

**LEGAL REASONING COURT RULING  
AGGREGATED THEFT CRIMINAL ACT  
(Decision Study Number: 37/Pid.B/2019/PN.BMS)**

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**Abstract**

Judges as decision makers need to apply legal reasoning objectively in order to achieve justice. Weak implementation legal reasoning can produce an onvoldoende gemotiveerd decision, such as in the Banyumas District Court Decision Number 37/Pid.B/2019/PN.Bms which is considered inconsistent with the provisions of Article 363 of the Criminal Code. This study aims to determine the basis for the judge's considerations in imposing a sentence for the crime of aggravated theft and to analyze the application of legal reasoning in decision Number 37/Pid.B/2019/PN.Bms. This type of research uses normative legal research using a statutory and case approach. The results of the study indicate that the basis for the judge's considerations in imposing a sentence is in accordance with the criminal procedure law mechanism as regulated in Law Number 8 of 1981, where the judge bases the decision on at least two pieces of evidence and trial facts. The evidence in the form of witness statements, the defendant's statement, and evidence proves that the defendant Saiful Aziz is legally and convincingly guilty of violating Article 363 paragraph (1) 3, 4, and 5 of the Criminal Code. However, the judge was deemed not to have applied legal reasoning in depth because the sentence of 1 year and 2 months imposed did not reflect the severity of the elements fulfilled or the aggravating circumstances proven based on the facts in the trial.

**Keywords:** *Legal Reasoning, Court Decision, Crime of Aggravated Theft*

**Abstrak**

Hakim sebagai penentu putusan perlu menerapkan legal reasoning secara objektif demi tercapainya keadilan. Lemahnya penerapan legal reasoning dapat menghasilkan putusan onvoldoende gemotiveerd, seperti pada Putusan Pengadilan Negeri Banyumas Nomor 37/Pid.B/2019/PN.Bms yang dinilai tidak sejalan dengan ketentuan Pasal 363 KUHP. Penelitian ini bertujuan untuk mengetahui dasar pertimbangan hakim dalam menjatuhkan pidana terhadap tindak pidana pencurian dengan pemberatan serta menganalisis penerapan penalaran hukum dalam putusan Nomor 37/Pid.B/2019/PN.Bms. Jenis penelitian ini menggunakan penelitian hukum normatif dengan menggunakan pendekatan perundang-

undangan dan kasus. Hasil penelitian menunjukkan bahwa dasar pertimbangan hakim dalam menjatuhkan pidana telah sesuai dengan mekanisme hukum acara pidana sebagaimana diatur dalam Undang-Undang Nomor 8 Tahun 1981, dimana hakim mendasarkan putusan pada sekurang-kurangnya dua alat bukti serta fakta-fakta persidangan. Alat bukti berupa keterangan saksi, keterangan terdakwa, dan barang bukti membuktikan bahwa terdakwa Saiful Aziz secara sah dan meyakinkan bersalah melanggar Pasal 363 ayat (1) ke-3, 4, dan 5 KUHP. Namun, hakim dinilai tidak menerapkan legal reasoning secara mendalam karena pidana 1 tahun 2 bulan yang dijatuhkan tidak mencerminkan beratnya unsur yang terpenuhi maupun keadaan memberatkan yang terbukti berdasarkan fakta dalam persidangan.

**Kata Kunci:** *Legal Reasoning, Putusan Pengadilan, Tindak Pidana Pencurian dengan Pemberatan*

## INTRODUCTION

Law enforcement institutions in Indonesia consist of the police, prosecutors, lawyers, and judges. However, within these law enforcement institutions, judges play a very central role, as they are the ones who have the authority to decide a case, determining who is right and who is wrong. In the Indonesian judicial system, judges are the primary decision-makers in a court case. Judges can be seen as the personification of the law, and therefore have an obligation to guarantee a sense of justice for every justice seeker through the legal process in court. (Taqiuddin, 2019).

Judges are the personification of the judicial institution, acting as the mouthpiece of the law, carrying out a heavy mandate. In making decisions, judges are required not only to possess intellectual abilities, but also to possess high morals and integrity, as well as strong communication skills, thereby demonstrating their authority in resolving legal cases before the public. To achieve justice and optimal law enforcement, the courts, as the primary pillar of law enforcement, through the role of judges as primary actors, are required to maintain integrity, hone their conscience, and demonstrate professionalism in carrying out their duties. (Jimly Asshidiqie, 2014). In addition, judges in deciding a case must base their decisions on various considerations that are acceptable to all parties and must not deviate from existing legal rules, which is known as legal reasoning.

