



Attempted Criminal Acts in Islamic Criminal Law

Dini Ramadhani¹ Nabila Az'zahra²

¹²State Islamic University Of North Sumatra

Email: dinmelati719@gmail.com nabilaazzahra9016@gmail.com

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Abstract

In this paper, the author will discuss attempted criminal acts in Islamic criminal law. Islamic Criminal Law is an important part of the Islamic legal system that aims to maintain order, justice, and the welfare of the community. In practice, Islamic criminal law not only regulates actions that have been committed, but also addresses actions that are still in the attempted stage. An attempted criminal act is the incomplete completion of a criminal act due to several external factors, the perpetrator having intent and the initiation of the criminal act. An attempted criminal act also has several elements. For an act to be considered an attempted criminal act, it must fulfill three main elements: an act that has begun with intent, there is implementation to carry out an act, and the incompleteness of the act that is not due to the individual's own will. Regarding this attempted criminal act, there are also several opinions from scholars. Scholars, including the imams of the madhhab, do not discuss this attempted criminal act explicitly and specifically. However, this does not mean that attempted criminal acts are considered an unimportant issue, but rather because attempted criminal acts are included in the category of ta'zir crimes, which are flexible and left to the judge's discretion. Indonesia in this section.

I. INTRODUCTION

Islamic criminal law is a crucial component of the Islamic legal system, aiming to maintain order, justice, and the welfare of the community. In practice, Islamic criminal law not only regulates completed acts but also addresses those still in the attempted stage. This demonstrates Islam's comprehensive focus on every form of human behavior that has the potential to cause harm to individuals and society. The concept of attempted criminal acts is interesting to study because not all unfinished acts are automatically considered criminal.

In law, in positive criminal law, attempted criminal acts are clearly regulated with certain criteria, such as intent and initiation of implementation. However, in Islamic criminal law, this concept has a different approach, as it is closely related to the perpetrator's intent (niyyah), will, and actual actions.

On the other hand, there are differences of opinion among scholars regarding the limits of when an act can be categorized as an attempted crime and whether the perpetrator can be

punished or not. Some scholars emphasize the importance of real action (fi'l),

while others also consider the aspect of intention as a basis for accountability. This distinction demonstrates that the discussion of attempted criminal acts in Islamic criminal law is complex and requires in-depth analysis. Furthermore, the increasingly complex developments of modern society also demand a more contextual understanding of the concept of attempted criminal acts in Islamic law. This is crucial to ensure that the values of justice embodied in Islamic law remain relevant and applicable to contemporary life.

Several previous studies have examined themes related to experiments in criminal acts in Islamic criminal law. Research by Mochammad Farhan et al. entitled Comparative Analysis of Attempted Criminal Acts from the Perspective of Islamic Criminal Law and Conventional Criminal Law in Indonesia focuses on comparing the concepts, elements, and sanctions for attempted criminal acts between Islamic criminal law and Indonesian criminal law. (Mochammad Farhan,

2023) In addition, Reski Anwar's research on Comparative Analysis of Criminal Sanctions in Islamic Criminal Law and Positive Law focuses more on comparing the criminal systems and types of sanctions in the two legal systems.

These two studies provide an overview of the differences in legal characteristics. Islamic criminal law and positive criminal law, but has not yet elaborated in depth the basis of criminal responsibility for attempted criminal acts based on the concepts of *jarimah*, *maqāṣid al-syarī'ah*, and the views of the jurists. (Anwar, 2018)

Based on previous studies, this research is different because it does not only comparing Islamic criminal law with positive criminal law, but focusing more on normative analysis regarding the concept of attempted criminal acts in Islamic criminal law.

This research examines the views of *fiqh* scholars regarding position attempted criminal acts, the forms of perpetrator accountability, and the types of sanctions that can be imposed for unfinished acts. Thus, this research is expected to provide a more comprehensive understanding of the concept of attempted criminal acts from an Islamic criminal law perspective and enrich the body of Islamic criminal law studies in Indonesia.

The aim of this research is to analyze the concept of experimental action. This study examines the basis for criminal liability for attempted criminal acts according to Islamic scholars, and explains the types of sanctions that can be applied to perpetrators based on the principles of Islamic criminal law. Furthermore, this research is expected to serve as an academic reference in the development of Islamic criminal law and contribute to the study of criminal law reform in Indonesia.

II. RESEARCH METHODS

This study uses a normative legal research method with a conceptual approach and a statutory approach. The conceptual approach is used to analyze the concept of attempted criminal acts from the perspective of Islamic criminal law based on the Qur'an, hadith, and the opinions of Islamic jurists, while the statutory approach is

used to examine provisions regarding attempted criminal acts.

criminal acts in Indonesian positive law as comparative material. The research data sources consist of primary, secondary, and tertiary legal materials obtained through library research.

