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Legal Analysis of the Application of Article 363 of the Criminal Code in the Sekayu District Court Decision Number 70/Pid.B/2021/PN Sky Regarding Theft in a Plantation Area

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Abstract: *This study aims to examine the suitability of the indictment with Article 363 paragraph (1) 4 of the Criminal Code used by the Public Prosecutor in decision Number 70/Pid.b/2021/PN Sky and whether the Judge's considerations in decision Number 70/Pi.B/2021/PN Sky were in accordance with the facts of the trial. The type of research used is normative legal research, which is a method of legal research conducted by examining library materials or secondary data. Based on research, it can be seen that there is a discrepancy between the indictment and Article 363 paragraph (1) point 4 of the Criminal Code used by the Public Prosecutor, as well as between the verdict and the judge's consideration, which does not or does not fully correspond with the facts of the trial, so that the article in the Public Prosecutor's indictment is still used. Both prosecutors and judges should apply the principle of lex specialis derogate lex generali in applying articles in indictments and in court decisions, so that justice can truly be upheld.*

Keywords: *District court decision; Criminal Act of Theft; Plantation Area.*

A. Introduction

As the oldest form of law among others, criminal law today is as old as human civilization itself. This is because criminal law has always evolved alongside human civilization.[1] The rapid development of criminal law does not fundamentally alter the essence of criminal law but merely underscores the vast scope of criminal law. Criminal law, as defined by Moeljatno, is part of the overall legal system of a country that establishes the foundations and regulates provisions regarding acts that are prohibited, accompanied by criminal penalties for those who commit them.[2] The provisions referred to are commonly known as substantive criminal law, which is enshrined in the Criminal Code (KUHP), which serves as the general law of criminal law.

One of the provisions contained in the Criminal Code is the crime of theft. Theft is one of the oldest crimes that has existed in society for a long time and continues to exist today. Theft committed by an individual may occur due to high unemployment rates or significant increases

[1] Saiful Asmuni Harahap, "Penerapan Undang-Undang Perkebunan Terhadap Pelaku Pencurian Kelapa Sawit Di Wilayah Perkebunan (Analisis Putusan Nomor: 211/Pid.B/2015/Pn.Stb)," *SOSEK : Jurnal Sosial Dan Ekonomi* 1, no. 2 (2020): 88–99, https://doi.org/10.55357/sosek.v1i2.59.
[2] Moeljatno, *Asas-Asas Hukum Pidana* (Rineka Cipta, 2008), 1.

in the prices of goods that are not commensurate with the income of the population. Other reasons include the opportunity to commit such criminal acts, a lack of legal awareness among perpetrators, as well as the influence of the environment and other social factors.[3]

Although criminal theft is generally regulated in the Criminal Code, specifically in Chapter XXII Articles 362-367, there are also specific regulations in Law No. 39 of 2014 concerning Plantations, which regulates criminal theft committed in plantation areas. This demonstrates that the Criminal Code, as a codification of criminal law, no matter how perfect its form may be in its development, will struggle to meet the legal needs of society. This is due to the widespread development of criminality in society, which takes various forms and has diverse motives.[4] Another reason is that crimes committed today are increasingly sophisticated with complex modus operandi.[5]

This phenomenon is part of the reason for the emergence of special criminal law. Criminal law encompasses principles and regulations, both general and specific.[6] Special criminal law, according to Eddy O.S Hiariej, refers to criminal law provisions that are materially outside the Criminal Code (KUHP) and formally outside the Criminal Procedure Code (KUHAP).[7] The same doctrine was also conveyed by Andi Hamzah, but he slightly changed the term special criminal law to special criminal legislation, which means all legislation outside the Criminal Code accompanied by other legislation, both criminal and non-criminal but with criminal sanctions.[8] Special criminal law is divided into two parts, namely special criminal law in criminal law and special criminal law not in criminal law but containing criminal sanctions.[9] Examples of special criminal laws include the Law on the Eradication of Trafficking in Persons, the Law on Sexual Violence, the Law on the Eradication of Corruption, and the Law on the Prevention and Eradication of Money Laundering. Examples of special criminal laws outside the criminal code include the Banking Law and the Plantation Law. The existence of special criminal laws within the criminal legal system serves as a complement to the criminal laws codified in the Criminal Code. In principle, these special criminal laws aim to provide legal certainty and justice in society.

