

ANALYSIS OF CRIMINAL LAW AND ISLAMIC CRIMINAL LAW ON THEFT WITH VIOLENCE (Comparative Study)

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Abstract

Violent theft is one of the crimes that disturbs society, not only causing material losses but also deep psychological impacts on the victims. In Indonesia, this crime is regulated in the Criminal Code (KUHP), while in Islamic criminal law, violent theft is included in the category of hirabah. The method used in this study is a comparative study with a normative approach, which examines the legal provisions in the Criminal Code and Islamic criminal law in depth. The results of the study show that in Indonesian criminal law, violent theft is regulated in Article 365 of the Criminal Code which provides punishment based on the severity of the crime, ranging from imprisonment to the death penalty. Meanwhile, Islamic criminal law regulates violent theft in the context of hirabah, which provides more severe punishments, including amputating hands, feet, or even the death penalty, depending on the impact of the crime on society. A comparison of these two legal systems shows differences in the approach to justice and protection of society. Indonesian criminal law focuses more on protecting individuals, while Islamic criminal law emphasizes moral and social protection in order to maintain public order. Both legal systems aim to provide a deterrent effect, but in different ways in terms of punishment and enforcement of justice.

Keywords: *Violent Theft, Indonesian Criminal Law, Islamic Criminal Law, Hirabah, Comparative Law, Punishment Crime.*

1. INTRODUCTION

In Indonesia, this crime is regulated in the Criminal Code (KUHP), specifically Article 365. On the other hand, Islamic criminal law also has special rules regarding theft accompanied by violence, known as hirabah, which includes severe penalties depending on the level of crime and its impact. This problem is interesting to study from two legal perspectives: positive criminal law (KUHP) applied in Indonesia and Islamic criminal law adopted by some Muslim communities as a normative guideline in everyday life. Differences in the definition, elements of the crime, and forms of sanctions between the two legal systems can reflect different approaches in understanding and handling the crime of theft with violence. The fundamental difference between the two legal systems lies in the definition and sanctions. The Indonesian Criminal Code focuses more on protecting the property and physical security of individuals by determining the type of punishment according to the level of crime, while Islamic criminal law pays more attention to the social and moral impacts of such actions, with punishments that are more based on retaliation commensurate with the level of crime (Ulmuftia, 2018).

Taking other people's rights is a very bad act both in terms of religion, Pancasila and law. From a religious perspective, in many religious teachings, such as Islam, Christianity, Hinduism, etc., depriving other people of their rights is a major sin. Religion teaches the values of justice, compassion and respect for individual rights. In Islam, for example, there are many verses that remind you not to oppress other people, such as in Surah Al-Baqarah verse 279 which prohibits all forms of usury and oppression of others. From the Pancasila perspective, Pancasila as the basis of the Indonesian state also emphasizes the importance of social justice for all Indonesian people (Suryohadioprojo, 2018). Pancasila teaches basic principles such as just and civilized humanity (Pancasila second principle) as well as Indonesian unity which supports the protection of the rights of every citizen. Depriving others of their rights is contrary to these principles, especially the second and fifth principles, which prioritize mutual welfare and justice. In terms of the law in Indonesian law, seizing or taking someone else's rights illegally is an act regulated in the Criminal Code (KUHP). For example, theft, fraud, and embezzlement are crimes that are punishable by imprisonment. Article 362 of the Criminal Code

Muhammad Irwansyah Khadri

regulates theft with imprisonment, and other articles provide threats of punishment for those proven to have seized someone else's rights illegally (Moeljatno, 2019). In Indonesia, theft with violence is regulated in the Criminal Code (KUHP), specifically in Article 365. This article states that anyone who commits theft using violence or threats of violence can be subject to very severe punishment (Hamzah, 2018). Article 365 Paragraph 1 Anyone who intentionally takes something with violence or threats of violence can be sentenced to a maximum of 9 years in prison. Article 365 Paragraph 2 If the violence committed causes the victim to be injured, the perpetrator can be sentenced to a maximum of 12 years in prison. Article 365 Paragraph 3 If the violence committed results in the death of the victim, the perpetrator can be sentenced to a maximum of 15 years in prison or the death penalty. In addition, in Islamic criminal law, theft with violence that can disrupt public security is referred to as *hirabah*, and the perpetrator can be subject to severe punishment according to the level of the crime, including the death penalty or amputation of hands (Sudarto, Criminal Law and the Development of Article 365 in Judicial Practice, 2016)

In Islamic criminal law, violent theft accompanied by threats or cruel acts against the victim is called *hirabah*. *Hirabah* is a crime that causes fear in society, for example robbery that uses violence. The punishment for *hirabah* is very severe and depends on the action and its impact on society, cutting off the hand (for thieves who commit this crime, if they commit theft without violence, but with violence and threats they can be subject to heavier punishment) (Anwar, 2017). The death penalty for robbers or *hirabah* perpetrators who threaten life or cause death, the death penalty can be imposed, or other equivalent punishment depending on the conditions and damage caused.