The data that has been collected is analyzed qualitatively using a descriptive-analytical method, namely by outlining the concept of attempted criminal acts in Islamic criminal law, then analyzing various opinions of scholars and relevant legal literature to gain an understanding of the basis.

criminal liability and the forms of sanctions that can be imposed on perpetrators of attempted criminal acts. The results of this analysis are expected to provide a comprehensive overview of the application of the concept of attempted criminal acts from an Islamic criminal law perspective.

III. RESULTS AND DISCUSSION

A. Understanding Attempted Criminal Acts in Islamic Criminal Law

Attempted criminal activity is an activity which leads to actions containing elements of a criminal act. Attempting to commit such a crime, if the conditions are met, can be subject to criminal punishment. The jurists do not pay attention to a specific theory of attempted crime as it is currently understood. However, they do pay attention to the problem of distinguishing between completed (perfect) and incomplete (incomplete) crimes. (Abdul Basith Junaidy, 2020) attempted crime is the failure to complete a criminal act due to external factors, but the perpetrator has the intention and the beginning of the criminal act. The scholars do not discuss attempted crime much because this act is a *ta'zir* crime that changes greatly according to space and time, customs and the character of a society.

They focus more on criminal offenses whose elements and requirements are not easily changed, such as *hudud* and *qisas/diyat* crimes. The theory of "attempted" crimes is not found among the jurists, and they are even unfamiliar with the term "attempted" in its technical-

juridical sense. What they discuss is the distinction between completed and uncompleted crimes.

This does not mean that they do not discuss the content of the theory of "attempted" as will be seen later. (Hamim, 2020) Essentially, Islamic legal theory on attempted criminal acts is broader in scope than conventional legal theory. Islamic law punishes any attempted criminal act, whether committed by men or women, if the unfinished crime is a sin. Sharia applies this principle without exception. Therefore, anyone who raises a stick at someone to hit them, then someone prevents them from doing so, has committed a sin that must be subject to ta'zir punishment.

Anyone who attempts to shoot someone, but misses, has committed a sin that will be subject to ta'zir punishment. (Abdul Basith Junaidy, 2020) An attempted crime is an act that has an intention from the start, there is an implementation to commit a crime, but the crime is not completed, not solely due to the perpetrator's own will.

In the case of an attempt, of course, a person can be punished by emphasizing that "the failure to complete the execution was not solely due to his own will," meaning that an attempt can be punished when an action occurs and the action is stopped outside of his will.

B. Elements of Attempted Crimes in Islamic Criminal Law

In positive criminal law, we know the term "attempt" (pogging). In Islamic Criminal Law (Fiqh Jinayah), this is called *As-Syuru'*. In terms of terminology, *Syuru'* is carrying out a prohibited act but the perpetrator does not succeed in completing the act or does not achieve the intended result due to factors outside his will.

The perpetrator. There are several elements of attempted Islamic crime. An act can be categorized as an attempted crime if it meets three main elements:

1. Having Intention (Al-Qashdu)

Intention is an inner pillar. The perpetrator must have a conscious will to commit a sin or *jarimah* (criminal act). However, intention alone without actual action cannot be subject to worldly

sanctions, based on the Prophet's hadith that Allah forgives what is in the heart as long as it is not spoken or acted upon. Transformation: Intention only becomes a criminal element when it is realized in the initial steps of implementation.

2. Starting the Implementation (Al-Bad'u fit Tanfidz)

This is an external pillar. The perpetrator must have moved from merely "preparing" to "executing". Differences between Preparation and Execution: Drawing a sword in front of the victim is already considered an act of execution, while simply buying a sword at the market is still categorized as preparation (*at-tahyi'ah*) which is generally not subject to sanctions except in certain cases. Objective & Subjective Theory: Scholars see that if the act has directly endangered the legal interests of others, then the element of execution has been fulfilled.

3. The Unfinished Deed Is Not Due to One's Own Will

The crime failed to achieve its ultimate goal due to external factors. Example:

- a. The perpetrator wanted to steal, but the alarm sounded so he ran away.
- b. The perpetrator wanted to kill, but his weapon jammed or someone else prevented him.

