

Legal Analysis of The Application of The Article On Attempted Theft with Aggravacy: A Study of Nabire District Court Decision Number 20/Pid.B/2025/Pn Nab

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Abstract. *This study aims to analyze the application of Article 363 paragraph (1) subparagraph 3 of the Indonesian Penal Code (KUHP) concerning the criminal act of attempted aggravated theft, and to assess its conformity with the principles of justice and criminal law enforcement, using the District Court Decision of Nabire Number 20/Pid.B/2025/PN Nab as a case study. Furthermore, the study seeks to examine the potential implementation of restorative justice as an alternative mechanism for case resolution in accordance with the Supreme Court Regulation (PERMA) Number 1 of 2024. This research employs a normative juridical method, which is based on library research through an in-depth examination of statutory regulations, legal doctrines, court decisions, and relevant academic literature. This approach is used to identify and analyze the legal norms related to the elements of aggravated theft and the application of the concept of attempted crime as stipulated in Article 53 of the Penal Code. The results indicate that the application of Article 363 paragraph (1) subparagraph 3 in conjunction with Article 53 of the Penal Code has been carried out appropriately. The elements of intent (*mens rea*) and commencement of execution (*begin van uitvoering*) were proven valid according to law. The panel of judges imposed a proportional sentence by considering the one-third reduction from the maximum principal punishment as regulated. Moreover, the application of these provisions aligns with the substantive principles of justice, legal certainty, and expediency as mandated by Article 24 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. The judges' decision reflects a balanced consideration between the act, its consequences, and the offender's responsibility, thereby upholding the principles of fair trial and due process of law within the Indonesian criminal justice system.*

Keywords: *Attempted Aggravated Theft; Legal Analysis; Restorative Justice.*

1. Introduction

Since the colonial era, the Indonesian criminal law system has undergone a process of codification, referring to the *Wetboek van Strafrecht voor Nederlandsch-Indië* (WvS-NI), which is a translation and adaptation of Dutch criminal law. This codification was carried out to create legal certainty in the Dutch East Indies, which at that time was facing a surge in conventional crimes, including theft. The colonial government felt the need to distinguish between ordinary theft and theft committed under certain conditions or methods that were more dangerous to public order, thus the birth of provisions regarding *gekwalificeerde diefstal* or aggravated theft.¹

The articles on theft in the Indonesian Criminal Code are a legacy of the Dutch legal system. In the original system, aggravated theft was regulated by considering various factors that aggravate the perpetrator's culpability, such as committing the crime at night, in someone else's home, or causing damage to property. The goal was to provide stronger legal protection for victims and to create a deterrent effect on perpetrators who engage in high-risk *modus operandi*.² When Indonesia became independent, these articles were then adopted into the National Criminal Code with limited modifications.

The long history of the Indonesian criminal law system has demonstrated the need to refine these provisions to reflect the social realities of post-colonial society. One way to do this is by re-examining the formulation of articles on theft, which are deemed not to fully reflect substantive justice. In this regard, Article 363 paragraph (1) of the Criminal Code has come under scrutiny because it contains aggravating elements that could potentially be imposed even on acts that have not yet been completed by the perpetrator. This situation raises fundamental questions about justice in sentencing.³

Furthermore, in the development of legal science and judicial practice, a new awareness has emerged that not all forms of theft can be treated equally in the criminal justice system. Modern criminal law demands individualization of sanctions based on the context and motivation of the perpetrator. Therefore, the aggravating element in Article 363 paragraph (1) should not be applied rigidly to all forms of theft, especially if the act is only at the attempted stage. This actually creates a dilemma between legal certainty and justice.⁴

¹Muladi. (2001). *Selected Chapters on the Criminal Justice System*. Semarang: UNDIP Publishing Agency.

²Wahyuningsih, SE (2017). *Basic Principles of the Criminal Justice System in Indonesia*. Semarang: Sultan Agung Islamic University Press.

³Radbruch, G. (2006). *Legal Philosophy*. Oxford: Oxford University Press.

⁴Rahardjo, S. (2009). *Let the Law Flow: Critical Notes on the Struggle between Humanity and Law*. Jakarta: Kompas.

