

## "IMPLICATIONS OF ARTICLE 477 OF THE 2023 CRIMINAL CODE ON LAW ENFORCEMENT OF THEFT WITH COMPARATIVE ANALYSIS WEIGHTING WITH ARTICLE 363 OF THE OLD CRIMINAL CODE"

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### Abstract

The enactment of the 2023 Criminal Code (KUHP) brought significant changes to the regulation of the crime of aggravated theft, particularly through Article 477 of the 2023 Criminal Code, which replaced Article 363 of the old Criminal Code. This change is not only editorial in nature, but also has implications for the construction of criminal elements and law enforcement practices. This study aims to analyze the implications of the application of Article 477 of the 2023 Criminal Code on the enforcement of the law on aggravated theft and compare it with the provisions of Article 363 of the old Criminal Code. The research method used is normative legal research with a legal approach and a comparative approach, supported by primary, secondary, and tertiary legal materials. The results of the study indicate that there are differences in the regulation of aggravating elements and the systematics of punishment that have the potential to affect the investigation process, prosecution, and judges' considerations in issuing decisions. In addition, the implementation of Article 477 of the 2023 Criminal Code still faces challenges in terms of norm interpretation and the readiness of law enforcement officers. This study concludes that a comprehensive understanding and implementation guidelines are needed so that the implementation of the new provisions can guarantee legal certainty and the effectiveness of law enforcement against the crime of aggravated theft.

**Keywords:** *Implementation of Article 477 of the 2023 Criminal Code, Law Enforcement of Aggravated Theft and Comparative Analysis with Article 363 of the Old Criminal Code*

### INTRODUCTION

Theft is one of the most common crimes in Indonesia and has significant economic and social impacts. According to data from the Central Bureau of Statistics (2022), theft cases still rank high in national crime reports, especially those involving aggravating factors, such as group action, threats of violence, or the use of tools to facilitate the theft. This situation demands clear and effective regulations to enforce the law against perpetrators of aggravated theft. Previously, Article 363 of the old Criminal Code served as the legal basis for law enforcement to prosecute aggravated theft. This article detailed technical aggravating factors, such as committing the crime at night, by two or more people, or using a fake key. However, in practice, this provision was often considered too rigid and formalistic, leading to differing interpretations in court (Putri, 2024; Hidayat, 2024). With the enactment of the 2023 Criminal Code, Article 477 replaced Article 363. This article simplified the formulation of aggravating elements and emphasized the quality of the act and the concrete context of the crime, rather than solely technical factors. According to Muladi (2019), this simplification of norms aligns with the principles of progressive law, which emphasize a balance between legal certainty, justice, and expediency. However, this simplification also poses new challenges for law enforcement officials, as it requires greater interpretive skills in determining aggravating elements and the punishment system. Previous research, such as that of Risman and Sari (2025), highlighted the sociological aspects of the increased penalties for theft, but did not examine in depth the changes to the 2023 Criminal Code and their implications for law enforcement practices. Furthermore, Putri's (2024) research focused more on judges' interpretations of Article 363 of the old Criminal Code, thus failing to provide a comprehensive picture of the challenges and opportunities in implementing Article 477 of the 2023 Criminal Code. Thus, the background of this problem emphasizes the need for research examining the normative and practical implications of Article 477 of the 2023 Criminal Code, and comparing it with Article 363 of the old Criminal Code, particularly in the context of

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aggravated theft. This research is expected to provide relevant academic and legal practice contributions to support fair, consistent, and proportional law enforcement in Indonesia. Changes to the provisions of the 2023 Criminal Code (KUHP) bring several adjustments to the articles governing the crime of theft. One significant change is the enactment of Article 477 of the 2023 Criminal Code, which regulates aggravated theft. This provision replaces Article 363 of the old Criminal Code, which was previously the primary reference for handling aggravated theft cases. This normative transformation not only modifies the wording but also has substantial implications for criminal law enforcement in Indonesia. The phenomenon of aggravated theft is a significant issue due to its frequency and impact on public safety and public confidence in the justice system. Clear and effective application of legal norms is crucial for law enforcement to operate fairly and consistently. However, in its implementation, law enforcement officers face challenges in interpreting and applying this new provision, especially when compared with the practice of applying Article 363 of the old Criminal Code, which is more established in jurisprudence and judicial practice.

