightful owner to the perpetrator without rights. In this case, the defendant took a 2013 white Mitsubishi pickup truck with license plate number DK 8371 DD parked at the Jimbaran Asri Housing Complex. The defendant's actions were carried out by damaging the car's ignition cable so that it could be started without a key, then driving the car away. Thus, the element of taking something has been proven.

c. The element "The goods are wholly or partly owned by another person"

The property the defendant took was not his. The vehicle's vehicle registration (STNK) was registered under Yuhanafi David Rustiawan, who then authorized Soeharsono to use it for the project. The defendant had no ownership rights whatsoever to the car; he had merely used it for project operations. Therefore, the property element was also met.

d. The element "With the intent to possess unlawfully"

The act of taking another person's property is only criminally punishable if it is done with the intention of unlawfully controlling or possessing it. In this case, the defendant took the car with the intention of using it for personal gain, namely to work elsewhere for higher pay. The defendant did not seek permission from the rightful owner or the authorized representative, making this act clearly unlawful. The element of unlawful intent to possess is fulfilled.

e. The element "Committed against motor vehicles"

Article 363 paragraph (1) point 5 specifically emphasizes that the theft was committed against a motor vehicle. The item taken by the defendant was a 2013 Mitsubishi pick-up truck, which is included in the category of motor vehicles as referred to in Law Number 22 of 2009 concerning Traffic and Road Transportation. Therefore, this element is completely fulfilled.

With all elements of the article proven, there is no doubt that the defendant Ade Muhammad Wijaya can be held criminally responsible for his actions. As a result of this crime, the victim, Soeharsono, suffered significant material losses, amounting to IDR 25,000,000. In addition to causing economic losses, the defendant's actions have also been socially detrimental because they have created a sense of insecurity in the community, especially in terms of trust in workers who were previously entrusted with using project operational vehicles.

On that basis, the defendant deserves to be sentenced according to the provisions of Article 363 paragraph (1) 5 of the Criminal Code, with a maximum prison sentence of 7 (seven) years. The imposition of a sentence on the defendant not only serves as retribution for his actions, but also as a means of prevention

(deterrent effect) so that similar actions are not committed again by either the defendant or other members of society.

It can be emphasized that all elements in Article 363 paragraph (1) 5 of the Criminal Code have been completely fulfilled, and the defendant Ade Muhammad Wijaya can be held criminally responsible for the crime of aggravated theft of a motor vehicle.

### **3.2. Legal Analysis of the Decision in the Context of Indonesian Positive Law**

Case Decision Number 666/Pid.B/2025/PN Dps relates to the crime of motor vehicle theft committed by damaging the ignition cable to start the engine without using the original key. Based on the legal facts at trial, the defendant deliberately committed the act to take another person's motor vehicle without the right. In Indonesian positive law, the act is qualified as aggravated theft as regulated in Article 363 paragraph (1) 3rd and 5th of the Criminal Code, because it was committed with the aggravation of "theft of a motor vehicle" and "committed at night" in a closed or fenced place.

The Denpasar District Court Decision Number 666/Pid.B/2025/PN Dps which tried a case of aggravated theft, is one of the implementations of Article 363 paragraph (1) 5 of the Criminal Code (KUHP). From the perspective of Indonesian positive law, analysis of this decision is important to assess the extent to which the panel of judges has been consistent with the principles of legality, the principle of legal certainty, and the objectives of punishment in the criminal justice system.

First, from a formal aspect, the decision fulfills the principle of legality as stated in Article 1 paragraph (1) of the Criminal Code, namely "no act can be punished except by virtue of criminal regulations in legislation that existed before the act was committed." The defendant's actions have been clearly regulated in Article 363 paragraph (1) 5 of the Criminal Code, which regulates aggravated theft if it is committed by two or more people together. Thus, the judge in this decision has based his considerations on applicable legal norms.

Second, from a material perspective, the analysis of the fulfillment of the elements of the article shows that all elements of the crime are met. The element of "taking something" is proven because the defendant and his partner took someone else's property. The element of "partially or wholly belonging to someone else" is also fulfilled because the goods taken do not belong to the defendant. The element of "with the intent to possess unlawfully" is proven because there is no right or permission from the legal owner. Meanwhile, the aggravating element of "committed by two or more people together" is proven based on trial facts that confirm a joint role in the commission of the crime.

Third, from the aspect of criminal responsibility, the defendant can be held criminally responsible because it meets the requirements of fault in the form of

intent (dolus). The defendant consciously collaborated with his partner to commit the theft, so there is no excuse or justification that can eliminate his criminal responsibility. This is in line with Moeljatno's theory of criminal responsibility, which emphasizes that a person can only be punished if their actions are unlawful and carried out with error.