In this regard, the court, as the body responsible for administering justice in criminal matters, is expected to deliver justice to all members of society. One of the factors in achieving justice also depends on the performance of law enforcement officials. Prosecutors and judges, as part of law enforcement officials who carry out their duties in the trial process, play an important role in realizing justice, benefits, and legal certainty. Considering that the three main pillars of the rule of law must be kept in balance with one another.[10]

As dominus litis, the public prosecutor should be able to formulate charges that are consistent with the chronology and the application of the articles (the articles charged), considering that the charges will later be used as the basis for evidence and limit the scope of

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[3] Rian Prayudi Saputra, "Perkembangan Tindak Pidana Pencurian Di Indonesia," *Jurnal Pahlawan* 2, no. 2 (2019): 1–8, https://doi.org/10.31004/jp.v2i2.573.
[4] Andi Hamzah dalam Joko Sriwidodo, *Kajian Hukum Pidana Di Indonesia "Teori Dan Praktek"* (Kepel Press, 2019), 292.
[5] Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana* (Cahaya Atma Pustaka, 2016), 5.
[6] Muhammad Dzikran Rizky et al., "Analisis Penjatuhan Pidana Stelsel Absorpsi Dalam Ketentuan Perbuatan Berlanjut," *Lex Jurnalica* 20, no. 1 (2023), https://doi.org/10.47007/lj.v20i1.6230.
[7] Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana Edisi Penyesuaian KUHP Nasional* (Rajawali Pers, 2024), 24.
[8] Andi Hamzah, *Asas-Asas Hukum Pidana* (Rineka Cipta, 2010), 13.
[9] Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana*, 24.
[10] Zainal Arifin Mochtar and Eddy O.S Hiariej, *Dasar-Dasar Ilmu Hukum Memahami Kaidah, Teori, Asas Dan Filsafat Hukum* (Rajawali Pers, 2023), 15.

the examination.[11] The examination and verification in court ultimately result in a verdict as a legal product, which is the final outcome of a trial conducted by a judge as an authorized state official. Judges, as the main actors in realizing the spirit of judicial power in carrying out their duties, must adhere to the applicable laws and regulations.

However, it should be noted that the actualization of a public prosecutor and judge as human beings cannot be separated from human nature. Both prosecutors and judges, as ordinary human beings in the performance of their duties, are not immune to errors, mistakes, or even errors in the application of the law within society. As stated by Tavene, a Dutch criminal law expert, the essence of his statement is that in the enforcement of the law, the role of human beings is more decisive than legal regulations.[12] If so, then everything related to the quality of law enforcement depends on the people who enforce it.

The ideal justice that is aspired to may not necessarily be well realized in a judicial process. This is because there are often shortcomings, both in procedural and material aspects. In this paper, the author intends to focus the discussion on court rulings. It is not uncommon for rulings formulated by the panel of judges to also have shortcomings, whether in terms of legal considerations or the improper application of provisions as an implication of the charges formulated by the public prosecutor.

This case was selected because the prosecutor's indictment only used a single charge, so the panel of judges decided the case by following the prosecutor's indictment, even though this case constituted a special criminal offense as stipulated in the Plantation Law. This is in accordance with the chronology contained in the indictment, which explains that in this case there were two perpetrators, namely Hebi Bayu Bin Mariadi as Defendant I and Rano Bin Muhammad as Defendant II. The incident began on December 19, 2020, around 5:00 PM, when the Defendants used their respective motorcycles to travel to the PT. Pinago Utama plantation to collect oil palm fruit bunches. Upon arriving at the PT. Pinago Utama plantation, the employees of PT. Pinago Utama were still engaged in harvesting activities, so the Defendants hid until the employees finished harvesting and left the plantation. After the PT. Pinago Utama employees left the plantation, the defendants then collected the sacks containing oil palm fruit bunches using their respective motorcycles, each carrying two sacks of oil palm fruit bunches, until a total of 31 (thirty-one) sacks containing oil palm fruit bunches were collected at the community-owned plantation. The defendants then immediately sold the palm fruit and received money from the sale of 4 (four) sacks of palm fruit, totaling Rp. 200,000 (two hundred thousand rupiah).[13]

Based on the chronology, it is known that the crime was committed by two people, all of whom were successfully brought to trial. It can be seen that each of them had the same role, namely Hebi Bayu Bin Mariadi as the perpetrator (the one who committed the crime) and Rano Bin Muhammad also as the perpetrator (the one who committed the crime). Therefore, the defendants were charged by the Public Prosecutor using the charge under Article 363(1)(4). The issue is that, upon further investigation by the author, there is a provision in the Plantation Law, namely Article 107(d) of Law No. 39 of 2014 on Plantations, which states: “Any person who unlawfully harvests and/or collects plantation products as referred to in Article 55 shall be

[11] H. Suyanto, *Hukum Acara Pidana* (Zlifatama Jawara, 2018), 87.
[12] Taverne dalam Nugraha Pranadita et al., “Implementasi Manajemen Strategis Oleh Advokat Terkait Dengan Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak,” *Jurnal Ilmiah Manajemen, Ekonomi, & Akuntansi (MEA)* 5, no. 1 (2021): 1616–31, Manajemen Strategi, https://doi.org/10.31955/mea.v5i1.1113.
[13] Putusan Pengadilan Negeri Sekayu, No: 70/Pid.B/2021/PN Sky.

punished with imprisonment for a maximum of 4 (four) years or a fine of up to Rp 4,000,000,000.00 (four billion rupiah).” This provision is more appropriately applied when considering the chronology of the case. Given the principle of Lex Specialis Derogat Legi Generali as the basis for prioritizing special regulations, the author is interested in examining the consistency of the indictment’s construction with Article 363 (1) (-4 of the Criminal Code used by the Prosecutor in Judgment No. 70/Pid.B/2021/PN Sky and to analyze the consistency of the trial facts with the Judge's considerations in Judgment No. 70/Pid.B/2021/PN Sky.

