

Impelementation of The Principle of Proportional Justice in The Policy of Criminal Punishment for Perpetrators of The Criminal Acts of Theft with Aggregation

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Abstract. *The implementation of the principle of proportional justice serves as a moral compass for judges in determining the severity of punishment. This principle requires that the punishment imposed not only adhere to the formal limits of the law but also be commensurate with the seriousness of the offense and take into account the subjective background of the perpetrator. This study aims to apply the principle of proportional justice in the sentencing policy for perpetrators of aggravated theft and the inhibiting factors in gathering evidence from aggravated theft by investigators based on the principle of proportional justice. The method used in this study is the sociological juridical method. The data used are primary and secondary data. Data collection uses interviews and literature studies, qualitative data analysis, and the problem is analyzed using theories of child punishment, law enforcement theory, and justice theory. The results of this study indicate that: The application of the principle of proportional justice in the sentencing policy for perpetrators of the crime of aggravated theft in the National Criminal Code (Law No. 1 of 2023) for the crime of aggravated theft (Curat) marks a fundamental transition from a rigid paradigm of retaliation to a more humane and recovery-based legal system. Through the mandate of Articles 51, 52, and 54, judges are now required to equally weigh the severity of the act, the level of culpability, and aspects of criminal individualization such as the motive and social background of the perpetrator to ensure that the sentence imposed reflects the appropriate degree of depravity.*

Keywords: Aggravated Theft; Principle of Proportional Justice; Theft.

1. Introduction

Theft is one type of crime against property that occurs in society today. As a form of crime, theft still ranks at the top when compared to other forms of crime, and continues to increase in terms of quantity. As a social problem, crime cannot disappear by itself, so efforts to overcome it are continuously carried out by the government and society. In the law enforcement mechanism, the criminal justice system in Indonesia refers to Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), because the KUHP discusses the procedures and methods of the Indonesian criminal justice system, known as procedural law, to enforce material criminal law.¹The crime of theft is categorized as the crime with the most cases resolved in court. The crime of theft itself is regulated in Chapter XXIV of the Criminal Code (KUHP), Articles 476 to 481, which is contained in the form of principal theft in Article 476, which states that:

"Any person who takes an item which partly or wholly belongs to another person, with the intention of possessing it unlawfully, shall be punished for theft, with a maximum prison sentence of 5 (five) years or a maximum fine of category V."

This contains elements of prohibited acts of taking, thus indicating that theft is a formal crime. Taking is a behavior that has a positive material nature, which is carried out with deliberate muscle movements, generally using the fingers and hands which are then directed at an object, touching it, holding it, and lifting it, then carrying and moving it to another place or into one's power.

Social inequality and high levels of poverty in various regions in Indonesia are factors that encourage some individuals to commit crimes to meet their daily needs.²In general, the perpetrators of theft are driven by economic needs. The current dire economic situation has led people to resort to any means, even illegal means, to commit theft to meet their needs. "As we see and hear from electronic and mass media, theft of various types is often motivated by unmet needs."³From a social science perspective, theft, a crime that occurs due to unfair social structures and conditions, is a common social problem that cannot be cured simply by punishing the perpetrator. This diversity in the resolution of theft cases creates a sense of injustice in society, leading to problems and negative impacts.

¹Ida Bagus Anggapurana Pidada et al., 2022, Criminal Acts in the Criminal Code, Widina Bhakti Persada, Bandung p. 2.

²Endang Sulistyowati, & H. Budi Santoso. 2019. Socioeconomic Factors as Causes of Theft Crimes. Indonesian Journal of Criminology, Vol.15 No. (2), pp. 123-137.<https://jurnal.unissula.ac.id/index.php/RLJ/Article/View/50988>

³Nurroffiqoh, Herry Liyus, Aga Anum Prayudi, "Prevention of Aggravated Theft Crimes", Pampas: Journal of Criminal Justice, Vol 3 No 1, 2022, Pg 87, Accessed From <https://Onlinejournal.Unja.Ac.Id/Pampas/Article/View/17706>

Formal law enforcement carried out by the police to date sometimes still leaves various unresolved issues, but this formal enforcement requires quite high costs, which are sometimes disproportionate to the cases to be resolved. Various criticisms and expressions of public dissatisfaction with the police institution, especially those expressed by the Indonesian National Police (Polri), reflect that law enforcement carried out by the Polri is considered not positive both in terms of interests and legal certainty, as well as a sense of justice within the community. To date, the form of resolving social problems through formal channels has not been able to satisfy the public, especially the parties involved in the case. Even formal law enforcement often leaves various kinds of problems that can exacerbate hostility and result in unresolved conflicts.

