

Wage Inequality and Economic Crime in Decision No. 1393 K/Pid/2023

Hendra Marta, M. Ruhly Kesuma Dinata

Hendramarta169@gmail.com, muhammadruhlykesumadinata@gmail.com
Universitas Muhammadiyah Kotabumi

ABSTRACT

This article discusses the relationship between wage inequality and economic crime in the context of the Supreme Court's decision Number 1393 K/Pid/2023. This study examines the legal arguments for rejecting the reason for cassation based on the economic condition of the defendant, specifically wages below the minimum standard, in the case of theft of company assets by two employees. The analysis focuses on the normative limitations of Article 253 of the Criminal Code and the lack of consideration for socio-economic factors in criminal practice in Indonesia. With a normative legal approach and structural criminology, this article critiques a formalistic criminal law approach that prioritizes form over substance. It was concluded that Indonesia's criminal justice system has not been fully responsive to the socio-economic motives of perpetrators, and it is necessary to adopt a more humane criminal paradigm through progressive, restorative, and integrative considerations between criminal law and labor norms.

Keywords:

wage inequality;
economic crime;
cassation;
substantive justice;
progressive
criminalization.

INTRODUCTION

The crime of theft within the context of industrial relations reflects the complexity of legal issues that extend beyond mere violations of property rights. It is intricately connected to the socio-economic realities faced by workers. In societies marked by structural inequality—particularly in terms of unfair wage distribution—the emergence of economically motivated crimes committed by workers or employees can be interpreted as a form of resistance to systemic injustice. This phenomenon aligns with the perspective of structural criminology, which views economic hardship as a primary driver of criminal behavior (Merton, 1968; Mas, 2012).

The Supreme Court of the Republic of Indonesia Decision No. 1393 K/Pid/2023 offers a concrete illustration of this issue. The case involved two defendants, Suntoro and Dede Suhendra, who were employed as staff and security officers at PT Surya Bumi Sentosa (PT SBS). They repeatedly committed theft of company property, including coffee beans and other high-value items. During the cassation process, the defendants' legal counsel argued that the crime was driven by their substandard wages, which fell below the legal minimum, forcing them to act out of economic necessity. However, the Supreme Court rejected the cassation appeal, stating that economic motives do not fall within the permissible scope of cassation review as outlined in Article 253, paragraph (1), of the Indonesian Criminal Procedure Code.

Legally, the defendants' actions were classified under Article 363 paragraph (2) of the Indonesian Criminal Code, which concerns aggravated theft, and Article 64 paragraph (1), which pertains to continuing offenses (*delictum continuatum*). Procedurally, the cassation grounds presented did not satisfy the formal requirements stipulated in Article 253 of the Code. The Supreme Court reaffirmed that the evaluation of the seriousness of the offense is within the authority of *Judex Facti*, and that the lower courts had already taken into account both aggravating and mitigating factors as mandated by Article 197 paragraph (1)(f) of the Criminal Procedure Code. The

Court also considered the personal circumstances of the defendant, as prescribed in Article 8 paragraph (2) of Law No. 48 of 2009 on Judicial Power.

Nonetheless, from the perspective of legal protection for workers, critical questions arise regarding the relevance and weight of economic motives in determining criminal liability. Law No. 13 of 2003 on Manpower, particularly Articles 88 and 89, mandates that employers provide workers with at least the minimum wage, a provision further reinforced by Law No. 11 of 2020 on Job Creation. Employer noncompliance with labor regulations creates conditions conducive to legal violations by workers. However, in current judicial practice, these socio-economic considerations have yet to be substantially factored into criminal sentencing decisions.

From a theoretical standpoint in criminal law, a rigid positivist-normative legal approach often fails to accommodate the sociological dimensions of criminal conduct adequately. Soedarto (1983) argued that criminal law must evolve in tandem with social dynamics and exhibit sensitivity to the structural causes of crime. Similarly, Muladi and Barda Nawawi Arief (2010) emphasized the need for integration between normative-legal and socio-legal approaches within criminal justice policy in order to achieve humane and substantive justice.

