



Sirqah In The Concept Of Islamic Criminal Law: Theft That Is Not Restricted (Hudud Sanctions)

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Abstract

Theft is one of the criminal acts that receives special attention in Islamic criminal law. This act is categorized as *sirqah* and has hudud sanctions if it meets certain requirements, such as the minimum amount of property, legal evidence, and the condition of the perpetrator who is mature and sane in his mind. The phenomenon of theft that does not meet hudud requirements creates complexity in law enforcement, because it still harms the victim but cannot be subject to a fixed punishment. This study highlights the relevance of the ta'zir mechanism as a flexible and humanistic alternative sanction, as well as the role of Islamic legal norms in balancing legal certainty, social justice, and rehabilitation of perpetrators. This study aims to analyze the concept of *sirqah* in Islamic criminal law, evaluate the application of hudud and ta'zir sanctions, and examine the relevance of Islamic legal norms in the context of unrestricted theft. The normative approach is used by examining primary legal sources such as the Qur'an, Hadith, and fiqh books, as well as secondary literature in the form of journals, books, and academic documents. The analysis was carried out qualitative-descriptive to understand the legal mechanism, the principles of maqashid al-shari'ah, and the flexibility of ta'zir sanctions. The results of the study show that non-hudud theft is still regulated through ta'zir sanctions that are adjusted to the intention, condition of the perpetrator, and social impact. Islamic legal norms emphasize the protection of victims' rights, the certainty of court procedures, and the rehabilitative effect for perpetrators. Ta'zir is an adaptive instrument to uphold justice, educate the community, and prevent the repetition of criminal acts. This approach shows that Islamic criminal law is not only repressive, but also humanistic, preventive, and restorative. The conclusion of this study confirms that Islamic criminal law is able to balance legal certainty, social justice, and rehabilitation goals in dealing with non-hudud theft. The normative and procedural application of ta'zir ensures the protection of victims' rights while providing educational and moral opportunities for perpetrators, so that the law remains relevant and adaptive to modern socio-economic dynamics.

I. INTRODUCTION

Theft is one of the criminal acts that receives special attention in Islamic criminal law. The level of seriousness of the regulation against theft is reflected in the determination of hudud sanctions which are permanent and firm. Hudud is designed to provide a deterrent effect and protect the public interest, but not all acts of theft meet the criteria for hudud punishment. The phenomenon of theft that does not meet the hudud requirements creates complexity in the enforcement of Islamic law (Siroj, 2017).

The distinction between restricted and unrestricted theft is a challenge for Islamic law practitioners. The hudud provisions require a

number of strict conditions, including the minimum amount of stolen property, the condition of the perpetrator, and valid evidence. The incompleteness of fulfilling these conditions makes some cases of theft enter the realm of ta'zir sanctions, which are flexible and left to the discretion of the judge. This condition raises questions about the effectiveness of legal protection for victims and legal certainty for perpetrators (Ridwan, 2018).

The existence of unrestricted theft reflects the socio-economic dynamics of the community. High levels of poverty, lack of education, and pressure of economic needs can trigger simple acts of theft that do not meet

hudud requirements. The Islamic criminal law approach to this case must consider aspects of justice, prevention, and rehabilitation of the perpetrator. Without the right strategy, the application of the law can lose its moral meaning and function as an instrument of social justice (Ulmuftia et al., 2024).

The ta'zir sentencing system provides flexibility for judges to determine sanctions according to the context of the case. The determination of ta'zir sanctions involves considering the level of error, intention, impact of loss, and potential rehabilitation of the perpetrator. This principle is in line with the purpose of maqashid al-shari'ah, which is to protect religion, soul, intellect, descent, and property. Evaluation of the implementation of ta'zir sanctions is important so that Islamic criminal law remains relevant and adaptive to social changes (Hamsinar, 2020).