B. Methodology

The type of research used by the author in this study is normative research with a satute and case approach. The type of data used by the author in this study is secondary data consisting of several legal materials, namely primary legal materials in the form of legislation and court decisions, secondary legal materials in the form of books and journal articles, and tertiary legal materials in the form of language dictionaries, legal dictionaries, encyclopedias, and legal encyclopedias. These legal materials were collected through literature review and analyzed using descriptive data analysis methods by describing the results of the analysis of indictments and court decisions on criminal law principles.

C. Results and Discussion

Compliance of the Indictment with Article 363(1)(4) of the Criminal Code Used by the Public Prosecutor in Decision No. 70/Pid.B/2021/PN Sky

Criminal law is closely related to criminal procedure law. Criminal law regulates acts that are considered criminal offenses and the penalties that can be imposed, while criminal procedure law regulates the procedures for enforcing criminal law. The focus of discussion in criminal procedure law spans from the investigative stage to the trial process, with the aim of ensuring that criminal law is applied appropriately. In the trial process, the judge, as one of the judicial authorities, plays a crucial role in implementing the law through the rulings they issue.

When making a decision, judges will always consider the indictment from the public prosecutor. This is because the indictment serves as an important basis for judges in examining a case.[14] Therefore, it is a logical consequence for the Public Prosecutor to formulate an appropriate indictment by considering the chronological consistency with the use of the Article. As the indictment filed by the Public Prosecutor against the two defendants, namely Hebi Bayu (Defendant 1) and Rano (Defendant 2), which the Author has mentioned above, is based on a single charge under Article 363(1)(4) of the Criminal Code.

In the author's opinion, there is a specific article in the law, namely Article 107(d) of Law No. 39 of 2014 on Plantations, which is more appropriate for use in the public prosecutor's indictment. The text of Article 107(d) of Law No. 39 of 2014 on Plantations is as follows: “Any person who unlawfully harvests and/or collects plantation products as referred to in Article 55 shall be punished with imprisonment for a maximum of 4 (four) years or a fine of up to Rp 4,000,000,000.00 (four billion rupiah).” Furthermore, the provision of Article 55, as stated in Article 107(d), is: “Any person who unlawfully harvests and/or collects plantation products is prohibited from doing so.”

[14] Andi Hamzah, *Hukum Acara Pidana Indonesia* (Sinar Grafika, 2013), 167.

The author's argument is based on the principles of Lex Specialist Derogat Legi Generalist, Transitoir, and Ultimum Remedium, which the author uses as analytical tools in answering the first question. The following is an explanation:

First, the principle of Lex Specialist Derogat Legi Generalist stipulates that if the substance of a rule is regulated in a general law and also regulated in a specific law, then the specific law shall prevail.[15] This is in line with Soerjono Soekanto's opinion that special events must be governed by laws that specifically mention those events, even though special events may also be governed by laws that mention broader or more general events that may include those special events.[16] In this case, if we relate it to the chronology of the case, we can use Article 363 paragraph (1) point 4 of the Criminal Code as charged by the Public Prosecutor, but in addition to Article 363 paragraph (1) point 4 of the Criminal Code, there is also Article 107 letter d of Law Number 39 of 2014 concerning Plantations which can also be used, especially since Law No. 39 of 2014 on Plantations is part of special criminal law (Administrative Penal Law), so its application should take precedence over the Criminal Code, which is, by definition, general criminal law.

From a criminal law perspective, the principle of lex specialis derogat legi generali is a legal principle that serves as a determinant in the application stage. This stage involves the application of criminal laws that have been violated in concrete cases through the law enforcement process. Therefore, the principle of lex specialis derogat legi generali is important for law enforcement officials when applying criminal laws to cases they are handling.[17]

Secondly, the Transitional Principle determines the applicability of a criminal law in the event of a change in legislation, whereby the most favorable law for the defendant is applied. The implementation of the Transitional Principle is stipulated in Article 1 paragraph (2) of the Criminal Code. Regarding the provisions of Article 1 (1) of the Criminal Code, there are two matters that require further clarification: what is meant by a change in legislation; and what is meant by more favorable in the sense of being more lenient toward the defendant. These two issues have sparked diverse opinions among legal experts, as the law does not provide a satisfactory explanation.

