



Comparison of Sanctions for the Criminal Act of Robbery in Islamic Jurisprudence and Indonesian Criminal Law

Khairun Nisa¹ Adella Nurul Azzahra² Alya Syafa³ Zulkarnain Tuanku Lelo⁴ Annawawi Fairuzi⁵

¹²³⁴⁵ State Islamic University of North Sumatra

E-mail: khairun203251002@uinsu.ac.id adella203251016@uinsu.ac.id alya203251022@uinsu.ac.id
zulkarnain203251018@uinsu.ac.id annawawi203251019@uinsu.ac.id

Info Articles

Article History

Received: 2024-05-02

Revised: 2024-05-14

Published: 2024-05-30

Keywords:

Robbery, Hirabah, Islamic Jurisprudence, Indonesian Criminal Law.

Abstract

Robbery is a crime that frequently occurs in society and causes both material and psychological losses to victims. From an Islamic legal perspective, robbery is known as hirabah, which is the act of taking another person's property with violence or threats that instill fear in the community. Meanwhile, Indonesian criminal law regulates robbery as theft with violence as stipulated in Article 365 of the Criminal Code (KUHP). This study aims to analyze and compare the sanctions for the crime of robbery in Islamic jurisprudence (fiqh jinayah) and Indonesian criminal law. This study uses a normative legal research method with a statutory and comparative legal approach. Data were obtained through a literature review of the Qur'an, hadith, Islamic jurisprudence books, laws and regulations, and relevant scientific literature. The results show that Islamic jurisprudence stipulates hudud sanctions based on the level of crime committed by the perpetrator, while Indonesian criminal law applies imprisonment, life imprisonment, and the death penalty in certain circumstances. Despite differences in the form of sanctions, both legal systems have the same goal, namely to protect society, maintain public order, and provide a deterrent effect on perpetrators of criminal acts.

I. INTRODUCTION

The increasingly complex development of society has been accompanied by an increase in various forms of crime. One of the most common crimes is robbery. This crime not only results in the loss of victims' property but can also threaten lives and instill fear in social life. Therefore, legal regulations are needed that can protect the community while imposing strict sanctions on perpetrators.

In Islamic law, the crime of robbery is known as hirabah. Hirabah is the act of taking another person's property through violence, threats, or terror, thereby disrupting public security. This crime falls under the category of hudud crimes, crimes whose forms and sanctions are determined by sharia. The legal basis for hirabah is found in Surah Al-Ma'idah, verse 33 of the Quran, which outlines various forms of punishment for perpetrators, depending on the severity of the crime.

On the other hand, Indonesian criminal law defines robbery as theft with violence, as stipulated in Article 365 of the Indonesian Criminal Code. This provision stipulates criminal penalties based on the consequences, ranging from imprisonment to the death penalty if the act results in the victim's death. The Indonesian criminal law system places greater emphasis on punishment aimed at fostering and reintegrating the perpetrator into society.

The differences in philosophical background between Islamic law and national criminal law are interesting to examine further. Islamic jurisprudence (fiqh jinayah) is based on revelation as the primary source of law, while Indonesian criminal law is derived from state-established legislation. Nevertheless, both share the same goal: to establish order, provide a sense of justice, and protect the rights of the community from criminal acts.

Based on this description, this research is important to understand how the sanctions for robbery are regulated in Islamic jurisprudence and Indonesian criminal law, as well as to analyze the similarities and differences between the two. The results are expected to contribute academically to the development of Islamic criminal law studies and national criminal law. In addition, the crime of hirabah can be defined as the crime of gal'u at-Tariq, sariqah al-Kubra. It is defined as qat'u at-Tariq because it means preventing people from passing through the public road, preventing security whether accompanied by harming the body or property or just simply frightening or taking property.

II. RESEARCH METHODS

This research uses normative legal research with a comparative legal approach. Normative legal research is research conducted by reviewing library materials or secondary data, consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

A comparative legal approach is used to analyze the similarities and differences between the sanctions for robbery in Islamic jurisprudence and Indonesian criminal law. This approach was chosen because the two legal systems have different philosophical foundations and characteristics in determining the form of punishment for robbery perpetrators.