Against this backdrop, the present article aims to critically examine the grounds for cassation in Supreme Court Decision No. 1393 K/Pid/2023 and assess whether the Indonesian criminal law system is sufficiently responsive to the socio-economic realities of offenders, particularly in industrial relations contexts. This inquiry is vital for the development of a judicial system that not only upholds procedural justice but also embraces the principles of transformative justice.

Based on the aforementioned background, the research questions formulated in this study are as follows: (1) What were the legal considerations of the Supreme Court in rejecting the cassation grounds based on wage inequality in Decision No. 1393 K/Pid/2023?. (2) Can socio-economic conditions, particularly wage disparities, be considered as a valid basis for criminal justice by the principle of substantive justice within Indonesian criminal law?

METHOD

This study adopts a normative juridical research methodology, utilizing both statutory and case approaches. The normative juridical method is employed to analyze pertinent legal norms, including the Indonesian Criminal Code (KUHP), the Criminal Procedure Code (KUHP), and labor-related legislation such as Law No. 13 of 2003 on Manpower and Law No. 11 of 2020 on Job Creation.

The case approach involves an in-depth examination of Supreme Court Decision No. 1393 K/Pid/2023, with particular attention to the Court's legal reasoning in rejecting a cassation appeal based on wage disparity. In addition, a conceptual approach is applied by incorporating theoretical perspectives from structural criminology, substantive justice, and penal policy, as developed by prominent legal scholars such as Soedarto, Muladi, Barda Nawawi Arief, and Satjipto Rahardjo.

The primary legal materials in this study include statutory regulations and judicial decisions, while secondary legal materials comprise legal commentaries, textbooks, academic journals, and other scholarly publications. The data is analyzed qualitatively through the interpretation of legal norms in tandem with the social context

reflected in the court ruling, thereby enabling the formulation of reflective and well-reasoned legal conclusions.

RESULTS AND DISCUSSION

1. Legal Considerations of the Supreme Court on the Grounds of Cassation due to Wage Inequality

The defendant's application for cassation in the Supreme Court Decision Number 1393 K/Pid/2023 raises a quite interesting issue: can the economic condition of the perpetrator, particularly wage inequality, be used as a basis for cassation to mitigate the crime? In this case, the two defendants, who worked at PT Surya Bumi Sentosa as employees and security officers, stole the company's assets in the form of coffee beans worth billions of rupiah, under the pretext that the wages received were far below the minimum standard, so that they were not enough to meet the needs of their families.

A. Normative Limitations on Grounds of Cassation

To assess the validity of the grounds for cassation, it is necessary to review the norms that govern the scope of the cassation application as stated in Article 253 paragraph (1) of the Criminal Procedure Code, which states:

"Cassation can be filed only for the following reasons: a. whether it is true that a legal regulation is not applied or applied not properly; b whether, indeed, the judicial procedure is not carried out according to the provisions of the law; c. whether the Court has indeed exceeded the limits of its authority."

From this provision, it is clear that cassation can only be filed based on an error in the application of the law, not against an objection to facts or personal reasons such as the economic background of the defendant. Therefore, in the position of procedural law, the Supreme Court is not authorized to reassess the facts or consider personal motives, unless there is an error in the application of the law by the previous Court.

This ruling also shows that the Supreme Court has consistently adhered to the principle of formal legality (*formele wettelijkheid*), which places law as a written and fixed norm, rather than as an expression of social justice or flexible moral considerations.

B. Affirmation of *Judex Facti's* Authority

The Supreme Court emphasized that the consideration of the severity and leniency of the crime is the authority of the Court of first instance and appeal (*judex facti*). In the Indonesian criminal justice system, this is also emphasized in Article 197 paragraph (1) letter f of the Criminal Procedure Code, which states that:

"The judge's decision must contain the reasons and basis for the decision and contain consideration of aggravating and mitigating circumstances."