Many cases of theft that do not meet hudud requirements actually occur in vulnerable groups such as children, adolescents, or individuals with economic limitations. The handling of these cases not only requires the application of legal sanctions, but also requires a preventive and educational approach. Punishment that is only repressive has the potential to cause negative social effects, including the repetition of criminal acts and stigmatization of the perpetrator (Abdi, 2014).

Academic studies of non-hudud theft are still limited, especially in the perspective of contemporary fiqh. In-depth analysis is needed to understand the legal mechanism, judges' considerations, and the relevance of sharia principles to the conditions of modern society. This study is important for bridging the gap between classical norms and current law enforcement practices. Weaknesses in the existing literature point to the need for structured empirical research to strengthen theoretical arguments and legal policy.

The unrestricted theft arrangement reflects a balance between legal firmness and moral flexibility. The existence of ta'zir as an alternative sanction allows judges to adjust the punishment to the socio-economic context of the perpetrator, while ensuring that the victim gets justice. This approach shows that Islamic criminal law is not only repressive, but also humanistic, paying attention to the goals of reform and rehabilitation (Elfia, 2019).

This research is directed to examine the concept of sirqah in Islamic criminal law in depth, especially theft that does not meet the requirements of hudud. This study is expected to provide a comprehensive understanding of the implementation of ta'zir sanctions, the challenges of law enforcement, and the relevance of sharia principles in the contemporary social context. The results of the research can be a reference for policymakers, academics, and practitioners of Islamic law in formulating a fair, proportionate, and civilized law enforcement strategy.

II. RESEARCH METHODS

This research method uses a normative approach that focuses on the study of law from a doctrinal and literary perspective. The research was conducted by examining primary Islamic law sources, namely the Qur'an and Hadith, as well as classical and contemporary fiqh books that discuss the concepts of sirqah and theft. Secondary legal sources in the form of journals, scientific articles, textbooks, and academic documents are used to enrich theoretical analysis and provide social and historical context (Rizkia & Fardiansyah, 2023).

This normative approach emphasizes a qualitative analysis of the legal provisions and sharia principles that govern theft, both those that belong to hudud and those that do not meet the requirements of hudud. The analysis was carried out by comparing legal theory, fiqh interpretation, and the practice of ta'zir sanctions in various literatures, so that a complete understanding of the flexibility of Islamic criminal law in handling non-hudud theft cases can be obtained.

The research process includes the identification of legal norms, the interpretation of legal texts, and the evaluation of the application of sanctions in the modern context. This research is descriptive-analytical, as it does not involve the collection of field data, but rather emphasizes an in-depth understanding of legal principles and their relevance to contemporary practice. The results of the study are expected to provide conceptual guidance for the enforcement of Islamic criminal law that is fair, proportionate, and in accordance with maqashid al-shari'ah.

III. RESULTS AND DISCUSSION

A. The Concept of Sirqah in Islamic Criminal Law

Theft in the perspective of Islamic criminal law is known as *Sirqah*, which terminology means taking someone else's property illegally and without rights. The Qur'an affirms the prohibition of theft in Surah Al-Maidah verse 38 which mentions the punishment of cutting off the hands of qualified thieves. The hadith of the Prophet Muhammad PBUH also emphasizes that theft is a great sin and endangers social stability. The concept of *sirqah* emphasizes not only physical actions, but also the intention and moral awareness of the perpetrator (Amdani, 2017).

The definition of *sirqah* according to classical and contemporary *fiqh* takes into account elements such as property rights, secrecy of taking, and the minimum amount of stolen property. Theft that does not meet the provisions of *hudud*, for example because the amount of property is below the *nisab* or occurs in an emergency, is categorized as a non-*hudud* violation. *Ta'zir* emerged as a legal alternative to dealing with this kind of theft, giving judges the flexibility to assess the context and intentions of the perpetrators (Arif, 2007).