This situation then gave rise to the urgency to re-evaluate the formulation of Article 363 paragraph (1) of the Criminal Code, especially in relation to cases of attempted theft. In a number of court decisions, legal debates were unavoidable when public prosecutors and judges tried to interpret whether the aggravating element could still be validly imposed on acts that had not yet fulfilled the main elements of the crime. This issue has become an important starting point in contemporary Indonesian criminal law discourse, particularly in relation to the protection of human rights and the proportionality of punishment.⁵

The formulation of Article 363 paragraph (1) of the Criminal Code, which regulates aggravated theft, is an important part of the national criminal law instrument that aims to protect citizens' property rights from the threat of more complex crimes. This article gives greater legal weight to acts of theft committed under certain circumstances or methods that are considered to increase the degree of culpability of the perpetrator. However, in practice, the application of this article to cases of attempted theft, especially those that have not yet caused concrete losses, has become a source of polemic. Difficulties arise when the aggravating element is applied to crimes that have not yet been completed, thus giving rise to quite sharp legal debate in the courtroom and academic circles.

In Indonesia's criminal law system, which adheres to the principles of legality and legal certainty, precision in interpreting and applying norms is crucial. Furthermore, in cases of attempted theft, substantive justice is a crucial benchmark to ensure that punishment is not merely formalistic but also reflects the values of justice that exist within society.⁶ This is where a major challenge in law enforcement arises: how to bridge the gap between written norms and dynamic empirical social conditions.

As society evolves, the paradigm of punishment has also shifted. Society now demands a legal system that is not solely repressive, but also corrective and restorative. In this context, a new awareness has emerged regarding the importance of a more humane legal approach, one that takes into account the psychological, economic, and social dimensions of the perpetrator, particularly in cases of minor offenses or incomplete crimes.⁷

Prof. Dr. Sri Endah Wahyuningsih, SH, MH, stated that criminal law should not be trapped in narrow legalism that only emphasizes written norms, but must also be able to capture the aspirations for justice that develop in society. She emphasized that criminal law must embody three main values: legal certainty

⁵Kelsen, H. (1967). *Pure Theory of Law*. Berkeley: University of California Press.

⁶Wahyuningsih, SE (2017). *Basic Principles of the Criminal Justice System in Indonesia*. Semarang: Sultan Agung Islamic University Press.

⁷Muladi. (2001). *Selected Chapters on the Criminal Justice System*. Semarang: UNDIP Publishing Agency.

(rechtszekerheid), justice (gerechtigheid), and utility (doelmatigheid).⁸. Law enforcement that focuses solely on punishment without considering the social conditions of the perpetrator, he said, would be counterproductive to the true purpose of the law.

In practice, criminal law enforcement in a democratic country must be responsive and contextual. This means that law enforcement officials are not only required to apply legal articles textually but also to understand the sociological conditions that accompany the crime. This approach encourages the emergence of alternative legal resolution options, such as restorative justice, especially in cases that do not cause significant harm and are committed by first-time offenders.⁹.

The concept of restorative justice is highly relevant in cases of attempted theft. This concept emphasizes restoring relationships between the perpetrator, victim, and community through dialogue and mutual agreement. As defined by Tony Marshall, restorative justice is a process involving all stakeholders to collectively address the impact of the crime and build resolution for the future.¹⁰.

In the Indonesian legal system which is based on the principle of the rule of law (rechtstaat), criminal law has a function not only as a repressive tool, but also as an educational and preventive instrument.¹¹This is in accordance with the mandate of Article 28D paragraph (1) of the 1945 Constitution, which affirms the right of every citizen to fair legal protection and legal certainty. However, in reality, there is often tension between the three basic legal values put forward by Gustav Radbruch: legal certainty, justice, and utility.¹²This tension requires law enforcement officials to balance the three contextually in every decision.

In responding to complex social realities, the progressive legal thinking developed by Prof. Satjipto Rahardjo serves as an important reference. According to him, law should not be a stagnant institution, but rather a tool for humanizing people and promoting substantive justice.¹³Therefore, in cases of attempted theft, an approach that prioritizes social recovery and rehabilitation is more appropriate than mere criminalization.

In a normative context, Hans Kelsen, through his theory of norm hierarchy, emphasized that lower norms must be subject to higher norms, with the

⁸Rahardjo, S. (2009). *Let the Law Flow: Critical Notes on the Struggle between Humanity and Law*. Jakarta: Kompas.

⁹Marshall, T. (1999). *Restorative Justice: An Overview*. London: Home Office Research Development and Statistics Directorate.

¹⁰The 1945 Constitution of the Republic of Indonesia.

¹¹Radbruch, G. (2006). *Legal Philosophy*. Oxford: Oxford University Press.

¹²Radbruch, G. (1946). *Gesetzliches Unrecht und übergesetzliches Recht*. *Suddeutsche Juristen-Zeitung*.

¹³Kelsen, H. (1967). *Pure Theory of Law*. Berkeley: University of California Press.

constitution as the basic norm (grundnorm).¹⁴ Therefore, the application of criminal law must not conflict with the constitutional spirit, especially regarding respect for human rights.

