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Editor's Office: Unesa Campus 5 Magetan
Jl. Maospati - Bar. No. 358-360, Kleco, Maospati, Maospati District, Magetan Regency, East Java
63392 Indonesia
Tel.: +6281328527557
E-Mail: lexfavorreo@unesa.ac.id
Website : <https://journal.unesa.ac.id/index.php/lexfavorreo/index>

Analysis Juridical Decision on Theft Number 1 10/ Pid.B /2025/PN Prp concerning the Crime of Aggravated Theft

Article	Abstract
<p>Author Robin Mulki Ramadhan ¹, Dede Bagus Sadewo ², Abdi Nauffal Satria Eraffif ³, Sarah Tri Nur Firman Ramadhan ⁴, Wahyu Catur Adi Nugroho ⁵</p> <p>¹²³⁴⁵ UNESA Campus 5, State University of Surabaya, Surabaya</p> <p>Corresponding Author: *Robin Mulki Ramadhan, Email: 24111764012@mhs.unesa.ac.id</p> <p>Data: Received: Nov 27, 2025; Accepted: Dec 11, 2025; Published: Dec 22, 2025</p> <p>DOI: DOI -</p>	<p>Objective : This study aims to analyze the application of criminal law in cases of theft of small-value plantation products with a focus on the use of Article 363 paragraph (1) 4 of the Criminal Code (KUHP), as reflected in the Pasir Pengaraian District Court Decision Number 110/ Pid.B /2025/PN Prp, particularly from the perspective of proportionality and substantive justice.</p> <p>Theoretical Framework : This research is based on the theory of the crime of theft in the Criminal Code, the doctrine of inclusion (<i>medeplegen</i>), the theory of guilt and criminal responsibility, as well as the theory of the objectives of modern punishment which includes retributive, preventive and rehabilitative justice, as well as the principle of restorative justice.</p> <p>Method : This research uses a normative legal research method with a statutory approach, a case approach, and a conceptual approach. Primary legal materials consist of court decisions and laws and regulations, while secondary legal materials include legal literature, scientific journals, and the opinions of criminal law experts.</p> <p>Results and Discussion : formal elements of aggravated theft under Article 363 of the Criminal Code have been fulfilled, the punishment of eight months imprisonment for theft with a loss value of under one million rupiah raises issues of proportionality and social justice. The judge's considerations are still dominated by a legalistic and retributive approach, while the defendant's socio-economic conditions and the social impact of the punishment have not been optimally considered.</p> <p>Research Implications : This finding emphasizes the need to implement a more proportional and restorative justice-oriented sentencing policy in petty theft cases.</p> <p>Originality / Value : This research contributes by revealing the gap between formal legal certainty and substantive justice in the practice of criminalizing the crime of theft of plantation products.</p> <p>Keywords: <i>Analysis Juridical ; Theft ; Crime Criminal.</i></p>

INTRODUCTION

The widespread theft of plantation products, particularly palm oil, has become an increasingly prominent socio-legal problem in Indonesia's agrarian regions. Palm oil plantations not only serve as the backbone of the national economy through exports and employment, but also create complex power relations between capital owners and surrounding communities. In practice, the existence of large-scale plantations often directly overlaps with the living spaces of local communities who depend on the natural resources in the area. This dependence often gives rise to latent conflicts, particularly when access to land and natural resources is limited. On the one hand, corporations have legal legitimacy in the form of state-recognized land use rights (HGU).¹ On the other hand, local communities often interpret plantation areas as part of their traditional economic space. This tension is the sociological backdrop for the emergence of various crimes related to plantation products.

The crime of oil palm fresh fruit bunch (FFB) theft is generally committed by individuals or groups from vulnerable socioeconomic backgrounds, such as farm laborers, informal workers, or communities surrounding plantations. Economic instability, lack of employment opportunities, and limited access to productive land are often the primary driving factors behind these acts.² However, positive law in Indonesia tends to view these acts normatively as mere violations of property rights. This approach often ignores the social realities underlying the perpetrators' actions. As a result, the perpetrators' humanity and subjective circumstances receive little consideration in the law enforcement process. Even relatively small losses are often not a primary consideration in determining the qualification of a crime.³ This gives the impression that criminal law operates in a rigid and formalistic manner.