Leg amputation if the perpetrator causes damage and the impact is great, such as robbery involving violence against the community, the punishment can include amputation of the legs or hands. In both legal systems, the threat of punishment is designed to provide a deterrent effect and protect individual rights, both in terms of personal security and property (Anwar, 2017). Violent theft, often referred to as "robbery," is one of the most prominent and disturbing forms of crime in society. This crime not only results in material losses for the victim, but can also have profound psychological impacts, such as trauma and prolonged fear (Sudarsono, 2017). Data from the Indonesian National Police shows an increase in the number of violent theft cases, reflecting a fundamental problem in the aspect of public security. According to the National Police report, total crime in Indonesia has increased significantly from year to year. The following is the crime rate in Indonesia for the period 2023.

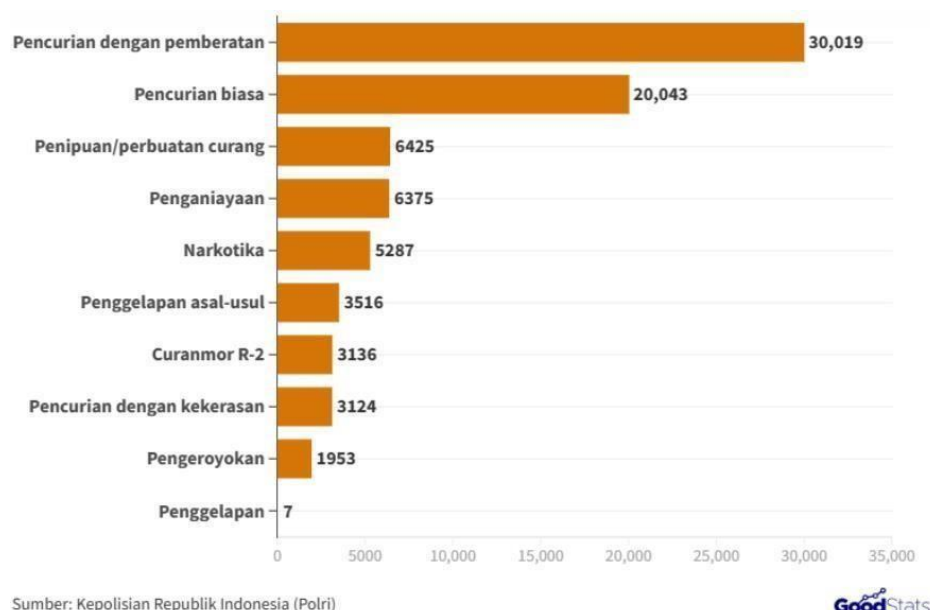


Figure 1.1 Crime Rate in Indonesia

In the period from January to April 2024, there were 137,419 cases of crime, of which 3,124 cases were violent theft (Polri, 2024). This figure reflects a worrying trend, indicating that preventive measures and more effective law enforcement need to be taken immediately. This indicates the need for serious attention from the

government and law enforcement officers to address this problem. It is important to analyze and compare how Indonesian criminal law and Islamic criminal law deal with violent theft. In Indonesian criminal law, violent theft is regulated in Article 365 of the Criminal Code, this article stipulates that theft committed with violence or threats of violence against people with the intent to prepare or facilitate theft can be punished with a maximum imprisonment of 9 years (Soesilo, 1991). On the other hand, Islamic criminal law regulates violent theft in the context of *hirabah*, which focuses on fulfilling the rights of Allah and enforcing strict sanctions. The differences in this approach will be described in this study, with the aim of understanding the effectiveness of each system in dealing with this crime. In the context of justice, Indonesian criminal law seeks to provide balanced justice between the perpetrator and the victim, while Islamic criminal law emphasizes justice as the fulfillment of the rights of Allah and the protection of society.

