

Construction of Regulations for The Criminal Act of Theft with Aggravation Based on Pancasila Justice

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Abstract. *The regulation of aggravated theft under Law Number 1 of 2023, as part of Indonesia's criminal law reform, aims to achieve a balance between legal certainty, utility, and justice. Nevertheless, the existing regulation still faces several challenges, including the limited application of restorative justice, the formalistic nature of aggravating circumstances, and the inadequate integration of Pancasila's social justice values. This study aims to analyze the regulatory framework of aggravated theft, identify weaknesses in its implementation, and formulate directions for legal reform based on the perspective of Pancasila Justice. The findings reveal that the current regulation remains predominantly oriented toward formal legal certainty and has not fully accommodated substantive justice and the social conditions of offenders. In addition, disharmony among legal substance, legal structure, and legal culture contributes to sentencing disparities and hinders the optimal realization of a fair and balanced criminal justice system. This research employs a sociological juridical (empirical) legal research method, which examines law not only as a set of written norms (law in books) but also as it operates in society (law in action). The study is descriptive-analytical in nature, using statutory, conceptual, and philosophical approaches. The data sources consist of primary, secondary, and tertiary legal materials collected through library research and analyzed qualitatively using deductive reasoning and interpretative methods. The research findings indicate that the regulatory construction of aggravated theft under the Indonesian Criminal Code (KUHP) is relatively robust in ensuring legal certainty through the formulation of clearly defined and limited elements. However, it still requires the strengthening of a more contextual approach in order to optimally realize substantive justice.*

Keywords: *Aggravated Theft; Pancasila Justice; Regulatory Construction.*

1. Introduction

The regulation of the crime of aggravated theft in Indonesian criminal law has evolved with the enactment of the National Criminal Code through Law Number 1 of 2023 concerning the Criminal Code, which replaced the Criminal Code (the old Criminal Code). In the old Criminal Code, aggravated theft was regulated under Article 363, which emphasized aggravating elements such as being committed at night, by two or more people, or by certain methods such as damaging or climbing. This formulation is more oriented towards the objective aspects of the act and the level of danger it poses.

The National Criminal Code (Law No. 1 of 2023) regulates aggravated theft, retaining the basic characteristics of aggravation, but within the framework of criminal law reform that emphasizes a balance between legal certainty, expediency, and justice. Normatively, the new Criminal Code promotes a more modern sentencing paradigm, including strengthening the objectives of punishment that are not only retributive but also corrective, rehabilitative, and restorative. However, upon closer analysis, the formulation of the crime of aggravated theft in the new Criminal Code still maintains a relatively rigid approach in terms of criminal penalties and classification of offenses.

Aggravated theft is one of the most common forms of property crime in society. Property crimes not only violate legal norms but also disrupt the sense of security and social order in society.¹This phenomenon not only indicates a violation of someone's property rights, but also reflects complex social, economic and moral issues, particularly those related to social inequality and weak social control.²In criminal justice practice, aggravated theft is often committed in more dangerous and organized ways, and has serious psychological consequences for the victim. This situation emphasizes that aggravated theft is not merely a legal issue, but also a social problem that requires comprehensive treatment.³

The handling of aggravated theft crimes has often raised issues of justice. A retributive justice-oriented criminal justice system tends to prioritize imprisonment as the primary means, without adequately considering humanitarian aspects, the rehabilitation of the perpetrator, and the recovery of the victim.⁴It's not uncommon to find court decisions that sentence perpetrators from lower socioeconomic backgrounds without considering their background, motives, and the social impact of the punishment. This has led to criticism that

¹Muladi & Barda Nawawi Arief. (2010). *Criminal Theories and Policies*. Bandung: Alumni, p. 34.

²Soekanto, S. (2014). *Factors Influencing Law Enforcement*. Jakarta: Rajawali Pers, p. 112.

³Rahardjo, S. (2009). *Law and Behavior: Good Living is the Basis for Good Law*. Jakarta: Kompas, p. 87.

⁴Muladi. (2002). *Selected Chapters on the Criminal Justice System*. Semarang: UNDIP Publishing Agency, p. 56.

criminal law often emphasizes formal certainty over substantive justice.⁵Such conditions indicate that the criminal justice system does not fully reflect the ideals of national law which are based on the values of Pancasila as the source of all sources of law.

