

The Qualification of Theft in Post-Demonstration Events: Analysis of Decision 2489/Pid.B/2025/PN Surabaya

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Abstract

This study examined the legal issue of applying Article 363 of the Criminal Code to the defendant's actions in Decision Number 2489/Pid.B/2025/PN Surabaya, which occurred after a demonstration. The purpose was to assess the suitability of theft elements with aggravating sanctions based on trial facts and to determine a more appropriate legal qualification. The research used a normative legal method with statutory and case approaches, analyzing charges, demands, judicial decisions, and criminal law doctrine. Findings showed that applying Article 363 was not fully appropriate because the element of taking another's property with intent to possess unlawfully was not convincingly proven. The object, a street nameplate as a public facility, indicated more of an act of moving or damaging rather than permanent control, which is central to theft. Moreover, the post-demonstration context cannot automatically justify aggravation without concrete evidence linking circumstances to the defendant's actions. Errors in offense qualification affect criminal responsibility and limit proportional settlement options, including restorative justice. Therefore, law enforcement must prioritize accuracy of evidence, the principle of personal responsibility, and substantive justice as the foundation for applying criminal norms.

Keywords: *Aggravated Theft; Criminal Code 363; Detention; Post-Demonstration.*

A. INTRODUCTION

The birth of a dynamic public space in a democratic country makes demonstrations one of the constitutional instruments of citizens to express opinions, criticisms, and demands for state policies made not based on the needs of the people. However, the implementation is also the post-demonstration dynamics that often lead to situations that are considered "vulnerable" such as crowds, mass mobilization of actions so as to trigger criminal acts against goods carried out in public spaces.

One of the criminal acts that is often associated with such a situation is theft. In general, the crime of theft in the community is the act of "taking" or giving benefits to people who take part or all of someone else's property. This basic element acts as a "foundation of proof" to distinguish whether the act meets the elements of the criminal offense formulation or not, in principle the theft article with the burden is not a crime that can stand alone, but theft with certain circumstances that are considered more dangerous or situations that are considered up-normal or unnatural circumstances.

In the practice of criminal law enforcement, law enforcement officials tend to focus on fulfilling the elements of criminal justice formally, especially in cases of theft that occur during demonstrations or social riots. This approach causes the social context, collective motives, and psychological situations of the masses to not be placed as relevant factors in the legal assessment process. In fact, modern criminal law requires a balance between legal certainty and a sense of justice in society so that criminalization does not turn into an instrument of criminalization of democratic freedom (Al Arif 2019).

The facts of the trial indicate an act that is visibly in the form of "moving" or "positioning" the goods for a specific purpose, but is not necessarily synonymous with "taking the right to own." In cases related to street signs, for example, there is a construction of the fact that the board has been lying on the road and then enforced/adjusted its position to obtain the right angle in content creation; The act of moving in this context can be understood as a momentary action oriented towards content production, thus giving rise to a juridical debate as to whether the element of "taking" along with the intention of unlawfully possessing is indeed

fulfilled or there is a misclassification of the crime (Jenifer Jequeen Andrasthea Pangau, Jemmy Sondakh 2025).

The research conducted by Awaludin Muhammad Jamil and Dini Dewi Heniarti, has basically made an initial contribution in understanding the application of criminal law to acts that arise in demonstration situations (Jamil and Heniarti 2026). The focus of the study is generally directed to the issue of whether or not the perpetrators can be held criminally responsible and on the fulfillment of the general elements of theft offenses with aggravation in the context of widespread demonstrations. Such a study is important because it provides a theoretical basis that actions that occur in a crowd can still be held criminally responsible as long as the elements of the offense are met. Thus, previous research serves as a starting point to see the relationship between demonstration events and the enactment of positive criminal law norms.

The discussion in previous research still tends to be general and focuses on the normative aspect of the application of criminal articles to acts that occurred during demonstrations. The research has not in-depth examined whether the construction of articles used by law enforcement officials and judges in concrete cases is in accordance with the legal facts revealed at trial. In fact, in judicial practice, post-demonstration events often give rise to various forms of acts that have different characteristics, both in terms of the time of the incident, the way of doing, the object taken, and the situation that accompanies it. These differences in character have direct implications for determining the juridical qualifications of a criminal act.