Legal reasoning is closely related to a judge's primary duty, which is to receive, examine, adjudicate, and resolve every case submitted to him. Judges are essential for decision-making in the disputes they examine and adjudicate. Judges in criminal cases must be able to process and process evidence obtained during the trial, including witness testimony, expert testimony, letters, instructions, and testimony from the defendant. (Soesilo, 2008). So that the decision to be handed down to the accused can be based on a sense of responsibility, justice, wisdom, professionalism and be objective.

Judges will always consider many factors when making a decision on a case presented before them. In considering these factors, the judge's reasoning and logic are required to connect all the facts presented. (Ahmad Sofian, 2018) Court decisions will have a humanitarian dimension if they are based on the principles of equality before the law and the presumption of innocence, because these two principles embody human rights values that must be protected and adhered to by law enforcement officials, especially judges authorized to decide cases. Court decisions are important milestones in reflecting justice, including court decisions in the form of sentencing and sentencing.

In carrying out their duties, a judge must possess sound reasoning in examining and providing sufficient consideration. This requires a process of legal reasoning. Legal reasoning, in this case, is the search for "reasons" regarding the law or the basis for how a judge decides a legal case. However, due to a lack of understanding of legal reasoning, judges' decisions are often considered *Onvoldoende Gemotiveerd*, that is, decisions that are considered imperfect. The imperfect judge's decision in question is a decision that does not carefully consider all the facts relevant to the case in question. (Atmaja, 2021).

One example of a case contained in the Banyumas District Court decision Number 37/Pid.B/2019/PN.Bms, where the defendant, Saiful Aziz, was proven and declared guilty of committing the crime of aggravated theft as stipulated in Article 363 of the Criminal Code. However, the defendant Saiful Aziz was sentenced to 1 year and

2 months in prison.(Decision of the Supreme Court of the Republic of Indonesia Banyumas District Court Number: 37/Pid.B/2019/PN.Bms, 2019). The sentence imposed on the defendant Saiful Aziz is still considered insufficient if it is based on the number of prison sentences contained in Article 363 of the Criminal Code, even though in the decision the defendant Saiful Aziz was legally and convincingly proven guilty of committing the crime of theft under aggravating circumstances.

## **METHOD**

This research is a normative type of research, namely research that focuses on studies of the opinions of legal experts and relevant laws and regulations.(Amiruddin and Zainal Asikin, 2018)This research focuses on discussing the basis of the judge's considerations in sentencing aggravated theft and the application of legal reasoning in decision Number 37/Pid.B/2019/PN.Bms. The approaches used include the statutory approach and the case approach. The statutory approach is used to examine various legal provisions governing the crime of theft. While the case approach is used to find out and understand the judge's considerations in deciding the decision, especially in the example of the case of decision Number 37/Pid.B/2019/PN.Bms.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, secondary legal materials in the form of books, journals, and opinions of legal experts, while tertiary legal materials are used to explain legal terms related to this research. The legal material collection technique is carried out through library studies by exploring various legal sources and relevant literature. All legal materials obtained are then analyzed using qualitative descriptive methods, by describing and interpreting legal provisions to obtain a clear understanding of the basis for the judge's considerations in sentencing the crime of aggravated theft and the application of legal reasoning in decision Number 37/Pid.B/2019/PN.Bms.

## RESULTS AND DISCUSSION

### **The Judge's Considerations in Sentencing the Crime of Aggravated Theft (Decision Study Number: 37/Pid.B/2019/PN.Bms)**

A judge's decision is closely related to how the judge expresses his or her opinion or considerations based on the facts and evidence presented in court, as well as the judge's conviction in a case. Therefore, the judge plays a central role in handing down a court decision. A court decision must include considerations regarding aggravating and mitigating factors. These factors will then be taken into account by the judge in issuing his or her decision, whether it be a conviction, acquittal, or acquittal.

Below are some of the judge's considerations in Decision Number: 37/Pid.B/2019/PN.BMS based on the testimony of witnesses and the defendant, in conjunction with the evidence presented at trial. The panel of judges obtained the following legal facts:

1. That the defendant Saiful Aziz alias Trisman has been proven to have committed the crime of aggravated theft.
2. That the defendant was proven to have caused the victim a loss of Rp. 6,000,000 (six million rupiah).
3. That the defendant has violated the provisions set out in Article 363 paragraph (1) 3, 4 and 5 of the Criminal Code.

