



## The Crime of Theft by Workers in the Workplace: A Review of the Concept of Ghulul in Islamic Criminal Law

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### Abstract

This study analyzes theft by workers in the workplace not merely as a crime against property (larceny), but as a form of betrayal of trust (fiduciary duty) in the context of Islamic criminal law. Using a normative approach based on literature studies, this journal examines the concept of Ghulul from the perspective of the Qur'an, Hadith and fiqh jinayah literature (Islamic criminal law), then compares it with the construction of theft in the Indonesian Criminal Code. The employment relationship is analyzed through the framework of the ijarah contract, where the worker acts as an amin (trusted party) who has special obligations. This study shows that criminal liability from the perspective of ta'zir (discretionary punishment) provides more comprehensive justice, going beyond mere punishment, including recovery of losses and social sanctions. In addition, the value of trust in the Islamic perspective can strengthen the company's internal control system. In conclusion, Ghulul is a relevant legal instrument to criminalize and prosecute acts of betrayal of trust in modern employment relationships, while also offering an alternative criminal liability that is more in line with substantive justice.

## I. INTRODUCTION

Theft by employees against the companies or organizations where they work has become an increasingly significant criminal phenomenon in modern crime. Unlike conventional theft involving outsiders, this crime has a more complex dimension because it involves betraying a position of trust granted by the employer. The terms "white-collar crime" or "corporate fraud" are often used to describe this phenomenon, but these depictions emphasize solely the economic aspect without delving into the deeper moral and ethical dimensions. Positive legal perspectives, particularly the Indonesian Criminal Code (KUHP), categorize employee theft as ordinary theft (Articles 362-365). This construction is considered inadequate because it fails to differentiate the perpetrator's status, particularly when the perpetrator acts as a trusted party. As a result, criminal accountability becomes blunt in capturing the essence of the breach of trust. The criminal sanctions imposed often do not reflect the severity of the ethical and moral violations, resulting in a less than optimal deterrent effect. In this context, Islamic criminal law, particularly the concept of Ghulul, offers a more holistic alternative perspective. Ghulul, as mentioned in the Qur'an and Hadith, reflects a profound

understanding of betrayal of trust, encompassing criminal, moral, spiritual, and social aspects simultaneously. This concept views the act not only as an unlawful act but also as a violation of sacred trust (amanah). Therefore, exploring the concept of Ghulul from an Islamic criminal law perspective can significantly contribute to the development of positive criminal law in Indonesia, particularly in efforts to optimize justice in addressing theft by workers.

### Writing Formulas/Equations

How are the qualifications of theft by workers from the perspective of the concept of Ghulul in Islamic criminal law? • How is the reconstruction of criminal responsibility for workers who commit Ghulul in order to provide comprehensive justice for employers and the interests of society?

## II. RESEARCH METHODS

Conceptual Approach. This approach is used to analyze legal concepts such as Ghulul, amanah, amin, ta'zir, fiduciary duty, and white-collar crime. Through a conceptual approach, researchers identify conceptual elements that distinguish Ghulul from ordinary theft and explore conceptual implications for criminal liability. Comparative Approach. This approach is

used to compare the concept of theft in positive law (especially the Indonesian Criminal Code) with the concept of Ghulul in Islamic criminal law. Through comparison, researchers identify the advantages and disadvantages of each approach in dealing with theft by workers, as well as explore the possibility of integrating both approaches to achieve more comprehensive justice. Primary Legal Material Data Sources: The Qur'an, Hadith of the Prophet, Indonesian Criminal Code, Law No. 13 of 2003 concerning Manpower, and other laws and regulations relevant to employment relations and criminal acts. Secondary Legal Materials: Islamic criminal law (jurisprudence), legal journals, academic articles, Islamic criminal law textbooks and positive criminal law, as well as publications from legal research institutions that discuss topics related to Ghulul, white-collar crime and internal fraud. Tertiary Legal Materials: Legal dictionaries, legal encyclopedias and other reference sources that provide a general understanding of the legal terms used in this study. Data Collection Techniques Data collection was carried out through an in-depth literature study of relevant primary and secondary legal materials. The researcher read, analyzed and compiled information from various sources to build a comprehensive understanding of the concept of Ghulul in Islamic law and its comparison with Indonesian positive law. Data Analysis Techniques Data analysis used a qualitative content analysis method. Through this method, the researcher identified the main themes in the literature, organized the information systematically, and built a coherent legal argument. The analysis process includes: (1) in-depth reading of the legal materials, (2) identification of key concepts and principles, (3) comparison between sources, (4) synthesis of understanding and (5) construction of logical and measurable arguments.