Furthermore, Prof. Dr. H. Laode M. Kamaluddin, MH emphasized that within the framework of *maqāṣid al-sharī'ah* (مقاصد الشريعة), the law must guarantee the protection of five main values: religion (*ḥifẓ al-dīn* / حفظ الدين), soul (*ḥifẓ al-naḥs* / حفظ النفس), reason (*ḥifẓ al-'aql* / حفظ العقل), offspring (*ḥifẓ al-nasl* / حفظ النسل), and wealth (*ḥifẓ al-māl* / حفظ المال)¹⁵. Therefore, in the context of criminal law, the function of law is not only to punish, but also to protect social order and repair disturbed social relations.

The application of Article 363 paragraph (1) 3 of the Criminal Code in cases of attempted theft must take into account the principle of *ultima ratio*, which means that criminal law is only used as a last resort. If there is no real loss or the perpetrator shows good faith, then alternative approaches such as penal mediation or social rehabilitation should be prioritized. Likewise, the principle of proportionality requires that sanctions be commensurate with the level of culpability and impact of the crime.¹⁶

In Islamic law, there is the principle of *ṣulḥ* (صلح) which prioritizes peaceful resolution of minor matters as long as they do not involve violations of the rights of Allah (*ḥuqūq Allāh* / حقوق الله)¹⁷. This mechanism is a form of social recovery based on deliberation and restorative justice. As emphasized in Islamic jurisprudence (*fiqh al-jināyah*), the orientation of punishment in Islam is more about education (*ta'dīb* / تأديب) than retribution (*ta'qīb* / تعقيب).¹⁸ This supports efforts to resolve cases through approaches that do not sever social ties but instead strengthen community cohesion.

Taking all these perspectives into consideration, it is important to review the application of Article 363 paragraph (1) 3 of the Criminal Code in the context of attempted theft as stated in the Nabire District Court Decision Number 20/Pid.B/2025/PN Nab. Where in the early hours of Monday, December 9, 2024 at around 01.30 WIT, the Defendant Jhon Giay was intoxicated due to consuming Bobo type liquor walking around the Kalibobo Market Complex, Nabire District. In this condition, he saw a man (victim witness Muhammad Paci) sewing beside the

¹⁴Kamaluddin, LM (2020). *Philosophy of Islamic Law and Maqāṣid al-Sharī'ah*. Semarang: Unissula Press.

¹⁵Zoelva, HH (2021). *Islamic Jurisprudence and the Idea of Restorative Justice in Islamic Law*. Semarang: Pustaka Unissula.

¹⁶Zoelva, HH (2018). *Reconstruction of the Concept of Jinayah in Islamic Jurisprudence and Its Relevance to the National Legal System*. Jakarta: Kencana Prenada Media Group.

¹⁷Auda, J. (2008). *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach*. London: The International Institute of Islamic Thought.

¹⁸Nyazee, IAK (2002). *Theories of Islamic Law: The Methodology of Ijtihad*. Islamabad: Islamic Research Institute Press.

house. The Defendant then approached the house and tried to open the side door which turned out to be unlocked. He then entered the house without permission.

Once inside, the Defendant took a black VEV brand handy talkie (HT) that was on the living room table. He then placed the HT near the door and went back into the room, then took a black backpack containing Rp. 500,000.00 in cash. When he was about to leave the room, his actions were caught by the witness Sumarni who was sick and lying in the living room. The witness screamed for help, calling her husband with the shout "Darling, help!"

Hearing the screams, witness Muhammad Paci immediately entered the house through the back door and found the defendant still inside. A brief scuffle ensued between the witness and the defendant, during which the defendant resisted arrest. Witness Paci then shouted for help from nearby residents.

Residents who heard the screams immediately arrived and helped secure the defendant. During the arrest, a 39 cm kitchen knife was found on the defendant's body, which is believed to have endangered the safety of the home's occupants. After being arrested, the defendant was handed over to the Nabire Police for further legal proceedings.

As a result of the incident, the victims suffered material losses and psychological trauma, particularly their 4-year-old child. Furthermore, evidence in the form of a handgun, backpack, and cash was returned to the victim-witness, while the knife carried by the defendant was determined to be destroyed. This research focuses not only on normative aspects but also reflects the need for a just, proportional, and responsive approach to the social context and Islamic legal values that prioritize the integrity of society.

2. Research Methods

This research is a normative legal research, namely legal research conducted by examining library materials or secondary data consisting of laws and regulations, court decisions, and relevant legal literature. Normative legal research aims to analyze applicable legal norms, both those written in laws and regulations and those developed through court decisions.