Normative analysis emphasizes that *sirqah* is not only a criminal act, but also an act that damages the moral and economic order of society. *Hudud* sanctions are definite and strict, while non-*hudud* theft requires consideration of *maqashid al-shari'ah*. This approach ensures the protection of public property and individual rights while maintaining social justice. The concept of *sirqah* is a normative instrument to uphold moral values through written and interpretive laws (Mardani, 2008).

Fiqh studies emphasize the existence of *Hudud Shurut* as a formal requirement to apply *hudud* punishment. This requirement includes full ownership of the property, minimum property value, legal evidence, and the condition of the perpetrator who is mature and sound of reason. The incompleteness of fulfilling these conditions resulted in the perpetrator being subjected to *ta'zir*. These legal norms show a balance between

procedural and substantial justice, ensuring that the law is not arbitrary (Rahmi, 2018).

The application of *hudud* and *ta'zir* norms reflects the philosophy of Islamic law that emphasizes the protection of property rights and social justice. *Sirqah* is considered a serious interference with the stability of society and moral values. The determination of *ta'zir* sanctions opens up the judge's interpretation space according to social conditions and the potential for rehabilitation of the perpetrator. This norm combines legal certainty and moral flexibility, so that the law remains relevant to the dynamics of people's lives (Ridwan, 2018).

The normative perspective of contemporary *fiqh* emphasizes the importance of rehabilitation of perpetrators in cases of non-*hudud* theft. Perpetrators who steal due to emergency needs or economic limitations are not solely subject to physical sanctions, but can be given educational punishments. Islamic legal norms view justice as a balance between the interests of the victim, the perpetrator, and the community. This principle is in line with the purpose of *maqashid al-shari'ah*, especially the protection of property and life (Islam, 2024).

Comparative analysis of *fiqh* highlights the variation in the implementation of *sirqah* between the Hanafi, Maliki, Shafi'i, and Hanbali schools. Each school emphasizes the elements of intention, amount of property, and emergency conditions differently, but still emphasizes the need for valid evidence and legal certainty. This norm is a reference for judges to determine the punishment of *ta'zir* in a fair and proportionate manner. This comparative approach strengthens the normative argument in dealing with non-*hudud* theft (Surya, 2018).

Modern literature emphasizes the relevance of *sirqah* in the context of contemporary Islamic criminal law. Social changes, urbanization, and poverty affect the frequency of petty theft that does not meet *hudud* requirements. Legal norms provide guidelines so that enforcement actions remain proportionate, preventing violations of the rights of perpetrators and victims. The concept of *sirqah* is a legal instrument to build moral awareness and public compliance.

Islamic legal norms emphasize evidence and procedure as instruments of justice. Non-

hudud theft must go through a transparent court process, taking into account intentions, economic conditions, and social impacts. This principle prevents the arbitrary application of the law. The application of procedural justice norms strengthens the legitimacy of Islamic criminal law in modern society and builds a sense of security for the public (Izaturahmi et al., 2024).

Normative studies of *sirqah* and non-hudud theft show that Islamic criminal law is oriented towards moral balance, protection of rights, and social justice. *Ta'zir* becomes an adaptive instrument to deal with violations that do not meet hudud, while still respecting *maqashid al-shari'ah*. This approach shows that Islamic law is not only repressive, but also educational and preventive, maintaining the social and moral integrity of society (Hamsinar, 2020).

B. Theft That Does Not Meet the Hudud Requirements and the Relevance of Ta'zir

Theft that does not meet hudud requirements arises when formal conditions are not met. Requirements such as the minimum value of the property, valid evidence, and full ownership of the property are the limits of hudud law. Violation of one of these conditions moves the case to the realm of *ta'zir*. *Ta'zir* is not a permanent punishment, but a sanction that is left to the discretion of the judge based on social, moral, and legal considerations (Tarigan, 2017b).

Normative analysis emphasizes the difference in purpose between hudud and *ta'zir*. Hudud emphasizes the deterrent effect and legal certainty, while *ta'zir* is educational and reformative. Islamic legal norms give legitimacy to judges to adjust sanctions to the perpetrator's conditions and social impact. This approach prevents injustice and maintains a balance between the rights of victims and the protection of perpetrators (Syarbaini, 2023a).