Moreover, the post-demonstration dynamics are not always identical to the conditions of the demonstration itself. After the masses disperse or the situation turns into a riot, individual actions often arise that need to be legally separated from the context of public expression. However, in practice, it is not uncommon for the entire series of events to be seen as a single entity so that the application of criminal punishment is carried out uniformly. This condition raises the need to review whether the use of Article 363 of the Criminal Code as the basis for criminal imposition is really appropriate to be applied to every post-demonstration case, but also to assess whether the judge's consideration in applying Article 363 of the Criminal Code is in accordance with the facts of the trial, evidence, and the concrete character of the defendant's actions. In other words, this study seeks to answer whether the judge's decision to qualify the act as theft with aggravation is appropriate, or should it be qualified in the form of another criminal act.(Hadianto 2025).

Departing from the phenomenon that occurred in August 2025, this article aims to critically examine the results of the decision of the Surabaya District Court judge with case numbers *2489/Pid.B/2025/PN Sby* By questioning the elements of the crime received by the judge through an indictment that shows whether the document is in accordance with the fulfillment of the elements of the theft offense with aggravation and understanding the purpose and purpose of this phenomenon, this case analysis study is expected to make a conceptual contribution rooted in the social reality of Indonesian society when carrying out demonstration actions as a form of response to anxiety or anger towards something that is considered lacking on the side of the community. As explained

in the background above, the main point of this research is how juridical analysis considers the subject matter of post-demonstration theft case from the perspective of justice (study of the case of theft after the August 2025 demonstration decision number 2489/Pid.B/2025/PN Sby) The main problem in this study can be divided into the following sub-main problem formulations: 1). Whether the application of the theft article to the defendant's actions in the post-demonstration context has met the elements About theft? 2). Is the proper juridical qualification for the defendant's actions reviewed from the different elements of the article?

B. RESEARCH METHODS

In this study, the author uses a normative legal research method, a method that focuses on a legislative approach (*statute approach*) and case approach (*case approach*), This method was chosen because it is in accordance with the purpose of the research, which is to review the verdict number 2489/Pid.B/2025/PN Sby against the perpetrators of theft in August 2025 in a chaotic situation based on positive legal provisions in Indonesia. The normative location of this research lies in the indictment and court decision as legal documents that are analyzed for legal material carried out qualitatively using legal interpretation methods and juridical arguments to assess the suitability between the facts of the trial, the elements of the criminal act, and the application of legal norms by the panel of judges. The author conducts a study of laws and regulations related to the crime of theft with the burden of participation in crime, as well as the principles of criminal responsibility relevant to the phenomenon of theft in the context of riots or social chaos (Muhaimin 2020).

C. RESULTS AND DISCUSSION

1. Application of the Theft Article to the Defendant's Actions in Decision number 2489/Pid.B/2025/PN Sby

The crime of theft is one of the crimes against property which is basically related to the act of taking someone else's property with the intention of illegally owning it. The provisions regarding this matter are regulated in Article 362 of the Criminal Code (KUHP) which states: "Whoever takes something, which belongs in whole or in part to another person, with the intention of unlawful possession, is threatened with theft with imprisonment for a maximum of five years or a fine." The formulation of the norm shows that the crime of theft does not only focus on the loss of an item, but also on the existence of active actions in the form of taking without rights.

In the doctrine of criminal law, the element of "taking" is interpreted as the transfer of real control over an item from the party who originally controlled it to the perpetrator. In other words, the goods are no longer in the control of the original owner or ruler, but have passed into the power of the perpetrator. This element is important because it is a marker that concrete action has taken that can be legally assessed, not just an intention or plan (Artawan, Hartono, and Adnyani 2022).

