

## Stages of Prosecution of Crimes with Aggravation Analysis of Religious Court Decisions

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### Abstract

The state guarantees the lives of its citizens in accordance with Article 28A of the 1945 Constitution. The Criminal Code covers specific crimes including crimes against property in Book Two Chapter XXII, namely Theft. The purpose of this study is to analyse the prosecutor's charges in a case of aggravated theft. The method used in this research is normative research. This type of research uses descriptive qualitative type. The data sources used are two types of primary data sources in the form of case file Number: 814/pid.B/2023/PN.Rap and criminal law books and secondary data sources in the form of books and articles related to this research. The results of this study are the unbalanced prosecutor's charges between the two perpetrators of theft with aggravation. This research concludes that the legal considerations in the judge's decision which sentenced each of the two defendants to 1 year (defendant 1) and 9 months (second defendant). This research is strengthened by the existence of case files located at the Labuhanbatu police station, so that it can be properly analysed.

**Keywords: Judge's Decision, Theft with Aggravation, Legal Considerations**



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## INTRODUCTION

As a society made up of different types of people, there are always good and bad deeds in social life. People will form a positive social group if they act well, and a bad social group if they act badly. In society, bad acts lead to the violation of laws, regulations, and norms. These violations of the law are considered good by society and are punished by punishment. Indonesia as a state of law, is not a state of authority. Therefore, every action must obey the law and be legally accountable. In accordance with Article 28A of the 1945 Constitution, the state guarantees the livelihood of its citizens (Chazawi, 2002).

Theft is one of the specific crimes included in Book Two Chapter XXII of the Criminal Code, which also includes crimes against property. To ensure that offenders are properly punished for their actions, there must still be clear discrimination. To maintain the security and orderliness of social life, the basic and extra punishments listed in Article 10 of the Criminal Code must exist and be enforced. Especially in property-related crimes such as theft, which often occurs due to financial problems. Although the forms of theft vary, there is still a need for clear separation so that the perpetrators receive punishment according to their actions (Salsabila et al., 2022).

Crime is a natural part of life and requires certain strategies, so it is impossible to eliminate it completely. Crime makes society uncomfortable. Therefore, many efforts are made to prevent crime, but it is difficult to eradicate it completely because it always changes along with changes in society (Muis, 2013).

In terminology, theft is the act of stealing other people's property secretly or without the knowledge of the owner (Fauzi & Jainah, 2022). Theft is classified into different types, and refers to theft committed under certain circumstances or in certain ways, and is more serious so that it can be punished with more severe charges than usual (Pratama et al., 2016). Stipulation Number 814/Pid.B/2023/Pn.Rap, which will be analysed in this investigation, concerns the crime of aggravated theft in violation of Article 363 Paragraph 1 Figures 4 and 5 of the Criminal Code. The term aggravated theft is usually referred to as qualified theft or qualified theft (Chairunisa et al., 2021).

Article 363 regulates theft, including; (1) a maximum imprisonment of 7 years, namely, theft of livestock, theft during a fire or natural disaster, theft committed at night in a yard or house by two people, theft committed by two or more people together, theft committed by damaging to enter a place with the intention of committing a crime. (2) If the theft described in the third paragraph is accompanied by one of the fourth and fifth paragraphs, imprisonment shall be imposed. (Moeljatno, 1959)

Everyone certainly has needs that must be met in order to live their lives (Rahman, 2022). Along with the times that continue to develop, making human needs continue to increase. The amount of income that each person has will greatly affect their respective needs. Someone with a small income will certainly find it difficult to fulfil their life needs (N. Nugroho, 2019). The needs of life that must be met continuously require a person to get a job for their survival. Continuous economic problems have an impact on fewer job opportunities, so not everyone gets the same luck in terms of employment as a result of which there is a lot of unemployment everywhere (Kristiyanti, 2022). People with low levels of welfare tend to ignore the norms or rules of law that apply. Seeing this situation, in order to fulfil their needs, they will tend to use all means to fulfil these needs, such as by stealing (W. Nugroho, 2012). One form of crime that often occurs in society is theft. Judging from the current social situation, people are very likely to look for shortcuts by stealing. The frequent occurrence of theft crimes of various types is motivated by the insufficient needs of life (Saputra, 2019).

The Attorney General's Office of the Republic of Indonesia is a government agency that has the task of carrying out law enforcement and justice, especially in the field of prosecution. The Attorney General oversees the High Prosecutor's Office and the District Attorney's Office, both of which have state authority, particularly in the field of prosecution. They are large and inseparable entities.

