



Judex Facti Consistency in Imposing Theft with Weights: A Review of Cassation Decision Number 1585 K/Pid/2025

Ariman Sitompul^{1*}, Muhammad Bayu Dwi Arya²
^{1,2}Master of Law, Dharmawangsa University, Indonesia

: ariman.sitompul@dharmawangsa.ac.id

Corresponding Author*

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ABSTRACT

This study examines in depth the consistency of judex facti in the application of Article 363 Paragraph (1) 3 of the Criminal Code related to theft with weighting based on Cassation decision number 1585 K/Pid/2025. The focus of the study is directed not only to the appropriateness of the application of material and formal legal norms, but also to the correctness of Juridical considerations, the objectivity of the assessment of facts, as well as the harmonization of decisions between the District Court, the High Court and the Supreme Court. Through normative legal research methods with statute approach, conceptual approach, and case approach, this research explores how the structure of legal considerations is built at each judicial level and how the quality of legal reasoning affects the final decision. The results showed that the Supreme Court expressly upheld the application of the law by judex facti, especially in terms of proving the element of entering the house at night without permission and taking goods that are carried out when the owner is sleeping, so that all elements of Article 363 Paragraph (1) 3 of the Criminal Code are fulfilled. The Supreme Court also considered that the imposition of a criminal sentence of 10 months in prison by the District Court and which was reinforced by the High Court was in accordance with the provisions of Article 197 Paragraph (1) letter f of the Criminal Procedure Code, because the judges of First Instance and appeal had proportionately considered the aggravating and mitigating circumstances of the defendant. This study also found that the public prosecutor's objection in the Cassation application, which basically questioned the severity of the crime, it cannot be justified according to law because the assessment is the domain of judex facti authority and does not include Cassation grounds as stipulated in Article 253 Paragraph (1) of the Criminal Procedure Code. Thus, the Supreme Court reaffirmed the fundamental principle that Cassation only checks the application of the law, not corrects the appreciation of facts or the degree of conviction, unless there is a real error. Overall, this study confirms the importance of consistency in the application of law between judex facti and judex juris to maintain legal certainty, substantive justice, and the credibility of the criminal justice system. Consistency is a crucial element in forming decisions that are not only formally valid, but also morally and rationally legitimate. Therefore, this Cassation ruling is a concrete example of how the Supreme Court exercises the function of judicial supervision (judicial control) within the limits of its authority without intervening in the discretionary space of judges of First Instance and appeal.

INTRODUCTION

In the Indonesian criminal justice system, the distinction between *judex facti* and *judex juris* is a fundamental principle that determines the limits of the authority of each level of court. *Judex facti* is a court authorized to examine, assess, and establish legal facts through a process of proof. *Judex facti* includes the District Court as a court of First Instance and the High Court as a court of Appeal. At these two levels, the judge assesses the testimony, evidence, facts of the trial, the credibility of the witness, to interpret the elements of the offense based on the results of the evidence.

In contrast, *judex juris* is a court that only examines the application of the law, not the facts, that is, the Supreme Court at the Cassation level. The Supreme Court is tasked with ensuring that previous courts apply procedural law and material law correctly, consistently, and not contrary to judicial principles.

According To M. Yahya Harahap, the scope of Cassation is very limited to the examination of whether *judex facti* has conducted:

- 1.mistakes in applying the law,
- 2.exceeding or under-applying the law, or
- 3.not meet the formal requirements of a

decision as determined by the code of Criminal Procedure.

Thus, the Supreme Court may not reassess facts or alter factual constructs already established by *judex facti*, unless it finds a misapplication of law or a consideration contrary to law.

Furthermore, Yahya Harahap emphasized that objections to the severity or lightness of the crime are not grounds for Cassation, because the assessment is the full domain of *judex facti*. This opinion is in line with the provisions of Article 253 Paragraph (1) of the Criminal Procedure Code which limits the reasons for Cassation only to errors in the application of the law, violations of the law or negligence in fulfilling the formal requirements of the decision. Therefore, the Supreme Court is not authorized to increase or decrease the crime solely because the applicant considers it disproportionate, unless there is a legal error in the fall.