There are three views regarding the meaning of legislative changes, namely: (1) the formal view; (2) the limited material view; and (3) the unlimited material view. The following is an explanation of these views:[18]

1. Formal Understanding
   According to the formal view, changes to legislation are limited to changes in the wording of provisions in criminal law, and do not include changes to legislation in the fields of civil law or administrative law, even though changes in other fields of law may have an impact on the criminalizability of certain acts, or in other words, even though legislation in the fields of civil law or administrative law contains criminal sanctions. This view can also be referred to as the narrow view. Those who hold this opinion include Simons and Van Hamel. The formalist approach is not fully adopted in legal

[15] Zainal Arifin Mochtar and Eddy O.S Hiariej, *Dasar-Dasar Ilmu Hukum Memahami Kaidah, Teori, Asas Dan Filsafat Hukum*, 145.
[16] Purnadi Purbacaraka and Soerjono Soekanto, *Perundang-Undangan Dan Yurisprudensi* (Citra Aditya Bakti, 1983), 8.
[17] Eddy O.S Hiariej, *Persepsi Dan Penerapan Asas Lex Specialis Derogat Legi Generali Di Kalangan Penegak Hukum*, Laporan Penelitian Fakultas Hukum Universitas Gajah Mada (Universitas Gajah Mada, 2009), 5.
[18] Adami Chazawi, *Pelajaran Hukum Pidana Bagian 1 (Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan, Dan Batas Berlakunya Hukum Pidana)* (RajaGrafindo Persada, 2013), 182.

practice. This narrow view is inconsistent with the statement in the Dutch MvT WvS, which states, “a change in legislation is a change in all substantive legal provisions that, under criminal law, affect the assessment of an act.”

2. Limited Materialism
   According to the limited materialism view, changes in legislation are not limited to criminal law but are more extensive because they involve changes in the legal beliefs of legislators in all types of law, whether civil or administrative law, which have a connection or influence on criminal law. This limited materialist view was pioneered by Van Geuns, as outlined in his dissertation titled “De terungwerkende kracht van strafwetveranderingen.”
   The Indonesian Supreme Court appears to adopt this limited materialist perspective, as evidenced in its decision No. 143 K/Kr/1963, which states that “although the state of emergency has been revoked and thus all regulations issued under the Emergency Law have also been repealed, since there are still other regulations containing prohibitions on certain associations, the underlying principle of the Emergency Law remains unchanged, so it cannot be said that there has been a change in legislation in this case."
3. Unlimited Material Concept
   Unlike the limited material concept, which views changes in legislation as changes in the beliefs or feelings of the legislators in all types of law that have a connection or influence on criminal law, but does not include changes due to circumstances or changes in time. According to the unlimited material concept, changes in legislation also include changes caused by changing circumstances or because of the times/era that affect criminal law.
   As an example cited by Prof. A. Zainal Abidin regarding the Hoge Raad arrest known as the 'Huurcommissiewet arrest (arrest of the law on the house rental committee), where the Supreme Court held that the legislation referred to in Article 1(2) of the Criminal Code encompasses all changes to laws in the broadest sense, including all types of changes, whether they involve changes in the legal sentiments of the legislature under the limited materialist approach or changes in circumstances due to the passage of time.

Of the three concepts described above, the author considers the concept of unlimited materiality to be the most appropriate for use in this analysis. There are at least two points that serve as parameters for the concept of unlimited material scope: first, changes in legislation across all types of law—whether civil law or administrative law—that have a connection to criminal law; and second, such changes in legislation are caused by shifts in the legal sentiments of the lawmaker as well as changes in the times/era. In principle, the scope of application of the general provisions contained in Book 1 of the Criminal Code (KUHP) is not limited to the Criminal Code alone but also extends to other criminal laws, as clearly stipulated in Article 103 of the Criminal Code (KUHP).

The Plantation Law falls under administrative law, which includes criminal sanctions (Administrative Penal Law), so that provisions for changes to legislation in all types of law can also apply to the Plantation Law. The Plantation Law was enacted in 2014 through Law No. 39 of 2014, while the Criminal Code (KUHP) was enacted in 1946 through Law No. 1 of 1946 on the Criminal Code. Therefore, the provisions of the theft article in Chapter XXII of the Criminal Code, which are also specifically regulated in the Plantation Law regarding theft specifically in plantation areas, are governed by the Plantation Law.

Previously, there had been amendments to the Plantation Law. The first Plantation Law was Law No. 18 of 2004, and the most recent was Law No. 39 of 2014. Upon further investigation, it was found that Law No. 18 of 2004 did not address theft committed within plantation areas. Such provisions were first introduced in Law No. 39 of 2014, specifically in Article 107(d). This indicates that the content of the Plantation Law has evolved in line with the legal sentiments of the lawmaker and also due to the influence of changes in time and circumstances, which have implications for the development of criminal offenses committed in diverse locations.

