

Legal Review of Criminalization of Aggravated Theft Based on Justice Values

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Abstract. *This research aims to analyze the application of criminal law to the offense of aggravated theft as regulated in Article 363 paragraph (1) point 4 of the Indonesian Criminal Code (KUHP), with a particular emphasis on the substantive justice aspect for offenders from lower socio-economic backgrounds. Cases such as theft of oil palm fruit by local residents around plantation areas often draw criticism for neglecting the social and economic context of the offenders. In this context, the study seeks to examine the extent to which criminal law is applied fairly by taking into account the values of humanity and social justice that live and develop within society. This study employs a normative juridical research method combined with a case study approach and supported by a conceptual approach to strengthen the analytical framework. The normative juridical method focuses on the examination of statutory regulations, legal doctrines, and relevant court decisions, while the case study approach is used to connect legal norms with their practical application in judicial decisions. The conceptual approach serves to construct a comprehensive understanding of the principles of criminal law, the doctrine of criminal responsibility, and the concept of substantive justice that underlies sentencing in aggravated theft cases. The findings reveal that aggravated theft constitutes a criminal offense requiring strict proof of both actus reus and mens rea elements in accordance with the principles of lex certa and lex stricta. In the a quo case, proof of the element of "joint participation" and the presence of valid evidence under the negative-wettelijk system becomes the primary basis for judges in rendering a fair verdict. A prison sentence of one year is considered proportionate if accompanied by a transparent explanation of the aggravating and mitigating factors. An ideal judgment should demonstrate coherence between facts, legal elements, principles, and the court's verdict, while also reflecting the values of al-'adālah (justice), al-maṣlaḥah (public interest), and al-karāmah (dignity). Furthermore, this research emphasizes the importance of considering the spirit of the 2023 Criminal Code reform, which aspires to prevent over-punishment and*

promote a more restorative and humanistic approach to sentencing. Thus, this study provides an academic contribution to the development of criminal law that is not only legally valid but also socially legitimate.

Keywords: *Aggravated; Justice; Sentencing; Substantive.*

1. Introduction

Indonesia is known as an archipelagic nation with abundant natural resources, both biological and non-biological. This diversity of resources makes Indonesia one of the countries with significant economic potential in Southeast Asia. This natural wealth not only serves as a major pillar of the national economy but also provides social and cultural benefits to the community. As Satjipto Rahardjo points out, the law must be able to address the evolving social dynamics that accompany natural resource management, which involves the interests of many parties, from the state, businesses, to local communities.¹

One of Indonesia's most prized natural resources is the oil palm (*Elaeis guineensis*). This commodity contributes significantly to national income through the export of derivative products, such as cooking oil, biodiesel, and cosmetics. Data from the Central Statistics Agency (BPS) shows that Indonesia is the world's largest palm oil producer, with plantations covering millions of hectares across Sumatra, Kalimantan, Sulawesi, and Papua.² However, behind this success, the palm oil plantation sector also faces various complex problems, both from a legal, social and environmental perspective.

Frequently arising issues include land ownership disputes, conflicts between indigenous communities and companies, and high rates of palm oil theft in large plantation areas. This palm oil theft phenomenon is inextricably linked to the economic factors of the surrounding community, weak oversight, and perceptions of injustice in natural resource management. According to Bardanawawi, crimes such as theft are often driven by social inequality and the poor distribution of economic benefits from existing resources.³

Indonesia, as an agricultural country, relies heavily on the plantation sector. Palm oil not only provides economic benefits through exports but also creates jobs for millions of people. However, unequal distribution of yields and plantation management that lacks local community involvement often fuel social discontent.

¹Rahardjo, S. (2009). *Progressive Law: A Synthesis of Indonesian Law*. Jakarta: Kompas.

²Central Bureau of Statistics. (2024). *Indonesian Plantation Statistics: Palm Oil*. Jakarta: BPS.

³Bardanawawi, B. (2022). *Criminal Law and Social Inequality*. Semarang: UNISSULA Press.

According to Bardanawawi, this unfair distribution of economic benefits can trigger crime, including theft, around plantation areas.⁴

Furthermore, palm oil plantation management practices involving large companies often neglect the social aspects of surrounding communities. In many cases, local communities feel they have historical rights to the land now controlled by the companies. This tension is exacerbated when communities are excluded from the planning and management of existing natural resources. This demonstrates an imbalance between the legal justice enforced formally and the substantive justice expected by the communities.⁵

On the other hand, the economic situation of the surrounding community is also a major factor in the occurrence of palm oil theft. Poverty levels, limited employment opportunities, and a lack of attention from local governments exacerbate the situation. According to Sri Endah Wahyuningsih, criminal law must consider the socio-economic context of the perpetrator, as punishment that ignores these conditions can deviate from the goal of crime prevention and rehabilitation.⁶

Furthermore, conflicts arising in the palm oil plantation sector often impact not only community-company relations but also give rise to complex legal issues. Law enforcement officials are required to balance legal certainty with the principles of utility and justice. In this context, Satjipto Rahardjo, through his progressive legal theory, emphasizes the importance of law as a means of providing fair protection, not merely as a formal instrument for enforcing regulations.⁷

Law enforcement in cases related to palm oil plantations often faces a dilemma between the rigid application of legal justice and the need for more humane substantive justice. In progressive legal theory, the law should not stand autonomously from social reality but must accommodate the values of justice that exist within society. Law enforcement that relies solely on the text of the law without considering the socio-economic context of the perpetrators can actually exacerbate injustice and foster public resistance to the law itself.⁸

The philosophical basis in the research on the application of Article 363 paragraph (1) 4 of the Criminal Code to the crime of theft of palm oil fruit does not only depart from the normative concept regarding violations of property rights, but is also closely related to the basic values that underlie the Indonesian legal system. In the context of a country that has abundant natural resources, including the palm oil

⁴Central Bureau of Statistics. (2024). Indonesian Plantation Statistics: Palm Oil. Jakarta: BPS.