This concept of dualism of authority is important to ensure a clear division of roles between fact-level courts and Law-level courts, and to maintain the stability of the criminal justice system.

Theft by weighting (*gekwalficeerde diefstal*) is regulated in Article 363 Paragraph (1) of the Criminal Code. One form of weighting is contained in Article 363 Paragraph (1) 3 of the Criminal Code, which requires:

- 1.Theft committed at night;
- 2.Performed in a house or place of residence;
- 3.By trespassing.

These elements reflect the presence of an increased degree of fault (*schuld*) and the potential danger to the victim. The doctrine of Criminal Law explains that the weighting element arises because the conditions are carried out at night and entering a house without permission is considered to increase public unrest, a potential threat to the safety of the victim, and the level of cunning of the perpetrator.

According to Moeljatno and Simons, the weighting in Article 363 of the criminal code is oriented to the *modus operandi* that adds to the quality of crime and the level of threat to people's sense of security. The house is a refuge that should be guaranteed security, so this violation of the private sphere is seen as a more serious form of crime. Therefore, the judge must carefully examine the evidence of each element so that there is no over-penalization or misapplication of Article.

The consideration of the judge is an essential aspect in the sentencing process. Article 197 Paragraph (1) letter f of the Criminal Procedure Code requires that the decision must contain the reasons and grounds for consideration that are the foundation for the imposition of a crime, including:

1.Aggravating circumstances, such as the impact on the victim, community unrest, or a *modus operandi* that shows cunning;

2.Mitigating circumstances, for example, the defendant is polite, regrets the act, admits the act, or has not been convicted.

The doctrine of Criminal Procedure Law explains that the consideration is part of the principle of reasoned decision or *motiveringplicht*, which is the obligation of the judge to provide a rational basis for his decision so that the decision can be assessed as objective, transparent, and accountable. Without adequate consideration, the judgment may be considered legally flawed and potentially invalidated.

According to Andi Hamzah, juridical considerations serve as a bridge between the facts found in the trial and the application of the law in the verdict. The judge should not simply impose a crime without providing adequate analysis of the elements of the offense, evidence, and relevant considerations. It is the quality of these considerations that determines whether a judgment can be maintained in an appellate as well as Cassation examination.

Theft is one of the most common forms of crime in Indonesia and a legal issue that continues to increase from year to year. The high rate of this crime is closely related to social, economic and environmental factors that allow the unlawful taking

of other people's property. In this context, theft is not only seen as a violation of the right to private property, but also as a threat to public order and people's sense of security. Due to its unsettling nature, the Penal Code provided for more severe regulation of certain forms of theft considered to have a higher degree of danger, which came to be known as theft with weights (gekwalificeerde diefstal) as provided for in Article 363 of the Penal Code.

Article 363 of the Criminal Code provides a description of certain conditions that can increase the severity of criminal liability, including when theft is committed at night, carried out jointly by two or more perpetrators, carried out by entering the house forcibly or without permission, or carried out when the owner is helpless. All forms of weighting essentially indicate an increase in the level of cunning, threat, and potential loss of the victim. Therefore, the application of this article requires the judge's carefulness and prudence in making an assessment of the elements proven in the trial.

One concrete example of the application of the provisions of Article 363 Paragraph (1) 3 of the Criminal Code can be found in the case of theft with weighting that occurred in Sampang Regency, with the defendant Syaifullah bin Satrawi. The case began when the defendant entered the victim's house at night without permission and took a number of items belonging to the victim, including a mobile phone. The Sampang District Court examined the case and sentenced him to 10 months in prison, which was later upheld by the Surabaya High Court. The Public Prosecutor considered the sentence too lenient and filed a cassation appeal with the Supreme Court, hoping that the verdict would be corrected through the imposition of a more severe sentence.