Based on these legal facts, the panel of judges can find the defendant guilty of committing a crime as regulated in Article 363 paragraph (1) 3, 4 and 5 of the Criminal Code by considering the elements of the Article charged. The elements of Article 363 paragraph (1) 3, 4 and 5 of the Criminal Code include the following:

a. Whoever:

The public prosecutor has brought the defendant Saiful before the court and based on the testimony of witnesses and the defendant's statement, it can be concluded that the person brought before the court is the person referred to by the public prosecutor according to the identity stated in the indictment, thus the element of "whoever" has been fulfilled.

b. Taking something that belongs wholly or partly to someone else:

The facts revealed in the trial, it was known that the defendant and witness Aji had taken goods without permission on Monday, January 8, 2019 at approximately 02.30 WIB, at a welding workshop located in Sokaraja Wetan Village Rt. 01 Rw. 05 Sokaraja District, Banyumas Regency. It started with witness Aji inviting the defendant to take someone else's bird and the defendant agreed then by riding a Honda Vario Techno 150 motorbike, brown color No. Pol. R--5828-VG the defendant and witness Aji looked for the target house in the direction of Sokaraja Wetan Village Wetan Rt. 01 Rw. 05 Sokaraja District, Banyumas Regency, when passing by a house belonging to witness Sarwono, the defendant saw a black Honda Revo motorbike No. Pol. R2668-HH and told witness Aji to take the motorbike. Then witness Aji and the defendant approached the motorbike which happened to not have the handlebars locked, then the defendant took the motorbike which was parked in front of the repair shop by leading the motorbike out then the defendant got on the motorbike pushed from behind by witness Aji using the motorbike towards the west.

Based on these facts, the panel of judges believes that the defendant has taken an item that is wholly or partially owned by another person, namely by moving an item in the form of 1 (one) black Honda Revo motorcycle with the number plate R-2668-HH belonging to witness Sarwono. Thus, this element is fulfilled.

c. With the intent to possess unlawfully

The facts revealed in the trial, it was known that after that the motorcycle's license plate was removed and spray-painted so that it would not be recognized by the owner, namely witness Suwarno, then the defendant posted the motorcycle on the Facebook buying and selling forum, and in February 2019 the motorcycle was sold for Rp. 1,200,000 (one million two hundred thousand rupiah) and the money had been used for the defendant's personal needs.

Based on the above facts, the panel of judges is of the opinion that the defendant's intention in taking witness Sarwono's property was to own it himself. The

defendant took the item without the owner's permission, thus the panel of judges believes that the defendant attempted to possess the item unlawfully, therefore this element has been proven.

- d. It is done at night in a house or enclosed yard where there is a house.

The facts revealed in the trial, it was known that the defendant and witness Aji had taken goods without permission on Monday, January 8, 2019 at around 02.30 WIB, at the welding workshop located at Sokaraja Wetan Village Rt. 01 Rw. 05 Sokaraja District, Banyumas Regency. The time the defendant committed the act was not from sunrise to sunset, so it was at night, the house was a closed house, there was no permission from the owner of the house therefore the element "done at night in a house or closed yard where there is a house", has been fulfilled.

- e. Done by two or more people in alliance

The facts revealed in the trial, it was known that the defendant together with witness Aji took goods without permission on Monday, January 8, 2019 at approximately 02.30 WIB, at a welding workshop located at Sokaraja Wetan Village Rt. 01 Rw. 05, Sokaraja District, Banyumas Regency. Based on these facts, the panel of judges believes that the element of "carried out by two or more people in collusion" has been fulfilled.

- f. Done by damaging, cutting or climbing or by using fake keys, fake orders or fake official clothing.

The facts revealed at trial revealed that the defendant took the items by climbing over a fence. Based on the facts revealed at trial, the panel of judges believed that climbing was the method of accessing the items, and therefore, this element was met.

Furthermore, the panel of judges also considered several pieces of evidence presented at the trial as follows:

- 1) 1 (one) unit of Honda brand motorbike, Vario Techno type, No. Pol R-58828-VG, brown color, Noka: MH1KF1110GK554894, Nosin: KF11E-1557725 along with motorbike STNK in the name of Hadminah.

- 2) 1 (one) number plate R-2668-HH, 1 (one) STNK No. Pol R-2668-HH in the name of Restunia Rerdanawati which was confiscated from witness Restunia Perdanawati

In addition to considering the elements of the article and the evidence presented at trial, the judge also considered aggravating and mitigating circumstances. Aggravating circumstances include the defendant's actions causing public disturbance. Mitigating circumstances include:

- a. The defendant was polite during the trial.
- b. The defendant admitted frankly and regretted his actions and promised not to repeat his actions.
- c. The defendant has never been convicted.
- d. The victim's motorbike has been replaced by witness Aji.