⁵Rahardjo, S. (2009). *Progressive Law: A Synthesis of Indonesian Law*. Jakarta: Kompas.

⁶Wahyuningsih, SE (2020). *Theory and Practice of Criminal Justice in Indonesia*. Semarang: UNISSULA Press.

⁷Rahardjo, S. (2012). *Legal Science in Social Context*. Bandung: Alumni.

⁸Rahardjo, S. (2012). *Legal Science in Social Context*. Bandung: Alumni.

plantation sector, a philosophical understanding is important to see how the law works not merely as a collection of norms, but as an instrument to achieve substantive justice for all levels of society.

Philosophically, the existence of criminal law must be positioned within a dialectical relationship between the state's right to maintain order and the people's right to social justice. Indonesia, as a state based on the rule of law (*rechtstaat*), places the protection of property rights as part of the principle of social order. However, on the other hand, the state also has a constitutional duty to ensure that the management of natural resources provides the greatest possible benefits for the prosperity of the people. It is at this point that a philosophical tension arises between the legal-formal approach to criminal law enforcement and the need for substantive justice that exists within society, particularly in regions dependent on the plantation sector.

The debate regarding the application of Article 363 paragraph (1) 4 of the Criminal Code is inseparable from the nature of the article which provides increased penalties for perpetrators of theft. In the context of palm oil theft, this increase is often considered disproportionate when considering the relatively small value of the loss compared to the threat of punishment. This view is in line with the principle of *ultimum remedium* in criminal law, which states that punishment should be the last resort after other settlement efforts cannot be carried out.⁹ Therefore, a criminal law policy is needed that pays attention to the balance between protecting the interests of victims and fair treatment of perpetrators.

In the case of Decision Number 190/Pid.B/2025/PN Mpw, the defendant Surindi alias Rendi was proven to have stolen 61 bunches of oil palm fruit belonging to PT. Rezeki Kencana. The chronology of the case shows that on Friday, February 21, 2025 at around 11:30 WIB, the defendant Surindi alias Rendi bin Surikan contacted his colleague, Mr. Aden (who is currently on the Wanted List or DPO), by telephone to ask for help selling oil palm fruit which he claimed came from his parents' plantation. The defendant's parents' plantation is directly adjacent to the PT. Rezeki Kencana plantation area, which is located in Block LU-1, Sungai Deras Village, Teluk Pakedai District, Kubu Raya Regency.¹⁰

The agreement between the defendant and Mr. Aden was reached after Friday prayers. At around 1:00 PM WIB, the defendant went to the location carrying a harvesting tool in the form of a *dodos*. However, Mr. Aden considered the tool the defendant brought was inadequate, so he returned with a larger harvesting tool. Aden then asked the defendant to prepare to transport the oil palm fruit he had harvested from the plantation owned by PT. Rezeki Kencana. In his actions, the defendant used his father's bicycle to transport the harvest from the company's

⁹Muladi. (2017). *Criminalization Policy in the Criminal Law System*. Bandung: Refika Aditama.

¹⁰Mempawah District Court. (2025). Decision Number 190/Pid.B/2025/PN Mpw.

land to his parent's plantation three times, with a total of 22 bunches of oil palm fruit successfully transported to the location.¹¹

This act was discovered by Mr. Satram, a patrol officer at PT. Rezeki Kencana's plantation, who immediately reported the incident to the company. Shortly thereafter, Mr. Aden fled, while the defendant was successfully secured by company security and taken to the office for further questioning. From the results of the field check, a total of 61 bunches of oil palm fruit were found to have been stolen, consisting of 22 bunches that had been removed by the defendant and 39 bunches that were still in the company's plantation area. As a result of this incident, PT. Rezeki Kencana suffered material losses worth Rp2,848,000.00.¹²

This case was reported to the Teluk Pakedai Police, and the defendant was then detained on February 23, 2025. The legal process continued from investigation, prosecution by the prosecutor, to examination at trial. During the trial, the defendant admitted all of his actions, expressed regret, and asked for leniency. However, based on witness statements, the defendant's confession, and evidence in the form of a dodos, a transport bicycle, and 61 bunches of oil palm fruit, the Panel of Judges concluded that all elements of Article 363 paragraph (1) 4 of the Criminal Code had been fulfilled. The evidence in the form of the dodos and bicycle was determined to be destroyed, while the stolen proceeds in the form of oil palm fruit were returned to PT. Rezeki Kencana.¹³

The panel of judges finally sentenced the defendant to one year in prison, considering that his actions fulfilled the elements of the crime of aggravated theft as stipulated in Article 363 paragraph (1) 4 of the Criminal Code. However, this case raises legal questions regarding the extent to which the application of this article reflects the values of justice, both for the victim and the defendant, especially considering that the losses incurred were not too great compared to the social impact that arose as a result of this punishment.¹⁴

2. Research Methods

Research methods are a crucial foundation for any scientific study, including legal research. Selecting the right method ensures that the research results have strong validity and relevance to the problem being studied. This research uses a normative juridical method with a case study approach. This method was chosen because it provides an in-depth analysis of applicable legal norms while linking them to their application in concrete cases. Therefore, this research is not limited

¹¹Bardanawawij, B. (2022). *Criminal Law and Social Inequality*. Semarang: UNISSULA Press.