Furthermore, regarding the meaning of more favorable to the defendant, the law does not provide clearer information about the phrase more favorable or more lenient to the defendant in Article 1 paragraph (2) of the Criminal Code. However, there are various opinions from legal experts on this matter, which can be summarized as follows: more lenient to the defendant refers to, among other things:[19]

a) lighter in terms of criminal penalties;
b) lighter in terms of the type of crime;
c) lighter in terms of the statute of limitations;
d) lighter in terms of complaints for criminal prosecution;
e) lighter in the sense that it is not punishable;
f) lighter in terms of criminal liability;
g) lighter in terms of not being subject to criminal prosecution
h) lighter in terms of the criminal sentencing system becoming conditional;

Of the eight (8) points used by the author in this analysis, the first (1) and second (2) points are relevant. First, regarding the comparison of the severity of criminal sanctions. The Plantation Law is lighter and should be used because in Article 107 letter d the penalty is four (4) years imprisonment or a fine of Rp. 4,000,000,000.00 (four billion), whereas in Article 363 paragraph (1) 4 of the Criminal Code the penalty is 9 years imprisonment. Furthermore, in terms of the type of criminal penalty, Article 107 (d) of the Plantation Law provides for the option of a fine, whereas Article 363 (1) (4) of the Criminal Code only provides for imprisonment. Referring to Article 10 of the Criminal Code, a fine is a lighter type of criminal penalty than imprisonment. This indicates that the hierarchy of fines is ranked fourth, while imprisonment is ranked second.

Third, the approach of the Ultimum Remedium Principle. In an effort to ensure compliance with administrative law norms, criminal sanctions are used as a last resort when administrative and civil sanctions are no longer effective. Thus, criminal sanctions in this case function as ultimum remedium. The policy of using criminal sanctions in administrative law is considered reasonable, given that it aligns with Herbert L. Packer's views in his book The Limits of Criminal Sanction, regarding the enforcement of law using criminal law, namely:[20]

a) Criminal sanctions are essential because we cannot live now or in the future without them.
b) Criminal sanctions are the best tools or means available to deal with major dangers and threats.

[19] Adami Chazawi, *Pelajaran Hukum Pidana Bagian 1 (Stelsel Pidana, Tindak Pidana, Teori-Teori Pemidanaan, Dan Batas Berlakunya Hukum Pidana)*, 190.
[20] Herbert L. Packer dalam Maroni, *Pengangar Hukum Pidana Administrasi* (CV Anugrah Utama Raharja, 2015), 117.

c) Criminal sanctions are sometimes the main guarantor of human freedom and sometimes the main threat to it. They become a guarantor when used carefully, but a threat when used forcefully and indiscriminately.

Criminal law is seen as a last resort when other measures can't be taken, because criminal acts cause suffering. So, criminal law should be used as little as possible because of how painful the penalties are.[21] Considering that criminal law is the last resort to reform human behavior, especially that of criminals, and to exert psychological pressure on others so that they do not commit crimes.

In principle, the use of the ultimum remedium principle in criminal law is in line with the characteristics of administrative criminal law, namely:

a) Criminal law is considered the ultimum remedium
b) It is substitute in nature, meaning it is derived from other laws when other mechanisms cannot be pursued
c) Criminal sanctions are alternative, not cumulative

In addition to the principles outlined above, it should be noted that Law No. 39 of 2014 on Plantations stipulates that the plantations referred to in this Law are those that have obtained a plantation business permit. This is stipulated in Article 47 of this Law. Based on the chronology of the case, the defendants committed theft of oil palm fruit bunches in the plantation area of PT. Pinago Utama, which, as noted, is a registered plantation. Therefore, it is a logical consequence to apply Article 107 (d) of Law No. 39 of 2014 on Plantations in Judgment No. 70/Pid.B/2021/PN Sky.

Thus, based on the author's argument above, at least the first problem has been answered. There is an inconsistency between the construction of the indictment and the provision used by the Prosecutor in Decision No. 70/Pid.B/2021/PN Sky. The Prosecutor in their indictment used a single charge under Article 363 (1) (4) of the Criminal Code, which, in the Author's opinion, would be more appropriate if Article 107(d) of the Plantation Law were used instead. However, the author also feels it necessary to combine Article 107 (d) of the Plantation Law with Article 55 (1) (1) of the Criminal Code. This is because Article 107 (d) of the Plantation Law does not include the option of theft committed by more than two persons or in concert. Therefore, Article 55 (1) (1) of the Criminal Code must also be cited to clarify the roles of the defendants, who, in the Author’s opinion, fall under the category of Medepleger in this case.

Consistency of the Judge's Considerations with the Facts of the Trial in Decision Number 70/Pid.B/2021/PN Sky

In a ruling, judges always and without exception make legal findings.[22] This is what Achmad Ali wrote in his book Menguak Tabir Hukum (Unveiling the Veil of Law). Achmad Ali reinforced his argument by presenting the following explanation:

Two people who observe phenomenon X together will interpret or give meaning to phenomenon X based on their own perceptions; the results may be the same, but they may also be different. Similarly, two people who read the same word together and describe or

[21] PAF Lamintang, *Dasar-Dasar Hukum Pidana Di Indonesia* (Sinar Grafika, 2016), 17–18.
[22] Achmad Ali, *Menguak Tabir Hukum* (Prenadamedia Group, 2015), 164.

interpret that word based on their own perceptions may also arrive at the same result, or they may arrive at different results.