The application of Article 363 of the Criminal Code (KUHP) concerning aggravated theft in cases of plantation theft often sparks debate about the sense of justice. This article does provide a legal basis for increasing the penalty if the theft is committed under certain conditions, including by a group or in a specific location. The Influence of Rehabilitation Theory on Criminal Policy in Indonesia However, in practice, the application of this article is not always accompanied by adequate contextual analysis. The Pasir Pengaraian District Court Decision Number 110/ Pid.B /2025/PN Prp is a concrete example of this situation. In this case, the defendant was sentenced to prison for the theft of palm oil with insignificant economic value. However, his actions were still classified as aggravated theft because they occurred in a corporate plantation area. This situation raises critical questions about the proportionality between the act, the loss, and the criminal sanctions imposed.

Based on this description, there appears to be a tension between protecting corporate property rights and efforts to achieve substantive justice for the common people. The criminal justice system faces a dilemma between maintaining legal certainty and responding to demands

¹ Dara Salsabila and Dara Salsabila, "DEGRADATION OF CULTIVATION RIGHTS OF OIL PLAM PLANTATIONS INDICATED TO OVERLAP WITH THE DESIGNATION DECREE OF FOREST AREA," 2024, 159–73.

² Noni Khapifah Pohan, "Theft of Fresh Fruit Bunches (FFB) of Oil Palm is Generally Perpetrated by Individuals or Groups with Vulnerable Socioeconomic Backgrounds, Such as Farm Laborers, Informal Workers, or Communities Surrounding Plantations. Unfavorable Economic Conditions," 2021.

³ Suhariyono AR, "Determination of Criminal Sanctions in a Law," 2009, 615–66.

for social justice. If the law focuses solely on normative certainty, the risk of criminalization of vulnerable groups will increase. Conversely, if the law is able to interpret the broader social context, then punishment can be directed toward more constructive goals. The goal of punishment is not merely retribution, but also rehabilitation and prevention so that perpetrators do not repeat their actions.⁴ In this context, the role of judges becomes very strategic in balancing the legal and sociological aspects. Therefore, an analysis of this decision is important to determine the extent to which Indonesian criminal law has been able to move from formal justice to more meaningful social justice.

The theory of the crime of theft in the Criminal Code serves as the initial foundation for understanding how an act can be classified as theft. The provisions regarding theft are regulated in Article 362 of the Criminal Code, which emphasizes the act of unlawfully taking another person's property.⁵ The formulation of this article demonstrates that theft is not only seen from the physical act, but also from the perpetrator's intention. The element of taking indicates the transfer of property from the owner's control to the perpetrator. The element of ownership of another person makes it clear that the object of the theft does not belong to the perpetrator. Furthermore, the existence of an intention to take possession unlawfully indicates an element of intent. Thus, the theory of theft emphasizes the importance of analyzing the act and the perpetrator's mental state simultaneously.

The theory of participation or *medeplegen* explains the involvement of more than one person in committing a crime. The basis for this regulation is found in Article 55 paragraph (1) of the Criminal Code, which broadens the definition of a criminal perpetrator.⁶ In this theory, the perpetrator is not only the person who directly commits the act. People who participate knowingly can also be held criminally responsible. The main characteristic of *medeplegen* is the existence of cooperation and division of roles between the perpetrators. This cooperation must be based on a shared intention to commit the crime.⁷ In practice, this theory is often applied to theft committed by groups. Therefore, the theory of participation is important in determining the qualifications and severity of criminal responsibility.

The theory of fault and criminal responsibility stems from the principle that there is no punishment without fault. This principle asserts that a person can only be punished if they can be held accountable for their actions.^{8,9} Fault includes the capacity to take responsibility and the presence of an inner attitude, whether intentional or negligent. The perpetrator must be conscious and understand the consequences of their actions. As time goes on, the assessment of fault becomes more than just normative. Socioeconomic factors and the perpetrator's personal

⁴ Syarif Saddam Rivanie et al., "Development of Theories of the Purpose of Punishment" 6, no. 2 (2022): 176–88.

⁵ Government of the Republic of Indonesia, "Criminal Code (KUHP)," Pub. L. No. Law Number 1 of 1946 (nd), <https://peraturan.bpk.go.id/Details/25029/uu-no-1-tahun-1946>.

⁶ Firmansyah Hilipito, "CRIMINAL RESPONSIBILITY FOR PARTICIPANTS (MEDEPLEGEN) IN COMMITTING CRIMES ACCORDING TO THE KUHP" IV, no. 5 (2016): 130–38.

⁷ Hilipito.

⁸ Aryo Fadlian, "CRIMINAL ACCOUNTABILITY IN A THEORETICAL FRAMEWORK Aryo" 5, no. 2 (2020): 10–19.

⁹ Lukman Hakim, *Principles of Criminal Law*, 2020.

circumstances can also influence the level of culpability.¹⁰ Thus, this theory opens up space for a more humane approach to criminal law. This approach aims to achieve more substantive justice.