3. Results and Discussion

3.1. Legal Analysis of the Application of Article 363 Paragraph (1) 3 of the Criminal Code to the Crime of Attempted Aggravated Theft in Decision Number 20/Pid.B/2025/Pn Nab

The legal analysis of Decision Number 20/Pid.B/2025/PN Nab shows how the judge interpreted and applied the elements of Article 363 paragraph (1) 3 of the Criminal Code in the context of attempted aggravated theft as regulated in Article

53 of the Criminal Code. In this case, the panel of judges faced a situation where the defendant's actions had reached the implementation stage, but had not been fully completed due to obstacles from the victim and the community.

Normatively, Article 363 paragraph (1) 3 of the Criminal Code stipulates that the crime of aggravated theft occurs when the theft is committed "at night in a house or enclosed yard where there is a house, carried out by a person who is in that place without the knowledge or without the will of the authorized party." This aggravating element places the defendant's actions in a category that has a higher potential for danger compared to ordinary theft, because it is carried out in conditions that increase the risk to the security and peace of society.

The following is the author's description of the legal analysis of the application of Article 363 Paragraph (1) Ke-3 of the Criminal Code to the crime of attempted theft in Decision Number 20/Pid.B/2025/PN Nab:

1. Chronology of Decision Number 20/Pid.B/2025/Pn Nab

This criminal case involves a defendant named Jhon Giay, a 44-year-old Protestant Christian with no permanent job. The defendant resides on Jalan Cendrawasih, Morgo Village, Nabire District, Nabire Regency.

The crime occurred on Monday, December 9, 2024, at approximately 1:30 a.m. WIT (Central Indonesian Time) in the Kalibobo Market Complex, Nabire District. After consuming Bobo liquor, the defendant walked around the market and saw the victim, Muhammad Paci, sewing clothes next to his house. The defendant then tried to open the victim's unlocked door and entered the house without permission.

After entering, the defendant took a black VEV-branded portable radio from in front of the television and a black backpack from the bedroom. However, his actions were witnessed by Sumarni, the victim's wife, who was lying down due to illness. She shouted for her husband, "Help!" until the victim arrived and caught the defendant inside the house.

A fight ensued between the victim and the defendant, but the defendant attempted to flee. The victim screamed for help, prompting neighbors to come and help apprehend the defendant. The defendant was then taken to the Nabire Police Station along with evidence of the crime. The items seized were one black VEV brand HT containing Rp. 500,000.00, and the victim suffered a loss of approximately Rp. 2,000,000.00.

The defendant was arrested on December 10, 2024 and detained successively by the Investigator, Public Prosecutor, and Panel of Judges, with the detention extended until May 13, 2025. During the trial, the defendant was not

accompanied by legal counsel and underwent the examination process at the Nabire District Court with regular examination procedures.

2. Public Prosecutor's Indictment in Decision Number 20/Pid.B/2025/Pn Nab

Public Prosecutor in the criminal case a quo compiled two forms of alternative charges (alternative cumulatief) against the defendant John Giay. This type of indictment is used when the public prosecutor has not yet obtained legal certainty regarding which acts are most appropriate to be proven in court, but all of the acts are interrelated and occurred in the same series of events. Therefore, if the first charge is not proven, then the panel of judges can examine and assess the second (subsidiary) charge.

a. First Charge: Aggravated Theft (Article 363 paragraph (1) 3 of the Criminal Code)

The Public Prosecutor accused the defendant of committing the crime of aggravated theft as formulated in Article 363 paragraph (1) 3 of the Criminal Code (KUHP). This article stipulates that theft committed "at night in a house or enclosed yard where there is a house, carried out by a person who is there unknown or not wanted by the person entitled to be there," is a form of theft with aggravated elements (*gekwalficeerde diefstal*).

Normatively, the elements of Article 363 paragraph (1) 3 of the Criminal Code are as follows:

1) The act of taking something.

The first element that must be proven in the crime of theft is the act of taking goods (*wegnemen*), namely the actual act of the perpetrator who transfers an object from the control of another person to his own control. In this case, the Panel of Judges considered that this element had been fulfilled, because based on the trial facts, the defendant entered the victim's house and took items in the form of a black VEV brand HT and a backpack without the owner's permission. This act of taking indicates an active act of controlling the victim's property, even though he had not yet managed to take it out of the house. Thus, from the objective action perspective, the element of "taking" was carried out by the defendant, and was not refuted in the evidence process in court.

2) The goods are wholly or partly owned by another person.

