

## **Criminal Sanctions for Robbery a Comparative Study between Fiqh Jinayah and Criminal Law in Indonesia**

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### **Abstract:**

Humans as social beings deserve to maintain safety and security in life in the world, but acts of terror in the form of robbery crimes still often occur among the community, even though Islam has provided guidance regarding the value of life and property rights over humans. Regarding efforts to prevent and deal with this crime of robbery, the law enforcement agencies of a country have a big responsibility and share in fighting these crimes, making legal provisions designed to protect its people and providing firm sanctions so that the crime of robbery is not free and provides a deterrent effect. The purpose of this study is to examine the handling of robbery perpetrators with criminal sanctions or punishments from the perspective of Islamic law and statutory law in Indonesia, which in this case the limitation used in the Criminal law book (KUHP). This study is library research. The method used is the content analysis which is used to explore the explanations, thoughts, and comments of Muslim scholars. The results of the observations prove that the sanctions for the crime of robbery in fiqh jinayah or Islamic criminal law as described in QS. Al-Maidah [5]: 33, namely: death penalty, crucifixion to death or killed after a long time the perpetrator hung, cut off his hands and feet crosswise, and the last one was exiled from the earth. The sanctions for the crime of robbery as stated in Article 365 of the Criminal law book, namely: 9 years, 12 years, 15 years imprisonment, a maximum prison sentence of 20 years, and the death penalty, or life imprisonment.

**Keywords:** robbery; sanctions; criminal law.

### **Introduction**

Humans are social beings who always live hand in hand in a community of citizens, as social beings it is proper to be able to relate harmoniously with one another in peace and serenity. One of the main tasks brought by the Prophet as the recipient of the revelation of the Qur'an is to establish peace and security for mankind in the world, the meaning of the word Islam itself in addition to submission to Allah SWT also implies welfare and safety.<sup>1</sup> Islam is a religion of *rahmatan lil'alam* which plays an important role in regulating and solving the problems of the people, especially in terms of violence and crime. In the

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<sup>1</sup> Muh}ammad Thahir Azhary, *Negara Hukum* (Bogor: Kencana, 2003), 146.

interpretation of the Qur'an itself, Allah SWT strongly condemns the perpetrators of terror in all its forms and kinds.<sup>2</sup> Islam from the beginning has begun to invite and fight for security in all corners of the world. Terror acts in the form of robbery often threaten the security of the community, both the right to ownership of valuables and life. The creation of a safe atmosphere and the application of sanctions against criminals and troublemakers are important points in a country, including Indonesia, in carrying out the life of the nation and state, so there must be a wise legal formulation in the applicable legislation.

Criminal law is a rule of law formulated by the state whose contents are in the form of prohibitions or obligations, those who violate them can be subject to sanctions that can be imposed strictly by the state.<sup>3</sup> Likewise in Islamic criminal law is a translation of the term Fiqh Jinayah. According to Zainuddin Ali, fiqh jinayah is all legal provisions regarding criminal acts.<sup>4</sup> These two laws have the function of prohibiting committing acts of robbery, protecting property, and providing severe sanctions against perpetrators of robbery crimes. The act of robbing is included in the category of jinayah or *jarimah*.<sup>5</sup> In the science of fiqh it is explained that the jarimah of robbery belongs to the *jarimah h{udud*, namely whose punishment is directly stipulated in the Koran. *jarimah h{udud* According to Zainuddin Ali, is a crime committed by one or more people, which results in the perpetrator being subject to sanction *h{ad*.<sup>6</sup> One action *jarimah* classified as major sins are crimes of robbery. Therefore, the Qur'an legitimizes the perpetrators of robbery or *hira>bah* as people who fight against Allah, His Prophet, and people who in fact create chaos and destruction on earth. In the Criminal Law Book (KUHP), the term robbery is not known, but it is called theft with violence, and this is classified as a crime with very heavy penalties. The laws and regulations in Indonesia, in this case the Criminal law book and Islamic criminal law, each have different sanctions for the perpetrators of the crime of robbery (theft with violence).

## Result and Discussion

### Al-Quran Exegesis Regarding Robbery

*Hirabah* or robbery have in common with *qat'ut ariq* namely a group of people who cause trouble, rob property and honor, shed blood, and cause chaos on earth.<sup>7</sup> The Qur'an states that robbery is a major crime, and the punishment is set out in the QS. Al-Maidah[5] : 33<sup>8</sup>

<sup>2</sup> Ilyas Hasan, *Intisari Islam Kajian Komprehensif tentang Hikmah Ajaran Islam* (Jakarta: Lentera, 2003), 549.