(Literatur: Nurainin dkk. mengulas berbagai jenis tindak pidana pencurian berdasarkan KUHP)

## 2. Article 363 of the Criminal Code: Aggravated Theft

Article 363 of the Indonesian Criminal Code is the primary reference in many legal studies on qualified or aggravated theft. This article provides higher criminal penalties compared to Article 362 due to the inclusion of aggravating elements such as theft at night, with a group, or by a specific method. Relevant legal studies: Legal Review of Aggravated Theft — Explains the elements, application, and judicial considerations regarding Article 363 of the Indonesian Criminal Code. Analysis of aggravated theft decisions (case study examples) — Explains the use of Article 363 in court decisions and the consistency of its application. Aggravated Theft (v. 3) — Explores aggravating circumstances such as theft at night or in groups, which affect the classification of the offense. Comparison of Article 363 and Article 365 — Explains the differences between theft and aggravated robbery (which is also a crime against property). Key conclusions of this study:

Article 363 of the Criminal Code increases penalties by considering the objective and subjective context of the crime of theft. The implementation of this article in judicial practice is often influenced by the judge's considerations and the prosecutor's indictment.

## 3. Comparison with Other Legal Systems (Comparative )

As a core part of comparative analysis, several studies have compared the regulation of theft between Indonesian positive law and other legal systems, particularly Islamic law:

Theft under Islamic Criminal Law vs. Indonesian Criminal Code — An examination of the definitions and penalties for theft between Islamic law and the Indonesian Criminal Code. The main differences arise in the type of offense and the form of punishment imposed.

Comparison of criminal penalties between Islamic law and positive law — Focusing on the criminal system's approach to the crime of theft and its legal objectives.

Kalibra Journal

Contextualizing Theft in Indonesian Law vs. Islamic Law vs. Iranian Law — A broader comparative analysis shows how different legal traditions treat theft in terms of sanctions and interpretation. Core comparisons:

Indonesian positive law (KUHP) uses imprisonment and fines as punishment, with various classifications of violations.

Some other legal systems (e.g., classical Islamic law) incorporate physical punishment or specific sanctions as a form of deterrence and retribution.

The general purpose of the law (preventive/deterrent effect) remains, although the mechanisms are different. (DOAJ)

## 4. Study of Court Decisions as an Empirical Source

Several articles analyze specific court decisions applying Article 363:

A case study of Decree No. 57K/PID/2023 concerning theft of valuables provides a practical overview of the application of this article and an analysis of its elements and penalties. The application of Article 363 in a case of livestock theft illustrates how this article is used to protect the economic assets of rural communities.

Axiology

Other decisions, such as 1152/Pid.B/2025, highlight the element of participation and its relationship to Article 53 of the Criminal Code.

Important functions of decision review:

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Provides empirical evidence on how the norms of the article are interpreted by judges, including factors that determine the severity of the sentence.

## Formulation of the problem

1. What is the difference between the provisions for the crime of aggravated theft under Article 477 of the 2023 Criminal Code and Article 363 of the old Criminal Code?
2. What are the implications of implementing Article 477 of the 2023 Criminal Code on law enforcement for aggravated theft compared to the implementation of Article 363 of the old Criminal Code? Barru District Court Decision Number: 12/Pid.B/2024/PN.Bru, concerning aggravated theft.

## LITERATURE REVIEW

The crime of theft is a crime against property that has long been regulated in the Indonesian Criminal Code (KUHP). In Indonesian criminal law, theft is not only understood as the unlawful taking of another person's property, but is also classified based on the seriousness of the act and the circumstances surrounding it. One form of theft considered to be more dangerous is aggravated theft, previously regulated under Article 363 of the old Criminal Code. Article 363 of the old Criminal Code stipulates a number of aggravating circumstances, such as theft committed at night, by two or more people, or by certain methods, including the use of false keys or burglary. Various studies have shown that this provision provides legal certainty because its formulation of norms is technical and limited. However, in judicial practice, Article 363 of the Criminal Code often gives rise to differences in interpretation, particularly in proving aggravating elements, resulting in inconsistent application of the law. The enactment of the 2023 Criminal Code brought updates through Article 477, which replaced Article 363 of the old Criminal Code. This provision formulates aggravated theft in a simpler and more substantive manner, emphasizing the quality of the act and the concrete context of the crime. This approach is considered in line with criminal law reform policies that prioritize a balance between legal certainty, justice, and expediency. However, the literature also notes that this change requires greater interpretative skills from law enforcement officials and has the potential to lead to differences in application if not supported by clear guidelines. Furthermore, comparative legal studies show that the regulation of theft in various legal systems shares the same goal of protecting property rights and preventing crime, despite differing mechanisms and forms of sanctions. This comparison provides the perspective that the updated regulation of theft in the 2023 Criminal Code is part of an effort to align national criminal law with evolving values of justice and societal needs. Based on a review of previous research, there are still limited studies specifically discussing the implications of the application of Article 477 of the 2023 Criminal Code on the enforcement of aggravated theft laws and its comparison with Article 363 of the old Criminal Code. Therefore, this study is relevant and novel in analyzing this normative change and its impact on criminal law enforcement practices in Indonesia.