Fiqh literature emphasizes that *ta'zir* includes various forms of punishment, ranging from fines, social work, to light physical punishment. The choice of sanctions must be in line with the principles of *maqashid al-shari'ah*, which emphasizes the protection of people's lives, property, and morality. This norm provides room for legal adaptation to the modern social context, including poverty, educational limitations, and psychological

factors of perpetrators (Dermawan & Harisudin, 2020).

The application of *ta'zir* shows the flexibility of Islamic criminal law in dealing with social dynamics. The judge assesses the intention, level of error, and condition of the perpetrator before determining the sanction. This norm prevents the application of arbitrary punishment, while ensuring a rehabilitative effect. The enforcement of *ta'zir* is a moral instrument to build legal awareness and restorative justice (Tarigan, 2017a).

Comparative studies of *fiqh* highlight the differences in the implementation of *ta'zir* between schools. The Shafi'i school emphasizes the need to consider intentions and emergency conditions, while Hanafi is more flexible towards physical sanctions and fines. This norm provides a reference for judges to determine proportionate and contextual sanctions, while maintaining the legitimacy of Islamic law in the modern era (Adam, 2019a).

Victim protection is an important aspect in the implementation of *ta'zir*. The victim's right to compensation or redress must still be respected even if hudud sanctions cannot be applied. Islamic legal norms affirm that *ta'zir* must include considerations of justice for the victim, so that the law still fulfills its social and moral functions (Rohmah, 2023).

The normative approach emphasizes the importance of legal education as part of *ta'zir*. Perpetrators who are subject to *ta'zir* sanctions are expected to gain moral awareness and rehabilitation opportunities. Legal norms emphasize preventive principles, so that the perpetrator does not repeat the act, and the public understands the consequences of theft that does not meet the hudud requirements (Primary, 2024).

The application of *ta'zir* in the modern context faces challenges related to evidence and procedures. Islamic legal norms emphasize the importance of clarity of evidence and transparency of the court process. This is to ensure that the perpetrator is treated fairly and the victim gets protection. The effectiveness of *ta'zir* depends on the judge's compliance with procedural and substantial norms (Syarbaini, 2023b).

The normative analysis emphasizes the relevance of *maqashid al-shari'ah* in determining the sanction of *ta'zir*. The implementation of *ta'zir* must consider the

protection of the community's property, soul, and morals. Islamic legal norms ensure that the law remains adaptive to socio-economic contexts, while maintaining the principles of justice and a proportionate deterrent effect (Lestari, 2024).

Normative studies show that non-hudud theft can be dealt with effectively through ta'zir, without disregarding the rights of the victim or moral principles. Ta'zir sanctions are a balanced instrument between legal certainty, justice, and rehabilitation of the perpetrator. This norm shows the flexibility of Islamic criminal law in dealing with social complexity and the modernization of society.

C. Normative Relevance and Contemporary Implementation

The implementation of Islamic criminal law against non-hudud theft demands a balance between classical norms and modern contexts. Fiqh norms emphasize the formal requirements of hudud, but still leave room for judges to adjust sanctions through ta'zir. This approach allows Islamic law to remain relevant and adaptive in dealing with the social, economic, and psychological dynamics of perpetrators (Khairunnisak, 2017).

The normative study emphasizes the need for transparent court procedures in determining ta'zir sanctions. The judge must consider the intentions of the perpetrators, social impacts, and economic conditions. Islamic legal norms affirm that fair procedures and valid evidence are the foundation of the legitimacy of sanctions, while preventing injustice for both perpetrators and victims (Lubis et al., 2022).

Contemporary literature emphasizes the relevance of rehabilitation in the application of ta'zir. Perpetrators who steal due to economic limitations or certain social conditions are entitled to sanctions that educate and prevent repetition. This norm shows the humanistic dimension of Islamic criminal law, prioritizing prevention, education, and moral reform of perpetrators.