The application of criminal law to an act requires that there be an accuracy between the norms charged and the facts proven in court. In the study of modern criminal law, punishment is not enough based on the alleged occurrence of an event, but must rely on the fulfillment of the elements of

delicacy, the existence of errors, and valid evidence according to the criminal procedure law. This approach shows that criminal law enforcement is always concerned with the balance between legal certainty and the protection of the rights of the accused (Teguh Prasetyo 2014).

In this case, the series of events began when the defendants at night left for the central area of Surabaya City to simply gather and enjoy coffee. There are no preliminary facts that show that there was a plan to commit theft or a will from the beginning to take the property belonging to another party. The situation then changed when the defendants entered the area that was experiencing mass riots due to the demonstration of the TNI Draft Law, so that a number of roads were blocked by the police. Because of the closed access, the defendants turned to Jalan Kenari and at that location saw the road name sign in a detached state and lying on the ground. From that spontaneous situation arose the will to carry the object, which was then transported together using a motorcycle with the intention of selling.

Shortly after that, the actions of the defendants were known to police officers when they passed in the Jalan Praban area, precisely around the red light in front of BG Junction Mall. The defendants were then secured and taken to the Surabaya Police for further examination. Based on the existing information, the street name sign is a public facility owned by the Surabaya City Government which is under the responsibility of the Surabaya City Transportation Office, so that material losses arise due to damage or loss of the facility in question. This fact does show that there is an unlawful act, but the main problem in this study lies in the accuracy of the construction of the

articles applied to the defendants.

If examined judicially, the application of Article 363 paragraph (1) 2 and 4 of the Criminal Code can still be debated, especially regarding the use of aggravating elements because it was carried out during riots. In this case, the riot of the demonstration appears to be more of a situation that is the background of the scene, rather than a condition that is actually used in a planned manner to commit theft. In addition, the object taken in the form of a road sign that has been detached from its position is closer to being seen as destruction or taking of public facilities than theft with a burden in the classical sense. Therefore, a more relevant legal construction can be directed to the crime of destruction of property or better known in short, "vandalism" against public facilities as stipulated in Article 406 of the Criminal Code regarding the destruction of other people's property or public interest. Thus, the focus of the problem does not lie on the existence or absence of an unlawful act, but on the accuracy of the juridical qualifications used by law enforcement in assessing the event.

Such as case number 2709/Pid.B/2025/PNSby as a comparator who has a similar case to strengthen the argument that in the case file that has used the new Criminal Code, charges were filed against the defendant based on the allegation of destruction or taking part of public facilities, namely cooling hoses at police stations, which were found after an examination of the defendant. This kind of handling pattern shows similarities with the case, namely law enforcement departs from a demonstration situation that leads to the search for a party who can be held criminally responsible, while the direct

relationship between the defendant and the main act still requires strict testing.

Juridical considerations of judges. To impose the sentence on the defendant basically relies on several main aspects, namely the fulfillment of the elements of the crime of theft, the evidence submitted by the public prosecutor, and the relationship of the defendant to the evidence found at the time of arrest. The judge considered the act of carrying a street name sign which is a public facility owned by the Surabaya City Government, which the public prosecutor qualified as the object of the crime of theft. In addition, the panel of judges also assessed the witness statements, the defendant's statements, evidence, and the conditions of events that occurred in the post-demonstration situation as part of a series of legal facts revealed at the trial.

In his consideration, the judge generally uses an evidentiary approach based on Article 183 of the Criminal Code, namely the judge's conviction obtained from at least two valid evidence, and in the existence of the street name sign in the possession of the defendant, the use of the vehicle to carry goods, and the relationship between time and place of occurrence are the basis considered to assess the involvement of the defendant in the criminal act. The judge also considered the circumstances that the incident occurred in a post-demonstration atmosphere or mass riot, which the public prosecutor positioned as a certain circumstance that could aggravate the act as the construction of Article 363 of the Criminal Code.