So, it is appropriate to conclude that words are too poor for the diversity of human thought. A single word can have more than one meaning, or conversely, a variety of words can have a single meaning. In relation to this, the relationship between laws and legal texts is the same as the relationship between our thoughts and their expression in words. In truth, language is incomplete, as text cannot possibly capture the entire context. Ultimately, no words are ever clear; they always require interpretation. Interpretation is not only carried out on unclear regulations; rather, all regulations require at least some interpretation. Even those who claim that the text of the law is so clear that it does not require further interpretation have in fact already carried out their own interpretation, because their statement about the clarity of the text is itself the result of their interpretation of the text. All judicial decisions are the result of legal findings, regardless of whether the regulations applied are considered clear or unclear. The creation of law by judges is referred to as judicial discovery, and the methods of judicial discovery consist of interpretation and construction, and therefore, judicial decisions are law (judge-made law). It is illogical to consider only construction as a legal discovery while interpretation is not. The text of the law never refers to a specific case but is general in nature. Portalis was correct in saying that it is not the legislators who provide certainty but the courts.[23] Thus, in order to achieve certainty in actualizing the law in the judicial process, judges are permitted to construct or interpret the law.

In this study, the author uses an interpretive approach, specifically grammatical interpretation. Grammatical interpretation is interpretation based on the everyday language used by the community. The function of this interpretation is to find the true meaning of a normative formulation or its parts/elements. In other words, grammatical interpretation means that we try to capture the meaning of a text according to the sound of its words. This can be limited to something automatic that we do unconsciously when reading, but it can also be more profound, where a word can have various meanings.[24]

Article 107 (d) of Law No. 39 of 2014 on Plantations essentially states: Any person who unlawfully harvests and/or collects plantation products. The term “and/or” provides an option to choose between one proposition or both propositions simultaneously. Having considered the chronology of the case, in this thesis, the author focuses on one proposition only, namely “collecting.” The fundamental question is whether the wording of Article 107 (d) of the Plantation Law can be considered as the offense of “theft” specifically committed within plantation areas. We certainly agree that the main elements of the offense of theft are generally outlined in Article 362 of the Criminal Code, one of which is the act of “taking.” Then, can the terms “taking” and “collecting” be interpreted as having the same meaning? And is it permissible to harmonize the meaning of these terms?

If a grammatical interpretation approach is used, it is acceptable to make adjustments, considering that, as the author explained earlier, grammatical interpretation means that we try to capture the meaning of a text according to the sound of the words, where a word can have various meanings. In relation to this, after the author looked it up in the Indonesian Thematic Thesaurus Dictionary published by the Ministry of Education, Culture, Research, and Technology, it turns out that the word “mengambil” can also be interpreted as “memungut”

[23] Achmad Ali, *Menguak Tabir Hukum*, 168–80.
[24] Achmad Ali, *Menguak Tabir Hukum*, 187.

because the two words are synonyms/equivalents.[25] The word "memungut" is also a word that is often used in everyday language by the community, as the grammatical interpretation intended to be carried out according to the everyday language used by the community has also been fulfilled.

Furthermore, the author feels it necessary to elaborate on the phrase "illegally." According to Lamintang, the phrase "unlawfully" can encompass the following meanings: "in violation of objective law" or "contrary to the law," "in violation of another person's subjective right" or "without the right of another person," and "without authority" or "without jurisdiction." Whereas "in violation of objective law," "in violation of another's subjective right," and "without authority" are interpretations of "illegal acts" or "acts contrary to the law."[26] Therefore, the phrases "illegally," "without rights," and "against the law" essentially have the same meaning, even though they differ in terminology. Thus, the phrase 'illegally' in Article 107 (d) of the Plantation Law has the same meaning as the phrase "against the law" in Article 362 of the Criminal Code.

In addition to explaining how judges find the law in a decision, the author feels it is also necessary to explain the three stages of a judge's duties before handing down a decision. The accuracy of a ruling begins when the judge first receives the case file, studies the case file, and identifies the main issues. Achmad Ali emphasizes that the first person to introduce the three stages of a judge's duties was Sudikno Mertokusumo. These stages include: the constatir stage, the kualisifir stage, and the konstituir stage.[27] Here is the explanation:

a) Constatation stage
   In this stage, the judge confirms whether the events presented are true or not, or in other words, observes, acknowledges, or confirms that the events presented have occurred. Thus, what is confirmed in this case is the events, but in order to reach a confirmation, the judge must conduct an investigation with the help of evidence to ascertain the truth of the events in question. Evidence, particularly witness testimony, is crucial in the process of proving, as it is from witness testimony that legal facts are derived. In uncovering these legal facts, the judge must employ effective questioning techniques. Legal facts derived from unsystematic questioning will result in an inaccurate decision.[28]
b) Qualification stage
   In this stage, the judge assesses which legal relationship the events deemed to have actually occurred fall under. In other words, qualification means assessing events that have been deemed to have actually occurred by selecting legal events from the results of the trial examination and then linking the results of the assessment of those legal events to legal norms.[29]
   The qualification stage is not as easy as one might imagine. This is because it is necessary to find the law or legislation that can be applied to a specific event. The