Indonesia as a country based on law, places law as the main instrument in realizing justice, certainty, and benefit. The 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a country based on law that guarantees equality before the law and protection of human rights (UUD NRI 1945, Article 1 paragraph (3) Article 28D paragraph (1). Jimly Asshiddiqie emphasized that the principle of a state based on law requires the supremacy of law, protection of human rights, and fair trials as the main pillars of state administration.⁶Therefore, every regulation of criminal acts, including aggravated theft, must be formulated and implemented fairly, proportionally and humanely, in line with the state's goal of realizing social justice for all Indonesian people.

From a Pancasila Justice perspective, the fundamental question that arises is whether this new construction fully reflects the values of humanity and social justice. Philosophically, the National Criminal Code does embody the spirit of reform, but in the context of aggravated theft, the approach used still predominantly emphasizes retribution and the formal protection of legal interests. Dimensions of substantive justice, such as consideration of the perpetrator's socio-economic condition, the real impact on the victim, and the opportunity for social restoration, have not been fully and explicitly accommodated in its normative construction.

One weakness of the current regulatory framework is the limited scope for applying restorative justice to aggravated theft. Regulatory-wise, the restorative justice approach within the Indonesian criminal justice system has been accommodated through various internal regulations of law enforcement agencies, such as the Police Regulation and the Prosecutor's Office Regulation concerning the termination of prosecution based on restorative justice. However, normatively, there is a clear limitation that the application of restorative justice can generally only be carried out on crimes punishable by imprisonment of no more than five years and not crimes that cause widespread public unrest.

This situation demonstrates that the limitations in the application of restorative justice are not only due to the perception that theft is a serious and disturbing crime, but also due to the existence of normative limitations based on criminal penalties in law enforcement regulations. Thus, there is a disconnect between

⁵The 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3) and Article 28 D paragraph (1)

⁶Asshiddiqie, J. (2011). Introduction to Constitutional Law. Jakarta: Rajawali Pers, p. 45.

the spirit of the National Criminal Code, which prioritizes corrective and restorative punishment, and the administrative-regulatory limitations that actually close off the scope for implementing a restorative approach to aggravated theft. This demonstrates the tension between the spirit of restorative criminal law reform and the still-rigid normative construction of the offense.

In addition to the limited scope for restorative justice, another weakness in the construction of regulations for aggravated theft lies in the cumulative nature of the aggravation, which tends to be cumulative without sufficient differentiation between the degree of culpability (*schuld*) and the extent of the harm caused. In many cases, aggravation is based on formal circumstances, such as being committed together or at night, without a thorough analysis of the proportionality between the act and the potential penalty. This has the potential to lead to disparities in sentencing and does not reflect the principle of individualization of criminal penalties.

Existing regulatory frameworks have not explicitly integrated a social justice-based approach as mandated by Pancasila. Criminal law still places greater emphasis on protecting property interests, while structural factors such as poverty, social inequality, and limited economic access have not been adequately considered in norm formulation. However, from the perspective of Pancasila Justice, the law should not only guarantee certainty and order but also deliver substantive justice that takes into account the social dimension of society.

Although the National Criminal Code has embraced the spirit of reform, the regulatory framework for aggravated theft still presents a number of conceptual and implementation problems. The limited scope for restorative justice, the rigidity of aggravation criteria, and the suboptimal integration of social justice values highlight the need for critical evaluation and the possibility of restructuring regulations to better align with the Pancasila Justice paradigm, the legal ideal of the Indonesian nation.

Based on the above description, the construction of regulations for the crime of aggravated theft in the National Criminal Code is an urgent need. This construction is not only intended to improve the normative formulation, but also to ensure that the criminal system is able to realize substantive justice in accordance with the legal ideals of Pancasila and the mandate of the 1945 Constitution of the Republic of Indonesia. Thus, the regulation of the crime of aggravated theft is expected to no longer be merely repressive, but rather able to provide justice that is humane, balanced, and oriented towards social justice.

One example of the application of the provisions of aggravated theft can be found in Decision Number 771/Pid.B/2024/PN Plg. In this case, the defendant was charged with aggravated theft because the act was committed under circumstances that met the elements of aggravation as stipulated in criminal law.