Retributive theory views punishment as a form of retribution for the wrongdoing of the perpetrator. This theory is rooted in classical thought, which emphasizes justice as an appropriate response.¹¹ According to this theory, punishment is imposed because the perpetrator deserves punishment for their actions. The primary focus of retributive theory is the perpetrator's culpability, not the social benefits of punishment. Therefore, the perpetrator's social condition or background is often not a primary consideration. This approach is still evident in criminal justice practices in Indonesia. However, the rigid application of retributive theory often draws criticism for its perceived lack of regard for human values. This criticism is particularly evident in cases of crimes with relatively small losses.

Preventive and rehabilitative theories reflect the evolving objectives of punishment in modern criminal law. Preventive theory emphasizes the function of punishment as a means of preventing future crimes. This deterrence can be general, providing a deterrent effect on society. Furthermore, prevention can be specific, preventing the perpetrator from repeating their actions. Meanwhile, rehabilitative theory views the perpetrator as an individual capable of improvement.¹² The rehabilitative approach emphasizes the perpetrator's social development and recovery. In the context of perpetrators from economically disadvantaged groups, this theory becomes particularly relevant. Punishment is expected not only to punish but also to help the perpetrator return to social functioning.

From articles with similar discussions, we used 3 articles, the first article entitled "Mechanism for Resolving Criminal Acts of Minor Theft of Garden Produce in Sukaramai Dua Village, Seruway District " discusses the mechanism for resolving criminal acts of minor theft of garden produce in Sukaramai Dua Village, Seruway District , Aceh Tamiang Regency through customary justice led by Geuchik . Triggering factors include economic hardship, low education, lack of faith, and weak local environmental security. The resolution is carried out through deliberation with sanctions such as advice, warnings, fines, or ostracism in accordance with Article 16 of Aceh Qanun Number 9 of 2008. The mechanism follows Article 17 paragraph 2 of Aceh Governor Regulation Number 60 of 2013, including receiving reports, examining witnesses, mediation, and implementing the decision. The empirical legal research method revealed 23 cases of garden theft in 2020-2022, with only 5 cases resolved through customary law. Obstacles include a lack of public awareness, minimal outreach, and weak coordination with

¹⁰ Sandy Adri et al., "The Influence of Socioeconomic Factors on Criminal Behavior (Literature Review)" 5, no. 2 (2019): 181–86.

¹¹ Putra Pratama Mursal Anis, Fitriati Bisma, "ANALYSIS OF JUDGES' DECISIONS IN THE APPLICATION OF RETRIBUTIVE THEORY ASSOCIATED WITH THE SENSE OF JUSTICE FOR VICTIMS IN CRIMINAL ACTS OF ASSAULT," 2023, 575–84.

¹² Nur Kemala Putri et al., "The Influence of Rehabilitation Theory on Criminal Policy in Indonesia: A Literature Review" 1, no. 2 (2022): 210–24.

the police. The conclusion emphasizes the effectiveness of customary justice in creating social peace, although it is not yet optimal.¹³

The second article, entitled "Resolving the Minor Crime of Theft of Palm Oil Plantation Produce at the Tambunan A Plantation - USU at the Salapian Sector Police ," analyzes the resolution of the minor crime of theft of palm oil plantation produce at the USU Tambunan A Experimental Plantation through a restorative justice approach at the Salapian Sector Police . The implementation of Perma No. 2/2012 and Perkap No. 8/2021 is hampered by Article 55 in conjunction with Article 107 of the Plantation Law, which imposes severe sanctions of up to 4 years in prison. Data from 2016-2021 shows a fluctuation in cases, with mediation efforts failing if the perpetrator is a recidivist or the loss is repeated. The legal substance obstacle from lex Specialist in the Plantation Law, the structural shortcomings of the perpetrator database , and the culture of public misunderstanding of minor crimes . Efforts include prioritizing Criminal Code Articles 362-364 for first-time cases under Rp 2.5 million, coordination between plantation management and the police, and outreach. Normative-empirical research recommends police discretion for restorative measures. Justice for a deterrent effect. The conclusion highlights the need for regulatory revisions to ensure effective restorative justice in the plantation sector.¹⁴

The third article discusses the crime of petty theft (tipiring) under Article 364 of the Criminal Code in conjunction with Supreme Court Regulation No. 2/2012, with a loss limit of Rp. 2.5 million and legal remedies for prosecution. Subjective elements include intent and possession, while objective elements include non-violent violations outside the home. Cases like Umar Buang and M. Ardian demonstrate restorative Justice is applied if the perpetrator is a first-time offender, there is a settlement, and the damages are minor. The prosecutor identifies the minor offense , specifies the article, and then offers mediation via family. group conferencing and police Conferencing . The primary legal remedy is pretrial (Articles 77-83 of the Criminal Procedure Code) to legitimize detention or dismiss charges. Gresik data from 2021-2022 shows an increase in restorative resolutions. Justice for up to 15,809 cases, with a restorative home in Suci. The conclusion recommends specific classifications in the SIPP of the Gresik District Court to avoid public misunderstandings.¹⁵