However, in the Supreme Court Decision No. 1585 K/Pid/2025, the Supreme Court had a different view and rejected the appeal of the public prosecutor. The Supreme Court considered that the Cassation objection filed was not based on valid legal grounds under Article 253 Paragraph (1) of the Criminal Procedure Code because the substance only concerned the severity of the crime, which is basically the full authority of *judex facti* (District Court and High Court). The Supreme Court affirmed that the assessment of the gravity or lightness of the crime does not belong to the sphere of Cassation examination, unless it is found to be an error in the application of the law or non-fulfillment of the formal requirements required by law.

This phenomenon raises important issues that form the basis of this study, namely how the consistency between *judex facti* and *judex juris* in

handling theft cases with weights and how the limits of authority of each judicial institution work concretely in the decision. Thus, this study not only examines the substance of the case, but also analyzes the ability of the judicial system to maintain the harmony of the application of law at various levels of the court.

METHOD

This study uses the method of normative legal research, which is research that focuses on the assessment of norms, principles, doctrines, theories of law, as well as relevant court decisions. Normative legal research views law as rules (norms) and not as empirical events, so the analysis is done through literature studies and legal interpretation.

RESULTS AND DISCUSSION

A. Analysis Of *Judex Facti* Considerations

In Sampang District Court Decision Number 66 / Pid.B / 2025 / PN Spg, the panel of judges conducted a comprehensive assessment of the facts in accordance with its authority as *judex facti*. The judge concluded that the element of theft with weighting as stipulated in Article 363 Paragraph (1) 3 of the Criminal Code has been fulfilled based on the following facts:

a. Evidentiary elements of Article 363 Paragraph (1) 3rd

1. Performed at night / early morning, that is, when the potential vulnerability of the victim is higher.

2. Performed in a house, which according to the doctrine is a place that has stronger legal protection.

3. Enter without permission, even if the door of the house is not locked. In doctrine, trespassing is still considered a form of violation of the right to privacy and ownership.

4. Taking other people's belongings, namely two units of mobile phones when the victim was asleep.

With the fulfillment of all objective and subjective elements of the offense, the judge declared the defendant legally and convincingly guilty.

b. Mitigating considerations

* The defendant acknowledges and regrets his actions and is cooperative at trial.

* The accused has never been convicted so it deserves humanitarian and rehabilitative consideration.

c. Aggravating considerations

* The act was committed while the victim was asleep, so that the victim was in a condition unable to protect himself or his property.

* The defendant's actions caused public unrest because they were carried out in residential neighborhoods at night.

d. Rationalization Of Criminal Prosecution

The judge sentenced criminal 10 months in prison, which is assessed:

- * balanced with error rate,
- * proportionate to the effect caused,
- * consider general and specific aspects of prevention.

This ruling appears to maintain the principle of individualization of the conviction, that is, it ensures that the criminal corresponds to the condition of the accused and the characteristics of the act.

B. Consistency Of Surabaya High Court Decision

As a *judex facti* appeal level, the Surabaya High Court upheld the entire consideration and decision of PN Sampang. PT assesses that:

1. The juridical facts have been established precisely, without any confusion in evaluating the evidence.

2. The application of Article 363 Paragraph (1) 3 of the criminal code is correct, because all elements are legally proven.

3. A 10-month sentence is considered proportionate, not too light and not too heavy, taking into account mitigating and aggravating circumstances.

Thus, the PT performs the function of control over the decision of the PN without replacing the excessive assessment of the facts, within the limits of its authority as *judex facti*.

C. The attitude of the Supreme Court in Cassation hearings

The Supreme Court in its Decision No. 1585 K/Pid/2025 rejected the Cassation of the Public Prosecutor with the following considerations:

a. Cassation objections are not juridically relevant

The public prosecutor filed a cassation appeal solely because he considered the 10-month sentence to be too light. However, according to Article 253 Paragraph (1) of the Criminal Procedure Code, the reason for Cassation is not to assess the gravity of the crime, but must be related to:

- * misapplying the law,
- * exceeding authority,

* or the way to judge is not in accordance with the provisions.