This case demonstrates that the existence of aggravation elements has significant legal consequences for both the criminal threat and the judge's considerations in issuing a verdict. Analysis of this case is important to assess whether the current construction of regulations for the crime of aggravated theft has been able to realize legal certainty while fulfilling the sense of justice that exists in society.

Another relevant case is that of a farmer in Situbondo who was prosecuted for taking wood from a forest area for personal use. This act is classified as a forestry crime and, in some similar cases, can also be linked to aggravated theft if certain elements are met, such as being committed together or at a specific time. Although the motive was for subsistence, the legal process proceeded without adequate consideration of the perpetrator's economic situation. This demonstrates that in criminal justice practice, the approach used is still predominantly legalistic and insensitive to social justice.⁷

These various cases demonstrate the inconsistency between criminal law regulations and the prevailing sense of justice in society. While the provisions for aggravated theft are clearly defined, their implementation often leads to injustice, particularly for vulnerable groups. This situation also reinforces the urgency of constructing regulations for aggravated theft based on Pancasila justice, so that criminal law not only emphasizes legal certainty but also delivers humane, proportional, and socially just justice.

2. Research Methods

The type of research used is sociological or empirical legal research. Sociological legal research focuses on observing people's legal behavior and the effectiveness of law enforcement in social life. This approach combines the study of legal norms with empirical data obtained directly from the field through interviews, observations, and case studies. Soerjono Soekanto explains that sociological legal research aims to determine the extent to which the law is effectively enforced in society and the factors that influence its enforcement.⁸

3. Results and Discussion

3.1. Current Construction of Regulations for the Crime of Aggravated Theft.

The regulatory construction of the crime of aggravated theft in Indonesian positive law is built through a tiered formulation system between basic offenses and qualified offenses. The basic offense of theft in Indonesian positive law is currently regulated in Article 476 of Law Number 1 of 2023 concerning the

⁷The Asyani Case: Condemned by Her Own Wood. Accessed on https://jatim.antaranews.com/berita/155926/kasus-asyani-1-terhukum-oleh-kayu-sendiri?utm_source=chatgpt.com March 20, 2026 at 6:50 PM

⁸Soekanto, S. (2014). Introduction to legal research. UI Press, p. 52.

Criminal Code. This provision serves as a normative basis that contains the main elements of the crime of theft as the basis for establishing the crime of aggravated theft as regulated in Articles 477 to 479 of the National Criminal Code. This regulatory construction is developed through qualified offenses that include certain circumstances as aggravating factors for the crime. These circumstances are formulated in a limited manner in statutory provisions, which serve to increase the degree of culpability and aggravate the threat of punishment without changing the essence of the act as theft.

This construction positions the formulation of prohibitions and criminal threats as the primary instruments in maintaining social order. As Sudarto argues, criminal law functions to establish prohibited acts and their sanctions as an effort to protect legal interests. Within this framework, the crime of theft is positioned as a violation of legal interests that are protected by the state.

Before analyzing the construction of aggravated theft, it is necessary to first understand the elements of the crime of theft as a basic offense as regulated in Article 476 of the National Criminal Code. The first element is "any person" which indicates that every legal subject can be held criminally responsible. The second element is "taking", namely transferring control of an item from the control of the owner or entitled party to the perpetrator. The third element is "items that are wholly or partially owned by another person", which indicates the existence of an object of the crime in the form of an object that has economic value and is in the control of another party. The fourth element is "with the intent to possess unlawfully", which is the element of intent (*mens rea*) in the form of the perpetrator's will to control the item without right.

The provisions regarding aggravated theft in Indonesian positive law are currently regulated in Article 477 of the National Criminal Code, while theft accompanied by violence or threats of violence is regulated in Article 479 of the National Criminal Code, which contains certain circumstances such as being committed at night, by two or more people, by damaging or climbing, and against certain objects such as livestock. According to Lamintang, these circumstances indicate a higher intensity of error because they are accompanied by methods that increase the social impact of the crime. Thus, this construction reflects a qualified offense pattern, namely a crime that is aggravated due to the existence of certain conditions.