¹²Muladi. (2017). *Criminalization Policy in the Criminal Law System*. Bandung: Refika Aditama.

¹³Wahyuningsih, SE (2020). *Theory and Practice of Criminal Justice in Indonesia*. Semarang: UNISSULA Press.

¹⁴Soponyono, E. (2018). *Criminal Law Policy from a Justice Perspective*. Semarang: UNDIP Press.

to theoretical aspects but also considers the practical aspects of legal application in the field.¹⁵

3. Results and Discussion

3.1. Application of Material Criminal Law to the Perpetrator as a Defendant/Suspect in a Theft Case Based on the Value of Justice

Curat (aggravated theft) is positioned as a special variant of the crime of theft because it is committed under certain circumstances or in certain ways that increase the degree of culpability compared to ordinary theft. The starting point remains the core element of theft "taking another person's property with the intent to possess it unlawfully" but with the addition of specific aggravating circumstances that have an impact on increasing the threat of punishment. In the old Criminal Code (WvS), the main elements of theft were formulated in Article 362, while aggravating circumstances were listed in Article 363 (e.g., livestock theft; occurring during a disaster/riot; committed at night in a house/enclosed yard; committed by ≥ 2 people; or by breaking/damaging/using a fake key, and the like). This framework is also commonly used by judges to test the *actus reus* and *mens rea*, then affirm the qualifications of aggravating factors individually for each element of the crime.¹⁶

At the application level, the examination of the elements of theft under the old regime requires precise proof of aggravating factors, for example, proving "nighttime" and "in a closed house/yard" (through witness testimony, a timeline of events, or technical traces), or "collaboration" (≥ 2 perpetrators with relevant contributions). First-instance court jurisprudence often narrates this proof in detail in the verdict, indicating that the increase in sanctions is not automatic, but rather depends on the convincing fulfillment of aggravating circumstances.¹⁷

Since Law No. 1 of 2023 (the National Criminal Code) was passed on January 2, 2023, the layout of the crime of theft has been restructured: Article 476 contains the basic form (equivalent to the old Article 362), Article 477 codifies aggravated theft (*curat*), while Article 478 regulates petty theft. The substance of the aggravating circumstances in Article 477 essentially continues the pattern of the

¹⁵Marzuki, PM (2017). *Legal Research: Revised Edition*. Jakarta: Kencana Prenada Media Group.

¹⁶Hukumonline. (2023, December 18). This is the text of Article 362 of the Criminal Code concerning theft. <https://www.hukumonline.com/klinik/a/ini-bunyi-pasal-362-kuhp-tentang-pencurian-lt65802c0e6e0f9/>

Hukumonline. (2024, January 2). Article 363 of the Criminal Code concerning aggravated theft. <https://www.hukumonline.com/klinik/a/bunyi-pasal-363-kuhp-tentang-pencurian-dengan-pemberatan-lt6593d9f864498/>

¹⁷Supreme Court of the Republic of Indonesia. (nd). Decision Directory (search results for "Article 363 paragraph (2) of the Criminal Code"). <https://putusan3.mahkamahagung.go.id/search.html/?q=%22Article+363+verse+%282%29+KUHP%22>

old Article 363 with adjustments to the wording to be contemporary relevance (for example, the context of place/space and the method of breaching protection). However, the 2023 Criminal Code only came into effect three years after its enactment, namely January 2, 2026, so until January 2, 2026, theft cases will still be prosecuted under the old Criminal Code regime. On the other hand, the direction of the reforms in the 2023 Criminal Code is important to read as a value compass for more modern and proportional criminal reasoning.¹⁸

The prioritization of justice in sentencing theft is emphasized by Article 51 of the 2023 Criminal Code concerning the objectives of punishment—not only preventing crime, but also resolving conflict, restoring balance, fostering perpetrators' remorse, and maintaining a sense of security in society. Although the old Criminal Code remains the basis for sentencing until January 2, 2026, the new objectives of punishment can serve as an ethical-normative reference to ensure that the imposition of criminal penalties for theft is proportional, not excessive, and sensitive to the recovery of victims and the reintegration of perpetrators.¹⁹

Within the framework of evidence-based proportionality (evidence-based sentencing), the choice of type and length of punishment should be tied to: (i) the degree of culpability/intent (mode of demolition, coordination between perpetrators, high-value targets, and so on); (ii) the level of harm and impact (material and non-material) on the victim; (iii) relevant mitigating/aggravating circumstances (e.g., return of goods, apology, authentic reconciliation, role of perpetrator, risk of recidivism); and (iv) protection of society without falling into over-punishment. Academic literature and UNISSULA studies emphasize that a “fair” verdict is not the harshest, but rather one that is reasonable, transparent, and predictable for similar cases in line with the balance of certainty, justice, and expediency.²⁰

¹⁸Indonesian Audit Board (BPK). (2023). Law Number 1 of 2023 concerning the Criminal Code (detail page). <https://peraturan.bpk.go.id/Details/234935/uu-no-1-tahun-2023>

JDIH Coordinating Ministry for Maritime Affairs & Investment. (2023). Law 1/2023: Criminal Code—effective 3 years from the date of enactment. <https://jdih.maritim.go.id/uu-12023-kitab-undang-undang-hukum-pidana-kuhp>