The primary legal materials in this study include the Quran, Hadith, the Criminal Code (KUHP), and laws and regulations related to the crime of robbery. Secondary legal materials include books on Islamic jurisprudence (fiqh jinayah), scientific journals, previous research results, and other literature relevant to the research object. Tertiary legal materials are obtained from legal dictionaries and legal encyclopedias.

The data collection technique was conducted through library research. The collected data was then analyzed descriptively and comparatively, namely by describing the

legal provisions regarding the crime of robbery in both legal systems, then comparing the two to draw conclusions regarding their similarities and differences.

III. RESULTS AND DISCUSSION

A. The Criminal Act of Robbery from the Perspective of Islamic Jurisprudence

In Islamic law, robbery is known as hirabah. Linguistically, hirabah means fighting or committing acts of violence that cause fear. In terms of terms, hirabah is the act of taking another person's property by force using violence or threats in a public place, thereby disturbing public security.

Scholars define hirabah as the act of going out with a weapon or tool that poses a threat to seize property, injure, or kill another person. This crime falls under the category of hudud crimes, crimes for which punishments have been determined by Allah SWT.

The legal basis for hirabah is found in QS. Al-Ma'idah verse 33: "Indeed, the only retribution for those who fight against Allah and His Messenger and cause damage on the face of the earth is that they be killed, or crucified, or have their hands and feet cut off crosswise, or be thrown out of the land where they live."

Based on this verse, the majority of scholars divide the sanctions for hirabah into several levels, namely:

1. Killing and Looting

If the perpetrator commits murder and also steals the victim's property, the punishment is death and crucifixion. This punishment is seen as a form of maximum protection for the lives and property of the community.

2. Killing Without Taking Property

If the perpetrator only kills the victim without taking his property, the penalty is the death penalty.

3. Seizing Property Without Killing

If the perpetrator takes property by force but does not kill the victim, the punishment is to have the right hand and left foot cut off in a crisscross pattern.

4. Spreading Terror Without Killing and Seizing Property

If the perpetrator only causes fear and security disturbances without confiscating property or killing, then he is subject to exile or other punishment deemed appropriate by the authorities (ta'zir).

The imposition of these sanctions aims to maintain the five main objectives of sharia (maqashid al-syariah), especially protecting the soul (hifz al-nafs) and protecting property (hifz al-mal).

B. The Crime of Robbery in Indonesian Criminal Law

In Indonesian criminal law, robbery is not explicitly referred to as "robbery", but is categorized as theft with violence as regulated in Article 365 of the Criminal Code.

Article 365 paragraph (1) of the Criminal Code states that theft which is preceded, accompanied or followed by violence or threats of violence against people is punishable by a maximum prison sentence of nine years.

The criminal threat can be increased if certain circumstances exist, namely:

Done at night, Done by two or more people together, Done by damaging or climbing, Resulting in serious injury, Resulting in the death of the victim.

If the act results in serious injury, the perpetrator can be sentenced to a maximum of fifteen years. If the act results in the victim's death, the perpetrator can be sentenced to death, life imprisonment, or a maximum of twenty years' imprisonment.

The criminal punishment system in Indonesian criminal law basically aims to provide a deterrent effect, protect society, and provide guidance to perpetrators so that they can return to functioning as good members of society.

C. Comparative Analysis of Robbery Sanctions in Islamic Jurisprudence and Indonesian Criminal Law

In general, both Islamic jurisprudence and Indonesian criminal law view robbery as a serious crime that threatens public security.

However, there are some fundamental differences.

First, in terms of legal sources. Islamic jurisprudence is based on the Qur'an and the Hadith as divine revelation, while Indonesian criminal law is based on statutory regulations established by the state.

Second, in terms of the type of sanctions. Islamic jurisprudence applies hudud punishments, which are strictly determined based on the severity of the perpetrator's crime. In contrast, Indonesian criminal law prioritizes imprisonment for a specific period, adjusted at the judge's discretion.