The three articles conclude that resolving petty theft of agricultural produce requires a non-formal approach to achieve restorative justice and social peace. The first article emphasizes the effectiveness of customary justice in Aceh through rapid and affordable deliberation, despite economic constraints and weak coordination. The second article reveals the constraints of the Plantation Law as a legal framework. Specialists who hinder mediation under Rp2.5 million, with priority solutions under the Criminal Code and a perpetrator database. The third article strengthens the implementation of restorative justice. Justice through pretrial and reconciliation for first-time offenders, as in the Gresik case, which saw a significant increase. Overall, the three

¹³ Liza Agnesta Krisna Anggie Thania Asmi, Wilsa, "MECHANISM FOR RESOLUTION OF THE CRIMINAL ACT OF MILD THEFT OF GARDEN PRODUCTS IN SUKARAMAI DUA VILLAGE, SERUWAY DISTRICT" 5 (2023): 147–57.

¹⁴ Ujung Surbakti and Runtung Sitepu, "Resolving the Minor Crime of Theft of Palm Oil Plantation Produce from Tambunan A Plantation – USU at the Salapian Police Sector" 3, no. 2 (2024): 184–97.

¹⁵ Fresiella Arsy et al., "The Crime of Petty Theft and Its Legal Efforts in the Criminal Prosecution Process" 5, no. 2 (2023): 1297–1308, <https://doi.org/10.37680/almanhaj.v5i2.3211>.

studies highlight the need to harmonize customary, restorative, and formal criminal law for optimal deterrence. Common obstacles include public misunderstanding, minimal outreach, and perpetrator recidivism. Key recommendations include regulatory revisions, inter-institutional coordination, and outreach to adapt to the modern era.

Phenomenon the rise application of Article 363 of the Criminal Code (KUHP) to case theft results plantation worth small show existence problem Serious in practice enforcement law crime. Theft of fresh coconut fruit bunches palm oil carried out by the community around plantation often directly qualified as theft with aggravation. In the Decision Pasir Pengaraian District Court Number 110/ Pid.B /2025/PN Prp, the judge sentenced criminal prison to the accused who stole results coconut palm oil with mark economy relatively low. In terms of formal elements offense theft with weighting of course assessed has fulfilled. However Thus, the fulfillment element formal the cause question about rationality the punishment imposed. The value of the loss is small and the background behind social defendant become proper aspects be considered. Therefore that, appears problem whether criminal penalties of a criminal nature repressive the has reflect proportional justice.

In a way formal juridical, the judge adheres to the provisions of Article 363 of the Criminal Code which regulates weighting criminal if theft done by two or more people more and done in the garden closed. Approach This put law criminal as instrument enforcement of norms textual. However, the application of too much law legalistic often ignored principle proportionality between actions, losses and sanctions criminal. When the value stolen goods relatively minor, criminal prison term time certain can cause imbalance in criminalization. Conditions the the more problematic if perpetrator originate from group social economy vulnerable. Criminalization that is not consider context social perpetrator potential cause injustice substantive. With Thus, the problem main lies in the tendency use approach law rigid criminal approach the Not yet fully capable answer need justice in context social public agrarian.

The gap First visible at a distance between approach formal juridical used in decision court with paradigm justice growing restorative in law modern criminal justice restorative emphasize settlement case through recovery connection between perpetrators, victims, and society. Paradigm This has become direction update law criminal national as reflected in Draft Criminal Code and various policy criminal. However, in practice justice, approach restorative seldom implemented in case theft results plantation. One of the the reason is because the victim is seen as corporation big, isn't it? individual individual. As a result, settlement case still focused on criminalization prison. This is showing existence gap between direction policy law criminal and practice justice in the field.

The gap next seen in the lack of consideration to factor social economy perpetrator in the process of being dropped verdict. In many case theft results plantations, actors is worker daily or public around garden with limitations economic conditions social the often only mentioned in a way short as mitigating factors, without influence type the sentence imposed. In fact, the punishment prison potential makes things worse condition economy the perpetrator and his family. In addition, criminal prison can also cut off connection social that becomes source

livelihood public local . Absence analysis deep social show that criminalization Still retaliation - oriented. Orientation the Not yet fully in harmony with objective criminal penalties of a criminal nature rehabilitative. With Thus, there is a gap between theory modern criminalization and practice criminalization actual.