DDTC Fiscal Research. (nd). Law 1/2023—quotation of Article 478 of the 2023 Criminal Code. <https://perpajakan.ddtc.co.id/sumber-hukum/peraturan-pusat/undang-undang-1-tahun-2023>

¹⁹Indonesian Audit Board (BPK). (2023). Law 1/2023 (PDF)—Article 51 on the purpose of criminal punishment. <https://peraturan.bpk.go.id/Download/287456/UU%20Nomor%201%20Tahun%2023.pdf>

²⁰Wahyuningsih, SE (2014). The urgency of reforming Indonesia's material criminal law based on the values of the One Almighty God. *Journal of Legal Reform*, 1(1), 17–23. <https://jurnal.unissula.ac.id/index.php/PH/article/view/1457>

Lubis, MFA, & Mashdurohatun, A. (2025). Analysis of criminal punishment for perpetrators of the criminal act of theft with aggregating: Study of Decision No. 208/Pid.B/2024/PN Jap. Khaira

Furthermore, a fair material analysis demands a clear distinction between theft and similar crimes such as theft with violence (*curas*). The element of violence/threat of violence against a person is a hallmark of *curas* (with different criminal consequences) and should not be "dragged" into aggravating theft without supporting elements. With this distinction, the ethic of justice, namely punishing according to what is proven, remains intact.²¹

The transition to the full validity of the 2023 Criminal Code also implies temporal consistency: events and prosecutions before January 2, 2026, remain subject to the old Criminal Code, while allowing for the interpretation of modern criminal law values. This affirmation of the three-year validity period has been disseminated through various official government and judicial channels to prevent unauthorized retroactive application.²²

Sri Endah Wahyuningsih's theory of punishment positions punishment as a criminal policy instrument oriented towards community protection, humanity, proportionality, and recovery. When linked to the problematic nature of theft as described, namely the need for element-by-element proof (Articles 362–363 of the old Criminal Code), the distinction between typology and *curas*, and the orientation of the 2023 Criminal Code reform, Wahyuningsih's theory serves as a normative framework for assessing whether the practice of element testing and sentencing in theft cases has met the standards of substantive justice and the objectives of modern punishment.

1) Material Elements and Differentiation of Qualifications

Within the framework of the old Criminal Code (WvS), the examination of theft by the judge is carried out element by element based on Article 363 which increases the criminal consequences from Article 362 (the main crime of theft). The elements tested include: (i) the act of taking; (ii) the object in the form of goods belonging to another person, in whole or in part; (iii) the intention to possess it unlawfully; and (iv) aggravating circumstances that must be proven legally (e.g., livestock theft; occurring during a disaster or riot; committed at night in a closed house/yard; committed by two or more people; or by breaking/damaging/using a fake key). This construction explains why the criminal threat "jumps" from the general limit: certain circumstances make the maximum sentence 7 years, and

Ummah Law Journal, 20(2), 685–690. <https://jurnal.unissula.ac.id/index.php/jhku/article/download/46112/12835>

²¹Hukumonline. (2025, May 15). Theft penalties under 2.5 million (explanation of the distinction between theft and robbery and qualifications). <https://www.hukumonline.com/klinik/a/hukuman-pencurian-di-bawah-2-5-juta-lt6826abbe7499d/>

²²Supreme Court of the Republic of Indonesia. (2025, April 4). History of the development and future of the Criminal Code in Indonesia (affirmation effective January 2, 2026). <https://marinews.mahkamahagung.go.id/artikel/sejarah-perkembangan-dan-masa-depan-kuhp-di-indonesia-0eN>

certain combinations of circumstances can push the maximum to 9 years, as long as they are convincingly met.²³

The 2023 National Criminal Code (KUHP) reforms its structure without changing its underlying rationale. Article 476 defines the basic form of theft, Article 477 codifies aggravated theft (*curat*), and Article 478 provides a framework for minor theft to maintain proportional punishment (including by considering the value of the loss and the spatial context). However, the 2023 KUHP only came into effect on January 2, 2026; thus, until that date, theft cases will continue to be prosecuted under Articles 362–363 of the old KUHP, while the new structure can be used as a reference for values and systematics in decision-making.²⁴

Academic literature details how the element-by-element examination of theft works to prevent misqualification. Doctrinal research emphasizes a clear distinction between the "aggravating factors" in Article 363 (e.g., burglary and conspiracy) and the characteristics of neighborhood crimes such as *curas* (violence/threats of violence against persons). By mapping this, judges systematically link the *actus reus* and *mens rea*, then affirm relevant and proven aggravating factors, rather than simply assuming them based on the narrative of the facts.²⁵

On the other hand, the updated study shows that the arrangement of Articles 476–478 in the 2023 Criminal Code is intended to clarify the typology (ordinary, serious/minor) while providing a contemporary wording on ways to penetrate the protection of space/objects. At the level of punishment, this framework helps judges formulate proportional and measured reasons: aggravating circumstances increase sanctions if they actually increase the degree of risk/harm, while the context of minor losses or certain situations can be channeled into the "minor" framework to maintain substantive justice.²⁶

2) Application of Justice Values: Proportionality, Victim Protection, and Reasoned Sentencing

²³Tirto.id. (2024, May 24). Contents of Articles 362 & 363 of the Criminal Code concerning theft and its elements. <https://tirto.id/isi-pasal-362-dan-363-kuhp-tentang-pencurian-dan-unsur-unsurnya-gvL7>

