



Attempting to Commit a Criminal Act: From the Perspective of Islamic Criminal Law

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Article History Received: 2024-09-07 Revised: 2024-09-14 Published: 2024-09-30 Keywords: <i>Attempted Criminal Acts, Islamic Criminal Law, Islamic Jurisprudence, Ta'zir, Imam Of The Madhhab.</i>	An attempted crime is an act that has been initiated by the perpetrator with the aim of committing a crime, but is not completed or does not produce the desired consequences due to certain obstacles. This study aims to analyze the concept of attempted crime from the perspective of Islamic criminal law through the views of four Islamic schools of thought, namely Imam Hanafi, Imam Maliki, Imam Syafi'i, and Imam Ahmad bin Hanbal, and examines the stages of implementation of the crime according to Al-Mawardi's thoughts in Ahkam al-Sulthaniyyah. This study uses a normative legal research method with a library research approach through analysis of the Qur'an, hadith, classical fiqh books, and Islamic criminal law literature. The results of the study indicate that the four schools of thought agree that hudud and qisas punishments can only be applied if all elements of the crime have been perfectly fulfilled. Meanwhile, attempted crimes that have not fulfilled these elements can still be subject to ta'zir sanctions based on the judge's discretion by considering the intention, actions, and level of danger posed. The stages of criminal conduct include intent, preparation, initiation of execution, completion of the crime, evidence gathering, and enforcement of the verdict. This concept demonstrates that Islamic criminal law prioritizes the principles of justice, prudence, and public welfare in law enforcement.

I. INTRODUCTION

Attempted crime is an important concept in criminal law because it relates to the accountability of someone who has begun committing a crime but has not yet completed or produced the desired result. In practice, this failure can be caused by factors beyond the perpetrator's control, such as resistance from the victim, interference from other parties, or other obstacles that prevent the crime from being successfully completed. Even though the perpetrator's intended result has not been achieved, the act still demonstrates a desire to violate the law and is therefore relevant in criminal law enforcement.

In Indonesia's positive criminal law system, provisions regarding attempted criminal acts are contained in Article 53 of the Criminal Code (KUHP), which states that a person can be punished if they have the intention to commit a crime, begin carrying it out, and the crime is not completed due to anything other than their own

will. This regulation demonstrates that criminal law not only focuses on the consequences but also on the actual actions that lead to the crime. The purpose of this regulation is to provide protection to the community while preventing the development of larger crimes.

Unlike positive criminal law, Islamic criminal law does not specifically regulate the concept of attempted criminal acts in a single, explicit provision. Discussions on attempted criminal acts developed through *ijtihad* (intelligence) among scholars based on the Qur'an, hadith, principles of Islamic jurisprudence (*usul al-fiqh*), and the objectives of sharia (*maqāsid al-syarī'ah*). Therefore, the concept of attempted criminal acts in Islamic law is more commonly found in Islamic jurisprudence literature, which discusses the elements of criminal acts, forms of criminal liability, and the types of punishments that can be imposed on perpetrators.

Differences in *ijtihad* methods have led to differing views among the imams of each school of

thought regarding the status of attempted criminal acts. The Hanafi school emphasizes the existence of intention and the initiation of the act as the basis for imposing ta'zir punishments, while the Maliki, Shafi'i, and Hanbali schools also believe that hudud and qisas punishments can only be imposed if all elements of the crime have been fully met. Nevertheless, all four schools of thought agree that attempted criminal acts remain unlawful and may be subject to ta'zir sanctions based on the judge's considerations for the benefit of society.

In addition to discussing the views of the imams of the schools of thought, studying the stages of criminal conduct also plays a crucial role in understanding the process of a crime. Abu al-Hasan al-Mawardi, in his work *Ahkam al-Sulthaniyyah*, explains that criminal acts do not occur suddenly, but rather go through stages, starting with the emergence of intention, preparation, initiation of implementation, completion of the crime, the evidentiary process in court, and the implementation of the verdict by the state. These stages demonstrate that Islamic criminal law emphasizes not only punishment but also prioritizes prevention, procedural justice, and the protection of community rights.