Prosecutors, called officers of justice in Dutch and Adhiyaksa in Sanskrit, are legal government bodies tasked with filing charges or petitions against those deemed to have committed crimes. In addition to other authorities granted by law, prosecutors are officials who have the functional authority to act as public prosecutors and carry out court decisions that have permanent legal force, as stated in Article 1 paragraph 1 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Chazawi, 2002).

From the police report file, no: LP/B/50/I/2023/SPKT/RES-LABUHANBATU/POLDA SUMUT, on 12 January 2023. Reporting that there was a theft on Sunday, 08

January 2023 at approximately 07.00 WIB, the complainant is one of the team from the company PT. Tower Bersama Group (TBG) received information from the centre that the Company's electricity tower located in LPK 1 and 2 housing, ID: 02021999109, jl. Tapa Lingkungan Rejo Mulio, jl. Tapa Lingkungan Rejo Mulio, Kel. Perdamean, Kec. Rantau Selatan, Kab. Labuhanbatu has gone out. Hearing this, the reporter immediately went to the location along with the witnesses. It turned out that when he arrived there, some material belonging to PT TBG (victim) had disappeared. So that the reporter informs the head of the company. Then the head of PT. TBG made a complaint report, in which because of this incident the company suffered a loss of Rp. 24,362,102, (Twenty-four million three hundred sixty-two thousand one hundred and two thousand rupiahs - (Indonesian National Police of the North Sumatra Region Labuhanbatu Resort, 2023).

From the above report, the researcher concluded that the losses caused by the theft were quite large, reaching tens of millions. According to the charge sheet the defendants were sentenced to one year (defendant 1) and nine months (defendant 2). (Rantauprapat District Court Class I-B, 2023).

Administrative filing, including investigation and prosecution, is the responsibility of the investigator or assistant investigator at the request of the investigator. According to Article 1 point 5 of the Criminal Procedure Code, an investigation is a series of actions carried out by an investigator in order to identify and reveal the possibility of a criminal event and assess whether an investigation can be carried out according to established legal procedures. According to Article 1 point 2 of the Criminal Procedure Code, investigation is a process by which an investigator seeks and collects evidence that can clarify the criminal offence committed. Investigators must follow the administrative process stipulated in this Law to be able to determine a suspect. One of the procedures is to submit a notification of the commencement of a criminal offence investigation - also known as a Notice of Commencement of Investigation (SPDP) - to the head of the local prosecutor's office. What is meant by "notification letter" is a message delivered by a police investigator (Polri) to the head of the prosecutor's office to notify the commencement of an investigation based on Article 1 point 17 of National Police Chief Number 14 of 2012 which regulates criminal investigation management." (Law Article 1 National Police Chief No. 14, 2012)

Matters relating to criminal law regulations are often found throughout the trial. In the prosecutor's indictment, which details the criminal law violated by the defendant, the articles in question are revealed. The judge then uses these clauses as a basis for applying sanctions or initiating further action. (Pradhana, 2021).

Robbery is categorised as a deviant activity because it involves theft and violence. According to Robert M. Z. Lawang, deviance is any behaviour that deviates from the norms that apply in a social system. Such behaviour forces those with power within the system to implement corrective action (Prayitno et al., 2020). Prosecutors begin working on the indictment after investigating and issuing a Notice of Commencement of Investigation (SPDP). This is considered complete. As in KUHAP Article 72, the Police are obliged to provide a copy of the Berita Acara Pemeriksaan (BAP) to the suspect or his legal counsel if requested. The purpose of this copy is to assist the suspect's defence. (Sutarto, 2020)

A judge's concerns, which include the concepts of fairness (*ex aequo et bono*) and legal clarity, are very important in assessing the effectiveness of a court decision. These factors

need to be addressed as they must also favour all interested parties. with full consideration, courtesy, and diligence. The Supreme Court or Court of Appeal will overturn a judge's decision if the judge does not deliberate diligently, meticulously, and pay attention to detail.