Therefore, it is important to explore how these two legal systems can complement each other in an effort to create a safe and just society. The relevance and urgency of the analysis of criminal law and Islamic criminal law on violent theft lies in the need to understand, compare, and develop both legal systems in order to create justice, protection for victims, and effective solutions to crime problems in society. The urgency of the problem that occurs is the increase in cases of violent theft in society, there is an urgency to examine the effectiveness of both legal systems in dealing with this problem. This analysis can provide recommendations for improvement. Harmonization of law in Indonesia, where there is a diversity of legal systems, is important to find common ground between positive criminal law and Islamic criminal law (Suhendra, *Islamic Criminal Law and National Criminal Law: A Review of the Perspective of Legal Integration in Indonesia*. This Article Delves into the Theoretical and Practical Considerations of Integrating Islamic Criminal Law Principles with National Criminal, 2018).

Violent theft is a criminal act involving the illegal taking of another person's property by using violence or the threat of violence against the victim. The purpose of this violence is usually to facilitate or force the victim to hand over the stolen goods, or to avoid resistance from the victim. This crime is more serious than ordinary theft because of the element of violence, which can cause physical injury or even death to the victim. In Indonesian law, violent theft is regulated in Article 365 of the Criminal Code, which differentiates the level of violence committed and provides a heavier penalty if the violence causes injury or death. The existence of violence or the threat of violence makes this crime very disturbing and dangerous for the victim, not only in terms of material losses, but also from the psychological impacts caused. In Islamic criminal law, violent theft is regulated in a concept known as *hirabah*. *Hirabah* is a crime involving violence or the threat of violence that causes fear in society, such as robbery or other criminal acts that damage public security and order. *Hirabah* is included in the category of serious crimes in Islamic criminal law, because its impact not only harms the victim directly, but also threatens social security and creates fear among the community. Therefore, the punishment for perpetrators of *hirabah* is very strict and can be very severe, depending on the level of the crime and the impact caused. So, theft with violence in Islamic criminal law is not explicitly mentioned as in the Indonesian Criminal Code, but is included in the category of *hirabah* which has severe penalties and reflects the importance of maintaining order and security in society.

In Islamic criminal law, the term used for theft is "*sariqah*" (سَرِقَة). *Sariqah* refers to the act of taking someone else's property illegally intentionally and without permission, which meets certain conditions stipulated in Islamic law. *Sariqah* is a form of crime against someone else's property and is considered an act that damages social justice and harms the owner of the property. However, there are some exceptions to the application of the punishment of amputation of the hand, such as if there is doubt about the perpetrator who committed the theft or there is a legitimate reason for defense (for example, theft due to hunger or emergency conditions). In Islamic criminal law, theft with violence or robbery is known as "*hirabah*" (هَرَبَة). *Hirabah* refers to a crime involving violence or the threat of violence against a person or group, with the aim of intimidating, seizing property, or causing greater damage to society.

Hirabah includes acts that threaten the safety of people and damage public order. So, *hirabah* is a term in Islamic criminal law that is used to describe violent theft or robbery, with very severe penalties to provide a deterrent effect and maintain public security. The main problem of this study is the difference in approach between positive criminal law (KUHP) Indonesia and Islamic criminal law in handling the crime of theft with violence. This study aims to explore and analyze the differences comparatively and provide recommendations to improve the existing legal system, including the possibility of creating harmonization between positive criminal law and Islamic criminal law in handling theft with violence. This urgency arises to create better legal harmonization in handling criminal acts. The crisis of trust in law enforcement has many people doubting the effectiveness of law enforcement against theft with violence. This comparative study can help explain existing

weaknesses and provide solutions to increase public trust. This prolonged legal reform can be the foundation for legal reform that is more responsive to social dynamics and community needs, especially in terms of justice and security. A global perspective in the context of globalization, it is important to see how different legal approaches can learn from each other. This comparative study can provide an international perspective in handling crime.

In research that focuses on violent theft and the comparison between Indonesian criminal law and Islamic criminal law, there are several gaps or deficiencies in previous research that can be the basis for this research. Some of these gaps include those conducted by Abdullah (2018) regarding the application of Article 365 of the Criminal Code, which is more theoretical in nature and does not discuss in depth the implementation of the law in real cases. This research focuses more on the study of laws and legal procedures without paying sufficient attention to real cases that occur in the field. Therefore, this gap needs to be filled with an in-depth analysis of the application of Indonesian criminal law and Islamic criminal law in practice, as well as the challenges faced by law enforcement officers in handling cases of violent theft.