Modern fiqh analysis emphasizes the flexibility of judges in determining non-hudud sanctions. Sentencing adjustments must take into account maqashid al-shari'ah and restorative justice. This norm integrates legal certainty with moral and social values, so that Islamic criminal law remains relevant in the context of modern and urban society (Amir, 1969).

Law enforcement practices show variations in ta'zir interpretations between regions and judicial institutions. Legal norms require judges to balance the interests of victims, perpetrators, and the community. This approach ensures that non-hudud theft is dealt with proportionately, while strengthening public trust in Islamic criminal law (Syarbaini, 2019).

The normative perspective emphasizes the role of public education in preventing non-hudud theft. Information about legal consequences, victims' rights, and moral values helps build legal awareness. Islamic legal norms support preventive and restorative approaches, so that the law is not only repressive, but also shapes the social and moral character of society (Adam, 2019b).

The normative study highlights the importance of documentation and evidence in the process of enforcing ta'zir. Legal certainty depends on valid and transparent procedures. Legal norms ensure that perpetrators receive fair treatment, victims are protected, and the community has the assurance that the law is enforced proportionately and with dignity.

The normative analysis emphasizes that the application of Islamic criminal law to non-hudud theft is an effort to adapt to contemporary realities. Legal norms prioritize flexibility, legal certainty, and rehabilitation goals. This approach maintains the moral integrity of the community while providing clear legal legitimacy.

Contemporary literature emphasizes the synergy between Islamic criminal law and the principles of social justice. Ta'zir is an instrument to balance the interests of victims, perpetrators, and the community. Legal norms provide guidelines for judges to adjust sentences, ensure the effectiveness of the law, and maintain moral values and social balance.

The normative approach shows that Islamic criminal law is adaptive and humanistic in dealing with non-hudud theft. Ta'zir allows flexibility, rehabilitation, and legal certainty at the same time. Legal norms affirm that law enforcement is not just a sanction, but also an educational, preventive, and restorative instrument for modern society (Tarigan, 2017b).

CONCLUSION AND SUGGESTIONS

A. Conclusion

Normative studies of sirqah in Islamic criminal law show that theft that does not meet hudud requirements still receives serious

attention through the ta'zir mechanism. Hudud sanctions require strict formal provisions, including the minimum value of property, full ownership, legal evidence, and the condition of the perpetrator who is mature and sound of mind. The incompleteness of this condition does not remove the violation, but rather moves the case to the realm of ta'zir which is flexible and left to the discretion of the judge. Ta'zir serves to maintain justice, protect the rights of victims, and prevent perpetrators from repeating criminal acts. Classical and contemporary fiqh analysis confirms that the principle of maqashid al-shari'ah is the main reference in determining sanctions, with a focus on the protection of property, soul, morals, and social balance. The application of this legal norm proves that Islamic criminal law is not only repressive, but also educational, preventive, and restorative. The flexibility of ta'zir allows adaptation to modern socio-economic conditions, provides legal legitimacy, and builds the moral consciousness of the community. The normative approach also emphasizes the importance of transparent procedures, valid evidence, and consideration of the perpetrator's intentions and context, so that justice is maintained and social stability is maintained. This study shows that Islamic criminal law is able to balance legal certainty, protection of rights, and rehabilitative purposes in dealing with non-hudud theft.

B. Suggestions

The application of ta'zir should be complemented by more detailed normative guidelines so that judges have a clear reference in determining sanctions. Legal and social education for the community and perpetrators needs to be improved to prevent non-hudud theft. Law enforcement must prioritize transparent procedures and legitimate evidence, maintaining a balance between the rights of victims and the rehabilitation of perpetrators. Governments and judicial institutions are advised to integrate the principles of maqashid al-shari'ah in law enforcement practices to remain relevant, humanistic, and adaptive to contemporary socio-economic dynamics.

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