Article 477 of the National Criminal Code regulates a form of aggravated theft because it is committed under certain circumstances that increase the level of danger of the act and the losses incurred. These aggravating circumstances include committing the crime at night in a house or enclosed yard where a house is located, being committed by two or more people together, being committed by means of damage, climbing, using a fake key, using a false order, or wearing fake official clothing. These circumstances indicate an increase in the quality of the

perpetrator's culpability, so that the law makers provide a more severe criminal threat than ordinary theft.

Furthermore, this construction also reflects the application of the principles of proportionality and criminal differentiation, as explained by Andi Hamzah, that increased punishment is a response to the higher level of danger of the act. The distinction between ordinary theft and aggravated theft allows for the imposition of a more proportional sentence according to the seriousness of the act.

In addition to aggravated theft as stipulated in Article 477, the National Criminal Code also regulates theft accompanied by violence or threats of violence in Article 479. This regulation shows the differentiation of the level of danger of the crime based on the method of implementation and the consequences for the victim. The use of violence is seen as a factor that increases the risk to the safety of the victim's life and property, thus obtaining a heavier criminal threat. Thus, the construction of the regulation of theft in the National Criminal Code is built in stages, starting from ordinary theft, aggravated theft, to theft accompanied by violence.

The provisions for aggravated theft in the National Criminal Code are essentially a continuation of the provisions previously contained in Article 363 of the Criminal Code, a legacy of the *Wetboek van Strafrecht*. Nevertheless, lawmakers have adjusted the systematics and formulation of norms to align with the direction of national criminal law reform. These changes demonstrate that Indonesian legislative policy still maintains the basic concept of qualified theft, but places it within a more modern national criminal law framework and is integrated with the objectives of punishment as stipulated in Law Number 1 of 2023.

The construction of the provisions for theft in the National Criminal Code cannot be separated from the objectives of punishment as stipulated in Article 51 of the National Criminal Code. This provision emphasizes that punishment is not solely aimed at inflicting suffering on the perpetrator, but also aims to prevent the occurrence of criminal acts, socialize the convict, resolve conflicts arising from criminal acts, restore balance in society, and provide a sense of security and peace. Therefore, the provisions for aggravated theft in the National Criminal Code must be understood within the framework of criminal law reform that prioritizes a balance between legal certainty, justice, and expediency.

As an academic implication, this study demonstrates that analysis of aggravated theft cannot be limited to a purely normative approach but must be developed into a multidimensional approach that integrates legal, sociological, and philosophical aspects. Practically, the results of this analysis provide a basis for strengthening sentencing guidelines, improving the quality of judicial deliberations, and developing legal policies that are more oriented toward social justice.

In closing, the author emphasizes that the construction of regulations for the crime of aggravated theft in Indonesian positive law essentially has a strong and systematic normative foundation in guaranteeing legal certainty. However, this strength has not been fully balanced with the ability to deliver justice that is contextual and responsive to the social realities underlying the occurrence of criminal acts. Therefore, according to the author, the direction of future strengthening is not sufficient to simply maintain the existing legalistic-formalistic approach, but must transform towards a more integrative approach, oriented not only to fulfill the elements of the crime, but also to the substantive meaning of justice. Within this framework, criminal law is no longer positioned solely as a repressive instrument, but as an adaptive, humanistic, and welfare-oriented means, thus capable of responding to societal demands for justice that is not only certain, but also just and civilized.

3.2. Weaknesses in the Current Construction of Aggravated Theft Criminal Regulations

The regulatory framework for aggravated theft under Indonesian positive law has essentially been formulated normatively in the Criminal Code, specifically through Article 363 of the Criminal Code. However, over time, this regulatory framework has demonstrated several weaknesses that impact the effectiveness and fairness of its application.

One major weakness lies in the tendency toward rigidity in regulatory construction, influenced by a legalistic-formalistic approach. Within this framework, determining the severity of a crime places greater emphasis on fulfilling formal elements as defined in the law, without adequately allowing for contextual considerations. As a result, regulatory construction becomes rigid and less responsive to the social dynamics underlying criminal acts.

The second weakness relates to the inability of regulations to accommodate the complexity of socioeconomic factors. In practice, many aggravated theft crimes are influenced by conditions such as poverty, unemployment, and social inequality. Existing legal frameworks do not explicitly consider these factors in formulating norms, resulting in a uniform approach to punishment without regard for the perpetrator's background.