²⁴Republic of Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code (official text). Indonesian Audit Board. <https://peraturan.bpk.go.id/Download/287456/UU%20Nomor%201%20Tahun%202023.pdf>

²⁵Mandey, OE, & Sendow, SH (2025). Theft under aggravating circumstances according to Article 363 of the Criminal Code. *Lex Privatum*, 13(1), 1–10. Sam Ratulangi University. <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/60460>

²⁶Amiruddin, A. (2024). The crime of theft from the perspective of Indonesian criminal law. *Journal of Law and Integrity*, 2(1), 35–49. Ciraja Journal. <https://journal.ciraja.com/index.php/JLI/article/download/36/22/117>

In theft cases, the value of justice requires proportional punishment commensurate with the degree of culpability (*mens rea*), *modus operandi*, and level of harm while ensuring the victim's rights are respected and preventing over-punishment. This value direction is emphasized by Article 51 of the 2023 Criminal Code concerning the objectives of punishment: not merely to punish, but also to prevent crime, resolve conflicts, restore balance, foster remorse in the perpetrator, and maintain a sense of public security. Although until January 2, 2026, the case was still processed under the old Criminal Code, the objective orientation in the 2023 Criminal Code is worthy of ethical-normative consideration so that sentencing does not stop at "value-free" certainty, but rather is measured and reasonable.²⁷

Within this framework, judges need to ground proportionality in three areas. First, precisely identify relevant aggravating circumstances for burglary, such as night burglary, conspiracy (more than two perpetrators), or the use of fake keys to avoid misqualification with neighboring crimes such as violent theft (*curas*), which involve elements of violence against individuals and a different threat regime. This typological distinction is not merely a matter of formality, but key to maintaining substantive justice: only those proven guilty are punished.²⁸ Second, the assessment of losses and impacts must be concrete (both material and non-material) and linked to auditable evidence (witness testimony, reconstruction, CCTV, or technical traces), so that the severity of the sanctions reflects the actual harm that occurred. Third, the individualization of criminal penalties requires the exploration of relevant mitigating/aggravating factors (the specific role of the perpetrator, the intensity of intent, the distribution of proceeds, the return of goods, an apology, or an authentic reconciliation) all without sacrificing the discipline of elements and principles of legality.²⁹

It's also important to distinguish between neighborhood crimes, which often overlap with theft. Vandalism (destruction of property) can be a means of entry (relevant to theft), but it doesn't involve violence against individuals. Extortion (demanding by force/threats) differs from extortion because the acquisition of property occurs through a stand-alone threat, not as part of a series of thefts. Fraud moves objects into the realm of deception (rather than stealth or forceful

²⁷Republic of Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code (see Article 51 Purpose of Criminalization). Audit Board of the Republic of Indonesia. <https://peraturan.bpk.go.id/Download/287456/UU%20Nomor%201%20Tahun%202023.pdf>

²⁸Hukumonline. (2025, May 15). Theft penalties under 2.5 million (distinction between theft and robbery and implications of the elements). <https://www.hukumonline.com/klinik/a/hukuman-pencurian-di-bawah-2-5-juta-lt6826abbe7499d/>

²⁹Tirto.id. (2024, May 24). Contents of Articles 362 & 363 of the Criminal Code: Theft & its elements. <https://tirto.id/isi-pasal-362-dan-363-kuhp-tentang-pencurian-dan-unsur-unsurnya-gvL7>

appropriation). In the 2023 Criminal Code, this map is more structured, making the boundaries between crimes clearer and more accessible to public scrutiny.³⁰

From a substantive justice perspective, misqualification, such as classifying a theft case as a theft merely because of the destruction of property, will increase the penalty beyond the bounds of proportionality. Therefore, element-by-element testing and time-based mapping of the incident (whether the violence occurred before, during, or after the theft and for the purpose required by law) are inevitable checklists. Academic literature and jurisprudence studies also emphasize the need for consistent evidence so that only proven circumstances increase the degree of the crime; this aligns with the principle of *lex mitior* and the principle of *nullum crimen, nulla poena sine lege*, and prevents "overcharging" that reduces the value of justice.³¹

3) Science-aided and Evidence-Based Sentencing

Neat material evidence, especially for aggravating points of theft such as "night in a closed house/yard", "collaborating (≥2 people)", or "breaking/damaging/entering with a fake key" requires the support of well-documented supporting science. Systematic crime scene processing, reading toolmarks on frames/locks, identifying footprints/fingerprints, and linking CCTV footage and digital forensic findings will strengthen the chain of reasoning from facts to the elements of the alleged crime. In the courtroom, this framework is supported by Article 184 of the Criminal Procedure Code (legal-negative evidence system), so that every scientific finding must be processed into valid evidence, for example, written as expert testimony or a letter (forensic examination report), which can then be intertwined into clues as long as the formal and material requirements are met.³²

From a sentencing perspective, best practices encourage evidence-based sentencing: the choice of type and size of sanctions is anchored to data on deterrence effectiveness, the risk of recidivism, and collateral consequences for the perpetrator, victim, and community. This orientation aligns with the Purpose of Sentencing in the 2023 Criminal Code (Article 51), and is further operationalized through Supreme Court Regulation No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. The Regulation details

³⁰Lubis, NF (2023). Legal review of theft with violence in the Criminal Code. SOSAINS, 4(2), 1–12. <https://sosains.greenvest.co.id/index.php/sosains/article/download/705/1264>