From the perspective of evidentiary law, the discovery of an item on the defendant does not necessarily prove that the defendant is the main

perpetrator of the criminal act charged. Evidence must still be linked to *tempus delicti*, *locus delicti*, the way of obtaining the goods, and the existence of the will and conscious involvement of the defendant in a series of criminal acts. In a comparative case, the element of riot or disorderly situation also needs to be proven concretely, not just assumed because the event occurred after the demonstration. Because the use of mass or post-action contexts is often used as an additional basis to strengthen the indictment (Expected 2024).

Cases that arise after demonstrations, legal judgments usually become more complex because an event often occurs in disorderly situations, involves many people, and takes place in rapidly changing conditions. Such circumstances require greater precision in identifying the perpetrator, the form of the act, and the relationship between a person and the goods that are suspected to be the object of a criminal act. The handling of this case in a mass situation must still adhere to the principle of personal liability, namely criminal liability is imposed on people who are proven to have committed the act, not because of their mere existence at the scene of the incident (Eddy O.S. Hiariej 2017).

The object of study in this discussion is related to the application of the theft article against the defendant in the post-demonstration context. The focus of the analysis is directed at the juridical construction used by the public prosecutor, the suitability of the elements of the criminal act with the facts of the trial, and the relevance of the use of the article of ordinary theft or theft with aggravation. In this way, the discussion does not stop at the

narrative of events, but moves to test whether the chosen delicacy formulation is really in line with the evidence and legal facts revealed at the trial (Mahmud Marzuki 2017).

1.1 Suitability of the Claim with the Legal Facts at the Trial

The fulfillment of the elements of ordinary theft cannot be separated from proving who owns the goods, how the goods were taken, and whether the perpetrator knew that the goods did not belong to him. If any of these elements cannot be proven, then the theft construction becomes weak. In judicial practice, judges assess subjective and objective elements together because the intention of the perpetrator can often only be read through a series of actions proven at trial (Nafiisa and Idary n.d.).

In addition to the basic form, criminal law recognizes theft with aggravation which is essentially a criminal act of theft accompanied by certain circumstances so that the weight of the offense is considered higher. Circumstances that are commonly considered incriminating include being carried out by more than one person, carried out by damaging or entering certain places illegally, or carried out in situations that cause social chaos. The addition of these elements is related to the increased risk of loss, security disturbances, and the level of difficulty in preventing acts (Arthani 2023).

The difference between ordinary theft and aggravated theft lies in the structure of the evidence. Ordinary theft focuses on the elements of unlawful taking of goods and the intention of unlawful possession, while aggravated theft requires additional proof of the specific circumstances

that accompany the act. In that context, the heavier the criminal threat applied, the more careful the proof needed so that there is no error in the application of criminal norms (Hasdiwanti, Heryani, and Muin 2023).

The suitability of the application of criminal articles always relies on the facts of the trial as the main basis for the judge's assessment. These facts were obtained from witness statements, defendants' statements, letter evidence, instructions, and other forms of evidence recognized by the criminal procedure law. In cases that occurred after the demonstration, chronology became an important part because from the series of events it can be seen the position of the defendant, the time of the incident, interaction with the object of the goods, and the surrounding situation when the alleged crime took place (Ramadan 2022) .

In this case, the evidence submitted by the public prosecutor consisted of several communication devices in the form of a mobile phone and driver's license card, a motorcycle unit used by the defendant at the time of the incident, motor vehicle documents, and a street name sign "Jl. Kenari" which was the main object in the case. The evidence is related to a series of post-demonstration events that occurred in the Surabaya City area and is used in the evidentiary process to describe the whereabouts of the defendant, the facilities used, and objects directly related to the alleged criminal act. From the perspective of criminal procedural law, the existence of evidence has an important function as a tool to strengthen the construction of events, connecting the facts of the trial with the statements of the parties.

If the defendant in the trial denies taking the goods and there is no direct evidence showing the act of taking, then the main elements of theft need to be strictly tested. A person's presence in a crowded area, proximity to the scene of the incident, or temporal relationship with the event have not automatically indicated criminal involvement. The law of criminal proof places suspicion as something that must be tested through evidence, not as the sole basis for punishing someone.