Research conducted by Suryani (2019) discusses the comparison between Indonesian criminal law and Islamic criminal law, but this research tends to be limited to theory and basic principles of law without going into depth on practical applications in the Indonesian context. This gap can be filled by discussing how these two legal systems can complement or even conflict in handling cases of violent theft in Indonesia, considering the diversity of laws in Indonesia. This research is important to do because of the existing gaps. the regulation of violent theft in Indonesian criminal law and Islamic criminal law. This research is expected to fill these gaps by considering the practical implementation of both legal systems, the social and psychological impacts on victims, and the importance of rehabilitation for perpetrators in order to create a more effective and just legal system.

Research on violent theft from the perspective of Indonesian criminal law and Islamic criminal law has high urgency in the social, legal, and justice context in Indonesia. The crime of violent theft, often known as robbery, is one of the major problems in society, which not only harms the victim materially, but also causes deep psychological trauma. The number of violent theft cases in Indonesia continues to show an increasing trend from year to year. According to data from the Indonesian National Police, despite various law enforcement efforts, the level of this crime is still quite high and continues to be a public concern.

The background of this research title is related to several main factors that reflect the importance of a comparative study between the Indonesian positive criminal law (KUHP) and Islamic criminal law in dealing with violent theft. Along with the increasing number of crimes, especially violent theft or robbery, society is increasingly feeling the negative impact of this crime. Violent theft not only causes material losses, but also deep psychological impacts on victims. This triggers the urgency to assess the effectiveness of the existing legal system in dealing with this problem. Indonesia adopts a legal system based on the Criminal Code (KUHP), which focuses on aspects of protecting individual property and physical, with varying penalties depending on the level of crime. On the other hand, Islamic criminal law has an approach that is more oriented towards the social and moral impacts of the crime, with heavier penalties, such as amputation of hands or the death penalty in cases of *hirabah*. This difference raises the question of which is more effective in providing protection to society and creating a sense of justice. Indonesia, as a country with diverse laws (national law and religious law), faces challenges in creating legal harmonization between the positive criminal law system and Islamic criminal law. This raises the need to explore the potential for integration between the two legal systems to create a more holistic and effective approach to dealing with crime, including violent theft.

In this context, it is important to conduct a comparative analysis between Indonesian criminal law, which is regulated in the Criminal Code (KUHP), and Islamic criminal law regulated in the Sharia legal system. These two legal systems have different approaches in regulating and responding to violent theft crimes, each of which has an impact on how perpetrators are handled and victims are protected. The importance of this study lies not only in a deeper understanding of the two legal systems, but also in the effort to find the best solution that can be applied in dealing with violent theft in Indonesia. With the plurality of laws in Indonesia, where there is a positive legal system (KUHP) and an Islamic legal system that is accepted by some people, this study seeks to find common ground between the two. This aims to improve and harmonize the application of the law, in order to create a fairer and more effective justice system in dealing with crime in society. Based on the background above, this study is intended to analyze how the basis for consideration of the draft formation of criminal law in Indonesia for the future related to the crime of attempted theft. Therefore, in the context of writing this main article, it has been taken to be discussed with the title "Analysis of Criminal Law and Islamic Criminal Law on Theft with Violence (Comparative and Conceptual Study)"

Formulation of the problem

Based on this background, the formulation of the problem in this study is as follows:

1. How is the current criminal law regulating theft with violence?
2. How does Islamic criminal law view theft with violence?
3. How does the handling of theft with violence compare in the two legal systems?

Research purposes

Based on the problem formulation above, the objectives of this study are as follows:

1. Analyzing the provisions of theft with violence in current criminal law.
2. Analyzing the perspective of Islamic criminal law on violent theft.
3. Comparing the handling of cases of theft with violence in the current criminal law system and Islamic criminal law.

Benefits of research

This research is expected to provide the following benefits:

1. Theoretical Benefits
Increasing academic insight regarding the differences in principles, approaches, and application of criminal law in two different legal systems, namely applicable criminal law and Islamic criminal law, especially in cases of theft with violence.
2. Practical Benefits
Providing contributions to legal practitioners, such as judges, prosecutors, lawyers, and other law enforcers, in understanding the differences and similarities in handling violent theft cases, so that they can provide alternative perspectives in law enforcement.
3. Social Benefits
Providing references for the wider community regarding the views of conventional criminal law and Islamic law regarding the crime of theft with violence, thereby increasing legal understanding in society.