This second element indicates that the object taken must belong to another person, not the perpetrator himself. The items taken in this case were a handgun and Rp. 500,000.00 in cash contained therein, as well as a black backpack, which, based on witness testimony and evidence at trial, belonged to the victim, Muhammad Paci. This fact is supported by the defendant's own admission that he had no ownership relationship with the items. Therefore, the element of

belonging to another person is legally proven, because the object of the theft is not the defendant's property.

3) Done with the intention of possessing unlawfully.

The third element requires a subjective element in the form of intent (*opzet*) to possess the property taken in an unlawful manner. In this case, the defendant's malicious intent (*mens rea*) was clearly evident in his actions of secretly entering the victim's home at night without permission and taking property that did not belong to him.

Although the defendant admitted to being intoxicated by Bobo, the panel of judges determined that his legal consciousness was not completely lost and he was still able to control his actions. This was evidenced by the defendant's systematic actions—entering the house, taking items, and attempting to leave with the stolen goods. There was intent to unlawfully possess the items, which means this third element was also proven.

4) Done at night

Article 363 paragraph (1) 3 of the Criminal Code requires the existence of an aggravating element in the form of carrying out the crime at night, which is a time that is socially considered more dangerous because environmental conditions tend to be quiet and lighting is limited. In this case, based on the description of the legal facts, the defendant's actions occurred at around 01.30 WIT, which is clearly night time.

This action demonstrates the presence of aggravating factors as referred to in the article, as the perpetrator exploited the quiet nighttime to commit the theft, avoiding easy detection by the victim. Therefore, the "nighttime" element has been proven legally and convincingly.

5) Done in someone else's house or enclosed yard

This element is crucial to aggravated theft, as the perpetrator committed the crime in a private, legally protected space, namely a home or enclosed yard. In this case, the defendant committed the crime inside the home of victim Muhammad Paci, located in the Kalibobo Market Complex, Nabire District. According to witness testimony and the examination at the crime scene (TKP), the defendant entered through an unlocked side door and proceeded to the living room and the victim's bedroom.

This act fulfills the requirement that the crime be committed in another person's home, which is a residential area and protected by law (Article 167 of the Criminal Code also prohibits entering someone's home without permission). This requirement is objectively fulfilled.

Based on the description in the indictment, the Public Prosecutor believes that all of these elements are met because the defendant entered the victim's house at night without permission, then took the victim's belongings, namely a HT and a backpack with the intention of unlawfully possessing them. Therefore, the first charge is directed at proving the existence of a completed theft (voltooid delict).

However, during the investigation and trial, evidence emerged that the defendant's actions were not fully completed, as the victim and the public discovered his actions before he successfully removed the stolen goods. This fact prompted the Public Prosecutor to prepare a second indictment as an alternative legal remedy in case the first indictment could not be fully proven.

b. Second Charge (Subsidiary): Attempted Aggravated Theft (Article 363 paragraph (1) point 3 in conjunction with Article 53 paragraph (1) of the Criminal Code)

As a form of subsidiary charge, the Public Prosecutor alleges that if aggravated theft is not completely proven, then the defendant's actions still fulfill the elements of attempting to commit aggravated theft as regulated in Article 363 paragraph (1) 3 in conjunction with Article 53 paragraph (1) of the Criminal Code. Article 53 paragraph (1) of the Criminal Code states that:

"Those who begin to carry out a crime, but the crime is not completed solely due to their own will, are threatened with the maximum sentence reduced by one third."

From the formulation of the article, there are three main elements of attempted (poging), in the context of this case, the Public Prosecutor assesses that the defendant's actions have fulfilled these three elements, namely:

- 1) There was intent (voornemen) to commit a specific crime. The defendant had the intent to steal the victim's property.
- 2) The commission of the crime has commenced (begin van uitvoering). The defendant commenced the commission of the crime by entering the victim's home and taking items without permission.
- 3) The failure to complete the crime was not due to the perpetrator's own will. The defendant's actions were not completed because he was caught by the victim and residents, not because of his own will to stop the act.

Therefore, the defendant's actions can be classified as attempted aggravated theft, not a completed theft. In criminal law theory, this situation is called an "incomplete crime" (onsvoltooide delict), which is still punishable because it poses a danger to protected legal interests.

3. Legal Facts Revealed in Decision Number 20/Pid.B/2025/Pn Nab

Based on the results of the examination at the trial, which included witness statements, the defendant's confession, and evidence submitted by the Public Prosecutor, the panel of judges found a number of legal facts which were the basis for assessing whether the elements of a criminal act as regulated in Article 363 paragraph (1) 3 of the Criminal Code were fulfilled and related to Article 53 of the Criminal Code concerning attempted criminal acts, namely:

First, it was proven that the defendant had the intent (*mens rea*) to take another person's property without the owner's permission. This intent was clearly evident from the defendant's actions in coming to the victim's house at night armed with tools such as a screwdriver and a flashlight. This demonstrates premeditation and the defendant's awareness of his unlawful actions.