Based on the description of the judge's considerations in Decision Number 37/Pid.B/2019/PN.Bms, it appears that the panel of judges has systematically assessed the elements of Article 363 paragraph (1) 3, 4, and 5 of the Criminal Code by linking witness statements, the defendant's confession, and the evidence presented at trial. Each element of the crime, starting from the fulfillment of the identity of the perpetrator (whoever), the act of taking someone else's property, the intention to possess it unlawfully, carried out at night, carried out in association, to the method of carrying out the act through aggravating elements, has been proven through legal facts and is considered legally and convincingly proven. In addition, the judge also considered aggravating and mitigating circumstances to assess the proportionality of the sentencing. However, based on the depth of proof of the elements of the crime and the position of aggravating circumstances, the space for a more comprehensive application of legal reasoning is actually still open so that the decision better reflects a sense of substantive justice.

Although the elements of the crime of aggravated theft have been fully proven and the evidence presented supports the judge's conviction in Decision Number 37/Pid.B/2019/PN.Bms above, the relatively light sentence indicates a weakness in the in-depth legal argumentation. The panel of judges should be able to provide a



stronger and more measured justification regarding the reasons for the punishment so that the decision is in line with the principle of proportionality and provides a deterrent effect for both the perpetrator and the community. Therefore, in-depth legal reasoning is essential to avoid the judgment being viewed as *onvoldoende gemotiveerd* and to emphasize the consistency of the fair and balanced application of criminal law.

***Legal Reasoning Court Decision on the Crime of Aggravated Theft (Study Decision Number: 37/Pid.B/2019/PN.BMS)***

Judges play a crucial role in resolving legal issues that arise in society, particularly those resolved through legal channels through the trial process. Judges are the symbol of the judicial institution, empowered to uphold the law. Judges must be able to resolve these legal issues by upholding the values of truth through their adopted paradigm. To ensure these values are realized in law enforcement, before a judge renders a verdict, a judge must verify the facts and events, as well as the evidence presented by the parties in the trial, to uncover concrete facts or events that guide the judge's belief in the truth. (Atmaja, 2021).

Before deciding a case, the judge must pay attention to matters that are considered both legally and outside the legal provisions in order to find the truth and create justice. In accordance with the principle of criminal acts without fault (*geen straf zonder schuld*), which means that a sentence can only be imposed if there is a defendant's fault that is proven in court, namely the defendant's fault as referred to in the public prosecutor's indictment. (Tifani Dianisa Mayaratri, 2020).

A judge in imposing a sentence on a defendant if the defendant is guilty of committing the criminal act charged against him and must be supported by valid evidence in accordance with the formulation of Article 184 paragraph (1) of the Criminal Procedure Code which is known as valid evidence including, witness statements, expert statements, letters, instructions, and the defendant's statement. So in a case decided by a judge, in addition to requiring at least two pieces of evidence as stated above, another very important thing is also required, namely the judge's

belief in a case that will be decided based on the facts obtained in the trial.(Andi Hamzah, 1985).

The case decided by the Banyumas District Court with decision Number: 37/Pid.B/2019/PN.BMS above, if analyzed, the chairman of the panel has indeed paid attention to all the facts revealed in the trial, the facts revealed are in the form of evidence contained in Article 184 of the Criminal Procedure Code as stated above. The evidence submitted by the Prosecutor in decision Number: 37/Pid.B/2019/PN.BMS above is in the form of witness statements, defendant statements, and evidence which are essentially as follows:

1. Witness testimony

The witnesses presented by the Public Prosecutor to prove the guilt of the defendant Saiful Aziz are 3 (three) witnesses, namely witness Aji Sulistio, who together with the defendant took the motorbike, witness Restunia Perdanawati and witness Sarwono, who was the witness who lost the motorbike on Monday, January 8, 2019 in front of the welding workshop located at Sokaraja Wetan Village Rt. 01 Rw. 05 Sokaraja District, Banyumas Regency. All of these witnesses, before giving their testimony, were sworn in before the court according to their respective religions and beliefs.

2. Defendant's Statement

The statement of the defendant Saiful Aziz which was delivered before the court regarding the accusations that had been indicted against him had admitted all his mistakes and the criminal acts he had committed that it was true that the defendant on Monday, January 8, 2019 at around 02.30 WIB had taken a motorbike without permission which was parked in front of the workshop by leading the motorbike out of the gate then the defendant got on the motorbike by being stepped on or pushed from behind by witness Aji using the motorbike towards the west.