Judges need evidence when assessing a case, and they base their conclusions on that evidence. The presentation of evidence is the most important stage of examination in a trial. To ensure a fair and accurate judgement, evidence is collected to prove the truth of an event or fact. Before making a decision, the judge must determine whether the event or fact is real, can be proven, and create a legal relationship between the parties." (Waruru, 2021)

In research (SIREGAR, 2023) with the title "Juridical Analysis of Sanctions for Offenders of Theft with Aggravation in the Perspective of Criminology and Anomie Theory from Robert King Merton." explains the results of research on social structure deviations in Robert King Merton's anomie theory and the sentences imposed by the judge on Defendant I and Defendant II are heavier than the demands of the Public Prosecutor, but lower than the threat of punishment from the Article he threatened. Then in research (Alhumaira & Mukhlis, 2019) with the title "Criminological Review of Theft with Aggravation in a House Left Behind by the Owner (A Study in the Legal Area of the Banda Aceh Police)" The results showed that theft with aggravation in a house left behind by the owner occurred due to economic factors, low education factors, and factors of opportunity. The modus operandi carried out by the perpetrator in the theft with aggravation in the house left by the owner is carried out at night, by monitoring and choosing a strategic location, by damaging doors and windows to enter the house. In research (Nurroffiqoh et al., 2022) with the title "Countering the Crime of Theft with Aggravation" The results of this study indicate that the factors that cause the crime of theft with aggravation in the Bungo Police District are as follows: Internal factors from outside, namely: Economic factors, the influence of friends, factors from within themselves, namely: The existence of malicious intent, opportunity or negligence of the victim. As well as countermeasures against the occurrence of the crime of theft with aggravation in the Bungo Police District in the form of preventive and repressive efforts. In the research of Alexander & Widowaty (2020) with the title "Factors Causing Disparity in Judges' Decisions Against Juvenile Offenders of Theft with Aggravation" the results of the research obtained by the Judge in imposing criminal decisions on children consider the background of the theft committed by the child, the judge also considers the conclusion of the report on the results of Community Guidance from BAPAS Yogyakarta, and the judge also considers the testimony of the parents and witnesses. The cause of the criminal disparity in the judge's decision related to the crime of theft by a child with aggravation is because the judge has the freedom to determine the severity of the punishment, so the judge is free to choose the type of punishment for the defendant as determined by the law.

With the above research, the researcher wants to further review the legal review of aggravated theft cases that occurred in the city of Rantauprapat, Labuhanbatu Regency. In the above writing, the researcher wants to analyse the prosecutor's charges against aggravated theft cases. Therefore, the researcher formulates a problem, namely, how are the results of the prosecution made by the prosecutor against cases of theft with aggravation in Labuhanbatu district?

## RESEARCH METHODS

This research uses normative research. Normative research is research conducted based on applicable laws or rules and then described according to applicable findings (Qamar & Rezah, 2020). This research explores the legal discovery procedures carried out by judges in the high court decision identified by reference 814/pid.B/2023/PN.Rap. This study of theft uses a normative juridical approach, examining and interpreting the theoretical aspects of the concept and principles of restorative justice as well as the application of law in the High Court decision 814/pid.B/2023/PN.Rap. This research uses qualitative research methodology with the aim of understanding the phenomena experienced by research participants. This includes actions, legal interpretations, and other elements that are explained holistically, using scientific methodology and narrative language in a specific natural setting.

The data applied in this research is auxiliary data, including diaries, official documents, and so on. Secondary data that the author applies to this research is legislation, research results, books, and so on. Primary legal materials and secondary legal materials (Ronaldo & Aprima Suar, 2022).

Data collection is carried out by studying documents or library materials, meaning that the author's data collection is carried out with written data. Literature studies are carried out by quoting and studying laws and regulations as well as books and other related legal materials. Labuhanbatu Resort Police data in this case is the place where the author's literature study is carried out.

In this research, data analysis is carried out in a qualitative way, namely data analysis by giving more emphasis to the content of the data or the quality of the data. In this section the author will describe the research descriptively which is then continued with data processing into a single unit that produces descriptive data.

## RESULTS AND DISCUSSION

### Juridical Review of the Judge's Decision in the Case of the Crime of Theft

The severity of the offence committed by the perpetrator determines the appropriate criminal sanction that the judge will apply to each theft case. It is this difference that leads to differences in the way some offences are prosecuted. To achieve comprehensive and fair results at both the theoretical and practical levels, judges' decisions must be based on interrelated theories and research findings.

The issue of the imposition of appropriate criminal consequences for the offence committed is directly related to the judge's choice of punishment. In essence, this is comparable to a type of revenge. Judicial power is an autonomous power, as confirmed in the interpretation of Article 1 paragraph (1) of Law Number 48 Year 2009. This indicates that, except in the provisions outlined in the 1945 Constitution, judicial power is not subject to external influence (Fitri Lubis et al., 2023). The Supreme Court and the judicial bodies under it exercise judicial power in different judicial circles, such as the general court, religious court, military court, state administrative court, and constitutional court, as stated in Article 24 paragraph (2) of the 1945 Constitution (Maniar Nainggolan et al., 2023). To uphold justice, judges must first determine whether the incidents raised are true and then assess them based on the applicable legal framework (Hamzah, 2009).