In this case, both the District Court and the High Court have given complete consideration regarding:

1. The defendant's active role as the initiator of the theft;
2. The position of the defendant as an insider in the company (employees and security officers);
3. Criminal acts are carried out in a continuous and organized manner.
4. A significant loss of IDR 5,840,019,500.00 was incurred.

In other words, even though the defendants came from lower economic backgrounds, the judges of first instance had considered that their functions and

responsibilities within the company demanded integrity, not betrayal of the trust placed in them. This aligns with the criminal law theory regarding the abuse of trust as a basis for criminal incrimination (Hiariej, 2016).

C. Relevance of Applied Criminal Articles

The panel of judges qualified the defendant's actions as a criminal act of theft with continued aggravation, which is regulated in:

Article 363 paragraph (2) of the Criminal Code, which states:

"Threatened with imprisonment for a maximum of nine years for theft committed by two or more people together..."

Article 64 paragraph (1) of the Criminal Code, which states:

"If a person commits several acts, each of which is a crime or offence and the act is related in such a way that it must be regarded as a continuing act, then only one criminal offence is imposed."

From here, the element of burdening (because it is done by more than one person together), and the element of continuity (because it is done systematically over a specific period) have been fulfilled. This also explains why the Supreme Court has maintained its position that the law has been applied correctly and that there is no legal error that can serve as a basis for granting the cassation application.

D. Views on Economic Motives in Criminalization

From a positive legal perspective, economic motives do not negate criminal liability. This is different from the excuse of forgiveness or justification regulated in Article 44 (inability to be responsible), or Articles 48 to 51 of the Criminal Code (for example, forced defense or office order). Therefore, the excuse of wage inequality put forward by the defendant's legal counsel cannot qualify as a excuse for forgiveness, as it does not remove the unlawful nature of their actions.

However, some progressive legal doctrines suggest that the legal system give space to the social background of the perpetrator as part of substantive justice considerations. As emphasized by Muladi (2010), good criminal law should not only be repressive but also preventive and corrective, including in the context of criminalizing perpetrators who are driven by structural economic conditions.

Based on the above description, it can be concluded that the Supreme Court has no formal juridical basis to accept the grounds of cassation based on wage inequality, because the reason is not an error in the application of the law as stipulated in Article 253 of the Criminal Code. Although socio-economic motives have a certain moral weight, positive law currently still clearly separates normative-formal considerations and sociological-moral considerations in the criminal process at the cassation level.

2. Wage Inequality as a Criminal Consideration in the Perspective of Substantive Justice

A. Economic Crime in the Perspective of Structural Criminology

Economic crime by workers (insider crime) is a form of social deviation that often stems from structural pressures in society. In the strain theory developed by Robert K. Merton (1968), it is explained that when a person experiences a gap between cultural goals (such as economic well-being) and the legitimate means of achieving them, the individual is encouraged to seek illegal alternatives, such as theft or embezzlement, as a form of adaptation.

In the Indonesian context, the phenomenon of workers with wages below the minimum standard, as in the case of the defendants Suntoro and Dede Suhendra, creates significant economic pressure. When the basic needs of life are not met through legal channels, crime becomes a form of *latent resistance*. Crimes due to poverty are not new, but the legal system often ignores this structural root because it adheres to a purely legalistic approach (Soedarto, 1983).

B. Substantive Justice and Criticism of Formalistic Criminal Law

The substantive justice approach, law is not only seen as a written rule that must be rigidly enforced, but also as an instrument that realizes social justice in society. John Rawls (1971), in *A Theory of Justice*, emphasized that substantive justice requires that the law also pay attention to the socio-economic position of the perpetrator, not just judge the act in black and white.

Similarly, according to Muladi and Barda Nawawi Arief (2010), a good criminal justice system should include three dimensions:

1. Reconstructive (correcting the perpetrator and victim)
2. Preventive (preventing repeat crimes)
3. Corrective (fixing structural errors that drive crime)

Unfortunately, Indonesia's criminal justice system applies more procedural justice, as seen in Supreme Court Decision No. 1393 K/Pid/2023, where the judge refused to consider the defendant's economic motives as a basis for mitigating the sentence. In fact, the progressive legal approach as developed by Satjipto Rahardjo (2006) emphasizes that the law must be sensitive to the social context and side with those who are structurally weak.