2. RESEARCH METHODS

The type of research conducted is a qualitative approach with a descriptive research type. The descriptive qualitative research method is a research based on the philosophy of postpositivism used to research the condition of natural objects where the researcher is the key instrument. This research is descriptive, analytical and comparative, namely research that describes, describes and analyzes data and compares data regarding the inclusion of criminal acts according to Positive Criminal Law (KUHP) and Islamic Criminal Law (Fikih Jinayah).

In this case, the data sources that the author uses in discussing various issues that arise in the title of the thesis are as follows: Secondary data, namely second-hand data, obtained through other parties, not directly obtained by the researcher from the subject of his research. Secondary data can be divided into: a) Binding legal materials consisting of the Criminal Code, the Qur'an and Hadith, which are related to the object of research, namely discussing the inclusion of criminal acts according to Positive Criminal Law (KUHP) and Islamic Criminal Law (Fikih Jinayah). b) Secondary legal materials include law books related to the object of this research. Not every law textbook can be secondary legal material. c) Legal textbooks that can be secondary legal materials in legal research are textbooks that are relevant to the research topic. Tertiary legal materials are instructions or explanations regarding primary legal materials or secondary legal materials that come from legal dictionaries, legal encyclopedias, and the internet.

The research data collection technique uses the library research method, namely by reading and studying various related literatures that use descriptive methods with a qualitative approach, namely research that studies various legal norms. The legal materials are then classified or grouped carefully according to existing references. Then analyzed from the perspective of Islamic Criminal Law and Criminal Law. In this study, the author uses this method to obtain and collect data regarding comparative studies of inclusion in criminal acts according to Positive Criminal Law (KUHP) and Islamic Criminal Law (Fikih Jinayah). Testing the validity of research data in this case is carried out through a data credibility test or trust in the research data. The credibility test is carried out using several techniques, including: a) Extension of Literature Review Extending the study of literature allows for an increase in the degree of trust in the data collected, by studying several books related to the journal title. b) Adequacy of References The validity of research data can also be done by

increasing the number of references that can test and correct the results of the research that has been carried out.

After the data that is relevant to the discussion is collected, the author uses data analysis methods including: Deductive Analysis, a method that starts from something that is general, then draws specific generalizations. This method is used to obtain data by means of discussion based on general data and then concluded in a specific sense. The author uses this method on the theoretical basis regarding inclusion in Positive Criminal Law (KUHP) and Islamic Criminal Law (Fikih Jinayah).

Comparative method is a method to obtain a conclusion by comparing one data with another data or a method used to obtain a conclusion by examining certain factors related to the situation and conditions and compared with other factors. In this case, the researcher compares the inclusion in criminal acts according to Positive Criminal Law (KUHP) and Islamic Criminal Law (Fikih Jinayah). The comparative method is to find the relevance between several data from various sentences, opinions obtained, after which the data is compared to draw conclusions. This method is used to complement the results of the study on the comparison of the inclusion of criminal acts according to Positive Criminal Law (KUHP) and Islamic Criminal Law (Fikih Jinayah).

3. RESULTS AND DISCUSSION

Violent theft is a form of crime that is specifically regulated in the Indonesian Criminal Code (KUHP), specifically in Article 365 of the Criminal Code. This crime is considered a serious crime because it not only harms the victim materially but also often threatens the victim's physical and psychological safety. The legal regulation of this crime aims to provide protection for individual property rights and public security in general.

3.1 How is the current criminal law regulating theft with violence?

In general, theft with violence is the act of taking someone else's property unlawfully by using violence or the threat of violence. This crime has two main elements: (Sudarto, Criminal Law and the Development of Article 365 in Judicial Practice, 2016)

1. Elements of theft: Unlawful taking of another person's property with the intention of owning it by the perpetrator.
2. Element of violence or threat of violence: Use of physical force or threat against the victim to facilitate theft, paralyze resistance, or ensure the perpetrator can escape with the proceeds of the crime.

Article 365 of the Criminal Code regulates this criminal act in stages, based on the conditions and consequences of the crime:

1. Article 365 Paragraph 1, Anyone who commits theft using violence or the threat of violence is subject to a maximum prison sentence of 9 years.
2. Article 365 Paragraph 2, If theft with violence is committed under certain conditions, such as:
 - a. Done at night.
 - b. Performed in an inhabited house.
 - c. Carried out by two or more people (allied).
 - d. Done by forced entry.
 - e. Then the sentence increases to a maximum prison term of 12 years.
3. Article 365 Paragraph 3, If theft with violence results in the victim suffering serious injuries, the perpetrator can be sentenced to a maximum of 15 years in prison.
4. Article 365 Paragraph 4, If the violence committed results in the victim's death, the perpetrator can be sentenced to life imprisonment or the death penalty.