The criminal justice system is a network of justice systems that utilizes substantive criminal law, formal criminal law, and enforcement law. However, this institution must be viewed within its social context. Overly formalism, if based solely on the pursuit of legal certainty, will lead to disastrous injustice.⁴Law enforcement carried out using formal justice methods, such as repressive police action followed by litigation or the law enforcement process, generally ends in a win-lose or lose-win situation. Ultimately, this process only seeks to punish the perpetrator for their actions, while redressing the victim's rights and the physical and psychological losses suffered by the victim as a result of the incident remains unmet.⁵Criminal law is usually used as an alternative solution to a legal problem that occurs, on the other hand, the punishment created by the state slowly results in a high number of punishments carried out on a legal problem, with the high number of punishments it can cause a potential injustice in various forms that are felt by the community. The birth of new punishments and the broad scope of criminal law will only threaten the efficiency and legitimacy of criminal law enforcement in the eyes of the public, it will also give birth to such broad discretion that presents injustice and public distrust of the law itself and not a few certain individuals make the law a tool of revenge *lex tallionis* for an act that ends in punishment.

This is where the importance of implementing the principle of proportional justice as a moral compass for judges in determining the severity of punishment lies. This principle demands that the punishment imposed not only adhere to the formal limits of the law, but also be commensurate with the gravity of the crime (seriousness of the offense) and take into account the subjective background of the perpetrator. Without a strong application of the principle of proportionality, sentencing policy risks being trapped in stark disparities in sentencing, where two cases with similar characteristics receive significantly different sentences, or

⁴I Ketut Adi Purnama, 2008, *Transparency of Police Investigators*, Reflika Aditama, Bandung, p.38.

⁵Mochammad Fajar Gemilang, "Restorative Justice as Progressive Law by Police Investigators", *Police Science Journal*, Vol 13, Number 3, December 2019, P. 227. <https://jurnalptik.id/Index.php/Jik/Article/View/194>

conversely, the sanctions imposed are perceived as inhumane and unfair to society. The gap between rigid legal certainty and dynamic social realities often results in the objectives of sentencing not being optimally achieved, both in terms of deterrence and rehabilitation. The "legalistic-formalistic" phenomenon that still characterizes most judges' decisions tends to make the sentencing process mechanistic, so that the values of substantive justice are often neglected. Therefore, this research is crucial to analyze how the criminalization policy for perpetrators of aggravated theft can be integrated with the principle of proportional justice in order to create a rule of law that not only punishes, but also humanizes humans and provides a sense of justice for all parties involved. Therefore, the researcher is interested in conducting a study entitled "Implementation of the Principle of Proportional Justice in the Criminalization Policy for Perpetrators of the Crime of Aggravated Theft."

2. Research Methods

The method is a basic process regarding the procedure for finding a way out of a problem, while research is a careful examination of signs in order to obtain human knowledge, so the research method can be interpreted as the basic procedure for finding a way out of existing problems in carrying out research related to the Implementation of the Principle of Proportional Justice in the Policy of Sentencing Perpetrators of the Crime of Aggravated Theft.⁶The sociological legal approach, also known as field research, examines the applicable legal provisions and what actually happens in society.⁷

3. Results and Discussion

3.1. Implementation The Principle of Proportional Justice in the Sentencing Policy for Perpetrators of the Crime of Aggravated Theft