C. Wage Inequality as a Mitigating Factor in Crime

In international practice, the socio-economic conditions of the perpetrators are often used as a *mitigating factor* in the imposition of punishment. For example:

- 1) The Penal Code model in the United States recognizes that circumstances such as severe economic stress, psychological distress, or emergencies can be mitigating factors.
- 2) In the Dutch and German legal systems, judges have broad discretion to adjust the crime based on the social background of the perpetrator.

Indonesia is actually not closed to this. In Article 197 paragraph (1) letter f of the Criminal Code, it is emphasized that judges are obliged to mention mitigating and aggravating circumstances in the decision. Although it does not explicitly mention economic conditions, this norm can be interpreted progressively to include factors of social inequality as part of such considerations.

However, in Supreme Court Decision No. 1393 K/Pid/2023, the reason for wage inequality is not categorized as a valid mitigating factor. This shows that although there is normatively a legal loophole to consider social conditions, in practice the Supreme Court still adheres to a narrow interpretation of criminal norms.

D. The Importance of the Restorative and Responsive Paradigm in Criminal Law

A penal system that relies only on a retributive approach (retribution) will give birth to a pseudo-deterrent effect without touching the root of the problem. In cases like these, it is important for criminal law to begin to accommodate a restorative approach, where the perpetrator is understood in his or her social context, and punishment is directed at rehabilitation and restoration of social trust (Wright, 1996).

For example, if in the case of the defendants Suntoro and Dede Suhendra, the judge considers wage inequality as part of the motivation, then the crime can be directed to a non-custodial sentence model such as social work, supervision, or even reintegration through job training, instead of a 6-year prison sentence which has the potential to impoverish further and break the social chain of the perpetrator's family.

Wage inequality is not just an economic fact, but also a social factor that can shape the structure of crime. In the context of criminality, this condition should not be ignored, but rather part of an integrative analysis between law and social justice. Indonesia's criminal law system needs to broaden the interpretation of criminal norms to be more responsive to social realities, and not just procedurally enforce the law.

Supreme Court Decision Number 1393 K/Pid/2023 affirms the application of criminal law that is formalistic and procedural, by rejecting the grounds of cassation filed by the defendant based on wage inequality as a driving factor for the occurrence of the crime of theft with continued aggravation. From the perspective of Indonesian criminal procedural law, this reason does not fall into the category of error in the application of the law as stipulated in Article 253 paragraph (1) of the Criminal Code, so the Court does not have a juridical basis to grant the cassation application.

Although normatively the reason for the cassation is unacceptable, a study of the socio-economic background of the perpetrators shows that wage inequality has a real criminogenic impetus. However, this reality has not found an adequate place in Indonesian criminal justice practice. The penal system is still dominated by retributive and procedural approaches, which do not accommodate the substantive justice aspect, namely justice that takes into account social conditions, perpetrators' motives, and structural inequalities in society.

Discussion

The Supreme Court Decision Number 1393 K/Pid/2023 affirms the judiciary's commitment to the principle of formal legality, as enshrined in Article 253 paragraph (1) of the Indonesian Criminal Procedure Code (KUHP). The defendant's petition for cassation, which argued that the theft was motivated by wage disparity and economic hardship, was rejected by the Court on the grounds that such motive does not fall within the statutory grounds for cassation, which are limited to: misapplication of the law, procedural error, or *ultra vires* acts by the lower courts. The Supreme Court maintained a strict interpretation of these grounds, reaffirming its jurisdiction only over legal matters, and not over factual or sociological considerations, including the defendant's financial condition. This reflects a strict adherence to the principle of *formele wettelijkheid* (formal legality), where the application of written law takes precedence over contextual justice (Hiariej, 2016).