The use of the theft article with aggravation also requires additional proof of aggravating circumstances. If the indictment is based on the post-demonstration situation as a form of general disorder, then the public prosecutor still needs to show a real connection between the situation and the manner in which the defendant committed the act. Disorderly social conditions do not necessarily turn all alleged theft into theft with a burden without a description of the concrete actions of the defendant (Setiawan 2021).

The assessment of this kind of case is also related to the principle of individualization of criminal responsibility. Each defendant is judged on his own actions, not on the actions of others in the crowd or for his presence in a collective event. This principle keeps criminalization within the corridor of justice, not procedural, and does not extend to accountability based on association alone (Maulla 2025).

The complete examination of the application of the theft article in this case is directed at whether or not there is a compatibility between the elements of the crime and the proven facts. Such an examination is

important because the quality of the indictment is highly determined by the accuracy of connecting concrete events with the formulation of criminal norms used by the public prosecutor.

2. The Appropriateness of the Defendant's Actions Reviewed from the Different Elements of the Destruction of Goods Article

The qualification in the main problem in the crime of theft with this burden can be reviewed through different elements, one of which is Article 406 of the Criminal Code concerning the destruction of goods which includes elements that make an important part in the criminal law enforcement process because it coincides directly with the determination of the application of norms to a concrete act, the events in this decision can give rise to more than one legal possibility if the elements are sliced several articles related. The public prosecutor in this case as a law enforcement officer is required to place the defendant's actions in the formulation of the crime that is most in accordance with the facts in the field and its conditions. Errors in determining the qualification of the offense can affect the direction of proof, the burden of criminal liability and the proportionality of the crime imposed.

The theft verdict during this demonstration, the defendant was charged with theft related to the riot during the demonstration, but when viewed from the narrative of the crime and the goods in question, there is room for analysis regarding the qualifications of other crimes. Especially acts that are closer to the destruction of public facilities owned by the Surabaya city government, according to criminal law. This kind of action is often associated with the concept of vandalism, which is the destruction of public

facilities and material harm and social disturbances to society at large.

If correlated with the legal facts revealed in the trial, it does not show that the defendant had the intention to commit theft with aggravation. The facts show that the street name sign was found in the possession of the defendant after the post-demonstration situation, which has already been dispersed. The judge, in assessing the element of delicacy, attributed the defendant's actions to the transfer of possession of goods, but not to the element of aggravation. Furthermore, the defendant's intention is also a crucial aspect, because based on his confession, he only intended to move the sign for the purpose of social media content, not to illegally control. Therefore, even though there is a relationship between the defendant and the evidence, these facts actually support the fulfillment of the element of destruction of goods, or the crime of vandalism, as stipulated in Article 406 of the Criminal Code, because the act is closer to the act of damaging public property, which is not related to the intention of permanent control. (Harahap et al. 2024)

The discussion of the destruction of goods becomes relevant because there is a fundamental difference between delinquencies that are oriented towards the destruction of public property. In post-demonstration situations, actions against public facilities such as street signage often occur in unstructured conditions and without careful planning. This opens up the possibility that the act is more reflective of the characteristics of vandalism, which is an act that has an impact on damage or change the function of the goods, compared to theft that requires the intention to take possession of the goods permanently (Hasan et al. 2023).

2.1 The Difference Between the Elements of Theft Delinquency and Delic of the Destruction of Goods.

The analysis is directed at testing the fulfillment of the elements of Article 363 of the Criminal Code as applied in Decision Number 2489/Pid.B/2025/PN Sby., it is necessary to systematically unravel each element of the article charged. The analysis of the elements of the crime is important because in criminal law, a person can only be convicted if all elements of the criminal act are legally and convincingly proven based on the facts of the trial. Therefore, the following table is prepared to compare the formulation of the elements of Article 363 of the Criminal Code with the legal facts revealed at the trial, so that it can be known whether the application of the article is juridically appropriate.