If the perpetrator stops of his own accord (*Taubat Nasuha*) before the act is discovered or produces results, then according to most scholars, he will not be punished in this world, but his affairs will remain with Allah in the afterlife. Division of Trials in Islamic Jurisprudence. The jurists divide trials into two main types:

- a. *Syuru' Naqish* (Attempt Stopped) The perpetrator has not completed the entire series of actions required for the crime (for example: just climbed the fence). Legal status: Sentenced to *Ta'zir*.
- b. *Syuru' Tamm* (Attempt Completed) The perpetrator has carried out all the actions that necessary, but the result did not occur (e.g., shot but missed). Legal status: Given a heavier *Ta'zir* sentence. (Santoso, 2003)

C. The Views of Scholars on Attempted Criminal Acts

Scholars, including the imams of the Islamic schools of thought, do not discuss the crime of attempted murder in detail and specifically. This does not mean that the issue is unimportant, but rather because attempted crimes fall under the category of ta'zir crimes. Although not discussed separately, this does not mean that attempted crimes are unrelated to other forms of crime. The lack of specific attention to attempted crimes is due to two main reasons:

1. Attempted acts of committing a crime are not subject to had or qisas punishments, but rather fall within the realm of ta'zir, where imposing sanctions is the responsibility of the government (ulil amri) or judges. Whether the crime is expressly prohibited by sharia or by the ruling authorities, the punishment is determined by them to suit the social conditions of the community. In this case, judges are given discretion in determining the punishment. the severity of the punishment, according to the minimum and maximum limits permitted.
2. Because general sharia provisions already exist regarding ta'zir punishments, creating specific regulations for attempted crimes is deemed unnecessary. This is because ta'zir sanctions can be imposed on any form of sinful act that does not fall under the categories of had or kifar. In other words, any act that constitutes an attempted crime is considered reprehensible and subject to ta'zir punishment.

On the first point, most ta'zir crimes are flexible and subject to change over time and place, including whether they are punishable or not. The elements of ta'zir crimes can also be adjusted according to the perspective and policies of the authorities. Because of this flexibility, Islamic jurists generally do not pay special attention to attempted crimes, as such attempts are already included within the scope of ta'zir crimes.

Meanwhile, in the second point, the punishment of had and kifar only applies to

certain crimes that have been completed. Therefore, any initial attempt to commit a prohibited act is only subject to ta'zir sanctions, because the attempted act itself is considered a form of sin or a complete crime, even though it is only part of an overall criminal act that has not been completed. Therefore, it is not unusual for one act to be considered a form of crime, and when combined with other acts, it can form a different type of crime. For example, if someone intending to steal has already made a hole in the wall of a house but is caught before he can enter, then this act is considered a form of sin or a violation that can be punished, even though it is only the initial stage of the act of theft.

Similarly, if someone breaks into another person's house with the intention of stealing, without damaging any part of the house such as the walls or roof, their act is still considered a separate crime, even though it falls into the category of incomplete theft. However, if the perpetrator successfully completes the entire series of acts that constitute the crime of theft and manages to remove the stolen goods from the house, then the entire act is categorized as a complete theft. In this case, the perpetrator will be subject to the hadd punishment according to applicable law. Conversely, each act that is part of the theft can no longer be subject to ta'zir punishment, because they have all combined into one complete crime, namely theft.

Therefore, Islamic jurisprudence scholars do not specifically regulate attempted criminal offenses. What is more important for them is distinguishing between completed and incomplete crimes. Completed crimes are subject to had or qisas punishments, while incomplete crimes are subject to only ta'zir sanctions (Maswandi, 2025).

D. Accountability and Sanctions Against Perpetrators

The punishment or sanction for people who attempt a crime ista'zir, not had, as the Prophet Muhammad SAW said:

مَنْ تَعَدَّى فِي شَيْءٍ مِنْ الْحَدِّ غَيْرِ الْحُدُودِ فَهُوَ مِنَ الْمُعْتَدِينَ

Whoever imposes a hadd punishment for a crime other than hudud, then he is included among those who have transgressed the limits (HR al-Baehaqi)

This hadith, although it only mentions the word haddan, does not only focus on hudud criminal law. The word haddan in the hadith above covers qisas and hudud criminal law, because if the crime is not resolved because the perpetrator repents, then in cases like this, scholars have different opinions.

Some scholars such as Imam Abu Hanifah, Imam Malik, Imam Shafi'i, and Imam Ahmad ibn Hanbal are of the opinion that repentance does not remove punishment. Meanwhile, some other scholars, particularly the Shafi'iyah, say that repentance can remove punishment. This is based on Allah's words in Surah al-Ma'idah, verse 34:

Meaning: Except for those who repent before you can seize them. So know that Allah is Oft-Forgiving, Most Merciful. Caring.