Based on description said, gap analysis in study This directed at questions fundamental about approach the law used by the judge. Question the is whether the application of Article 363 of the Criminal Code has considered principle proportionality , principle justice restorative, and conditions social defendant. Question This important for evaluate to what extent the law Indonesian criminal law is capable realize justice substantive. Academic criticism submitted No intended for negate certainty law. On the other hand, criticism This aim push integration between formal justice and justice social analysis to the a quo decision is expected can reveal inequality paradigm criminalization. With Thus, research This contribute in enrich discourse law more criminal humanistic and value - oriented humanity .

This study aims to comprehensively examine the application of criminal law in the case of theft of palm oil plantation products as reflected in the Pasir Pengaraian District Court Decision Number 110/ Pid.B /2025/PN Prp. The main focus of the study is directed at analyzing the fulfillment of the elements of the crime of aggravated theft as regulated in Article 363 paragraph (1) 4 of the Criminal Code based on legal facts, evidence, and the legal construction used by the judge. In addition, this study aims to evaluate the judge's legal considerations in imposing an eight-month prison sentence from the aspects of formal legality and substantive justice. The assessment focuses on the rationality of the sentence and its conformity with the principle of proportionality between the act, the value of the loss, and the sanctions imposed. This study also aims to assess the suitability of the decision with the objectives of modern punishment which include retribution, prevention, and social rehabilitation. Through this analysis, this study seeks to assess the extent to which humanitarian values and social justice have been accommodated in the practice of punishment against perpetrators from weak economic groups. Thus, this research is expected to contribute ideas to the development of criminal justice practices that are more just, proportional, and oriented towards social recovery.

RESEARCH METHODS

This research uses a normative legal research method or normative juridical which focuses on the study of positive legal norms, legal principles, and legal doctrines relevant to the problem being studied.¹⁶ This method was chosen because the research is directed at analyzing the application of criminal law in court decisions and its conformity with the principles of justice and the objectives of punishment. A statutory approach is used to examine the provisions of the Criminal Code , particularly Article 362 and Article 363 of the Criminal Code, as well as other regulations related to punishment policies and restorative justice. In addition, a case approach is applied by using the Pasir Pengaraian District Court Decision Number 110/ Pid.B /2025/PN Prp as the main primary legal material. Through this approach, the research analyzes the judge's legal considerations, the fulfillment of the elements of the crime, and the rationality of sentencing. A conceptual approach is also used to understand the theory of error, criminal responsibility, and

¹⁶ Agung Hidayat, "Critical Review of Peter Mahmud Marzuki's Book 'Legal Research,'" 2013, 1–9.

the objectives of punishment in modern criminal law. The legal materials used consist of primary legal materials in the form of court decisions and statutory regulations, as well as secondary legal materials originating from literature, scientific journals, and the opinions of criminal law experts.

ANALYSIS AND DISCUSSION

1. Legal Facts and Chronology Case

Based on Decision Pasir Pengaraian District Court Number 110/ Pid.B /2025/PN Prp , revealed fact that defendant together a his colleague do theft of fresh coconut fruit bunches (FFB) oil palm in plantation areas owned by PT Sawit Nusantara. The act the done with method cut fruit palm oil direct from the tree and then transport results stolen the use motorbike theft done at night day with objective avoid supervision from party security garden. The defendant and his partner enter to the plantation area without permission from party company as holder right management. Actions This Finally known by the party security company so that defendant succeed secured, while his colleague run self. From the results theft said, the party company experience loss relative material small. Based on results estimate, value losses experienced company only around Rp. 750,000.00.

During the examination process at the trial, the defendant confess in a way open all over his actions without deny the facts alleged by the prosecutor general. The defendant also conveyed that actions the done No Because intention planned evil, but rather driven by need economic conditions the caused by the loss of work keep the same as before become source livelihood defendant. Statement defendant This strengthened with fact that He originate from background behind simple economics. Not found existence violence or threat in implementation action criminal In addition, the results theft Not yet had time traded Because defendant has more formerly secured. Facts This Then become part from judge's considerations in evaluate matter.

The Public Prosecutor charged defendant with Article 363 paragraph (1) 4 of the Criminal Code, namely theft committed by two or more people more with allied. In his demands, the prosecutor evaluate that elements theft with weighting has fulfilled so that demand criminal prison for 10 months. The court Then consider all over fact the law revealed in court, including information witness, confession the defendant, and mark losses incurred. The panel of judges also considered aggravating and mitigating circumstances defendant before drop verdict. Aggravating circumstances among other things, actions defendant harm party company and disturbing environment around. Meanwhile That 's extenuating circumstances is confession defendant, attitude cooperative during the trial , as well as the economic motives behind it actions Based on that. consideration said, the court drop criminal prison for 8 months to defendant.