Table 1
Comparison Table of Article Elements

NO	Categorie s	Common theft (Article 362 of the Criminal Code)	Theft with Aggravation (Article 363 of the Criminal Code)	Article of Destruction of Public Facilities (Article 406 of the Criminal Code)
1.	Legal subjects	Any person: a person or legal entity as a subject of law who can be held criminally liable.	Any person: a person or legal entity as a legal subject who can be held criminally liable.	Who: Manusai as a legal subject of criminal acts (naturlijke persoon) Which focuses on the individual human being.

2.	Core deeds	The act of moving, real control over someone else's property.	Taking goods: the goods taken belong to another party with burdensome circumstances. (theft during a fire, eruption, flood, earthquake, or sea earthquake, mountain eruption, shipwreck, stranded ship, train accident, riot, rebellion or danger of war)	Deliberately against the law: the existence of the will and awareness of the perpetrator for his actions to damage the goods.
3.	Object of criminal action	All objects that have a use value or economic value and have a use value.	It is a burden because it is carried out at a time or in a chaotic situation and there is cooperation between the perpetrators in the criminal act.	Done without rights: destroying, damaging the property of another person and causing loss to more than one person
4.	Special Circumstances	The intention of unlawfully possessing is sufficiently proven to be the act of taking goods.	Taking advantage of chaotic situations to commit thefts thus making it more severe.	Goods are still physically there, but they no longer function as they should.

Source : R. Soesilo, *Criminal Code (KUHP) and his comments are complete article by article*, (1996).

Based on the table, it can be seen that the fulfillment of the elements of Article 363 of the Criminal Code has not been fully fulfilled comprehensively. Although Article 363 of the Criminal Code is a form of aggravated theft, the

main element still rests on the act of taking property belonging to another person with the intention of illegally owning it. The main element of this offense still lies in the willingness of the perpetrator to permanently control the goods for his own interests. If the elements of "taking goods" or "intention to possess" are not clearly proven based on the facts of the trial, then the basis for the application of the article becomes weak and requires more convincing proof.

Moreover, the defendant's confession in the arrest minutes should be a legal consideration to impose an Article 363 indictment as a legal basis to ensnare the defendant, the intention of the defendant is not only to take control of the goods but only to create content on a social media or TikTok platform which is crowded to be created in August 2025, the intention and motive of the defendant's statement are very different from the articles imposed on the defendant (Munandar, et al., 2024). In addition, certain circumstances that are used as grounds for aggravation in Article 363 of the Criminal Code cannot be immediately assumed just because the event occurred in the context of the post-demonstration. These circumstances must be proven to have a causal relationship with the defendant's actions, both in terms of timing, manner of conduct, and situations that legally meet the qualifications of aggravation as formulated in the law. Without this proof, the use of Article 363 of the Criminal Code has the potential to cause errors in determining the qualification of a crime.

On the other hand, if the facts revealed actually show that there is an act of damage, destruction, or rendering the goods unusable without the purpose of possessing, then the act is closer to the character of the crime of destruction or vandalism, regarding the accuracy of the norms used, especially in

distinguishing between theft with aggravation and acts that are substantially more appropriately qualified as vandalism.

Vandalism is more oriented towards the act of damage, uprooting, moving, or interfering with the function of an item, especially public facilities, without the purpose of owning the item. In the development of criminal law studies, vandalism is often associated with spontaneous and situational actions, especially in certain social conditions such as post-demonstrations, where social control tends to weaken and collective behavior can influence individual actions. In the construction of Indonesian criminal law, vandalism in article 406 of the Criminal Code is essentially aimed at protecting the legal interests of objects or goods from any act that deliberately causes damage, loss of function, or the disappearance of the control of the rightful owner. This delik places the main focus not on the transfer of ownership as in theft, but on the attack on the physical integrity or usefulness of an item.

When associated with matters involving street signage as objects, then the analysis of the element of taking or moving should be carried out more carefully. Street signage is part of public facilities that have information and public service functions. The act of holding the signboard that has been lying on the road does not necessarily indicate the existence of a will to have it illegally, but can also be interpreted as an act of vandalism that interferes with or damages the function of the facility. In this case, the focus of the assessment is not only on the existence of the goods in the hands of the defendant, but also on the purpose and context of the act committed.