The third weakness is evident in the disparity in sentencing in judicial practice. Cases with relatively similar characteristics often result in different decisions, both in terms of the severity of the sentence and the legal considerations used. This situation demonstrates that even though legal norms have been clearly formulated, their application still relies heavily on the subjectivity of judges, potentially undermining legal certainty and a sense of justice.

Another weakness lies in the lack of contextual and flexible nature of the regulation. The limited formulation of aggravating circumstances in Article 363 of

the Criminal Code does provide legal certainty, but at the same time, it can limit the judge's interpretation in assessing the seriousness of the act more comprehensively. Not all aggravating circumstances carry the same level of gravity, but this difference has not been adequately accommodated within existing norms.

The existing regulatory framework also demonstrates the dominance of a formalistic approach, which emphasizes the act and the fulfillment of the elements of the crime. This approach tends to ignore other important aspects, such as motive, the individual circumstances of the perpetrator, and the degree of involvement in the crime. As a result, the application of the law has the potential to result in decisions that do not reflect substantive justice.

Furthermore, the current regulatory framework does not fully reflect the principle of individualization of criminal penalties in modern criminal law. Sentencing should be based on an assessment of the perpetrator's specific circumstances, including their social background, motives, and the circumstances underlying the act. However, these aspects have not been explicitly addressed in existing normative formulations, leaving them highly dependent on interpretation in judicial practice.

Another weakness is evident in the tension between legal certainty and substantive justice. On the one hand, the provisions in Article 363 of the Criminal Code provide clear boundaries regarding aggravating circumstances, thus supporting legal certainty. On the other hand, the rigidity of these provisions has the potential to ignore the complexities of social reality, resulting in decisions that, in some cases, do not fully reflect the prevailing sense of justice in society.

The regulatory framework for aggravated theft also continues to show limitations in adapting to developments in modern criminal law. Despite updates to the 2023 National Criminal Code, there have been no significant substantive changes in the regulatory approach. The normative structure retains the old pattern, which focuses on formal classifications of aggravating circumstances.

These weaknesses demonstrate that the current legal framework for aggravated theft in Indonesian law requires further development. Strengthening flexibility, recognizing social factors, and reducing overly formalistic approaches are crucial to creating a more adaptive and equitable criminal justice system.

Analysis of the weaknesses in the regulatory construction of aggravated theft crimes can be deepened by using the legal systems theory proposed by Lawrence M. Friedman. Friedman divides the legal system into three main elements: legal structure, legal substance, and legal culture. These three elements are interrelated and determine the effectiveness of a legal system.

From a legal substance perspective, the primary weakness lies in the formulation of the norm in Article 363 of the Criminal Code, which remains limited and formalistic. The formulation of aggravating circumstances, based on specific conditions, fails to fully accommodate the complex social realities underlying criminal acts. This rigid legal substance leads to a lack of flexibility in adapting the norm to societal developments, potentially leading to unfair application.

From a legal structure perspective, weaknesses are evident in law enforcement practices, which still exhibit disparities in sentencing. Law enforcement officials, particularly judges, have room for interpretation in applying existing norms, but the lack of more comprehensive guidelines leads to differences in verdicts in similar cases. This situation indicates that the legal structure is not yet fully capable of ensuring consistency and uniformity in law enforcement.

Meanwhile, from a legal culture perspective, weaknesses are evident in the continued dominance of a formalistic paradigm in understanding and applying criminal law. The evolving legal culture tends to emphasize adherence to textual norms, without being balanced by a more substantive understanding of the value of justice. Furthermore, public legal awareness, still influenced by socioeconomic factors, also impacts the effectiveness of aggravated theft regulations.

These three aspects of the legal system theory indicate that the weaknesses in regulating the crime of aggravated theft lie not only in legal norms alone, but also relate to weaknesses in the structure of law enforcement and the legal culture that has developed in society. From the perspective of Lawrence M. Friedman's legal system theory, the disharmony between legal substance, legal structure, and legal culture indicates a dysfunctional legal system, where each element does not work in harmony, thus hindering the achievement of legal objectives effectively and fairly.