2. Analysis Fulfillment Elements of Article 363 paragraph (1) 4 of the Criminal Code

In a way juridical, the panel of judges is of the opinion that all over elements of Article 363 paragraph (1) 4 of the Criminal Code have fulfilled based on fact law revealed in court. The element of " goods "who" is fulfilled Because defendant is subject competent law responsible answer in a way law , healthy physical and spiritual, as well as No is at in

conditions that eliminate accountability criminal. During the trial process, the defendant capable give information in a way clear and understandable consequence law from his actions. With so, no there is reason justifier and forgiving person who can delete error defendant. Fulfillment element This become base beginning for judges to continue analysis to elements next. Element subject law in case This nature simple and not cause debate. Therefore that, the panel of judges stated element This fulfilled in a way valid and convincing.

The element “ take” something goods” are also assessed has fulfilled Because defendant in a way real do actions take fresh fruit bunches of coconut palm oil direct from the tree. Actions take the done with cut fruit palm oil and move it from mastery owner to in mastery defendant. This action show existence transition power on goods in a way factual, although Not yet had time enjoyed or traded . The element "wholly" or part other people's property " is also fulfilled Because object theft is owned by PT Sawit Nusantara as corporation holder Cultivation Rights on land plantation said. Ownership status This proven through information witnesses and documents presented at the trial. With so, no there is doubt that items taken No owned by defendant. Fulfillment element This strengthen construction action criminal theft in a way juridical.

Next, the element "with" Meaning For owned in a way oppose law" is proven through confession the defendant in court. The defendant in a way open state that results stolen the the plan will for sale for fulfil need every day. Confession This show existence intention or attitude inner defendant for own goods the without rights. Elements intentional in actions defendant become clear Because action the done in a way conscious and unconscious in condition forced. In addition, the defendant know that his actions contradictory with law and not get permission from owner garden. This is confirmed that actions the done in a way oppose law. With Thus, the elements subjective in action criminal theft was also fulfilled. The panel of judges then continue evaluation to element weighting.

Element aggravation "carried out by two or more people more with associate” to become base main application of Article 363 of the Criminal Code in case This is the¹⁷ trial facts show that defendant do theft together his colleague with distribution clear roles. Work The same the show existence intentional together although done with simple planning. Elements associate filled Because second perpetrator each other knowing and wanting occurrence actions theft. With fulfillment element this, the panel of judges assessed that theft the enter in category theft with aggravation. However thus, in a way substantive appear problem about proportionality criminalization. The relative value of the loss small cause question whether use chapter with threat criminal heavy has reflect balanced justice. Therefore that, although element formal fulfilled, aspects justice substantive still becomes issue important in case This.

3. Analysis of the Role of the Defendant and Other Parties

In the case of this, the defendant positioned as perpetrator main (dader) because in a way direct do actions take fresh fruit bunches of coconut palm oil from tree owned by company. Defendant involved active since beginning until end action, start from entering the

¹⁷ Nelvita Purba, *Certain Crimes in the 2nd Criminal Code (KUHP)* , 2022.

plantation area until transport results stolen. Meanwhile that, colleague defendant play a role as parties involved as well as do actions with assist the transportation process results stolen go out from the garden area. Division role the show existence Work The same between second perpetrator in realize action criminal theft. Work The same This done in a way conscious and unconscious nature coincidence. Therefore that, the act the fulfil element participate as well as do as intended in doctrine medeplegen. With fulfillment element intentional together, both perpetrator in a way law can asked accountability criminal.

Based on doctrine law criminal, medeplegen requires existence intentional together or community opzet between the perpetrators. In case this, deliberate together seen from existence agreement For take results plantation without permission. Although No there is complex planning , the existence of awareness together For do theft Already Enough For fulfil element inclusion. Second perpetrator know objective actions and mutual support in implementation. However , the form participation that occurs nature simple and not involving structure organized crime. Not found existence arrangement complex roles or distribution systematic profits . This fact show that actions the more nature situational. With however, although element medeplegen fulfilled, level seriousness actions need assessed in a way proportional.