Fourth, in terms of sentencing, the panel of judges imposed a sentence in accordance with Article 363 of the Criminal Code, which carries a maximum prison sentence of 7 years. This decision can be considered proportional because it takes into account the aggravating and mitigating circumstances of the defendant. Aggravating circumstances include the defendant's actions harming the victim, causing public unrest, and being carried out through joint planning. Meanwhile, mitigating circumstances include the defendant's polite behavior during the trial, admitting his actions, and regretting them. This is in accordance with the principle of individualization of punishment adopted in Indonesian criminal law, where punishment not only considers legal certainty but also takes into account aspects of justice and expediency.

Fifth, from an Islamic legal perspective, this crime fulfills the elements of *jarimah sariqah* (theft subject to *hudūd* sanctions) as explained by Wahbah al-Zuhaili in *Al-Fiqh al-Islāmī wa Adillatuhu*, namely the act of secretly taking another person's property from a safe place (*hīrz*), without permission and without rights, with the intention of owning it. The defendant's actions clearly fulfill these elements, because motor vehicles are valuable assets (*māl mutaqawwam*), taken from a place that has security, carried out without the owner's knowledge or permission, and accompanied by the intention to own it.

Sanctions against perpetrators of motor vehicle theft in Indonesia are categorized as *ta'zīr*, which is a type of punishment that does not have standard provisions in the text, but is determined by the government or judge based on considerations of the public interest. According to Al-Syatibi in *Al-Muwāfaqāt fī Uṣūl al-Syārī'ah*, *ta'zīr* punishment functions to uphold justice and prevent social damage by paying attention to *maqāṣid al-syārī'ah* (the objectives of sharia), such as protecting property (*ḥifz al-māl*), life (*ḥifz al-nafs*), and public order (*ḥifz al-mujtama'*).

**Legal implications** This decision shows that the application of Article 363 paragraph (1) 5 of the Criminal Code is still consistent in judicial practice. The judge has examined the legal facts based on valid evidence as regulated in Article 184 of the Criminal Procedure Code, namely witness statements, defendant statements, and evidence. The judge's considerations show a balance between normative aspects and concrete facts, so that the decision can be considered to fulfill the principle of substantive justice. Thus, the legal analysis of Decision Number 666/Pid.B/2025/PN Dps shows that the application of positive Indonesian law in this case has been carried out in accordance with the provisions of statutory

regulations, the principles of criminal law, and the principle of justice in sentencing.

#### **4. Conclusion**

The Denpasar District Court through Decision Number 666/Pid.B/2025/PN Dps has correctly applied the provisions of Article 363 paragraph (1) 5 of the Criminal Code, because the defendant's actions fulfill the elements of aggravated theft. The aggravating element lies in the theft being committed under certain circumstances that have a more serious impact than ordinary theft. The judge in this decision considered formal aspects (article elements) and material aspects (trial facts) before imposing a sentence. legality and the principle of legal certainty. The judge based his decision on valid evidence in accordance with Article 184 of the Criminal Procedure Code, and imposed a sentence by taking into account aggravating and mitigating circumstances. However, in the context of substantive justice, there is still criticism regarding the extent to which the sentence imposed is able to provide a deterrent effect while providing protection for the rights of the defendant and the victim.

#### **5. References**

##### **Al-Qur'an:**

Al-Qur'an Surat Al-Māidah ayat 38

##### **Journals:**

Wahyuningsih, S. E. (2021). Pendekatan normatif dalam penelitian hukum: Menelusuri nilai dalam struktur sosial. *Jurnal Hukum UNISSULA*, 12(3), 201–215.

##### **Books:**

Al-Jaziri, A. (1990). *Al-fiqh 'al a al-madhāhib al-arba'ah*. Beirut: Dār al-Fikr.

Al-Mawardi, A. H. (1996). *Al-ahkām al-sultāniyyah*. Beirut: Dār al-Kutub al-'Ilmiyyah.

Al-Nawawi, Y. (2002). *Al-majmū' sharḥ al-muhadhdhab*. Beirut: Dār al-Fikr.

Al-Qurthubi, M. (2006). *Al-jāmi' li aḥkām al-Qur'ān*. Beirut: Dār al-Kutub al-'Ilmiyyah.

Al-Syatibi, I. (2003). *Al-muwāfaqāt fī uṣūl al-shari'ah*. Kairo: Dār al-Kutub al-'Ilmiyyah.

Al-Zuhaili, W. (1989). *Al-fiqh al-islāmī wa adillatuhu* (Vol. 6). Damaskus: Dār al-Fikr.

Ali, M. (2005). *Asas-asas hukum pidana*. Jakarta: Raja Grafindo Persada.

Anshori, A. G. (2019). *Hukum pidana Islam di Indonesia*. Yogyakarta: UII Press.

Arief, B. N. (2020). *Kebijakan legislatif dalam penanggulangan kejahatan*. Semarang: Universitas Diponegoro Press.