The perpetrators of aggravated theft have characteristics and *modus operandi* that are different from those of ordinary theft perpetrators, so that legal treatment of them must carefully consider these factors. The perpetrator is the person who commits the crime in question, meaning the person who, intentionally or unintentionally as required by law, has caused a consequence that is not desired by law.⁸Aggravated theft is a crime committed by a person who unlawfully takes another person's property, accompanied by circumstances or methods that aggravate the crime. According to Indonesian criminal law, this aggravation can include the use of violence, burglary, threats, or theft committed

⁶Soejono Soekamto, 1986, *Introduction to Legal Research*, Jakarta: Ui Press, p. 6

⁷Mukti Fajar and Yulianto Achmad, 2010, *Dualism of Normative and Empirical Legal Research*, Yogyakarta: Pustaka Pelajar, p. 175.

⁸Sahril Fadillah, Heni Siswanto, Fristia Berdian Tamza, Ahmad Irzal Fardiansyah and Maya Shafira, 2024, "Legal Accountability for Perpetrators of Criminal Acts of Assault", *Alliance: Journal of Law, Education and Social Humanities*, Volume 1, No. 5, p. 292

at a specific time and place that makes the crime more dangerous and significantly harms the victim.⁹

Aggravated theft perpetrators typically use more damaging methods, such as using violence, breaking into homes, or stealing high-value items, which causes greater harm to victims and disrupts the public's sense of security. Therefore, criminal law imposes harsher penalties on perpetrators of aggravated theft as a form of respect for victims' rights and an effort to maintain social order.¹⁰ The legal facts above indicate that the criminal penalties for aggravated theft as stipulated in the colonial Criminal Code (KUHP) currently in force in Indonesia have not been fully effective in providing a deterrent effect for perpetrators or in reducing the crime rate. This condition raises legal issues regarding the extent to which the formulation of the crime of aggravated theft is effective in protecting the public from harm and providing legal certainty. The high number of aggravated thefts each year indicates an urgent need to reassess the adequacy of the current criminal regulations, while also opening up space for reform of criminal law in Indonesia.¹¹

Legal reform is crucial to ensure the criminal justice system is more responsive and adaptive to current societal issues. Law Number 1 of 2023 concerning the Criminal Code aims to address various weaknesses in the old Criminal Code, including provisions on sanctions for aggravated theft. Sanctions for perpetrators of aggravated theft are regulated in Article 477 of Law Number 1 of 2023 concerning the Criminal Code, which stipulates:

(1) Anyone who commits:

- a) Theft of sacred religious or belief objects
- b) Theft of antiquities
- c) Theft of livestock or goods that are a person's main source of livelihood or income
- d) Theft during fire, explosion, natural disaster, shipwreck, stranding, airplane accident, train accident, road traffic accident, riot, rebellion or war
- e) Theft at night in a house or enclosed yard where there is a house, carried out by a person who is there without the knowledge or without the consent of the person entitled to do so.

⁹Hendra Lubis, 2022, *Theft Crime*, Bandung, Refika Aditama, pp. 58-60

¹⁰Rahmat Hidayat, 2020, "Law Enforcement for Aggravated Theft", *Journal of Legal Studies*, Vol.10, No. 2, pp. 77-85.

¹¹Luhut MP Pangaribuan, 2023, *Criminal Procedure Law*, Jakarta, Sinar Sinanti, p. 30

f) Theft by means of damaging, dismantling, cutting, climbing, cheating, using fake keys, using fake orders, or wearing fake official clothing, to enter the place of committing the crime or to take possession of the goods taken g. Theft carried out together and in association.

(2) If the act as referred to in paragraph (1) is based on more than one of the methods as referred to in paragraph (1) letters f and g, the punishment shall be a maximum prison sentence of 9 (nine) years.