Second, the act was committed at night, as described in the indictment and supported by the testimony of the victim and his wife who heard suspicious sounds around their house at around 02.00 in the morning. This fact shows that the element of "committed at night" as referred to in Article 363 paragraph (1) 3 of the Criminal Code has been fulfilled, which is an aggravating element because the night situation increases the level of danger and difficulty for the victim in monitoring his property.

Third, the location of the incident was at the victim's home, specifically in a fenced-in yard. Based on witness testimony and the results of the crime scene examination (TKP), the defendant entered the area without permission. Therefore, the element of "committed in another person's home or enclosed yard" was also deemed fulfilled.

Fourth, the defendant was unable to remove the stolen items. Based on the defendant's confession and the victim's testimony, it was discovered that the defendant had only managed to open the window and attempt to remove some valuables from the living room. However, before he could remove the items, the defendant was caught by the victim and his wife, who immediately shouted for help from local residents. The defendant's actions were stopped not of his own volition, but due to resistance from the victim and pressure from the community who arrived at the scene.

Fifth, from all of these facts, the panel of judges is of the opinion that even though the main elements in Article 363 paragraph (1) 3 of the Criminal Code have been fulfilled, namely the existence of intent, the time at night, and the location in another person's house, the defendant's actions have not yet become a completed crime of theft (*voltooide diefstal*). This is because the goods that were to be taken have not yet been successfully controlled by the defendant. Thus, the *actus reus* element of the crime of theft has only reached the stage of "beginning of implementation" (*begin van uitvoering*).

Sixth, according to the provisions of Article 53 paragraph (1) of the Criminal Code, an attempted crime is considered to have occurred if the intention is clear through the initial act of implementation, but is not completed not because of the perpetrator's own will. In this case, the failure to achieve the final result is not because the defendant gave up his intention, but because of the intervention of the victim and residents who thwarted his action. Therefore, this act has fulfilled the element of "initiated implementation that is not completed not because of his own will."

The panel of judges considered that the criminal act committed by the defendant legally fulfills the elements of attempted aggravated theft as regulated in Article 363 paragraph (1) point 3 in conjunction with Article 53 paragraph (1) of the Criminal Code. The judge is of the opinion that the attempt has clearly begun with the existence of an intention that is manifested in the concrete action of entering the victim's house at night with the intention of taking goods unlawfully. The legal facts revealed at the trial show that although the theft has not been successfully completed, there are elements of intent, the beginning of the implementation, and failure that is not caused by the defendant's will, so that it can be qualified as a crime of attempted theft with aggravation.

The author's description of the Legal Analysis of the Application of Article 363 Paragraph (1) 3 of the Criminal Code to the Crime of Attempted Aggravated Theft in Decision Number 20/Pid.B/2025/PN Nab, legally, the application of Article 363 paragraph (1) 3 in conjunction with Article 53 of the Criminal Code in Decision Number 20/Pid.B/2025/PN Nab is appropriate and in accordance with the principles of criminal law. The judge succeeded in constructing a relationship between evil intent (*mens rea*), the initial act of implementation (*actus reus*), and failure not caused by the perpetrator himself, so that the elements of attempted aggravated theft can be legally proven. This decision also reflects the application of law that not only emphasizes the consequences, but also the potential danger and evil intent of the perpetrator, as is the preventive objective in the Indonesian criminal law system.

3.2. The application of Article 363 Paragraph (1) 3 of the Criminal Code to the crime of attempted aggravated theft in this case is in accordance with the principles of justice and the principles of criminal law enforcement.

The principle of justice in the Indonesian criminal law system is the primary foundation of every law enforcement process. Justice is defined not only as the appropriateness of the act and the punishment, but also as consideration of humanitarian values, proportionality, and the social purpose of punishment. The principle of criminal law enforcement aims to ensure legal certainty, justice, and utility, as mandated by Gustav Radbruch's legal theory, which states that the law must balance these three fundamental values.

The defendant in decision number 20/Pid.B/2025/PN Nab, was charged with attempted aggravated theft as regulated in Article 363 paragraph (1) 3 of the Criminal Code in conjunction with Article 53 paragraph (1) 3 of the Criminal Code. Article 363 paragraph (1) 3 of the Criminal Code states:

"Threatened with a maximum prison sentence of seven years, theft committed at night in a house or enclosed yard where there is a house, committed by a person who is there without the knowledge or permission of the authorized person."