In post-demonstration situations, actions against public facilities such as

road signage often occur in unstructured conditions and without careful planning (Kharisudanya, Sulastri, and Lestari 2024). This opens up the possibility that these acts reflect more characteristics of vandalism, i.e. actions that have an impact on damage or change in the function of goods, rather than theft that requires an intention to take possession of the goods permanently. Therefore, it is important to assess whether there is sufficient evidence regarding the intention of the defendant to possess, or whether his actions are more appropriately understood as actions that lead to the destruction of public facilities.

The comparison in the comparison of this article provides a more proportionate basis for analysis in assessing the legal construction used, especially in distinguishing whether the application of the theft article with the aggravation is appropriate, or precisely the defendant's actions are closer to the characteristics of the crime related to vandalism of public facilities.

2.2 Implications of Determining Delik Qualifications on Criminal Liability

It becomes very important when some of the qualifications of the offense in a post-demonstration event become an inaccuracy, because this is a failure in practice to protect the defendant and optimize the rights of the defendant which can actually be pursued, in the event that occurred at the demonstration for the formation of the TNI Bill that occurred in the city of Surabaya the defendant did not follow the crowd. The incident was read by the police in general.

In the urian, the difference between ordinary theft and aggravation is very clear, distinguishing from the beginning of the arrest process to the level before the file enters the realm of the district court, such as negotiation efforts and *restorative justice* that can optimize the rights of the defendant from the

beginning of the legal process. Like the trial process of proving the Surabaya City Transportation Agency can actually and receive good ethical intentions from the defendant to compensate the road signage that was damaged in the incident before the next trial rolls out with the approval of the panel of judges, but Supreme Court Regulation number 1 of 2024 Article 6 paragraph (1) letter c which regulates rules or punishments of more than 5 years cannot be carried out *restorative justice*. This creates a judicial precedent that does not inhabit proportional justice in an indictment against the defendant.

When these efforts can be achieved in the sense that the public prosecutor prosecutes proportionately, not just procedurally, then the space for negotiation of the impact caused by the defendant can be more open. In an academic framework, this allows the realization of restorative justice efforts, where defendants can show good faith to compensate for damages, so that their rights are still considered. In fact, if the negotiation is processed in sincere faith, the Surabaya City Transportation Agency can accept the improvement efforts shown by the defendant before the trial continues. Thus, the legal process can still respect material justice, where the losses suffered by the victim can be taken into account proportionately, without having to close the possibility of lighter punishment or forms of reconciliation (Subroto and Lestari 2024).

3. CONCLUSION

Based on the discussion of the formulation of the first problem, the application of the theft article to the defendant's actions in Decision Number 2489/Pid.B/2025/PN Sby is not entirely appropriate when associated with the elements of the crime of theft. The main elements in the form of the act of

"taking" and the existence of "unlawful intent to possess" must be clearly proven based on the facts of the trial, not only based on the post-demonstration situation or the presence of the defendant around the event. In this case, the defendant's actions against the street signage showed more situational actions in post-demonstration conditions, not the will to permanently control the goods as his own. Therefore, the use of theft articles, especially theft with aggravated theft, needs to be assessed carefully so that there is no expansion of criminal liability that is not in accordance with the principles of proof and the principle of individual criminal responsibility.

Based on the discussion of the formulation of the second problem, a more appropriate juridical qualification for the defendant's actions tends not to lead to the crime of theft with aggravation, but rather closer to acts related to vandalism or destruction of public facilities. This is because the object in question is a public facility, while the defendant's actions are more related to the act of moving, using, or interfering with the function of goods, rather than taking goods to be owned illegally. The difference between theft and aggravation and vandalism is important because it affects the direction of proof, the severity of criminal liability, and the chances of a more proportionate settlement. Thus, the accuracy of the qualification of the crime is the main thing in realizing substantive justice, legal certainty, and proportionality of punishment in criminal cases that arise in the post-demonstration context.

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