<sup>3</sup> Muh}ammad Yusuf Musa, *Islam: Suatu Kajian Komprehensif*, (Jakarta: Rajawali, 1988), 240.

<sup>4</sup> H. Zainuddin 'Ali, *Hukum Pidana Islam*, (Jakarta: Sinar Grafika, 2007), 1.

<sup>5</sup> Shamsuddin Muh}ammad bin Abi Al-Abbas Ahmad bin Hamzah bin Shihabuddin Al-Manufi Al-Ramli, *Niha>yah Al-Muh}taj ila Syarh} Al-Minha>j*, Vol. 8 (Mesir: Musht}afa Al-Ba>b Al-Hala>bi wa Aula>duh, 1938), 2.

<sup>6</sup> Zainuddin Ali, *Hukum Pidana Islam*, 10.

<sup>7</sup> Sayyid Sabiq, *Fiqh al-Sunnah*, Juz 2, (Kairo: Maktabah Dar al-Turas, tth), 393.

<sup>8</sup> A. Rahman I Doi, *Hudud dan Kewarisan*, (Jakarta: Srigunting, 1996), 64.

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ (٣٣)

Indeed, the penalty for those who wage war against Allah and His Messenger and spread mischief in the land is death, crucifixion, cutting off their hands and feet on opposite sides, or exile from the land. This 'penalty' is a disgrace for them in this world, and they will suffer a tremendous punishment in the Hereafter.

Verily, those who fight against Allah and His Messenger and cause mischief in the earth, are recompensed by being killed or being nailed to a cross, or having their hands and feet cut off in recompense, or being expelled from the land (their place of residence). It is an insult to them in this life, they will be very tormented with a painful torment in the hereafter.<sup>9</sup> Interpretation of QS. *Al-Maidah*: 33 is Verily the punishment for those who violate the religious rules of Allah and His Messenger, and cause trouble in the earth by cutting roads or taking property is the death penalty for the perpetrator who kills, the cross is punished for the perpetrator who kills and robs the property. , the punishment of cutting hands and feet crosswise is imposed on perpetrators who rob and forcibly take property but do not kill, are punished by being expelled from one country to a remote area (another country) or imprisonment for people who only scare them. That punishment is a form of humiliation for them in this world, and it will be even more severe in the hereafter a very painful and severe torment, namely the torment of hell.<sup>10</sup>

The meaning of the verse above, that God and His Messenger are not physically fighting, but those who become objects are people who are God's lovers, namely innocent people, civil society in general who are victims, these incidents such as robbery in hotels, cafes, public places, streets, and others. The criminal law enforcement process is closely related to criminology because criminology can provide input for criminal law, especially the causes of people's crimes and the factors that cause crime, and what efforts must be made so that law enforcement officers can handle them without violating the law. Including victimology, many researchers have proposed that in order to understand crime more comprehensively, we can understand not only the factors of crime from the perspective of the perpetrator but also from the social aspect of the victim. Based on this, criminology methods and victim science are important strategic entities that find the root causes of robbery crimes and provide appropriate countermeasures.

### ***Hirabah* : The Meaning of Robbery in the Qur'an**

In the view of the early Islamic world it shows that there are several terms that indicate the meaning of robbery, among those terms are *assirq*, *qit*, *tauriq*, *riddah*, *qit*, *taussabil*, *al-qatlu* and *sa'au fil ard*. All of these terms have the meaning of *al-hira>bah*. In many studies, it is stated that *al-hira>bah* shows the meaning of robbery strictly and in accordance with the meaning of *hira>bah* stated in verse 33

<sup>9</sup> Departemen Agama RI, *Al-quran Dan Terjemahnya* (Bandung: Diponegoro, 2008), 213.

<sup>10</sup> Quraish Shihab, *Tafsir Al-Misbah: Pesan, Kesan dan Keserasian al-Qur'an*, Vol. 3, (Jakarta: Lentera Hati, 2001), 103.

in the Qur'an letter Al-Ma'idah as explained earlier. *Hira>bah* has the root word 'harb' which translates as "war"<sup>11</sup> *Hirabah* is the act of an armed person or group in an area then causing chaos (terror), confiscation of property, spilling blood, destroying honor, and destroying public order. Mufassir agrees that this *hira>bah* is a major sin (*min al-kaba'ir*) which must be subject to sanctions *h}ad*. If globally and literally *hira>bah* can mean carried out by thieves, but the differentiating point is that stealing means taking the property or property of the victim secretly, while *hira>bah* is taking or seizing and controlling the property and property of the victim openly and anarchist. So *hira>bah* has the meaning and meaning of robbing, scaring and threatening a person or group in a certain location. This is in line with the opinion of Imam Hanafi stated by Abdul Qadir Audah in his book, that *hira>bah* is controlling other people's property through violence which may be accompanied by frightening people who pass through *t}ari>q/sabi>l* ( on the street) or killing people.