Meanwhile, Article 53 paragraph (1) of the Criminal Code regulates:

"Anyone who with the intention of committing a crime has begun to carry out the act, but the execution is not completed due to no other reason than his own will, is threatened with a suspended sentence."

From these two provisions, it is clear that the essential elements that must be met are the presence of intent (voornemen) and the beginning of the crime (begin van uitvoering), which was not completed due to reasons other than the perpetrator's will. In this case, the defendant attempted to enter the victim's house at night with the intention of stealing goods, but failed because residents discovered him.

In the decision, the judge assessed that the defendant's actions had fulfilled the initial elements of carrying out the crime of aggravated theft, so that it was appropriate to be sentenced based on Article 363 paragraph (1) 3 of the Criminal Code in conjunction with Article 53 paragraph (1) of the Criminal Code.

In the context of criminal law, the principle of justice demands that law enforcement not only uphold legal certainty but also consider the value of substantive justice. In Decision Number 20/Pid.B/2025/PN Nab, the judge demonstrated the application of the principle of justice through several considerations:

1. Proportional Justice

The judge considered that because the crime was only at the attempted stage, the sentence imposed should be lighter than the completed crime. This is in line with Article 53 paragraph (2) of the Criminal Code, which stipulates that the maximum sentence is reduced by one third for attempted crimes.

2. Individual Justice

The judge took into account the defendant's personal condition — he was still young, regretted his actions, and had never been convicted — so that the sentence imposed was not merely retaliatory, but also educational (reformative).

3. Social Justice

In his ruling, the judge also considered the social impact of the defendant's actions. Because the actions did not cause significant harm or widespread public unrest, the sentence imposed was not intended to be an excessive deterrent, but rather to maintain a balance between individual and societal interests.

The judge's considerations reflect the application of proportional and balanced justice as mandated by Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which requires judges to explore and understand the legal values and sense of justice that exist in society.

Article 363 paragraph (1) 3 of the Criminal Code regulates theft committed at night in a house or enclosed yard belonging to another person. In the case of Decision Number 20/Pid.B/2025/PN Nab, the judge applied this article because it was proven that the defendant entered the victim's house at night with the intention of taking goods without permission, even though the act was not yet completed. Because the defendant's actions were not completed due to being prevented by the victim, the judge considered the act as an attempted aggravated theft, in accordance with Article 53 of the Criminal Code, which regulates attempted criminal acts.

The application of this article reflects the principle of justice, as the judge considers not only legal certainty but also the proportionality between intent and consequences. Although the theft has not yet fully occurred, the malicious intent and initial actions are clear, so criminal punishment is still necessary to protect society from the threat of crime. On the other hand, the judge imposed a lighter sentence because the act was not yet complete, thus demonstrating justice for the defendant. This aligns with the principle of substantive justice, which emphasizes the balance between victim protection and the defendant's rights.

Law enforcement in this case was in accordance with the principle of legality, as the judge based his decision on the applicable provisions of the Criminal Code. Furthermore, the punishment was applied proportionally and not excessively, in accordance with the humanitarian principles underlying Pancasila.

The application of Article 363 paragraph (1) 3 of the Criminal Code (KUHP) in the case of Decision Number 20/Pid.B/2025/PN Nab shows that the panel of judges has considered the element of justice and fundamental principles in enforcing criminal law. The principle of justice in the context of criminal law is not only oriented towards legal certainty, but also pays attention to the proportionality between the perpetrator's fault, the consequences, and the humanitarian values upheld in the Indonesian legal system. Judges do not only look at the act formally, but also consider aspects of intent, consequences, and the social conditions of the defendant as part of the implementation of substantive justice.

1. Compliance with the Principle of Legality

The principle of *nullum crimen sine lege, nulla poena sine lege* means that no act can be punished except based on the law. In this case, the legal basis used is Article 363 paragraph (1) 3 of the Criminal Code concerning aggravated theft and Article 53 of the Criminal Code concerning attempted criminal acts. The judge determined that the element of "initiation of implementation that is not completed not because of one's own will" has been proven. The application of this law is in accordance with the principle of legality because the judge based his decision on valid and written rules.

2. Conformity with the Principles of Justice

Justice in criminal law is not only oriented towards legal certainty but must also consider the proportionality between the act and the punishment. In this case, the judge concluded that although the defendant's actions were not yet complete, the malicious intent (*mens rea*) and actual action (*actus reus*) had been clearly proven. Therefore, imposing a sentence for attempted aggravated theft is a form of substantive justice, as it still protects the interests of the victim and society from the real dangers of the crime.