However, from the perspective of progressive legal theory, the Court's refusal to consider wage disparity as a mitigating factor may be viewed as a rigid juridical stance. According to Satjipto Rahardjo (2016), law should be responsive and contextual an instrument of social transformation that aligns with the lived realities of society. In this case, the defendant's criminal act cannot be seen purely as a moral failing but as a consequence of structural economic pressure, a condition that demands judicial empathy rather than formal detachment. The strain theory by Robert K. Merton provides a criminological framework for understanding such acts: when individuals are unable to achieve socially endorsed economic goals through legitimate means, they may resort to illegitimate alternatives. In practice, underpaid workers

often find themselves pushed toward insider crimes due to systemic inequality (Latif, 2018).

Although economic motivation does not exonerate criminal responsibility under Indonesian positive law, modern penal systems increasingly recognize the relevance of socio-economic background as a mitigating factor in sentencing. For instance, the Model Penal Code in the United States and legal systems in Germany and the Netherlands allow judges broad discretion to tailor punishments based on an offender's personal and social circumstances (Kusno, 2020). Unfortunately, the Indonesian judiciary, as illustrated by this decision, has not yet consistently applied such mitigating factors, despite the fact that Article 197 paragraph (1)(f) of the KUHP permits the inclusion of both aggravating and mitigating circumstances in a judgment. A progressive interpretation of this provision could legitimately encompass wage inequality as a relevant sentencing consideration (Arief, 2013).

Furthermore, as Muladi and Arief (2010) have emphasized, an ideal penal system must encompass corrective, rehabilitative, and preventive dimensions, and not be solely retributive. The imposition of a six year custodial sentence on a defendant driven by economic distress risks further impoverishing the offender and his family, without addressing the root cause of the crime. For the law to serve substantive justice, Indonesia's sentencing paradigm must shift towards restorative and responsive approaches ones that seek not only to punish but also to restore social balance and prevent recidivism. This is particularly important for non-violent offenses arising from structural poverty, where alternatives such as community service, vocational training, or supervised probation would be more humane and socially constructive (Widodo, 2021).

This ruling reflects that our criminal law is not fully responsive to the social root causes of crime, thus risking reinforcing the cycle of criminalization against vulnerable groups, especially the working class with marginalized economic conditions.

In conclusion, although the Supreme Court was legally correct in applying formal procedural standards, it missed an opportunity to adopt a substantively just and socially empathetic approach. Wage disparity is not merely an economic fact, but a structural issue that can influence criminal behavior. Therefore, Indonesia's criminal justice system must move beyond rigid proceduralism and begin to embrace broader interpretations of sentencing norms ones that reflect social realities and promote equitable justice for all members of society.

CONCLUSIONS

The development of a substantive justice approach necessitates a reinterpretation of Article 197 paragraph (1) letter f of the Criminal Procedure Code. This reinterpretation should allow social factors—such as wage inequality, poverty, and economic pressure—to be explicitly considered as mitigating circumstances in criminal sentencing. Such an approach would contribute to a more socially equitable criminal justice system. In addition, comprehensive reform of the penal system is required. The government and the Supreme Court should actively promote the application of non-custodial sanctions, including community service, social development initiatives, or restorative justice programs. These alternatives are especially appropriate for economic offenders whose actions are driven by structural

socio-economic stress, as long as the offenses do not involve violence or result in significant material loss.

Furthermore, there should be an integration of labor law norms within the framework of criminal law. Violations of minimum wage provisions ought to be considered as contextual elements in criminal proceedings involving workers. To facilitate this, courts can cooperate with labor and employment agencies to conduct thorough audits of the employment relationships involved in such cases. Finally, judges must be encouraged to adopt a progressive legal approach—one that goes beyond the literal interpretation of statutory texts and takes into account justice, human values, and the concrete social conditions surrounding each case. This progressive reasoning not only enhances the fairness of judicial decisions but also strengthens the moral and social legitimacy of the criminal justice system.

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