Juridical considerations are part of the judge's decision-making process which is legally required to be contained in the decision and is based on the juridical facts found and presented in the trial. The following details are given as true (Riyananda, 2021):

### **Public prosecutor's indictment**

According to the results of juridical analysis based on existing facts. There has been a criminal offence of theft with aggravation as stated in Article 363 Paragraph (1) 4th and 5th of the Criminal Code which was committed by two suspects. The elements of Article 363 Paragraph (1) 4th of the Criminal Code "Theft committed by two or more persons together shall be punished by a maximum imprisonment of seven years". In Article 363 Paragraph (1) 5th "Theft committed by the offender by entering the place of the crime or being able to reach the property to be taken by means of breaking, entering, climbing or by means of false keys, false orders, or false positions" (Ronaldo & Aprima Suar, 2022).

In situations where one or more persons may have committed an act, charges are prepared against everyone. Furthermore, if the prosecution is unsure whether a particular criminal law should be applied to an offence they consider having occurred, for example possession or theft, alternative charges will be brought (Muhammad, 2013).

### **Statement of the defendant**

The defendant admitted that they stole the goods from the Tower and sold them to a scrap yard in Kampung Baru. They admitted that they committed this act together. According to the defendant's confession, they both opened the box using a piece of wood and cut the electricity cable with pliers, then sold it to a scrap yard in Kampung Baru. The statement of the defendant as referred to in Article 189 of the Criminal Procedure Code is a statement given by the defendant in court about his actions, his personal knowledge, or his own experience.

### **Witness statement**

The witness testified that the following items were stolen: 330 metres long Power Bill 6 pulls as many as 6 units, 6 units of Optick, 8 metres long RST recti to acpdb Power Cable, 50 metres long Coax Cable, 1 piece of RBS Power Cable, 1 piece of 52166 bassband, 1 piece of PDU Cable, and 2 pieces of RDH Bill SFP with different types.

If the witness's testimony includes a direct recollection of what the witness himself heard, felt, and saw, then it is considered admissible evidence. Witnesses first swear under penalty of law according to their respective beliefs (Vergano & Rahmawati, 2019).

### **Evidence**

The evidence according to the witness was that the goods taken by the defendant had already been sold to a place where used goods were sold so that the evidence left behind was that there was 1 LEACH brand battery box in which there should have been 6 empty ones at the defendant's house which were used as evidence (Labuhanbatu, 2023).

### **Decision Number 814/Pid. B/2023/PN. Rap**

The Rantauprapat District Court decided that the two defendants were tried (1) and found guilty of committing the crime of "Theft under aggravating circumstances" because of the determination that the two defendants were found guilty. (2) Sentenced them to one year and nine months imprisonment respectively. (3) Determine the length of time the defendants shall be imprisoned and confined, considering any reduction resulting from the judgement. (4)

Decide that the accused shall remain in custody for a period of one year and nine months calculated from the commencement of their arrest and detention. (5) Authorised the destruction of one box of Leach branded batteries as evidence. (6) Ordered the defendants to pay court costs of Rp5,000 each (Rantauprapat District Court Class I-B, 2023).

### **Analysis of the Prosecutor's Charges for Theft with Aggravation in Decision No. 814/Pid. B/2023/PN. Rap**

Based on the results found, the prosecutor charged the defendant with one year's imprisonment (defendant 1) and nine months (defendant 2). According to the researcher's analysis, the imbalance in sentences carried out by the two defendants was since the first defendant was the brain of planning and carrying out the theft and destruction of the tower fence, while the second suspect was the perpetrator of the theft and damage planned by the suspect. Therefore, the prosecutor's charges against the two suspects were different according to what the suspects had done. So that the results of the verdict given by the judge to the two suspects are like the demands made by the judge.

### **CONCLUSION**

The consequences of the offence of theft committed by the Defendant, which is considered a serious offence in criminal law. The reduction of the period of detention already served by the Defendant from the imposed prison sentence is a positive aspect of this decision. The Defendant will also remain in detention while serving his prison sentence, in accordance with the court's decision. Evidence such as 1 box of stolen Leach Brand Batteries was destroyed as part of the legal process. This aims to restore rights and justice to victims of criminal offences. Finally, court costs of Rp. The 5,000.00 charged to the Defendants was part of the judicial process that the Defendants needed to fulfil as their legal responsibility. This demonstrates that the legal procedure was conducted impartially and in accordance with the relevant legislation, and that the sentence imposed on the defendants was appropriate given the gravity of the offence committed. This demonstrates the role of law enforcement in upholding justice in society.

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