## RESEARCH METHODS

### 1. Type of Research

This research uses a **normative comparative legal research method**. Normative legal research involves reviewing and analyzing laws, legal doctrines, and scholarly literature relevant to theft and Article 363 of the Indonesian Criminal Code (KUHP). Comparative analysis is applied to examine the similarities and differences between Indonesian regulations and other legal systems regarding theft, providing insights into legal implications and best practices.

### 2. Data Sources

The data for this study is categorized into **two types** :

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Data Type	Source	Description
Primary Data	Legislation	Indonesian Criminal Code, especially Article 363 concerning aggravated theft.
	Court decision	The relevant decision applies Article 363 of the Criminal Code to describe the implementation of the law.
Secondary Data	Legal literature	Books, journals, articles, theses, or dissertations that discuss theft and comparative legal analysis.
	Comparative legal studies	Studies from other countries or alternative legal systems (e.g., Islamic law) that are relevant to the offence of theft.

### 3. Data Collection Techniques

Data was collected using the following methods:

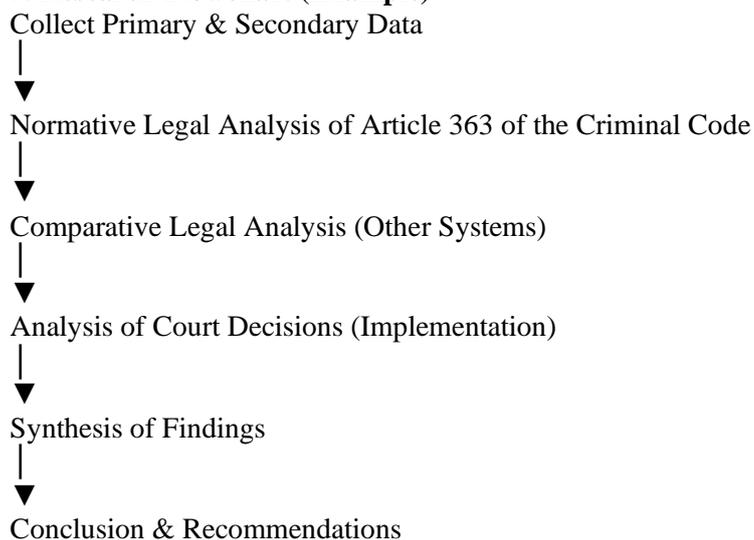
- a. **Library research** : Collecting legal documents, books, journals, and academic articles related to theft and Article 363 of the Criminal Code.
- b. **Analysis of court decisions** : Selecting relevant court decisions and analyzing the judge's legal reasoning and application of the law.
- c. **Comparative legal review** : Collecting literature on theft in other legal systems for and benchmarking purposes.

### 4. Data Analysis Techniques

The collected data was analyzed qualitatively using a normative and comparative legal approach, which consists of:

- a. Normative legal analysis
  - Examining the provisions of Article 363 of the Criminal Code in comparison with national legal literature.
  - Analyze the elements of the crime, aggravating conditions, and applicable sanctions.
- b. Comparative legal analysis
  - Comparing theft regulations and practices in Indonesia with other legal systems.
  - Identifying similarities and differences in definitions, penalties, and law enforcement.
- c. Analysis of court decisions
  - Assessing the judge's interpretation of Article 363 of the Criminal Code and the application of aggravating circumstances.
  - Drawing conclusions about consistency in the application of law and alignment with legal theory.
  - Comparative study of theft regulations in other legal systems
  - Synthesis of findings to assess similarities, differences, and legal implications.
  - Draw conclusions and provide recommendations based on the analysis.