Austin, J. (2009). *The province of jurisprudence determined*. Cambridge: Cambridge University Press.

Barizah, N. (2019). *Pluralisme hukum dan keadilan integratif dalam konteks Indonesia*. Surabaya: Universitas Airlangga Press.

Chazawi, A. (2014). *Hukum pidana materiil*. Malang: Bayu Media.

Friedman, L. M. (1975). *The legal system: A social science perspective*. New York: Russell Sage Foundation.

Fuller, L. (1969). *The morality of law*. New Haven: Yale University Press.

Gunarto, G. (2021). *Filsafat hukum pidana Islam*. Semarang: UNISSULA Press.

Gunarto, G. (2021). *Hukum pidana dan sistem peradilan pidana Indonesia*. Semarang: UNISSULA Press.

Gunarto, G. (2021). *Hukum pidana: Teori dan praktik dalam sistem nasional*. Semarang: UNISSULA Press.

Gunarto, G. (2021). *Konsep keadilan dalam hukum pidana Islam*. Semarang: UNISSULA Press.

Gunarto, G. (2021). *Konsep ta'zir dalam penegakan hukum pidana Islam*. Semarang: UNISSULA Press.

Gunarto, G. (2022). *Filsafat hukum dan dinamika masyarakat Indonesia*. Semarang: UNISSULA Press.

Gunarto, G. (2022). *Living law dan implementasinya dalam sistem hukum pidana Indonesia*. Semarang: UNISSULA Press.

Rahardjo, S. (2006). *Hukum progresif: Hukum yang membebaskan*. Jakarta: Kompas.

Rahardjo, S. (2009). *Hukum dan perubahan sosial*. Jakarta: Genta Publishing.

Saleh, R. (1983). *Perbuatan pidana dan pertanggungjawaban pidana*. Jakarta: Aksara Baru.

Saleh, R. (1983). *Segi-segi lain hukum pidana*. Jakarta: Ghalia Indonesia.

Simons, J. (1935). *Leerboek van het Nederlands strafrecht*. Haarlem: Tjeenk Willink.

Simons, J. (1992). *Het Nederlands strafrecht*. Zwolle: Tjeenk Willink.

Soekanto, S. (1986). *Pengantar penelitian hukum*. Jakarta: UI Press.

Soekanto, S., & Mamudji, S. (2006). *Penelitian hukum normatif: Suatu tinjauan singkat*. Jakarta: Rajawali Pers.

Soesilo, R. (1996). *Kitab Undang-Undang Hukum Pidana serta komentar-komentarnya lengkap pasal demi pasal*. Bogor: Politeia.

Sudarto. (1986). *Hukum pidana I*. Semarang: Yayasan Sudarto.

Sudarto. (1990). *Hukum pidana I*. Yogyakarta: Ghalia Indonesia.

Sudarto. (1990). *Hukum dan hukum pidana*. Bandung: Alumni.

Sudarto. (2006). *Hukum pidana I*. Yogyakarta: Gadjah Mada University Press.

Sudikno Mertokusumo. (2010). *Penemuan hukum: Sebuah pengantar*. Yogyakarta: Liberty.

Syarifuddin, A. (2002). *Hukum Islam: Perspektif pemidanaan*. Jakarta: Kencana.

Utrecht, E. (2014). *Hukum pidana I*. Jakarta: Sinar Grafika.

Utrecht, E. (2014). *Hukum pidana I*. Surabaya: Pustaka Tinta Mas.

Van Hamel, J. (1888). *Inleiding tot de studie van het Nederlands strafrecht*. Haarlem: Bohn.

Wahyuningsih, S. E. (2021). *Integrasi nilai Islam dalam penegakan hukum pidana nasional*. Semarang: UNISSULA Press.

Wahyuningsih, S. E., & Gunarto, G. (2021). *Hukum dan keadilan dalam sistem pidana Indonesia*. Semarang: UNISSULA Press.

Wahyuningsih, S. E., & Gunarto, G. (2022). *Hukum pidana dan spirit keadilan Islam dalam negara hukum Indonesia*. Semarang: UNISSULA Press.

Wahyuningsih, S. E., & Gunarto, G. (2023). *Metodologi penelitian hukum normatif dan yuridis*. Semarang: UNISSULA Press.

Wahyuningsih, S. E., & Gunarto, G. (2023). *Restorative justice dalam hukum pidana Islam dan nasional*. Semarang: UNISSULA Press.

**Regulation:**

Law of the Republic of Indonesia Number 1 of 1946 concerning Criminal Law Regulations.

Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA).

Criminal Code (KUHP). (2022). Jakarta: Ministry of Law and Human Rights of the Republic of Indonesia.

Denpasar District Court Decision Number 666/Pid.B/2025/PN Dps.