The provisions of Article 365 of the Criminal Code aim to:

1. Protecting property and public safety: Ensuring that everyone can feel safe from the threat of violent theft.
2. Creating a deterrent effect: The threat of severe punishment aims to prevent the perpetrator or others from committing similar acts.
3. Maintaining public order: Violent theft can cause fear in society, so imposing strict sanctions aims to maintain social stability.

Problems and Challenges in the Implementation of Article 365 of the Criminal Code

1. High Crime Rate, Although Article 365 of the Criminal Code regulates the threat of severe punishment, crime data shows that cases of theft with violence still occur frequently. This shows that the deterrent

effect has not been fully achieved.

2. Problems of Evidence: In the legal process, proving elements of violence or threats of violence is often a challenge, especially if the victim cannot provide sufficiently strong testimony or there is no additional supporting evidence.
3. Victim Trauma, Victims of violent theft often experience serious psychological impacts, such as trauma and prolonged fear. The current legal system has not fully accommodated the victim's complete recovery.
4. Legal Gap with Restorative Approach, Indonesian criminal law still focuses on the retributive approach (punishment as a response). Meanwhile, the restorative approach, which focuses more on restoring the relationship between the perpetrator, victim, and community, has not been implemented significantly. Harmonization with Other Legal Systems In the diverse context of Indonesia, there is a need to compare and integrate the values of Islamic criminal law known as hirabah. Hirabah is a criminal act that is similar to violent theft, but with a stricter approach and includes moral and social aspects. The punishment for hirabah can be amputation, execution, or other punishment aimed at maintaining overall community security.

The current Indonesian criminal law regulation on theft with violence, as stipulated in Article 365 of the Criminal Code, has been designed to provide strong legal protection for individuals and society. However, the effectiveness of this regulation still faces various challenges, such as the high crime rate and the lack of a holistic approach to victim recovery. Therefore, legal reform that integrates retributive, preventive, and restorative approaches is an important need to improve the effectiveness of this legal regulation. Case Examples in Indonesia Armed robbery of gold shops also often occurs in Indonesia, where the perpetrators use firearms or sharp weapons to threaten shop owners and customers. Case Example: In 2023, in Medan, a group of armed robbers looted a gold shop in broad daylight. The perpetrators pointed a gun at the shopkeeper and injured a visitor who tried to fight back. In this case, the perpetrators can be charged with Article 365 Paragraph (2), with a maximum sentence of 12 years in prison because the victim only suffered injuries.

3.2 How does Islamic criminal law view theft with violence?

In Islamic criminal law, violent theft is known as hirabah, which is one of the serious crimes (jarimah berat) that threatens the stability of society. Hirabah comes from the word harb, which means war or hostile action. In this context, hirabah refers to actions that create fear, threats to public security, and violations of individual property and life rights. Islamic criminal law regulates violent theft in detail in the Qur'an, Sunnah, and practices implemented during the reign of the Khulafaur Rasyidin. These rules emphasize aspects of protecting the property, life, and honor of individuals and society in general.

Hirabah is defined as a criminal act committed by one or a group of people by:

1. Using violence or threats of violence, such as assault, robbery, or murder.
2. Taking other people's property by force.
3. Causing fear or terror in society.

Hirabah is different from ordinary theft (sariqah) because it involves elements of violence, threats, or acts of terrorism.

Hirabah is regulated in Surah Al-Maidah verse 33, which states:

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِّنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ ٣٣

"Verily the recompense of those who wage war against Allah and His Messenger and spread corruption on earth is that they be killed, or crucified, or their hands and feet be cut off on opposite sides, or they be exiled from their homes. That is a humiliation for them in this world, and in the Hereafter they will have a terrible punishment."

This verse provides the basis for Islamic criminal law to impose severe punishment on perpetrators of hirabah. In Islamic law, this violation is considered a violation of the rights of Allah (haqqullah) because of its wide impact on society.