³¹Sultan Agung Islamic University (UNISSULA). (2024). Legal analysis of criminal liability in aggravated theft [Thesis]. UNISSULA Repository. https://repository.unissula.ac.id/35363/1/Magister%20Ilmu%20Hukum_2030220010_3_fullpdf.pdf

³²Brahmana, HS (nd). Theory and law of evidence (summary of Article 184 of the Criminal Procedure Code). Lhoksukon District Court. https://www.pn-lhoksukon.go.id/media/files/20170417150853209334910258f4781588e77_20170419145829_Teori%20dan%20Hukum%20Pembuktian.pdf

the prerequisites, stages, and parameters for recovery (victim, perpetrator, community) so that punishment is not reduced to mere retribution, but rather restores losses, fosters remorse, maintains order, and a sense of public safety without abandoning the principles of legality and the public interest.³³

Current academic thought, including work within UNISSULA, emphasizes that a good decision is not the harshest, but rather the most accountable: rational, proportional, and predictable for similar cases. Recent studies demonstrate the need to measure sentencing using benefit indicators (victim recovery, perpetrator reintegration, and re-incarceration) within the framework of Pancasila Justice, so that the rationale for decisions can be publicly audited and does not fall into "value-laden certainty."³⁴In the realm of theft, dissertations and theses themed on regulatory reconstruction emphasize the importance of evidence-based upstream (determining the correct qualifications: theft vs. neighborhood offenses) and downstream (choosing sanctions that are commensurate with the *modus operandi* and harm), including when authentic peace and restitution of losses are truly present as long as they do not sacrifice the public interest.³⁵

Wahyuningsih's theory encourages individualization: taking into account the role of the perpetrator, motivation, return of goods, reconciliation, and the risk of recidivism.³⁶In the practice of theft, this requires judges to distinguish between the primary perpetrator and co-perpetrators, assess the level of intent, and weight mitigating measures (restitution, genuine reconciliation) as long as they do not compromise the public interest. Individualization prevents a "one-size-fits-all" sentence and fulfills the objective of expediency in sentencing.

Wahyuningsih supports the integration of restorative justice in suitable cases.³⁷This aligns with Supreme Court Regulation No. 1 of 2024, which stipulates prerequisite conditions (confession, victim involvement, and restitution). For theft crimes where the losses are recoverable, a restorative approach should be an option: not replacing criminal penalties in serious cases, but calibrating the

³³Supreme Court of the Republic of Indonesia. (2024). PERMA No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice (official PDF). JDIH MA. https://jdih.mahkamahagung.go.id/storage/uploads/produk_hukum/2024/2024perma001.pdf

³⁴Supra Endra Tama. (2025). Policy on sentencing perpetrators of criminal acts based on Pancasila justice (Study of Decision No. 504/Pid.B/2024/PN.PTK) [Thesis, UNISSULA]. UNISSULA Repository. https://repository.unissula.ac.id/41338/1/Magister%20Ilmu%20Hukum_2030240028_8_fullpdf.pdf

³⁵Fajar Seto. (2023). Reconstruction of law enforcement regulations for aggravated theft through a restorative justice approach [Dissertation, UNISSULA]. UNISSULA Repository. <https://repository.unissula.ac.id/31272/4/2.%20FAJAR%20SETO%20-%2010302100037.pdf>

³⁶Wahyuningsih, SE (2013). Criminal Law Policy: In Crime Prevention. Semarang: UNDIP Press.

³⁷Wahyuningsih, SE (2018). Reconstruction of the Indonesian Penal System. Yogyakarta: Thafa Media.

response so that victim recovery and perpetrator reintegration are prioritized, in accordance with the criminal purposes of the 2023 Criminal Code (Article 51).

The author's perspective, linked to Sri Endah Wahyuningsih's theory, states that the application of substantive criminal law in theft cases must go beyond the formal elements—and become a reasoned, proportional, humane, and expedient-oriented sentencing process. This requires judges to:

- (a) precise proof of the condition of the weight;
- (b) formulation of reasons that connect facts, evidence and the purpose of the punishment;
- (c) individualization and use of restorative justice where appropriate; and
- (d) application of the temporal principle and *lex mitior* with discipline.

Thus, criminalization in theft cases is not merely a matter of increasing the criminal threat, but rather choosing the most appropriate legal response for the protection of society and the recovery of losses, which is the core of Wahyuningsih's theory of criminalization.

3.2. The Judge's Considerations in the Decision Are in Accordance with the Principles of Justice in Indonesian Criminal Law.

Starting from the principles of criminal law, the question of “whether the judge’s considerations are in accordance with the principles of justice” is ideally tested in layers—starting from the sufficiency of evidence, the accuracy of the qualification of the offense, the proportionality of punishment, respect for the constitutional rights of the parties, to the transparency of the reasons for the decision (reasoned decision) that can be audited by the public. The standard of proof in the Criminal Procedure Code is negative-legal: the judge’s conviction must be supported by at least two valid pieces of evidence (witness/expert testimony, letters, clues, or the defendant’s statement), so that every conclusion must be linked coherently to the elements of the act, consequences, causality, and fault.³⁸

In the qualification test, careful distinction between *curat* (aggravated theft) and *curas* (theft with violence) is a requirement for both justice and legal certainty. Any aggravating circumstances, such as committing the crime at night in a closed house/yard, committing it in a group (two or more people), or using breaking/damaging/fake keys, must be specifically proven, not assumed. This approach maintains the principle of legality (*lex certa*, *lex stricta*) and prevents misclassification that results in disproportionate sanctions. This structure is maintained in the National Criminal Code (Law No. 1/2023) through a