### III. RESULTS AND DISCUSSION

#### A. Discussion

##### Qualification of Theft by Workers as Ghulul

1. The Basic Difference between Ordinary Theft and Ghulul In Islamic criminal law, ordinary theft (sariqah) is defined as taking another person's property without permission with the intention of owning it. The elements of theft include:

- the presence of valuables (mal)
- belonging to another person (mamlukli-ghairihi) taking (akhz) intention to own (niyyatat-tamliki) and

- Unlawful (bi-ghairihaq). Ghulul, on the other hand, is a betrayal of trust by a trusted party. The fundamental difference lies in the perpetrator's status and how they gain access to the goods. In ordinary theft, the perpetrator does not have legitimate access to the goods before taking them. In Ghulul, however, the perpetrator has legitimate access because they are trusted to manage, guard, or use the goods within the context of their duties. Thus, Ghulul contains an element of betrayal (khiyanah) that is not present in ordinary theft. In the context of employment, this difference becomes very significant. An employee who steals from the company where he works is Ghulul, not ordinary theft. For example: a cashier who embezzles money from the cash register; a project manager who takes project materials for personal use; administrative staff who sell customer data; or a production worker who takes finished products out of the factory without permission. In all these cases, the perpetrators have legitimate access to the goods due to their job duties. The taking of the goods is therefore a betrayal of the trust given, not theft in a public place like shoplifting.

2. The Status of Workers as Amin in the Ijarah Contract In the ijarah contract that regulates the employment relationship, workers are not only service providers but also amin (trusted parties). Ibn Qayyim Al-Jauziyah in *I'lam Al-Muqi'in* explains that amin is a party who is given a mandate (trust) and has the responsibility to maintain that trust. This responsibility is not only a contractual responsibility, but also a moral and legal responsibility. The status of workers as amin has several implications: Workers must take care of company assets as well as possible (amanah); Workers may not use company assets for personal gain without permission (even for small needs); Workers are responsible for the assets in their possession; If theft or damage occurs, workers can be held accountable, unless it can be proven that force majeure occurred; Workers may not betray the trust given by the employer. By understanding the status of workers as amin, theft or misuse of assets by workers becomes clearly a Ghulul. Ghulul is not just a financial loss for the company, but also a violation of trust and integrity within the employment relationship. This perspective

shifts the legal framework for employee theft from a mere property crime to one involving deeper ethical and moral questions.

### 3. Case Examples and Illustrations of Ghulul in the Workplace

**Case 1: Store Cashier Embezzles Cash.** A store cashier entrusted with managing the store's cash register embezzled Rp 50 million over three months. This cashier had legitimate access to the cash due to his job duties. This unauthorized withdrawal of cash constitutes a form of ghulul. From a Criminal Code perspective, this act can be qualified as embezzlement (Article 374), but from a ghulul perspective, it is much more serious because it involves a betrayal of trust. The cashier not only violated his employment contract but also violated the trust that had been placed in him. From a ghulul perspective, criminal liability would include not only financial compensation but also moral and ethical considerations, as well as possible social and professional sanctions (being barred from handling cash again, etc.).

**Case 2: Accounting Staff Manipulating Financial Reports.** An accounting staff member tasked with recording financial transactions manipulated the situation by deleting several transactions from the general ledger to conceal losses. This act constituted a form of Ghulul (violation of trust) that betrayed the trust placed in the accounting staff. These staff members had access to the company's financial data due to their job duties, and the abuse of this access constitutes a breach of trust. Under the Criminal Code, this act might qualify as fraud or document falsification, but the dimensions of the breach of trust are not well captured. The Ghulul perspective allows the court to consider a more profound question: how this trust was betrayed and what the moral and social consequences of this betrayal are.

**Case 3: Logistics Manager Selling Project Materials.** A logistics manager responsible for managing construction project materials sold some of the materials (bricks, cement, iron) to a third party and diverted the proceeds to his personal account. These materials were company assets entrusted to the manager. This act constituted Ghulul because the manager betrayed the trust given to him. From a positive legal perspective, this act could be classified as theft or embezzlement, but from a Ghulul perspective, it is

understood as a betrayal of trust by a trusted party, which requires more comprehensive accountability, including asset recovery, compensation, and possible social sanctions.