Third, in terms of the purpose of punishment, Islamic law places greater emphasis on protecting society and prevention through a strong deterrent effect, while Indonesian criminal law combines elements of retribution, prevention, and the development of the perpetrator.

The similarities between the two lie in the main objective of criminal punishment, namely creating social order, protecting society, and providing justice for victims of crime.

For a comparison of the sanctions for robbery in Islamic jurisprudence and Indonesian criminal sanctions, this is described in table 1 below.

Table 1. Comparison of Islamic criminal sanctions and Indonesian criminal sanctions

Aspect	Criminal Jurisprudence	Indonesian Criminal Law
Term	Hirabah	Theft with violence
Legal basis	QS. AL-Ma'idah :33	Article 365 of the Criminal Code
Source of Law	Al-Quran and Hadith	Legislation
Types of Law	Hudud	Life imprisonment, death penalty
Purpose of Criminalization	Protecting Life and Property, Deterrent Effect	community protection and development

Nature of Punishment	It has been determined by Sharia	adjusted to the judge's considerations
----------------------	----------------------------------	--

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on the results of research on the comparison of sanctions for the crime of robbery in Islamic jurisprudence and Indonesian criminal law, it can be concluded that the crime of robbery in Islamic jurisprudence is known as *hirabah*, namely the act of taking another person's property with violence or threats that cause fear in society. Sanctions against perpetrators of *hirabah* are included in the category of *hudud* crimes, with the form of punishment adjusted according to the level of crime committed, such as the death penalty, crucifixion, amputation of hands and feet in a crossed position, and exile.

Meanwhile, Indonesian criminal law defines robbery as theft with violence, as stipulated in Article 365 of the Indonesian Criminal Code. The penalties include imprisonment, life imprisonment, and the death penalty under certain circumstances, particularly if the crime results in serious injury or death.

Although there are differences in legal sources, types of sanctions, and orientation of punishment, both legal systems have the same goal, namely to protect society, maintain security and public order, provide a deterrent effect on perpetrators, and realize justice for victims of crime.

B. SUGGESTIONS

This research is expected to provide students and academics with valuable insights into the differences and similarities between Islamic jurisprudence (*fiqh jinayah*) and Indonesian criminal law regarding the crime of robbery. Furthermore, policymakers need to consider the values of substantive justice when formulating national criminal law policies without neglecting the principles of human

rights protection and the development of modern society.

REFERENCE LISTAN

- Awdah, A.Q. (2013) *At-Tasyri' Al-Jina'i Al-Islami Muqaranan bi al-Qanun al-Wad'i*. Beirut: Dar al-Kitab al-'Arabi.
- Hamzah, A. (2022) *Asas-Asas Hukum Pidana di Indonesia*. Jakarta: Rineka Cipta.
- Kementerian Agama Republik Indonesia (2019) *Al-Qur'an dan Terjemahannya*. Jakarta: Lajnah Pentashihan Mushaf Al-Qur'an.
- Muslich, A.W. (2019) *Pengantar dan Asas Hukum Pidana Islam (Fikih Jinayah)*. Jakarta: Sinar Grafika.
- Pemerintah Republik Indonesia (2023) *Kitab Undang-Undang Hukum Pidana*. Jakarta: Sekretariat Negara Republik Indonesia.
- Rahman, A. dan Siregar, M. (2022) 'Analisis Perbandingan Sanksi Pidana dalam Hukum Islam dan Hukum Positif Indonesia', *Jurnal Hukum Islam*, 7(2), pp. 120–132.
- Rohman, F. (2021) 'Konsep Hirabah dalam Perspektif Fikih Jinayah', *Al-Ahkam: Jurnal Hukum Pidana Islam*, 3(1), pp. 45–58.
- Sari, N. (2024) 'Penerapan Pasal 365 KUHP terhadap Tindak Pidana Perampokan', *Jurnal Lex Crimen*, 13(1), pp. 85–94.
- Maulidya Mora Matondang S.H.I., M.Ag (Dosen Fakultas Syariah Dan Hukum, Program Studi Hukum Tata Negara / Siyasa.