³⁸Republic of Indonesia. (1981). Law Number 8 of 1981 concerning Criminal Procedure Code (KUHP). Jakarta: BPK RI.

restructuring: the principal offense is in Article 476, aggravated offenses in Article 477, and petty theft in Article 478, although the new regime takes effect on January 2, 2026.³⁹

Proportionality of punishment is the third axis. Article 51 of the 2023 Criminal Code emphasizes that punishment is not merely to "punish," but also to prevent crime, resolve conflict, restore balance, foster remorse, and maintain a sense of security in society. Therefore, the measure of justice is not the severity of the sentence, but rather the appropriateness of the sanction relative to the harm, the perpetrator's role, and the prospects for social recovery—although for cases occurring before January 2, 2026, the material norms of the old Criminal Code still apply.⁴⁰

Judicial instruments clarify its operationalization. Supreme Court Regulation No. 1 of 2024 provides guidelines for the implementation of restorative justice in court, including case criteria, the roles of victims, perpetrators, and communities, and file management to ensure that recovery proceeds in line with legal certainty and the public interest.⁴¹ When a case involves women (as victims, witnesses, or perpetrators), Supreme Court Regulation No. 3 of 2017 requires judges to avoid stereotypes, maintain dignity, and reject victim-blaming; explicit adherence to these guidelines is an integral part of the principles of equality and non-discrimination in "justice."⁴² Above all, Article 5 paragraph (1) of Law Number 48/2009 binds judges to "explore, follow and understand the legal values and sense of justice that exist in society", so that the reasons for the decision must be able to be followed by the public, a logical bridge from facts → elements → principles → rulings.⁴³

Placed within that framework, the chronology of the Surindi alias Rendi case that you described, telephone coordination with Aden (DPO); harvesting and moving 22 bunches from the PT Rezeki Kencana area; finding a total of 61 bunches (22 have been moved, 39 are still at the location); estimated loss of Rp2,848,000.00; the defendant's confession; and the confiscation of dodos and bicycles are methodologically sufficient to support the judge's conviction if presented as evidence under Article 184 of the Criminal Procedure Code (witnesses, defendant's statement, letters/BA, and clues arising from the connection of

³⁹Republic of Indonesia. (2023). Law Number 1 of 2023 concerning the Criminal Code (KUHP). Jakarta: BPK RI. (see arrangement of Articles 476–478 and provisions coming into force).

⁴⁰Republic of Indonesia. (2023). Law 1/2023—Article 51 (Purpose of criminal punishment). Jakarta: BPK RI.

⁴¹Supreme Court of the Republic of Indonesia. (2024). PERMA No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. Jakarta: JDIH MA.

⁴²Supreme Court of the Republic of Indonesia. (2017). PERMA No. 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law. Jakarta: JDIH MA.

⁴³Republic of Indonesia. (2009). Law Number 48 of 2009 concerning Judicial Power (Article 5 paragraph (1)). Jakarta: BPK RI.

evidence).⁴⁴With the mode of collusion without violence against people, the use of Article 363 paragraph (1) 4 of the Criminal Code (theft by “two or more people”) seems dogmatically correct; this is also in line with the pattern of reading jurisprudence and academic studies when the panel considered the element of “collusion” as a characteristic of theft, not *curas*.⁴⁵In terms of proportionality, a prison sentence of 1 (one) year (minus the period of detention) can be seen as in line with the idea of “appropriate sanctions” as long as mitigating/aggravating considerations regarding the defendant’s remorse, the measurable value of the loss, the role of each perpetrator, the social impact, and the potential for recovery are clearly outlined in the considerations.³⁶

Decision Number 190/Pid.B/2025/PN Mpw has not yet appeared/uploaded in the Mempawah District Court Decision Directory for 2025 during the general search, so the above evaluation is normative and based on the chronology you provided. The final assessment should refer to an authentic copy so that the logical bridge (facts → elements → principles → rulings) can be fully tested.

Rawls's principles of just savings and fair distribution of burdens can be interpreted as meaning that fair punishment is not merely about punishment, but rather about distributing social and moral burdens proportionally according to the role and level of culpability. When punishment is directed at preventing crime, restoring balance, fostering remorse, and maintaining a sense of security in society, as emphasized in Article 51 of the 2023 Criminal Code, this approach is intertwined with Rawls's principle that social institutions must regulate burdens and benefits in a way that is most beneficial to society at large, especially for vulnerable groups or those most negatively impacted.

Judicial policies such as PERMA No. 1 of 2024 and PERMA No. 3 of 2017 are also highly compatible with Rawls's theory. PERMA Restorative Justice reflects Rawls's principle of the importance of a just basic structure of society, which must ensure that public institutions restore social relations, not simply impose punishment. Meanwhile, the obligation of judges to avoid gender stereotypes and victim-blaming (PERMA 3/2017) is a direct application of Rawls's first principle: equal basic liberties. Everyone, including women, has the right to respect for dignity and equality in the legal process; discrimination violates the Rawlsian structure of justice.

Referring to the case of Surindi alias Rendi, the use of Article 363 paragraph (1) 4 of the Criminal Code to prosecute non-violent acts of association demonstrates consistency with Rawls's principles of fair equality of opportunity and public reason. This decision is not only dogmatically correct, but also acceptable to any

⁴⁴Republic of Indonesia. (1981). Law Number 8 of 1981 concerning Criminal Procedure Code (KUHP). Jakarta: BPK RI.