### 5. Research Flowchart (Example)



## RESULTS AND DISCUSSION

### A. Differences in the Regulations for the Crime of Aggravated Theft between Article 477 of the 2023 Criminal Code and Article 363 of the Old Criminal Code

The provisions for aggravated theft in the old Criminal Code and the 2023 Criminal Code demonstrate significant conceptual and systematic differences. Therefore, a legal review of these two provisions is crucial to assess their consistency, regulatory objectives, and practical implications within the Indonesian criminal law system. This comparison is relevant given that the enactment of the 2023 Criminal Code brings fundamental changes, particularly in the formulation of aggravating elements and the approach to sentencing, which have a direct impact on law enforcement practices. Based on the research results, the most fundamental difference between Article 363 of the old Criminal Code and Article 477 of the 2023 Criminal Code lies in the structure of the formulation of the criminal norm. Article 363 of the old Criminal Code defines aggravated theft as a form of theft aggravated by certain circumstances, such as the time of the crime, the place of the crime, the method of committing the act, and the number of perpetrators. These aggravating elements are formulated in a limited and closed manner, so their application is highly dependent on formal proof of the circumstances explicitly stated in the norm. In contrast, Article 477 of the 2023 Criminal Code adopts a more substantive approach, no longer rigidly emphasizing specific technical elements. This provision provides broader scope for assessing the quality of the act, the level of culpability of the perpetrator, and the concrete impact of the crime of theft. Thus, aggravated theft is not solely determined by formal circumstances, but rather by the seriousness of the act in the concrete context of the case. This change reflects the direction of criminal law reform, which focuses on substantive justice and proportional punishment.

### B. Implications of the Implementation of Article 477 of the 2023 Criminal Code on Law Enforcement of Aggravated Theft Compared to Article 363 of the Old Criminal Code

The implementation of Article 477 of the 2023 Criminal Code has significant implications for the enforcement of aggravated theft laws compared to the implementation of Article 363 of the old Criminal Code. This reformulation of the norm is not only normative but also has philosophical and practical implications within the framework of criminal law policy. Article 477 of the 2023 Criminal Code is designed to balance legal certainty, substantive justice, and protection of the interests of victims. In law enforcement practice, this change requires law enforcement officials to focus not only on fulfilling formal elements but also to conduct a more in-depth assessment of the context of the act and the level of culpability of the perpetrator. This has implications for the investigation and prosecution process, as well as the judge's considerations in issuing a verdict. Unlike Article 363 of the old Criminal Code, which was relatively easy to apply because its elements were well-established in practice and jurisprudence, Article 477 of the 2023 Criminal Code requires greater interpretive skills. The research results show that during the transition period to the implementation of the 2023 Criminal Code, law enforcement officers still tend to use reasoning patterns influenced by the provisions of Article 363 of the old Criminal Code. This situation has the potential to lead to differences in interpretation and inconsistencies in the application of the law if not supported by clear implementation guidelines. Therefore, the successful implementation of Article 477 of the 2023 Criminal Code depends heavily on

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the readiness of law enforcement officers and the existence of comprehensive interpretation guidelines to ensure legal certainty and justice in handling aggravated theft cases.

## CONCLUSION

Based on the analysis conducted in this study, several conclusions can be drawn:

1. Understanding Theft under Article 363 of the Criminal Code Article 363 of the Criminal Code provides a clear legal framework for aggravated theft, which includes special conditions that increase the severity of the crime, such as committing theft at night, in a group, or using certain methods. The law aims to protect property rights while ensuring proportionate punishment based on the circumstances of the offense.
2. Comparative Legal Insights Comparing Indonesian law with other legal systems, such as Islamic law and certain foreign legal frameworks, reveals similarities and differences in the conceptualization and penalization of theft. While all legal systems aim to prevent theft and protect property, the methods of punishment, classification of offenses, and legal procedures differ significantly.
3. Application in Practice Court decisions demonstrate that the interpretation of Article 363 of the Criminal Code is consistent with normative legal principles but is also influenced by judicial discretion. Judges consider the legal elements of aggravated theft and contextual factors in determining the appropriate sanction.
4. Implications for Legal Development The comparative analysis suggests that the Indonesian legal system could benefit from lessons learned from other jurisdictions, particularly in clarifying definitions, ensuring proportionality in sentencing, and enhancing the deterrent function of theft laws.

### Final Remarks:

This study highlights the importance of understanding both the normative provisions and the practical implementation of Article 363 of the Criminal Code. Comparative legal analysis provides valuable insights for legal reform and more effective law enforcement, ensuring that the law achieves the goals of prevention, property protection, and justice.

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