The development of modern legal systems demonstrates that the principles put forward by classical scholars remain relevant in current law enforcement. The concept of caution in sentencing, the importance of strong evidence, and the judge's authority to determine ta'zir sanctions demonstrate that Islamic criminal law has the flexibility to address various contemporary legal issues. Therefore, the study of attempted criminal acts is not only theoretical but also has practical benefits as material for developing a just legal system.

Based on the above description, this study aims to analyze the views of the imams of the Islamic schools of thought regarding attempted criminal acts from the perspective of Islamic criminal law and examine the stages of criminal acts according to the thoughts of Abu al-Hasan al-Mawardi in *Ahkam al-Sulthaniyyah*. This study is expected to provide a scientific contribution in enriching the study of Islamic jurisprudence (fiqh

jinayah) and demonstrate the relevance of classical Islamic legal thought to the development of modern criminal law in Indonesia.

II. RESEARCH METHODS

This study uses a normative legal research method with a qualitative approach. The approaches employed include a conceptual approach and library research, examining various primary and secondary legal sources and scientific literature related to attempted criminal acts in Islamic criminal law.

The research data was obtained through a literature study of classical fiqh books, such as *At-Tasyri' al-Jina'i al-Islami*, *Al-Muwatta'*, *Al-Risalah*, *Al-Mughni*, *Ahkam al-Sulthaniyyah*, as well as various books and journals discussing Islamic criminal law and Indonesian positive criminal law. All data were then analyzed using descriptive-qualitative analysis methods by comparing the opinions of the imams of the schools of thought regarding attempted criminal acts and identifying similarities, differences, and their relevance to the development of contemporary criminal law.

III. RESULTS AND DISCUSSION

A. Research results

The results of the study indicate that the concept of attempted criminal acts in Islamic criminal law is understood as an act that has entered the implementation stage, but has not yet achieved the desired result due to obstacles beyond the perpetrator's will or due to certain other factors. Although not explicitly regulated in the Qur'an and Hadith, this concept developed through *ijtihad* of scholars of various schools of thought guided by sharia principles, especially regarding criminal responsibility, caution in imposing punishment, and protection of the public interest.

Based on a study of the opinions of four Islamic schools of thought, a consensus was found: hudud and qisas punishments cannot be applied to attempted crimes because the elements of a crime have not been fully met. All schools of thought require an act, intention, and consequence as the primary elements of a crime. If any of these elements are not met, the

perpetrator cannot be subject to the punishment prescribed by sharia.

The Hanafi school places greater emphasis on the presence of intention (qasd) and the initiation of action (bad' al-fi'l). According to this school, a person who has already begun a concrete act of committing a crime can be subject to ta'zir punishment even if the crime is not yet complete. This approach is based on the goal of maintaining public security and preventing the development of larger crimes.

Meanwhile, the Maliki school emphasizes the importance of fulfilling the element of consequence in a crime before hudud or qisas punishment is imposed. However, attempted criminal acts are still considered reprehensible acts subject to ta'zir punishment based on the judge's discretion. The principle of sadd al-dzari'ah, developed in the Maliki school, serves as the basis for preventing greater harm by imposing sanctions on those who attempt it.

The Shafi'i school also believes that attempted criminal acts do not meet the requirements for a perfect crime and therefore cannot be subject to hudud punishment. However, judges still have the authority to impose ta'zir punishments, taking into account the level of culpability, the perpetrator's intent, and the resulting impact. This approach demonstrates the Shafi'i school's prioritization of legal certainty and caution in imposing criminal penalties.

Almost the same view is also found in the Hanbali school. According to this school of thought, hudud can only be implemented if all elements of a criminal act have been proven perfectly. If the criminal act is still at the trial stage, then the resolution is carried out through a flexible ta'zir mechanism according to the level of danger posed by the perpetrator.

In addition to examining the views of the imams of the Islamic schools of thought, this study also found that, according to Abu al-Hasan al-Mawardi, the implementation of a crime proceeds through several stages: intention, preparation, initiation of the crime, completion of the crime, the evidentiary process in court, and the implementation of the verdict. These stages demonstrate that Islamic criminal law is not solely

focused on punishment but also considers prevention, fair evidence, and the protection of the rights of society and individuals.