⁴⁵Wicaksono, H. (2021). Application of Article 363 paragraph (1) 4 of the Criminal Code in the Cilacap District Court Decision No. 235/Pid.B/2015/PN.Clp. *Sudici Law Review*, 1(1), 1–12.

party in an impartial position. Likewise, a sentence of 1 (one) year in prison—if proportional and based on a clear explanation of mitigating/aggravating factors—can be considered in line with Rawls's principles regarding the fair distribution of the burden of punishment and the goal of long-term social stability.

By aligning the principles of legality, proportionality, and proof of the Criminal Procedure Code with Rawls's theory of justice, it can be concluded that the concept of "justice" in criminal decisions is not only compliance with positive law, but also conformity to impartial and rationally accountable public moral principles. This ensures that decisions are not only legally correct but also just according to Rawls's universal standard of fairness.

Substantive justice differs from purely procedural justice in that it requires that criminal decisions not only be based on literal adherence to norms but also achieve real appropriateness for individuals and society. In Indonesia's constitutional values and public ethics, the measure of "fairness" is derived not only from the text of the article, but also from rational considerations, the commensurateness of sanctions to the degree of wrongdoing and harm, and the preservation of the dignity of all parties involved. This foundation is rooted in the guarantee of equality before the law and fair legal certainty as stipulated in the 1945 Constitution, and is reinforced in judicial authority through the mandate that judges "explore, follow, and understand the legal values and sense of justice that exist in society."⁴⁶

Operationally, there are several guidelines that serve as both "brakes" and "compasses" for substantive assessments. First, the Criminal Procedure Code's evidentiary standard requires a judge's conviction to be supported by at least two valid pieces of evidence (Articles 183–184), ensuring a clear and verifiable logical bridge from the evidence to the elements of the act, consequence, causality, and culpability.⁴⁷ Second, the purpose of criminal punishment in the National Criminal Code (Law Number 1/2023) Article 51 emphasizes that punishment is not only to punish, but also to prevent crime, resolve conflicts, restore balance, foster remorse in the perpetrator, and maintain a sense of security, a value mandate that demands proportionality and a recovery orientation.⁴⁸ Third, Supreme Court Regulation No. 1 of 2024 provides procedures for implementing restorative justice in court; while Supreme Court Regulation No. 3 of 2017 requires courts to be sensitive to vulnerability and anti-gender bias when cases involve women as victims,

⁴⁶The 1945 Constitution of the Republic of Indonesia, Article 27 paragraph (1), Article 28D paragraph (1), & Article 28I paragraph (2).

Republic of Indonesia Law Number 48 of 2009 concerning Judicial Power, Article 5 paragraph (1).

⁴⁷Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code (KUHP), Articles 183–184.

⁴⁸Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (KUHP), Article 51.

witnesses, or perpetrators.⁴⁹Fourth, the principle of a communicative “reasoned decision” is a consequence of the Judicial Power Law: considerations must be able to be followed, tested, and accounted for in the public sphere.⁵⁰

Indonesian academic discourse, including research contributions from UNISSULA, supports this orientation. The broad outline of criminal law reform emphasizes that punishment rests on human values and dignity, maintains a balance between certainty, justice, and utility, and allows for rational and proportional sanctions and restores social relations (restorative) when the necessary conditions are met. The quality of decisions, within this framework, is measured by reasoning that the public can follow, not solely by the escalation of sanctions.⁵¹

4. Conclusion

Based on the overall normative doctrinal description and the reading of the facts of the *a quo* case (*S alias R*), several main conclusions can be drawn as follows: Qualification of the offense and legal discipline. *Curat* is a special form of theft that is “qualified” by certain aggravating circumstances. Within the framework of the Criminal Code that is still in effect until January 2, 2026, the proof must move from the main offense of Article 362 to the aggravating circumstances of Article 363, with a strict element-by-element test of *actus reus*, *mens rea*, and aggravating facts (for example, “collusion” or burglary). A clear distinction from *curas* is a requirement for legal certainty (*lex certa*, *lex stricta*) as well as a requirement for justice. Standard of proof and due process. The negative-*wettelijk* evidentiary system requires the judge's conviction to be based on at least two valid pieces of evidence. In the *a quo* case, the chronological sequence you presented (harvesting, transfer of 22 bunches, discovery of a total of 61 bunches, evidence of *dodos*, bicycles, and confessions) if documented as evidence according to the Criminal Procedure Code is methodologically sufficient to support a guilty verdict under Article 363 paragraph (1) 4 of the Criminal Code (associated). Proportionality of punishment. The measure of justice of sanctions is not “how heavy”, but “how appropriate” to the harm, the role of the perpetrator, and the purpose of punishment. The orientation of Article 51 of the 2023 Criminal Code, prevention, conflict resolution, restoration of balance, remorse of the perpetrator, and a sense of public security provides an ethical compass for reasoned sentencing, even though temporally the old material regime still applies. Within that framework, a 1 (one) year prison sentence can be considered proportional as long as the aggravating/mitigating reasons are explained openly and measurably.

⁴⁹Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice.

Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2017 concerning Guidelines for Adjudicating Cases of Women in Conflict with the Law.

⁵⁰Republic of Indonesia Law Number 48 of 2009 concerning Judicial Power, Article 5 paragraph (1).

⁵¹Republic of Indonesia Law Number 48 of 2009 concerning Judicial Power, Article 5 paragraph (1).

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