### B. Criminal Responsibility from a Ta'zir Perspective

1. The Concept of Ta'zir in Islamic Criminal Law  
Ta'zir etymologically means to guide, educate, or give punishment. In Islamic criminal law, ta'zir is a category of discretionary punishment imposed by a judge for crimes that do not have a definite punishment limit such as theft or adultery. Ta'zir includes various forms of punishment designed according to the nature of the offense and the condition of the perpetrator, with the aim of providing education, prevention and rehabilitation. The principles of Ta'zir according to scholars: (1) Ta'zir must be proportional to the offense committed; (2) Ta'zir must take into account the condition of the perpetrator (age, mental status, motivation); (3) Ta'zir must not exceed the limits of reasonableness and humanity; (4) The purpose of ta'zir is deterrence, rehabilitation, and restoration; (5) The judge has discretion in determining the form and severity of ta'zir, as long as it remains within the framework of sharia principles. In the context of Ghulul, ta'zir offers flexibility that is not available in conventional positive legal systems. Judges can impose sentences that extend beyond imprisonment to include restitution (diyath), payment of a fine (gharamah), community service, or loss of the right to practice certain professions. With the ta'zir approach, criminal accountability becomes more holistic and oriented toward substantive justice.

**Comprehensive Reconstruction of Criminal Responsibility**  
In dealing with Ghulul, criminal responsibility must be reconstructed to include three main aspects: punishment, restoration and prevention.

a) **Criminal Action.** From a ta'zir perspective, action against Ghulul can be in the form of: (1) Imprisonment (prison) for a duration proportional to the magnitude of the loss and the degree of betrayal; (2) A significant fine (gharamah) as a deterrent; (3) Loss of the right to practice certain professions (for example, not being allowed to be a cashier, accountant, or manager anymore); (4) Recording in the criminal offender register as a constructive social

stigmatization mechanism.

b) Restitution of Losses. Ghulul results in financial losses for the employer. From a ta'zir perspective, restitution of losses (diyat) is not merely a civil liability, but also an aspect of criminal liability. The judge can order the perpetrator to reimburse the company for all losses suffered, plus compensation for indirect losses (such as loss of trust, investigation costs, and court costs). If the perpetrator is unable to pay, the judge can consider an installment payment system or forced labor (without violating humanitarian principles).

c) Prevention and Rehabilitation. The ta'zir perspective also encompasses an orientation toward prevention and rehabilitation. Judges can order perpetrators to participate in ethical or work integrity rehabilitation programs as part of their punishment. Furthermore, court decisions can serve as a lesson for perpetrators and the community about the importance of trust in employment relationships.

3. Advantages of the Ta'zir Approach compared to the Criminal Code The ta'zir approach has several advantages compared to the embezzlement or theft framework in the Criminal Code:

- Sentencing Flexibility. Ta'zir allows judges to impose sentences tailored to specific situations, rather than being tied to predetermined punishment categories in the Criminal Code. This allows for more nuanced and proportional justice.
- Focus on Recovery and Restitution. Unlike the Criminal Code, which emphasizes punishment and general deterrence, ta'zir emphasizes recovery of losses and restitution to victims. This is more beneficial for employers who are victims of Ghulul.
- Consideration of Moral and Ethical Aspects. Ta'zir explicitly considers the moral dimension of the violation, not just the formal legal aspect. This allows the court to grasp the essence of betrayal of trust, which is a serious moral violation.
- Integration of Criminal and Civil Approaches. Ta'zir enables the integration of criminal and civil liability, so that victims do not need to bring separate cases to obtain restitution.
- Consideration of Social Welfare (Maslahah). Ta'zir is based on the concept of maslahah (benefit), which allows for consideration of broader social interests in sentencing, not just the interests of the state or the victim.

C. Integration of Trust Values in the Company's Internal Control System

1. The Value of Amanah as the Foundation of Internal Control An Internal Control System (ICS) is a mechanism designed to ensure that company assets are protected, operations are efficient, and financial reporting is accurate. In the internal risk management literature, ICS is based on several components: the control environment, risk assessment, control activities, information and communication, and monitoring. However, these components are often mechanical and procedural, without a strong ethical foundation. The value of amanah, from an Islamic perspective, can be a strong ethical foundation for ICS. Amanah is a trust given to someone to be guarded and managed properly. When the value of amanah is integrated into ICS, internal control is no longer merely a technical mechanism, but becomes an expression of a moral commitment to trust. Thus, the effectiveness of ICS increases because it is supported by a strong ethical awareness from all members of the organization.