3. Evidence

The evidence submitted was 1 (one) Honda Vario Techno motorbike, No. Pol: R-5828-VG brown, Noka: MH1KF1110GK554894, Nosin: KF11E-1557725, along with the motorbike's STNK a. n Hadimah and key, 1 (one) number plate R-2668-HH, 1 (one) STNK No. Pol: R-2668-HH a. n Restunia Perdanawati.

The evidence presented above is the basis for the judge to decide the case. In addition, the judge has also seen the elements contained in the criminal act committed by the defendant Saiful Aziz, where all elements of the Article charged by the public prosecutor have been fulfilled, namely Article 363 of the Criminal Code. In addition, the judge has also considered the aggravating and mitigating factors for the defendant. The aggravating factor for the defendant in the above decision is that the defendant's actions disturbed the community. Meanwhile, the mitigating factors for the defendant include:

- a. The defendant was polite during the trial.
- b. The defendant admitted frankly and regretted his actions and promised not to repeat his actions.
- c. The defendant has never been convicted.
- d. The victim's motorbike has been replaced by witness Aji.

From the description that the author has presented above in relation to decision Number: 37/Pid.B/2019/PN.BMS, in which decision the defendant Saiful Aziz alias Trisman was proven guilty of committing the crime of aggravated theft as regulated in the provisions of Article 363 paragraph (1) 3, 4 and 5 of the Criminal Code and the defendant was sentenced to 1 year and 2 months in prison by reducing the period of arrest and detention from the sentence imposed on the defendant.

According to the author's analysis, the sanctions given to the defendant Saiful Aziz alias Trisman are still very inadequate. Because the defendant was clearly found guilty of committing the crime of aggravated theft as regulated in the provisions of Article 363 paragraph (1) 3, 4 and 5 of the Criminal Code and all the elements contained in the provisions of the Article have been fulfilled. So the judge in deciding the case only tends to look at non-juridical considerations, namely only looking at the

mitigating factors for the defendant. Whereas the judge in formulating and compiling legal considerations must be careful, namely it must be complete, containing facts of the event, legal facts, formulation of legal facts, application of legal norms both in positive law, customary law, jurisprudence and legal theories used as arguments (reasons) or legal basis in the judge's decision.

The application of a prison sentence to defendant Saiful Aziz alias Trisman in the decision Number: 37/Pid.B/2019/PN.BMS above, according to the author's perspective, is that the judge did not conduct in-depth legal reasoning. Judges, in making decisions in accordance with the law and the public's sense of justice, must also decide cases based on their conscience. The voice of conscience in question is a voice of conscience for the benefit of the wider community, not for the judge's own personal interests or to protect the interests of certain individuals with access to power. In order to uphold truth, justice, and legal certainty, judges must not be prisoners of the law alone. (Galang Asmara, 2010) This is where in-depth legal reasoning is needed. Law enforcement must truly utilize legal reasoning in decision-making. If judges or law enforcement officers fail to utilize legal reasoning, their decisions will be irrational and even undermine the very foundations of law enforcement and justice. (Ni Luh Putu Vera, 2016).

## CONCLUSION

The judge's basis for considering sentencing aggravated theft (study of decision number: 37/Pid.B/2019/PN.Bms) is in accordance with the provisions of the law as stipulated in Law Number 8 of 1981 concerning Criminal Procedure. In deciding a case, the judge requires at least two pieces of evidence, such as witness statements, the defendant's statement, and other evidence. The evidence and facts revealed in the trial, the defendant Saiful Aziz was legally and convincingly proven guilty of committing the crime of aggravated theft in violation of Article 363 paragraph (1) 3, 4 and 5 of the Criminal Code. However, in decision number: 37/Pid.B/2019/PN.Bms above, the judge did not conduct in-depth legal reasoning on the case of Decision

Number: 37/Pid.B/2019/PN.BMS above. The defendant was only given a prison sentence of 1 year and 2 months, even though all the elements contained in the provisions of Article 363 paragraph (1) 3, 4 and 5 of the Criminal Code that were violated had been fulfilled. In addition, the evidence submitted based on the facts of the trial had also been submitted.

Judges are expected to apply legal reasoning more comprehensively and argumentatively in every decision-making process, so that the legal considerations provided do not lead to judgments that are considered *onvoldoende gemotiveerd*. A more in-depth application of legal reasoning will be able to reflect the proportionality between the defendant's guilt, the proven aggravating factors, and the sentence imposed. Furthermore, capacity building and ongoing training are needed for judges in applying systematic legal analysis methods based on substantive justice values.

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