From the corner view accountability criminal, important For evaluate degrees the fault (schuldgraad) of each perpetrator. In case this, the act defendant No driven by intention planned evil, but rather by pressure economy consequence lost source livelihood. Conditions This show that error defendant is at a relative level more light. In addition, the defendant No own role as controller main or designer action criminal. His actions more reflect effort endure life in situation difficult economy. Therefore that, approach excessive punishment repressive potential ignore dimensions humanity perpetrators. Assessment to roles and levels error This should become base in determine type and weight the sentence imposed. With consider factor said, more severe punishment proportional and oriented rehabilitative become relevant For applied.

4. Judge's considerations in Drop Decision

In dropping decision, the panel of judges based it on considerations in two aspects common main used in practice justice criminal, namely aggravating circumstances and mitigating circumstances defendant. Consideration This is part important in determine type and duration the sentence imposed, because functioning as bridge between certainty law and sense of justice. The judge tried evaluate No only the actions taken, but also the context behind them occurrence action criminal said. Although That's how the judge weighs it second aspect the still need analyzed in a way critical, especially in case theft with mark relative loss small. This is important for seem to what extent is consideration the has reflect principle proportionality. In other words, the judge's considerations need to be tested whether Already balanced between interest victim law and conditions the defendant. From here analysis to the judge's considerations become relevant For reviewed more carry on.

a. Aggravating Circumstances:

The panel of judges assessed that that actions defendant carried out in plantation areas closed owned by company without permission, so that considered violate right property and order law. In addition, the status of the accused as recidivists are also made reason ballast in fall criminal. The judge is of the opinion that repetition actions show lack of effect deterrent from criminalization previously. This factor viewed as indication that defendant own trend For return do action the same crime. From the point of view view formal juridical, consideration the of course can justified. However, the approach This tend put error defendant in a way absolute without dig reason structural from repetition actions. In fact, recidivist status No always reflect intention evil is increasing, but can also be influenced by conditions social economy that is not changed. Therefore that, aggravating considerations This need seen in a way more contextual.

b. Extenuating Circumstances:

On the other hand. the panel of judges also considered a number of mitigating circumstances defendant. Defendant confess his actions in a way honest and show regret during the trial process. In addition, the value the losses suffered by the victim are assessed relatively small If compared to with threat the criminal law used. The judge also pays attention to that defendant own liability family as well as is at in condition weak economy. Factors This show that actions defendant No fully driven by intention evil, but rather by pressure economic considerations the reflect existence the judge's efforts to enter dimensions humanity in verdict. However, the circumstances relieve this is the end only have an impact on reducing duration criminal, not on choice type criminal. This is show that approach criminalization Still imprisonment oriented.

Based on consideration said, the panel of judges sentenced criminal prison during eight month, which is more light from demands prosecutor prosecutor general. Decision This show existence the judge's efforts to balance between aspect aggravation and mitigation. However, from perspective justice substantive, decision the Still cause question about rationality criminalization. Criminal prison still made into choice main although mark loss relatively minor and defendant originate from group economy weak . In the context of this, criminalization prison potential cause impact more social big compared to expected benefits. Therefore that, the decision This reflect Still strong paradigm criminalization retributive in practice justice criminal. Evaluation critical to the judge's consideration becomes important For push more criminal penalties proportional and recovery - oriented social.

5. Evaluation Critical to Rationality Criminalization

From the results analysis to verdict, found existence enough gap real between application of legal norms formally with objective social from criminalization That alone. Although the panel of judges stated that the elements of Article 363 paragraph (1) 4 of the Criminal Code have fulfilled, the approach used still very focused on fulfilling element law in a way textual. Assessment to case more focus on aspects formal legality compared context social background actions defendant. Condition social economy the perpetrator, who is in position vulnerable, not yet become consideration main in determine type criminal. In

addition, the value losses incurred very small If compared to with threat criminal law used. Approach rigid legalistic This potential ignore function social law criminal. As a result, the punishment imposed tend lost dimensions justice substantive.

According to principle proportionality, the punishment imposed should balance with level error the perpetrator and the consequences of his actions.¹⁸ In case this, criminal prison during eight month to theft with mark loss not enough from One million rupiahs caused question Serious about balance said. Imprisonment in case like This No only impact on the perpetrator, but also on the family who becomes the victim responsibility. From the perspective view efficiency social, criminal prison precisely potential cause cost more social big compared to expected benefits. In addition, punishment that is not proportional can strengthening social stigma to perpetrator. Condition This risky push cycle repeat crime, not prevent it. Therefore that, approach criminalization kind of This can categorized not enough effective in a way social. In a broader context area, thing this also opens room the occurrence of overcriminalization of perpetrator economy weak.