The provisions in Article 477 of Law Number 1 of 2023 concerning the Criminal Code regulate various forms of theft that are considered to have a higher level of seriousness because they involve objects of special value, emergency situations, or dangerous methods or are carried out in collaboration. However, to maintain the balance of law enforcement, the Criminal Code also differentiates if the crime of theft is committed in a lighter scope as explained in Article 478 of Law Number 1 of 2023 concerning the Criminal Code, which stipulates: If the Crime as referred to in Article 476 and Article 477 paragraph (1) letters f and g is committed not in a house or closed yard where there is a house, and the value of the stolen goods is not more than IDR 500,000.00 (five hundred thousand rupiah), it is punished for petty theft, with a maximum fine of category II. In this provision, the legislators attempt to differentiate the severity of theft based on the value of the loss and the situation in which the crime occurred. However, even though there is a distinction between ordinary theft, aggravated theft, and petty theft, Article 480 then determines: Any person who commits the crime of theft as referred to in Article 476 to Article 479 may not only be subject to the principal penalty as formulated, but may also be subject to additional penalties in the form of revocation of certain rights listed in Article 86 letters a, b, c, and/or d.

The new Criminal Code allows judges to impose not only principal penalties but also additional penalties to strengthen the deterrent effect on theft perpetrators. However, Law Number 1 of 2023 concerning the Criminal Code also provides specific limitations through Article 481, which stipulates:

(1) Criminal prosecution will not be carried out if the person who commits one of the Criminal Acts as referred to in Articles 476 to 479 is the husband or wife of the Victim of the Criminal Act who is not separated from each other by bed and board or by assets.

(2) Criminal prosecution may only be carried out based on a complaint from the victim if the perpetrator as referred to in paragraph (1) is the husband or wife of the victim of the crime who is separated by bed and board or by property, or is related by blood or marriage either in a straight line or in a lateral line up to the second degree. (3) In a society that uses a matriarchal system, complaints may also be made by another person who exercises paternal authority.

These provisions provide a clearer and more assertive legal basis for handling the crime of aggravated theft as stipulated in Article 477 of Law Number 1 of 2023 concerning the Criminal Code, which includes theft of objects of special value, committed in emergency situations, by certain dangerous methods, or by collusion. With the regulation of heavier and more specific sanctions, it is hoped that law enforcement can be more effective and provide optimal protection for the community. In addition, This regulation also serves as a preventative measure to suppress theft committed under more serious conditions or methods, while also providing a deterrent effect on perpetrators. Furthermore, this provision also accommodates the objectives of criminal punishment, namely guiding convicts to return to their roles as productive members of society, restoring social order and peace, and upholding a sense of justice for victims.¹² When compared, the provisions regarding aggravated theft in the old Criminal Code (*Wetboek Van Strafrecht, WvS*) and the new Criminal Code (Law Number 1 of 2023) are essentially the same in terms of the threat of criminal sanctions, namely a maximum of seven years in prison, and in certain circumstances can be increased to nine years. The difference lies not in the severity of the sanctions, but in the formulation, meaning, and scope of the aggravating elements. The old Criminal Code in Article 363 emphasizes classic circumstances such as theft committed at night, in a house or enclosed yard, committed together, or by breaking and using fake keys.

According to R. Soesilo, who explained that Article 363 of the Criminal Code is intended to provide aggravating criminal penalties because certain circumstances indicate the nature of the act that is more dangerous or detrimental to the victim. For example, theft committed at night is considered more dangerous because the dark situation makes it difficult to supervise and increases the victim's fear, theft in a closed house or yard shows a violation of the sense of security in a private environment, theft together (more than one person) shows collective strength that increases the threat, while theft by breaking in, climbing, or using a fake key shows a more mature evil intention and a more serious attempt. Thus, aggravation is not only a technical issue, but also related to the protection of public interests and the sense of security of citizens.¹³ At the same time, the new Criminal Code retains these classic elements, but also provides more detailed explanations that are relevant to the modern social context, for example, explicitly regulating motor vehicle theft, repeat theft (recidivism), and adding a dimension of victim protection by opening

¹²Mudzakkir, 2008, *National Legal Development Planning in the Field of Criminal Law and the Penal System (Legal Politics and Penalty)*. Jakarta, Department of Law and Human Rights, National Legal Development Agency, p. 88

¹³R Soesilo, 1988, *Criminal Code (KUHP) and its Article-by-Article Commentaries*, Bogor, Politea, p. 251

up space for additional penalties in the form of restitution and compensation. Thus, the comparison between the old and new Criminal Codes lies not only in the aspect of criminal sanctions, but also in the deepening of the meaning, scope of criminal acts, and the orientation of law enforcement that places more emphasis on protecting the interests of victims.