Thus, strengthening the criminal justice system in handling aggravated theft crimes needs to be directed at achieving a balance between legal substance, legal structure, and legal culture. This balance is a crucial factor in addressing the disharmony of the existing legal system and also serves as the foundation for the realization of a criminal law that not only guarantees legal certainty but also delivers justice and benefits more comprehensively and sustainably to society.

Thus, it is understandable that the weaknesses in the regulatory construction of aggravated theft crimes are not solely related to normative aspects, but also to how the law operates in practice and interacts with social realities. This demonstrates that the issues that arise cannot be resolved simply through wording improvements to the law but rather require a more comprehensive and holistic approach.

Therefore, reform of criminal law in the context of aggravated theft needs to be directed at building a system that is more adaptive to societal developments. The

law should not merely serve as a tool of certainty; it must also be a means of achieving justice that is truly felt by all parties involved, including perpetrators, victims, and the wider community.

Ultimately, the entire description of the weaknesses in this regulatory structure provides a crucial basis for the need to reformulate a more ideal regulatory model. This model is expected to not only address existing weaknesses but also achieve a more proportional balance between legal certainty, justice, and expediency within the Indonesian criminal justice system.

3.3. Construction of Regulations for the Criminal Act of Theft with Aggravated Sentences Based on Pancasila Justice

The construction of regulations for aggravated theft from the perspective of Pancasila Justice is a conceptual and normative effort to rebuild the criminal law system that is not solely oriented towards retribution, but also emphasizes aspects of humanity, balance, and social justice. Pancasila Justice, as the philosophical foundation of the state, requires that criminal law be able to deliver substantive justice by proportionally considering the interests of the perpetrator, the victim, and the community.

This regulatory construction stems from the fact that the provisions of positive law for aggravated theft, particularly in Articles 477 and 479 of the National Criminal Code, still display a dominant retributive approach that emphasizes imprisonment as the primary sanction. This approach does not fully reflect the goals of modern criminal justice, which encompass rehabilitation, prevention, and recovery. Within the framework of Pancasila Justice, criminal law should function not only as a deterrent but also as a means to reform perpetrators and restore social relationships disrupted by criminal acts.

Philosophically, the construction of this regulation is based on just and civilized humanitarian values and social justice for all Indonesian people. Humanitarian values demand that perpetrators of criminal acts be treated as legal subjects with social, economic, and psychological backgrounds that must be considered in the sentencing process. The value of social justice requires a balance between protecting victims, the interests of society, and the rights of perpetrators. Therefore, the construction of the regulation must be able to harmoniously integrate these three dimensions.

At the normative level, regulatory construction is directed toward establishing a more flexible, proportional, and substantive justice-oriented regulatory model. One concrete form of this construction is reformulating provisions regarding aggravated theft to avoid the rigidity and automatic application of aggravated criminal penalties. Aggravated criminal penalties should not be based solely on the fulfillment of formal elements, but should also consider the degree of

culpability (schuld), the amount of loss, the perpetrator's role, the socio-economic conditions, and the impact on the victim.

The use of relatively structured sentencing guidelines in Dutch judicial practice also allows judges to consider various individual factors without neglecting the principle of legal certainty. Factors such as the extent of the victim's harm, the perpetrator's role, the motive for the crime, and the likelihood of behavioral improvement are crucial in the sentencing process. Thus, the Dutch legal system strives to balance legal certainty with the individualization of criminal penalties.

When compared with the provisions of aggravated theft in the National Criminal Code, it is apparent that Indonesian positive law still places greater emphasis on fulfilling the formal elements of aggravation as formulated in Articles 477 and 479 of the National Criminal Code. Although the objectives of punishment in Article 51 of the National Criminal Code have accommodated aspects of rehabilitation and recovery, regulations regarding the parameters of individualized punishment and sentencing guidelines have not been regulated in detail. This condition causes the application of the law to rely heavily on the discretion of law enforcement officials.

Based on this comparative study, several values can be adopted in constructing regulations for the crime of aggravated theft based on Pancasila Justice. First, the principle of individualization of punishment, as developed in Islamic law and Dutch law, needs to be strengthened by requiring consideration of the socioeconomic conditions, motives, and level of culpability of the perpetrator. Second, the application of alternative punishments needs to be expanded to reduce reliance on imprisonment as the primary sanction. Third, more detailed sentencing guidelines need to be established to ensure more consistent and proportional application of the law. Fourth, the approach to restoring social relations, as reflected in the concepts of ta'zir and restorative justice, needs to be given greater space within the national criminal law system.