[25] "Arti Kata Mengambil - Kamus Besar Bahasa Indonesia (KBBI) Online," accessed August 2, 2025, https://kbbi.web.id/mengambil.
[26] Mamakhayla, "Tanpa Hak Atau Melawan Hukum (Wederrechtelijke)," *Mamakhayla*, September 13, 2011, https://mamakhayla.wordpress.com/2011/09/13/tanpa-hak-atau-melawan-hukum-wederrechtelijke/.
[27] Achmad Ali, *Menguak Tabir Hukum*, 173.
[28] Teddy Lahati, "Proses Hakim Dalam Membuat Putusan Mengkonstatir (Bagian I)," accessed August 2, 2025, https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/proses-hakim-dalam-membuat-putusan-mengkonstatir-bagian-i-oleh-teddy-lahati-shi-99.
[29] Teddy Lahati, "Proses Hakim Dalam Pembuatan Putusan Mengkualifisir (Bagian II)," accessed August 2, 2025, https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/proses-hakim-dalam-pembuatan-putusan-mengkualifisir-bagian-ii-oleh-teddy-lahati-shi-259.

concrete event must be directed toward the law, and conversely, the law must be adapted to the concrete event. In conclusion, the qualification stage will give rise to concrete events, and at this stage, judges begin to exercise their creativity to find the law from the concrete events revealed in the trial.

c) Constitutive stage
This stage is the final stage after the judge has carried out the constatative and qualifying stages. Here, the judge determines the law applicable to the parties in civil cases or to the defendant in criminal cases. The judge uses syllogism, which is drawing a conclusion from the major premise in the form of the law and the minor premise in the form of the actions in the concrete case.

From these three stages, the author then attempts to connect them with the contents of Decision Number 70/Pid.B/PN Sky. The initial stage, namely confirmation, was carried out by the judge through the process of evidence in the trial. This evidence has established the legal facts as outlined by the author above. Thus, having gone through the evidentiary process to establish legal facts, it has been proven that the theft committed in the plantation area by Defendant I Hebi Bayu and Defendant 2 Rano did indeed occur.

After establishing the facts, the next step is to qualify them. In this stage, the judge assesses the events that have been deemed to have actually occurred and then finds the applicable law or legislation to be applied to the concrete events. The concrete events are directed toward the legislation, while the legislation is adjusted to the concrete events. Therefore, the author attempts to elaborate on the elements of Article 107 (d) of Law No. 39 of 2014 in conjunction with Article 55 (1) (1) of the Criminal Code, which the author believes can be applied in this case. The elements are as follows:

a) Every Person;
Every person refers to legal subjects (perpetrators) who are exempt from Article 44 of the Criminal Code. Based on the examination at the court hearing, defendant 1 Hebi Bayu and defendant 2 Rano are legal subjects who are of legal age and capable of being held legally responsible.

b) Illegally;
The phrase “illegally” can also include the following meanings: contrary to the law, without the right of a person, and without authority. All of which are interpretations of unlawful acts. Thus, the phrase “illegally” can also be interpreted as an act committed without legal rights and in a manner contrary to legal regulations. Based on the definition of the phrase “unlawfully” in relation to the chronology of events as mentioned above, the element of “unlawfully” is fulfilled because, based on the legal facts outlined in this decision, the defendants' actions were unlawful because they took palm oil fruits without right, or in other words, it was not the defendants' right but the right of PT. Pinago Utama.

c) Harvesting and/or collecting plantation products;
The words “and/or” provide alternatives to choose between one proposition or two propositions simultaneously. Having considered the chronology of the case, in this thesis the author focuses on only one proposition, namely “collecting.” According to the KBBI, collecting means picking up something that has fallen on the ground or floor, etc. The phrase “and so on” has a broad interpretation that picking up does not only refer to what has fallen but also what has been dropped or even more complex situations. Based on the case, these palm oil kernels had previously been harvested

by employees of PT. Pinago Utama, then filled into several sacks and placed in the plantation area of PT. Pinago Utama. The sacks filled with palm oil fruits were then taken by the defendants. To fulfill the element of "picking up," the author has previously explained the grammatical interpretation approach above. The element of "collecting" in Article 107 (d) of the Plantation Law has the same meaning as the element of "taking" in Article 362 of the Criminal Code. This is because, in the Thematic Thesaurus Dictionary of the Indonesian Language, the words 'taking' and "collecting" are synonyms/equivalents.