Also the Word of Allah SWT. In surah an-Nisa: 16: *Meaning: (If there are) two people among you who do (a heinous act), punish both of them. If both repent and reform, let them be. Indeed, Allah is the Most Accepting of repentance, the Most Merciful.*

Meanwhile, according to Ibn Taymiyah and Ibn Qayyim, both of them specify that if the crime is Allah's right, then repentance can cancel the punishment, and if the crime concerns Adami's rights, then repentance does not cancel the punishment. The opinions of Ibn Taimiyah and Ibn Qayyim seem to be a middle way that compromises the conflicting first and second opinions.

However, according to these two imams, the effect of repentance on punishment only applies to crimes that offend the rights of the community. However, for crimes that offend individual rights, repentance still has no effect on punishment.

The legal sanction for ta'zir crimes related to the mixed rights of individuals and groups, such as attempted murder, is that if the victim forgives, then Ulil Amri is permitted to punish them. Al-Mawardi explains:

1. If forgiveness of Adami's rights is granted before the lawsuit is filed with the judge, then Ulil Amri can choose between imposing ta'zir sanctions and forgiving him.
2. If forgiveness is granted after the victim files a lawsuit with the judge, jurists differ on the elimination of the Ulil Amri's right to impose punishments related to community rights. Some argue that the Ulil Amri's right is eliminated by the victim's filing of the lawsuit. This opinion is held by Abu Abdillah al-Zubayr. However, according to others, the Ulil Amri's right to impose punishments related to the rights of the congregation cannot be eliminated, whether before or after the victim files the lawsuit.

E. The Relevance of the Concept of Attempted Criminal Acts in Islamic Criminal Law to Modern Criminal Law

In the concept of Islamic criminal law, scholars, including the Imams of the Islamic schools of thought, do not specifically and in detail discuss the crime of attempted crime. This does not mean that the issue is unimportant, but rather that attempted crime falls within the framework of ta'zir crimes. This condition does not mean that there is no connection at all between attempted crime and other crimes. Attempted crime is not subject to had or qisas punishment, but rather ta'zir punishment. The determination of sanctions is left to the state authorities (ulul-al amri) or judges. Islam views an act as having three main elements:

1. Intention (al-niyyah)
2. Deeds (al-fi'l)
3. Consequences (natijah)

However, unlike modern law, in Islamic law, intention holds a very dominant position. This is based on the hadith:

"Indeed, deeds depend on the intention."

In the context of an attempted criminal act, if someone has evil intentions and begins to carry out actions, but has not yet produced results, then his actions are still taken into account legally, but do not amount to hudud punishment. (Abdul Qadir Audah, b1992) In modern legal

concepts, trial, which in Dutch is called "Poging", according to the doctrine is a crime that has started, but is not yet complete.

It can also be interpreted that an attempt (Poging) is an attempt to carry out an action goal but is not completed. The action is not completed not because of the person's own desire, but because of other factors that prevent it. In criminal law, there are known theories regarding the basis for the criminalization of attempted crimes. Theories regarding the basis for the criminalization of attempted crimes can be distinguished into objective attempted theories and subjective attempted theories. An action that can be said to be an attempt (Poging), (Montolalu, 2016) has several elements. Based on Article 53 of the Criminal Code, it contains several elements:

1. There is an intention
2. There is a start of implementation
3. The failure to complete an implementation is not due to the will of the person himself.

Explanation of Article 53 of the Criminal Code which states that an attempt to commit a crime is punishable if the intention to commit the crime is clear from the start of the crime, but the crime is not completed solely because of the perpetrator's will.

IV. CONCLUSION

Attempted criminal acts are generally recognized in Islamic criminal law, although not explicitly formulated as in modern criminal law. This concept is reflected in the discussion of jarimah ghairu tammah (incomplete crimes), namely acts that have begun but have not yet reached the consequences prohibited by sharia. In this regard, Islamic criminal law still considers the element of intention (al-niyyah) as the primary basis for assessing an act, so that even though a crime is not yet completed, the perpetrator can still be held morally and legally accountable.

However, because the element of consequence has not been completely fulfilled, the perpetrator of the attempted crime is not subject to hudud or qisas punishment, but is subject to Ta'zir punishments are flexible and left to the

judge's discretion. This flexibility allows for fairer and more proportional punishments, taking into account the level of culpability, intent, and condition of the perpetrator.

Thus, it can be concluded that Islamic criminal law has an approach that emphasizes not only external acts but also the inner aspects (intentions) and the goal of justice. This demonstrates that the concept of attempted criminal offenses in Islamic criminal law remains relevant, particularly in contributing to the formation of a more humane, preventative, and just legal system.

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