Overall, the research findings show that Islamic criminal law has a fairly comprehensive mechanism for regulating attempted crimes. While it does not impose the same punishment as a completed crime, scholars still recognize the legal accountability of perpetrators through the imposition of ta'zir punishments as a form of protection for public order and the public good.

B. Discussion

The research results show that the concept of attempted criminal offenses in Islamic criminal law has different characteristics from positive criminal law, but both share the same goal: preventing crime and providing protection to society. In Islamic criminal law, the primary focus is not only on the consequences but also on fulfilling the elements of a crime according to sharia law. Therefore, the application of hudud and qisas punishments requires complete proof to avoid errors in sentencing.

The consensus of the imams of the Islamic schools of thought indicates an agreement that an attempted crime cannot be equated with a completed crime. Even if the perpetrator has intended and initiated the actual act, the lack of legal consequences prevents the hudud punishment from being applied. This approach reflects the principle of caution (dar'u al-hudud bi al-syubuhah), which avoids imposing severe punishments if there is still doubt about the fulfillment of the elements of a crime.

On the other hand, the existence of ta'zir punishments provides judges with flexibility in imposing sanctions on perpetrators of attempted crimes. This flexibility allows judges to consider the level of culpability, the perpetrator's motive, the danger posed, the community's circumstances, and the goals of the perpetrator's rehabilitation. Thus, ta'zir serves not only as punishment but also as a means of education, prevention, and social protection.

The Hanafi school of thought can be considered more progressive because it focuses on the early stages of a crime. This school believes

that concrete actions that have already begun indicate a threat to public security, thus requiring the state to impose sanctions through ta'zir. This approach demonstrates that Islamic criminal law is not only repressive but also preventive in preventing the development of criminal acts.

Meanwhile, the Maliki, Shafi'i, and Hanbali schools of thought place greater emphasis on the importance of fulfilling the element of consequence before imposing a final sentence. Nevertheless, all three schools of thought still allow judges the right to impose ta'zir sentences for attempted crimes. This shared view demonstrates that all schools prioritize a balance between legal certainty, justice, and expediency in enforcing Islamic criminal law.

Research on the stages of criminal conduct according to al-Mawardi also shows that Islamic law enforcement is systematic. The stages, which range from intention, preparation, execution, proof, and even the execution of the verdict, demonstrate that a criminal offense cannot be immediately punished without due process. This reflects respect for individual rights while protecting the interests of society.

When compared with the Indonesian criminal law system, the concept of attempted criminal offenses in Islamic law shares several similarities, particularly in recognizing that perpetrators who have already initiated the crime can still be held criminally responsible. The difference lies in the basis for imposing sanctions. In Indonesian criminal law, the form and extent of punishment are determined by statutory regulations, whereas in Islamic criminal law, judges have greater latitude in determining the form of ta'zir punishment according to the circumstances of the case and the public interest.

Thus, the results of this study indicate that the thoughts of the imams of the Islamic schools of thought regarding attempted criminal acts remain relevant in the development of modern criminal law. The principle of caution in sentencing, the importance of strong evidence, and the flexibility of ta'zir punishments can serve as references in realizing a criminal law system oriented towards justice, legal certainty, protection of human rights, and the benefit of society.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

An attempted crime is an act that has begun to commit a crime but is not completed due to obstacles. In Islamic criminal law, the assessment is based on the elements of intent, the act, and the resulting consequences. For hudud and qisas crimes, punishment is generally imposed if the elements of the crime have been fulfilled, while for ta'zir crimes, the judge may impose sanctions for attempted crimes to protect the public interest. Therefore, Islam emphasizes caution in sentencing to ensure it adheres to the principles of justice.

B. Suggestion

A more in-depth study of the concept of attempted criminal acts in Islamic criminal law is needed to clarify its understanding and make it relevant to current legal developments. Furthermore, it is hoped that further research will compare the application of attempted criminal acts in Islamic criminal law and positive criminal law to enrich academic studies.

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