The punishment for hirabah is strict and severe because it has several main objectives:

1. Protection of Society The act of hirabah damages the peace of society, so the punishment aims to maintain social stability.
2. Creating a Deterrent Effect Severe punishments such as amputation or the death penalty are designed to deter others from committing similar crimes.
3. Upholding Justice in Islamic law, every action must receive appropriate punishment (qisas), including in the case of hirabah.
4. Fulfilling Allah's Rights and Human Rights. Punishment for hirabah aims to protect Allah's rights (public order) as well as individual rights to property, life and security.

Characteristics of Hirabah Law in Islam

1. The Importance of the Intention of the Perpetrator in Islamic law, the perpetrator's intention (intention) is an important factor in determining the type and severity of the punishment.
2. Community Restoration Perpetrators who repent before being caught by the authorities may be given a reduced sentence, provided they restore the victim's rights and show remorse.
3. Strict but Flexible Justice Judges are empowered to assess the situation, weigh the evidence, and determine the most appropriate punishment based on the severity of the crime and its impact.

Comparison with Other Legal Systems

Unlike positive criminal law (such as the Indonesian Criminal Code), Islamic law pays greater attention to the moral and social aspects of crime. The sanctions applied in hirabah are not only retributive but also have educational and preventive elements. For example, the punishment of amputation is not only intended to punish the perpetrator but also to provide a stern warning to society about the seriousness of the crime.

In the modern context, the concept of hirabah is often compared to cases of armed robbery, terrorism, and criminal acts that disrupt public security. Some principles of the law of hirabah can be adapted to:

1. Handling Violent Crime: A tough approach in hirabah can inspire to increase penalties for serious crimes.
2. Social and Moral Restoration: Islamic law emphasizes the importance of rehabilitation of the perpetrator and restoration of society after the crime.

Islamic criminal law views theft with violence as a serious crime that has wide-ranging impacts on individuals and society. Hirabah is regulated with strict and severe sanctions, reflecting the importance of protecting the rights of Allah and human rights. Although it seems harsh, the punishment in hirabah is designed to create a deterrent effect, prevent further damage, and uphold justice. This approach shows that Islamic law is not only aimed at punishment but also at creating social order and harmony. Examples of events in Indonesia that fall into the Hirabah category

Here are some examples of cases of violent theft that often occur in Indonesia and how Islamic criminal law views them:

1. Armed Robbery in Residential Area

This incident often occurs in urban areas, where groups of perpetrators use sharp weapons or firearms to enter residents' homes, seize property, and injure victims if they resist. Islamic Law View:

- a. In the Islamic context, this is a form of hirabah because it involves violent seizure of property and causes the victim to feel threatened. If the perpetrator kills the occupants of the house, the punishment can be the death penalty. If you only confiscate property without killing, the punishment can be amputation of the arms and legs crosswise.

2. Highway Robbery

Cases of mugging or violent theft on the highway are also very common in Indonesia. The perpetrators usually rob the victim of a motorbike, valuables, or cash. In many cases, muggers do not hesitate to injure or kill the victim.

a. Islamic Legal View:

This act of robbery is a classic example of hirabah. The punishment given is appropriate by crime level: If the victim is killed, the punishment is death or crucifixion. If the victim is injured but does not die, the punishment is amputation or other severe forms of punishment according to the damage caused.

3. Bank or Gold Shop Robbery

Armed robbery cases at banks or gold shops are common, especially in big cities. The perpetrators usually work in an organized manner, involving careful planning, weapons, and threats against

employees or customers.

a. Islamic Legal View:

This type of robbery includes elements of hirabah because its impact is widespread, including economic loss and fear in society. The punishment in Islam can be amputation or death if the victim is injured or killed.

4. Violent Crime on Public Transportation

Another example is a robbery on a bus, train, or other public transportation, where the perpetrator points a gun at passengers to steal their valuables.

a. Islamic Legal View:

This includes hirabah because the perpetrator creates fear in public spaces and violates the rights of many people. Punishment can take the form of exile or corporal punishment depending on the impact of the crime.

3.3 How do the regulations for theft with violence compare in the two legal systems?

Violent theft is a serious crime regulated by two different legal systems, namely Indonesian criminal law based on the Criminal Code (KUHP) and Islamic criminal law based on sharia principles. These two legal systems have differences in terms of definition, approach, and sanctions, although they have the same goal: to protect individual rights and create order in society.

Indonesian Criminal Law

In the Criminal Code, theft with violence is specifically regulated in Article 365, which states that this crime involves:

1. Theft: Taking someone else's property unlawfully.
2. Violence or threat of violence: Used to facilitate theft or to attack the victim.