Thus, a comparative study of Islamic law and Dutch law demonstrates that an effective legal system is built not only through strict norms, but also through flexible application, individualization of punishment, and an orientation toward social recovery. These values align with the Pancasila principle of justice, which places humans at the center of legal protection and calls for a balance between the interests of the perpetrator, the victim, and society. Therefore, these values are worthy of being used as a basis for reconstructing the regulation of the crime of theft with more just, humane, and socially just penalties.

4. Conclusion

1. Current Construction of Regulations for the Crime of Aggravated Theft: The regulatory construction of aggravated theft crimes in Indonesian positive law demonstrates a strong and systematic system through the distinction between

basic and qualified crimes, formulated in a limited manner in the Criminal Code. This construction emphasizes legal certainty through a legalistic-formalistic approach oriented toward fulfilling the elements of the crime and applying the principle of proportionality in sentencing. However, this construction still faces limitations in accommodating substantive justice due to its rigid nature and lack of responsiveness to contextual factors, such as the perpetrator's socioeconomic condition and the concrete impact of the act. The reliance on judicial discretion in practice indicates the need for more targeted guidelines to avoid disparities in decisions. From a comparative perspective, Islamic law offers a more flexible and contextual approach through a balance between legal certainty, justice, and the public interest, which can serve as a source of reflection in the development of national criminal law. Therefore, strengthening future regulatory construction needs to be directed toward a more integrative approach, combining legal certainty, flexibility of application, and an orientation toward substantive and social justice. Thus, the existing construction is not final, but needs to be refined to be able to present a criminal law system that is more adaptive, humanistic, and just in responding to the dynamics of society.

2. Weaknesses in the Current Construction of Aggravated Theft Criminal Regulations: Based on the description of the weaknesses in the regulatory construction of aggravated theft, it can be concluded that the provisions in Article 363 of the Criminal Code still exhibit various limitations, both normatively and implementably. These weaknesses are evident in the dominance of a legalistic-formalistic approach, which creates legal rigidity, an inability to accommodate socioeconomic factors, and the persistence of disparities in sentencing in judicial practice. Furthermore, from the perspective of Lawrence M. Friedman's legal systems theory, the weaknesses in these regulations are also influenced by the disharmony between legal substance, legal structure, and legal culture. These three elements do not work synergistically, resulting in a dysfunctional legal system that results in the suboptimal achievement of the goals of legal certainty, justice, and utility. The results of this study confirm that the main problem in regulating the crime of aggravated theft does not only lie in the weakness of legal norms alone, but in the design of the legal system which is not yet fully oriented towards contextual justice, so that a reorientation of the approach towards a criminal law system that is more flexible, humanistic, and responsive to the social realities of society is needed.

3. Construction of Regulations for the Crime of Aggravated Theft Based on Pancasila Justice: The construction of regulations for aggravated theft crimes based on Pancasila Justice represents an effort to reform criminal law that is oriented toward substantive justice, placing a balance between the interests of the perpetrator, the victim, and society as the primary foundation. This construction arose from criticism of the provisions in the National Criminal Code, which still tend to be retributive and formalistic, thus not fully reflecting the goals of modern criminal justice. Normatively, regulatory construction is realized through the creation of a more flexible and proportional regulatory

model, emphasizing the principle of individualization of punishment, consideration of the degree of culpability (*schuld*), the value of the loss, the role of the perpetrator, socioeconomic conditions, and the impact on the victim. This construction also includes differentiation of levels of violence, expanding the application of restorative justice, and developing alternative punishments beyond imprisonment. In terms of implementation, regulatory development requires the support of criminal guidelines and harmonization of technical regulations across law enforcement agencies. The absence of integrated technical regulations has the potential to lead to disparities in decisions and legal uncertainty, thus necessitating policy synchronization to ensure consistent application of the values of Pancasila Justice in practice. Thus, the construction of this regulation confirms the shift in the paradigm of criminal law from a purely repressive approach to a more humanistic, proportional, and social justice-oriented approach as a manifestation of Pancasila Justice.

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