2. Implementation of Trust in Company Policy Integration of trust values in ICS can be realized in several practical ways:

- a) A Trust-Based Code of Ethics. Companies can develop a Code of Ethics that explicitly emphasizes the value of trust as the foundation of employee behavior. This code is not simply a list of rules, but a manifesto of commitment to the trust placed in them by the company and its stakeholders.
- b) Trust Clause in Employment Contracts. Employment contracts can include a clause explicitly stating that the employee is a trustee (amen) for the company's assets. This clause is not merely a legal formality, but a statement that reminds employees of their moral responsibility. An example of a clause: "The employee understands and accepts that in carrying out his or her duties, he or she acts as a trustee (amen) for the company's assets, information, and resources. The employee is committed to upholding this trust with full integrity."
- c) Trust Ethics Training Program. Companies can organize a training program that emphasizes the value of trust to all employees. This program not only teaches regulations and procedures, but also discusses ethics, moral responsibility, and the consequences of betraying trust. With a deeper understanding, employees will be more aware of the importance

of maintaining trust.

d) Reward and Recognition System. Companies can implement a reward system that recognizes and celebrates employees who demonstrate high integrity and uphold the trust. This reward can take the form of bonuses, promotions, or public recognition. In this way, the value of trust is not only taught but also practiced and celebrated within the company culture.

e) Reporting Mechanisms and Whistleblower Protection. Companies can establish secure reporting channels (hotlines, email, or forums) for employees to report breaches of trust or unethical practices. Whistleblower protection should be strictly enforced to encourage reporting. With these mechanisms, breaches of trust can be detected early and prevented.

3. The Effectiveness of Amanah Integration in Fraud Risk Management Research in fraud examinations shows that the fraud triangle (opportunity, motivation, and rationalization) is a framework that helps understand why fraud occurs. Integrating the amanah value into the ICS can break down this fraud triangle:

- **Reduced Motivation.** By emphasizing trustworthiness, employees internalize the values of integrity, thus reducing their motivation to commit fraud because they will feel morally guilty, not just afraid of punishment.
- **Reduces Rationalization.** With a clear understanding of the mandate, employees will have a hard time rationalizing fraud with the excuse that "everyone else is doing it or the company has a lot of money." They will understand fraud as a betrayal of trust.
- **Improve Detection.** A strong culture of trust encourages employees to report fraudulent activity, as they feel a responsibility to protect the trust placed in them.

## **CONCLUSION AND SUGGESTIONS**

### **A. Conclusion**

Based on an in-depth analysis of the concept of Ghulul in Islamic criminal law and its comparison with theft in Indonesian positive law, this study draws the following conclusions.

- **Theft by Workers is Ghulul, Not Ordinary Theft.** Theft committed by workers against the company where they work is a form of betrayal

of trust (Ghulul), not theft in the usual sense (sariqah). The fundamental difference lies in the perpetrator's status as a trusted party (amin) who has legitimate access to assets. Thus, betrayal of trust is an important element that distinguishes Ghulul from ordinary theft.

- **The Ijarah Contract Framework Provides a Strong Conceptual Foundation.** An employment relationship based on an ijarah contract explicitly places the employee in the position of amin (trusted party). This position carries significant legal and moral implications, namely the obligation to uphold the trust given. Violation of this obligation constitutes Ghulul, which violates the ijarah contract and the trust that has been given.

- **The Ta'zir Perspective Offers More Comprehensive Justice.** Criminal liability in the ta'zir perspective offers greater flexibility and comprehensiveness compared to the embezzlement or theft framework in the Criminal Code. Ta'zir allows judges to impose sentences that include not only enforcement (imprisonment and fines), but also restitution of losses and socio-professional sanctions, taking into account deep moral and ethical aspects.

- **The Value of Trust Can Strengthen Internal Control Systems.** Integrating the value of trust into a company's internal control system can create a strong ethical foundation for internal control. With a deep understanding of trust, employees will be more motivated to maintain integrity and protect trust, thereby significantly increasing the effectiveness of fraud risk control.

- **Comparative Approach Opens Opportunities for Indonesian Criminal Law Reform.** A comparative analysis between the concepts of Ghulul and theft in the Criminal Code shows that Islamic criminal law offers a rich and relevant perspective to address modern corporate crime. This approach opens opportunities for Indonesian criminal law reform to integrate the values of justice derived from the Islamic legal tradition.

### **B. Suggestion**

This research on the crime of theft by workers from the perspective of the concept of ghulul is expected to contribute to the development of Islamic criminal law and Indonesian national criminal law. This study is expected to encourage further, more comprehensive research on criminal liability based on the value of amanah

(trustworthiness), thereby enriching the scientific body and supporting the development of a legal system that is fairer, more integrated, and more responsive to the development of crime in the workplace.

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