If associated with theory objective sentencing, verdict This show trend strong on paradigm retributive or revenge. Focus main criminalization directed at punishment on error perpetrator, not on the repair or recovery condition social. Dimension preventive, good prevention general and prevention special, not yet looks in a way clear in judge's consideration. Likewise, aspects rehabilitation aimed at repair behavior perpetrator almost No get room in decision. In fact, the law modern criminal law emphasizes importance balance between retaliation , prevention , and rehabilitation .¹⁹ Absence balance the show that criminalization Still oriented towards the old paradigm. As a result , the goal criminalization as means coaching social become less than optimal.

More continue, direction policy law current Indonesian criminal law This Actually has move going to a more approach humanistic and restorative. This is reflected in Draft Criminal Code and Regulation Chief of Police Number 8 of 2021 concerning Handling Criminal Acts Based on Justice Restorative. Policy the emphasize settlement case in a way proportional, especially For action criminal with loss small and perpetrator from group vulnerable. However, in case this, approach justice restorative Not yet implemented in a way real. Decision Still put criminal prison as choice main without consider alternative other solutions. Conditions This show existence gap between policy law modern criminal law and practice justice in the field. Therefore that, evaluation critical to rationality criminalization become important For push transformation system justice more criminal fair and recovery - oriented social.

6. Implications to Consistency Practice Justice

Decision This reflect existence inconsistency in practice justice criminal law, in particular in handle case theft with mark relative loss small. In some decision others, such as Decision Mempawah District Court Number 42/ Pid.B /2023/PN Mpw and Decision Kisaran District Court Number 67/ Pid.B /2024/PN Ksn, the judge chose approach more criminal

¹⁸ Joko Sriwidodo, *Indonesian Criminal Law Study* , 2019.

¹⁹ Hartanto, *Understanding Criminal Law* , 2019.

penalties soft. In cases mentioned, considerations to condition social economy actors and values minimal losses become base implementation criminal test or settlement through justice restorative. Difference approach This show that even though the legal norms used relatively same, result criminalization can be very different. This is cause impression that fall criminal law is highly dependent on subjectivity panel of judges. As a result, certainty law and equality before law become not enough guaranteed. Condition This show that system justice Indonesian criminal law has not yet own standard rationalization consistent criminalization For case similar.

Absence uniform standards in determine type and weight criminal impact straight to quality justice felt by society. When matters with characteristics that are almost The same produce different decisions in a way significant, then appear potential distrust public to institution judiciary. In addition, inconsistencies This can widen gap between formal justice and justice substantive. In the context of theft worth minor, criminal prison often viewed No give benefit optimal social approach. On the other hand, the alternative like criminal test or justice restorative precisely assessed more effective in prevent repetition crime. Difference practice This show Not yet internalized objective modern criminalization evenly distributed in the environment justice. Therefore that, consistency in practice criminalization become issue important things that need to be done get attention seriously. Without consistency, function law criminal as means control social become not enough effective.

Condition the confirm the need reorientation policy criminalization to be more in harmony with values justice social, proportionality, and efficiency law. Approach excessive punishment emphasize aspect legalistic and fulfillment element formal potential ignore reality social background action criminal. In this case theft results plantation, context social perpetrator should become an integral part of judge's consideration. Without consider aspect said, the law criminal risky lost moral legitimacy in the eyes of society. Reorientation policy criminalization is also necessary For push use alternative more criminal penalties humanist. With thus, the law criminal No only functioning as tool condemnation, but also as means coaching social.²⁰ This effort important For realize system justice more criminal fair, consistent and responsive to need public.

CONCLUSION

Based on results analysis, can concluded that application of Article 363 paragraph (1) 4 of the Criminal Code in Decision Pasir Pengaraian District Court Number 110/ Pid.B /2025/PN Prp has fulfil elements action criminal theft with weighting in a way formal juridical, however Not yet fully reflect justice substantive. Criminalization prison during eight month to theft results plantation with mark relative loss small show existence imbalance between level error perpetrator, impact actions, and the sanctions imposed. The judge's considerations are still dominated approach legalistic and retributive, while dimensions proportionality, rehabilitation, and context social economy defendant Not yet accommodated optimally. Conditions This show existence gap between objective modern criminalization and practice justice crimes that are still pending put imprisonment as instrument main. In addition, the difference pattern criminalization

²⁰ Imron Rosyadi, *Criminal Law*, 2022.

in case similar show Not yet existence standard rationalization consistent criminalization in system justice Indonesian criminal law. Therefore that, research This confirm importance reorientation policy criminalization through implementation a more approach proportional and restorative, in particular in case theft worth small involving perpetrator from group economy vulnerable. Going forward, the findings This can become base for judges and makers policy For expand use alternative more criminal penalties humanist to strengthen moral legitimacy of law criminal and realize justice sustainable social.

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