Furthermore, because the defendant's actions did not result in significant material losses, the judge took this into account by imposing a lighter sentence than the maximum possible criminal penalty. This reflects the principle of proportionality, where the punishment is commensurate with the level of culpability of the perpetrator.

3. Implementation of Humanitarian Principles

The principle of humanity in criminal law is reflected in the view that perpetrators of crimes are still human beings who have the right to be treated fairly and with dignity. In this case, the judge did not impose an excessive sentence, but instead took into account mitigating factors such as the defendant's confession, the pending completion of the crime, and the perpetrator's economic situation. This approach aligns with the humanitarian values that underlie Pancasila and the 1945 Constitution.

4. Compliance with the Principle of *Ultimum Remedium*

The application of criminal penalties in this case demonstrates that criminal law is used as a last resort (*ultimum remedium*) after the perpetrator's actions are proven to endanger public order. The judge did not immediately impose a severe sentence, but rather adjusted the context of the failed attempt due to external factors, not the defendant's own will. This emphasizes that criminal law enforcement remains oriented toward development and prevention, not retribution.

5. Application of the Principle of the Purpose of Punishment

In this case, the judge applied the principle of the purpose of modern sentencing, namely to educate and reform the perpetrator so that he becomes a better member of society. Sentencing for attempted aggravated theft serves not only as a deterrent but also as a corrective and preventive measure. This purpose of sentencing demonstrates that the justice applied is educational, not merely punitive.

6. Substantive Justice and Social Protection

The application of this article also demonstrates substantive justice because it takes into account the interests of both the community and the victim. The judge ensured that attempted acts like this remain punishable to maintain public safety and emphasized that the law protects everyone from the threat of theft, even if it has not yet been completed. This strengthens public trust in the legal system and upholds the principle of social justice for all Indonesians.

The application of Article 363 paragraph (1) 3 of the Criminal Code to attempted aggravated theft in Decision Number 20/Pid.B/2025/PN Nab is in accordance with the principles of justice and the principles of criminal law enforcement. The judge has considered the aspects of legality, proportionality, humanity, and the purpose of punishment in a balanced manner. This decision reflects a form of law enforcement that not only strictly enforces norms, but also pays attention to moral and social values that form the basis of Indonesian national law.

4. Conclusion

Based on the results of the analysis of Decision Number 20/Pid.B/2025/PN Nab regarding the crime of attempted aggravated theft, the following conclusions can be drawn: 1. The legal analysis of the application of Article 363 paragraph (1) 3 of the Criminal Code to the crime of attempted aggravated theft shows that the panel of judges has applied the legal provisions correctly and in accordance with the elements of the article. The elements of intent (*mens rea*) and the beginning of implementation (*begin van uitvoering*) as regulated in Article 53 of the Criminal Code were legally proven based on the trial facts. Because the defendant's actions have fulfilled the elements of attempted aggravated theft, the judge has legal grounds for imposing a sentence by considering a maximum reduction of one third of the main criminal threat according to the provisions of the article. 2. The application of Article 363 paragraph (1) 3 of the Criminal Code in this case is in accordance with the principles of justice and the principles of criminal law enforcement. The judge in handing down the verdict adhered to the principle of equality before the law and paid attention to the balance between legal certainty, justice, and expediency as mandated in Article 24 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. The verdict also shows proportional consideration between the actions, consequences, and responsibilities of the perpetrator, thus reflecting the principles of fair trial and

due process of law in the Indonesian criminal justice system. 3. Restorative justice can be used as an alternative to resolving cases in cases of attempted aggravated theft, as regulated in Supreme Court Regulation (PERMA) Number 1 of 2024 concerning Guidelines for the Implementation of Restorative Justice in Criminal Cases. Based on the provisions of Article 2 paragraph (1), Article 3, and Article 5 paragraph (2) of the PERMA, cases can be resolved through a restorative justice mechanism if the criminal threat is no more than five years, there is reconciliation between the victim and the perpetrator, and the perpetrator is willing to compensate for the losses incurred. In the context of this case, the application of restorative justice has the potential to be applied if the victim has not suffered major losses and reconciliation has occurred, with the aim of restoring social relations and restoring the balance of justice in society. Decision Number 20/Pid.B/2025/PN Nabhas reflected the application of criminal law in accordance with statutory provisions, the principles of justice, and the spirit of modern criminal law reform, which opens up space for resolution through a restorative justice approach. This approach is expected to strengthen the function of the law not only as a means of enforcing sanctions, but also as an instrument of social recovery and harmonizing relations between perpetrators, victims, and the community.

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