The scope of Indonesian criminal law is narrower, focusing on crimes against property and individual safety. This system prioritizes the aspect of retributive justice, namely punishment commensurate with the actions committed by the perpetrator.

Islamic Criminal Law

In Islamic criminal law, violent theft is known as hirabah, which is defined as the act of:

1. Confiscation of property, threats of violence, or actual violence against individuals or groups.
2. Spreading fear in society, thus creating general insecurity.

The scope of hirabah is broader, involving social and moral impacts in addition to physical aspects. Violent theft in Islam is considered a violation of Allah's rights and human rights, so that the punishment includes dimensions of justice in this world and the hereafter.

Elements of Crimes in Indonesian

Criminal Law

The elements of theft with violence in the Criminal Code include:

1. Theft: Taking someone else's property unlawfully.
2. Violence or threat of violence: To facilitate theft or to fight the victim.
3. Intention (malicious intent): The perpetrator consciously intended to commit the act.

Islamic Criminal Law

The elements of hirabah in Islamic criminal law include:

1. The act of taking property by force: Carried out with violence or threats.
2. Threats to public security: Making individuals or groups feel afraid.
3. Actual damage caused: For example, murder, injury, or simply the confiscation of property.
4. Strict proof: Requires at least two fair male witnesses, or a confession from the perpetrator.

Penalties Imposed by Indonesian Criminal

Law

In the Criminal Code, the punishment for theft with violence is determined based on the severity of the act: (Soesilo R. , 1991)

1. Maximum 9 years in prison: If the act does not cause injury or loss of life.
2. Maximum 12 years in prison: If the violence results in injuries or involves several perpetrators.
3. Maximum 15 years in prison or death penalty: If the violence results in the death of the victim.

Punishment is flexible and based on the principle of progressiveness, that is, the more severe the consequences of the action, the more severe the punishment.

Islamic Criminal Law

The punishment for hirabah is regulated based on the impact of the crime, as stated in Surah Al-Maidah verse 33:

1. Death penalty: If the perpetrator kills the victim.
2. Crucifixion: For perpetrators who commit murder and robbery.
3. Cross-cutting of hands and feet: If the perpetrator only takes property without killing.
4. Exile or imprisonment: If the perpetrator merely spreads fear without seizing property.

This punishment is based on the principle of hudud, which is a fixed sanction for violation of the rights of Allah, but still provides an opportunity for repentance before the perpetrator is caught. This comparison shows that despite their differences, both legal systems have the same goal, namely to provide justice and prevent crime. The combination of the two can create a more effective approach to dealing with violent theft.

4. CONCLUSION

Based on the analysis that has been carried out, there are several important conclusions regarding the regulation of theft with violence in Indonesian criminal law and Islamic criminal law:

Indonesian criminal law, through Article 365 of the Criminal Code, regulates theft with violence with a primary focus on the protection of property and the safety of individuals. This legal system is progressive, where the sanctions imposed on the perpetrator depend on the severity of the crime committed. The penalties imposed can be imprisonment of varying durations, ranging from 9 years to the death penalty, depending on the impact of the violence committed, such as injury or death to the victim. This approach emphasizes legal protection for victims and providing a deterrent effect for perpetrators.

On the other hand, Islamic criminal law views theft with violence as a form of hirabah, which is a crime that causes fear in society and disrupts public order. Islamic law provides much more severe punishments, ranging from amputation of hands or feet to the death penalty, depending on the severity and impact of the act. Punishment in Islamic criminal law is not only intended to provide a deterrent effect, but also to protect society and fulfill moral obligations to Allah.

A comparison between the two legal systems shows a fundamental difference in the approach to violent theft. Indonesian criminal law focuses more on protecting individuals and enforcing justice based on social and humanitarian conditions, while Islamic criminal law places more emphasis on protecting the moral and spiritual well-being of society by providing strict punishments as a form of appropriate retribution. In addition, Islamic criminal law emphasizes repentance and the opportunity for the perpetrator to improve himself, which is an important aspect of this legal system.

Despite significant differences in terms of sanctions and approaches, both legal systems share the same goal, namely to create a safe, just, and prosperous society. Therefore, this study suggests the possibility of harmonization between the two legal systems, especially in the context of Indonesia which has a society with diverse legal backgrounds. This harmonization can strengthen law enforcement, provide better protection for victims, and provide a maximum deterrent effect for perpetrators of crimes.

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