3.2. Inhibiting Factors in Collecting Evidence from Aggravated Theft Crimes by Investigators Based on the Principle of Proportional Justice

R. Soesilo used this aggravated theft approach because of its nature, which makes the theft subject to aggravated criminal penalties. This type of theft is also called qualified theft (*gequalificeerd diefstal*). The aggravating elements of qualified theft are that the act is directed at a specific object or is carried out in a specific manner and can occur because the act produces specific consequences.¹⁴ Criminal law is the law required by a society to guarantee both individual freedoms and rights, as well as public order from disturbances originating from individuals, groups, or those in power. Criminal law (including criminal procedure law) essentially functions as follows:¹⁵

1. Prevent law enforcement from carrying out arbitrary actions against members of the public or justice seekers who commit unlawful acts.
2. Determining who and what actions are prohibited and are subject to sanctions.

Law enforcement is an effort to address crime rationally, fulfilling a sense of justice and effectively. In order to address crime, various means as a response can be given to perpetrators of crime, in the form of criminal law and non-criminal law means, which can be integrated with one another. If criminal means are called upon to address crime, it means that criminal law policy will be implemented, namely holding elections to achieve criminal legislation results that are appropriate to the circumstances and situations at a certain time and in the future.¹⁶ Talking about law enforcement, of course there are those who enforce the law, namely law enforcers. Each law enforcer has its own position and role. One of them is the Indonesian National Police (Polri), which is a state apparatus that plays a role in maintaining public security and order, law enforcement, protection, shelter, and service to the community in the context of maintaining domestic security as stated in Article 5 paragraph (1) of Law Number 2 of 2002 concerning the Indonesian National Police. Therefore, the Indonesian National Police is required to continue to develop to be more professional.

¹⁴R. Soesilo, *Op-Cit*, p. 251

¹⁵Kadri Husin, Budi Rizki Husin, 2016, *Criminal Justice System in Indonesia*, Jakarta: Sinar Grafika, p.15.

¹⁶Barda Nawawi Arief, 2012, *Criminal Law Policy*, Citra Aditya Bakti, Bandung, p. 109

The police, as a law enforcement agency, are tasked not only with law enforcement but also with measures to prevent criminal acts. These crime prevention efforts are a strategic step in addressing the recent rise in crime. The increase in crime compared to the previous year necessitates preventive measures, particularly by the police, to prevent recurrence in the coming year. Furthermore, the public can take steps to support this prevention effort.¹⁷According to Moeljatno, aggravated theft is basically ordinary theft, but it is carried out in a certain way that makes the crime more serious, for example, it is carried out at night, carried out by two or more people in collusion, or carried out by damaging goods.¹⁸Meanwhile, according to PAF Lamintang, aggravated theft is theft in its principal form as regulated in Article 362 of the Criminal Code, with additional aggravating elements, resulting in different and more severe penalties. This offense is also called qualified theft because of the additional requirements that increase the penalty.¹⁹According to the Old Criminal Code, theft is essentially defined as taking another person's property or another person's property while attempting to violate that person's rights. According to Article 362 of Law Number 1 of 1946 which states that: The crime of theft is anyone who takes something, which is wholly or partly owned by another person, with the intention of possessing it unlawfully, is threatened with theft, with a maximum prison sentence of five years or a maximum fine of sixty rupiah.

Meanwhile, according to Article 476 of Law Number 1 of 2023 concerning the Criminal Code (KUHP), it also states that: The crime of theft is any person who takes an item that is partly or wholly owned by another person, with the intention of possessing it unlawfully, shall be punished for theft, with a maximum imprisonment of 5 (five) years or a maximum fine of category v.