Because the Cassation reason did not touch the legal aspect, the Supreme Court considered the objection unacceptable.

b. Criminal assessment is the authority of *Judex Facti*
MA reaffirms the important doctrine that:

The determination of the gravity of a crime is entirely the domain of *judex facti* judgment, not *judex juris*.

As long as *judex facti* has given reasonable, proportionate, and lawful consideration, the Supreme Court is not authorized to change it.

c. There Is No Misapplication Of The Law

MA stated:

* PN and PT have applied Article 363 Paragraph (1) 3 of the criminal code appropriately.

* Consideration of the elements of weighting, evidence, and mitigating/aggravating circumstances have been analyzed in full.

So that there is no error in law that can be used as a basis to cancel the decision of *judex facti*.

D. Implications of the verdict on the criminal justice system

The Supreme Court ruling has several important implications for judicial practice:

a. Confirmation Of The Limits Of Cassation Authority

This ruling reinforces the strict boundary between *judex facti* and *judex juris*. The Supreme Court will not reassess the facts unless there is a clear error of law. This ensures legal certainty and consistency of interlevel judicial roles.

b. Strengthening The *Judex Facti* Function

PN and PT as *judex facti* are affirmed as institutions that better understand the factual situation of a matter. MA will only examine aspects of its legal application. It encourages judges of First Instance and appeal to give more complete and transparent consideration.

c. Consistency Of Three Levels Of Judicial Decisions

Alignment between the decision PN, PT, and MA showed that:

- * the judicial process is effective,
- * interpretation of laws used uniformly,

- there is an adequate standard of consideration in criminal prosecution.

This is an indicator that the criminal justice system works according to the corridors of law.

d. Increasing legal certainty and predictability

This Supreme Court decision serves as a precedent regarding jurisprudence:

- * limitation of Cassation grounds,
- the status of criminal judgments in the layered justice system,
- * and the principle of proportionality of punishment.

It is important to provide guidance for prosecutors, legal counsel, and judges in dealing with similar cases in the future.

CONCLUSION

Judex facti has applied the law precisely and proportionately. The Sampang District Court and the Surabaya High Court comprehensively assessed the facts and evidence, especially related to the element of theft with weighting in Article 363 Paragraph (1) 3 of the Criminal Code. Aggravating and mitigating considerations have also been clearly outlined so that the verdict of 10 months in prison reflects the principle of proportionality, the principle of justice, as well as the individualization of sentencing. The Supreme Court has consistently asserted the limits of judex juris' authority in Cassation hearings. The Supreme Court refused to reassess the facts of the case because it was the domain of judex facti. This consistency shows the proper application of Article 253 of the Criminal Procedure Code that Cassation only targets errors in the application of the law, violations of procedures, or decisions that exceed authority. The Cassation refusal of the Public Prosecutor strengthens the legal certainty regarding the limits of the assessment of the facts and the grounds for Cassation.

The Supreme Court's ruling affirms that objections to the severity of the crime are not grounds for Cassation. This strengthens the role of Cassation as a mechanism for legal supervision, not facts, and provides guidelines for law enforcement officers to better understand the functions of Cassation. The consistency of the PN, PT, and MA decisions shows the effectiveness of the tiered justice system. The alignment of assessments at all levels of the judiciary reflects the functioning of the checks and balances mechanism in criminal justice. This shows that the tiered justice system is able to maintain uniformity in the application of the law and

improve the quality of decisions. The Supreme Court decision contributed to the development of jurisprudence regarding the limits of Cassation authority. By rejecting Cassation applications that do not fit the juridical reasons, the Supreme Court strengthens the direction of jurisprudence regarding Cassation restrictions in criminal cases. This has the potential to be a reference for judges and law enforcement in the face of similar cases in the future.

The handling of this case reflects the application of the principle of legality and the principle of prudence in sentencing. Both judex facti and the Supreme Court point out that any judgment must be based on positive legal provisions, an objective analysis of the facts, as well as clear limits of authority. This provides protection against abuse of authority and ensures the implementation of a fair trial.

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