d) Those who committed, ordered, or participated in the act;
This element is alternative in nature, meaning that if any one of the criteria within this element is met, then this element is deemed proven beyond a reasonable doubt. Based on the legal facts, the defendants collectively proceeded to the PT. Pinago Utama plantation and collectively took palm oil fruits, or in other words, the defendants collectively committed the criminal act in question. For this reason, the defendants are classified as accomplices. This classification is not without reason, as the author quotes R. Soesilo, who states that "accomplice" in Article 55 of the Criminal Code means "jointly committing." At least two people must be involved: the perpetrator (pleger) and the accomplice (medepleger) of the criminal act. In this case, all parties must have carried out the act of commission, i.e., performed an element of the criminal act. It is not permissible, for example, to have only carried out preparatory acts or acts that are merely auxiliary in nature, as in such cases, the person providing assistance would not be classified as a "medepleger" but would still be punished as an "accomplice" under Article 56 of the Criminal Code.[30]

Thus, when concrete events are directed toward the law, conversely, the law has been adjusted to concrete events through the elaboration of the above elements, then in the qualification stage, according to the Author, Article 107 letter d of Law Number 39 of 2014 Jo Article 55 paragraph (1) of the Criminal Code can actually be applied in this case. Furthermore, once the applicable law (statute) has been identified, the final stage is to constitute or establish the law against the defendant or defendants by drawing a conclusion from the major premise, which is the legal rule in question, namely Article 107 (d) of Law No. 39 of 2014 in conjunction with Article 55 (1) (1) of the Criminal Code, and the minor premise being the concrete act of the incident, namely the theft committed by Defendant I Hebi Bayu and Defendant 2 Rano in the plantation area.

To further strengthen the Author's argument, the Author obtained one Decision, namely Decision Number 385/Pid.B/2024/PN Lbp, which has a similar chronology to Decision Number 70/Pid.B/2021/PN Sky that the Author examined. In Decision No. 385/Pid.B/2024/PN Lbp, the judge instead applied Article 107 (d) of the Plantation Law, as the Author intended to use in Decision No. 70/Pid.B/2021/PN Sky. In Decision No. 385/Pid.B/2024/PN Lbp, the charges used by the Public Prosecutor were subsidiary charges, namely the primary charge under Article 363 (1) (4) of the Criminal Code, followed by the subsidiary charge under Article 107 (d) of the Plantation Law. The judge, in his consideration, chose Article 107 (d) of the Plantation Law because, according to the judge, one of the elements in Article 363 (1) (4) was not fulfilled. That element concerns the phrase "belonging to another person." It was not fulfilled because, in this Decision, the Judge determined that the palm oil fruit bunches taken were not the

[30] R Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal* (Politeia, 1995), 73.

property of another person nor the property of the defendants, but rather the property of PT. PP Lonsum.

Furthermore, if we examine the article used in this ruling, it is Article 363 paragraph (1) point 4 of the Criminal Code, which means that the article applied to the defendants is theft with aggravating circumstances, with a maximum penalty of 9 (nine) years imprisonment. However, in the Judgment, the defendants were each sentenced to 1 (one) year and 10 (ten) months of imprisonment, so the purpose of aggravation in this Article is completely inapplicable in the Judge's Considerations. Ultimately, based on the above arguments, the author believes that Article 107 (d) of Law No. 39 of 2014 in conjunction with Article 55 (1) (1) of the Criminal Code can be applied as it aligns with the legal facts.

D. Conclusion

Based on the indictment of the Public Prosecutor in Decision Number 70/Pid.B/2021/PN Sky, according to the Author, there is no consistency between the construction of the indictment and the article used by the Public Prosecutor. The Prosecutor in their indictment used Article 363(1)(4) of the Criminal Code, which the Author believes would be more appropriate to use Article 107(d) of Law No. 39 of 2014 in conjunction with Article 55(1)(4) of the Criminal Code, considering the principles outlined by the Author in Chapter IV Results and Discussion. These principles are the Principle of Lex Specialist Derogat Legi Generalist, the Principle of Transitoir, and the Principle of Ultimum Remedium. Therefore, public prosecutors need to prioritize these principles in determining charges to ensure consistency in the application of criminal law in the plantation sector.

It is imperative for judges to formulate a decision while continuing to discover the law, whether through legal interpretation or legal construction. In this thesis, the author focuses on legal interpretation. In addition to legal discovery, judges should also consider the three stages of a judge's duties as outlined by Sudikno Mertokusumo. This significantly influences judges in providing legal considerations based on trial facts. Based on the author's research on Judgment No. 70/Pid.B/2024/PN Sky, there was an inaccuracy in the judge's legal considerations, which did not align with the trial facts. Furthermore, the sentence imposed on the defendants did not align with the spirit of the aggravated theft provision used by the judge.

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