Barda Nawawi Arief emphasized that aggravating circumstances in theft do not change the fundamental nature of the crime, but rather elevate the act to a more dangerous level, making it reasonable for the law to impose a heavier penalty. Therefore, aggravated theft is seen as a crime with broader social impacts than ordinary theft.²⁰Based on the above description, it can be seen that aggravated theft is essentially still theft in its basic form, but the presence of certain elements qualifies the act as a more serious offense. Aggravating elements not only increase the severity of the criminal threat, but also emphasize that the act has the potential to cause greater harm and danger to society. The existence of articles regarding aggravated theft in the Criminal Code,

¹⁷Yulvan Laksana Putra, 2020, Law Enforcement on Minor Crimes (Theft) in the Jurisdiction of the Salatiga Police in 2019, Journal of Legal Surgery, Faculty of Law, Boyolali University, Vol. 4, No. 2, p. 42

¹⁸Moeljatno, 2018, Principles of Criminal Law, Jakarta, Rineka Cipta, p. 95.

¹⁹PAF Lamintang and Jisman Samosir, 2010, Special Offenses: Crimes Against Property Rights, Bandung, Nuansa Aulia, p. 67.

²⁰Barda Nawawi Arief, 2010, Anthology of Criminal Law Policy, Jakarta, Kencana, p. 145.

both old and new, reflects stronger legal protection for property interests and serves as a preventative measure to prevent the public from recurring criminal acts with more dangerous methods.

Elements of the Crime of Aggravated Theft in Law Number 1 of 2023 concerning the Criminal Code (KUHP) The elements of the crime of aggravated theft in Law Number 1 of 2023 concerning the Criminal Code (KUHP) are basically a continuation of the provisions in the old KUHP, but with several improvements and expansions. These provisions are contained in Article 477, which expressly details special circumstances that, if they accompany the crime of theft, will result in a heavier criminal threat. The following are the elements of the crime of aggravated theft contained in Article 477 of Law Number 1 of 2023 concerning the Criminal Code (KUHP):

1. Theft of sacred religious or belief objects. This element emphasizes special protection for objects considered sacred by adherents of a particular religion or belief system. Theft of sacred objects not only causes material loss but can also hurt the religious sentiments of the community and potentially lead to social conflict.²¹
2. Theft of Antiquities Antiquities are a nation's historical and cultural heritage, possessing high value, both in terms of science and national identity. The unlawful appropriation of antiquities is seen as a threat to cultural preservation and the public interest, and therefore is considered aggravating circumstance.²²

4. Conclusion

1. ImplementationThe Principle of Proportional Justice in the Sentencing Policy for Perpetrators of Aggravated Theft in the National Criminal Code (Law No. 1 of 2023) for the crime of aggravated theft (Curat) marks a fundamental transition from a rigid paradigm of retaliation to a more humane and restorative-based legal system. Through the mandate of Articles 51, 52, and 54, judges are now required to equally weigh the severity of the act, the level of culpability, and individualizing aspects of the crime such as the perpetrator's motive and social background to ensure that the sentence imposed reflects the appropriate degree of depravity. This justice is reinforced by the judicial pardon mechanism in Article 70 for urgent humanitarian reasons and the integration of restorative justice that prioritizes the restoration of victims' losses in accordance with the objectives of Articles 12 and 13. Systematically, this policy is the state's effort to create a balance between legal certainty, protection of human rights, and restoration of social harmony, so that every criminal sanction imposed has real utility value for the perpetrator, victim, and the wider community. 2. Several factors that hinder law enforcement efforts by the Cirebon City Police are as follows: a. Public

²¹Wirjono Prodjodikoro, *Certain Criminal Acts in Indonesia*, Bandung, Refika Aditama, 2023, p. 19

²²*Ibid.*, pp. 22–24

negligence. The Cirebon City Police have taken preventive measures to prevent the occurrence of aggravated theft, but many people are still negligent about the security of their property, thus giving criminals the opportunity to carry out their actions. b. Economic factors, namely many perpetrators of aggravated theft are desperate to carry out their actions due to economic pressure. c. Social factors. There are also some perpetrators who commit aggravated theft so that the perpetrators can have fun using the money from the sale of the stolen goods. d. Lack of evidence. In repressive law enforcement efforts, investigators at the Cirebon City Police often lack evidence to solve cases of aggravated theft. This is usually caused by the reluctance of victims or witnesses to provide information.

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