*Hira>bah* actually contains the meaning of a global crime. Imam Al-Qurt}ubi explains QS. Al-Ma'idah [5]: 33 based on a number of syarabs and the opinions of scholars that he collected,<sup>12</sup> the meaning of the word *hira>bah* in QS. Al-Ma'idah[5]: 33 is often interpreted the same as *qit}{t}au tari>q, assirqu fi ssabil, qit}{t}au sabi>l*, because the act of *hira>bah* is really assumed to be very global (general meaning) and contains all definitions of the term crime mentioned above. The perpetrators of *hirabah* in this verse are closely related to the activities of a group of people who are hostile to Islam, then violate their agreement with Muslims, then ambush, confiscate, and even kill Muslims in the middle of the road or at a location. As a result of behavior *hira>bah*, Islamic da'wah is hampered, the power of oppressors and infidels is getting stronger, and finally, the destruction on earth is increasing. For this reason *hira>bah* in this verse is stated so closely with the meaning of causing "damage on earth".

According to Abi Suja' in his work Fath}u al-Qari>b al-Mujib, he explained that actually the act of *hira>bah* is synonymous with *qat}{ut}ariq* (blocking the journey) which is to carry out obstruction or forcible seizure of someone's journey in a place (road). Shaykh Salih added that they carried out the crime of seizing property frontally and bravely, not secretly.[13] And from the many interpretations at the beginning, it shows that it is very certain that the term "robbery" is indicated to be the same as the meaning of *hira>bah*. and to dive deeper into the meaning of *hira>bah* in QS. Al-Ma'idah[5]: 33, earlier scholars discussed explicitly the meaning of the sentence *yuh}{aribu>na ilalla>h wa rasu>lah* / fighting Allah and His Messenger. Among the differences of opinion between them are:

<sup>11</sup> In Islamic criminal law, the word *hira>bah* comes from lafadz harb which indicates the meaning of attack. Muhammad Abduh explained in his commentary (al-manar) that the term harb was used in 4 formulations. First, it is aimed at someone who eats usury because he is classified as a subject who fights Allah and the Messenger of Allah by eating other people's property in an unjust manner. Second, with regard to (inland Arabs at that time) the Bedouin tribes always attacked one another to seize and control valuable objects. Third, harb is the opposite of salama (salvation). Fourth, harb means *qa>tala-yuqa>tilu* (killing each other) with *ka>firi>n* but it is not included in the definition of war and jihad. See Abdul Azis Dahlan, *Ensiklopedi Hukum Islam* Jilid II, (Jakarta: Ichtiar Baru Van Hoeve, 1997), 556. See also Muhammad Rashid Rid}a, *Tafsir Al-man>ar* (ttp, Da>r Al-fikr, tt), 356.

<sup>12</sup> Muh}ammad bin Ah}mad ibn Abi Bakr al-Qurt}ubi. *Al-Jami>' li Ah}ka>m Al-Qur'an*, Vol. 7 (Cairo: Muasisah al-Risa>lah), 433.



- a. Imam Hanafi stated that actually the confiscation must be in a remote place, so if it is in a city or crowded place, it does not fall into the category *yuh}a>ribu>n*.<sup>13</sup>
- b. Imam Shafi'i, Al-Laist and Abu Thaur are of the view that robbing in a quiet place or in a crowded city is the same. Both have the determination to loot or rob. In books with nuances *fighi there* is not much information about sea pirates called *lanu>n* (pirates). Of course it can also be understood that *lanu>n* (pirates) are also included in the circle of people who fight against Allah and the Messenger of Allah as well,<sup>14</sup> because the perpetrators of *lanu>n* disrupt the safety of human passage at sea, and can be more brutal than robbery on land.
- c. Imam Malik interprets it by holding up weapons to plunder other people's property, and this is not based on enmity between the robber and the robbed of his property. And this incident occurs anywhere, whether it takes place in crowded or quiet and remote areas.

As for the operational scheme of the meaning of *hira>bah* in this verse, there are several possibilities. First, the perpetrator left with the aim of taking (controlling) the property directly and frontally and looting the property (property) but not committing murder. Second, the perpetrator acts with the aim of taking possession of the property boldly and frankly and committing terror or intimidation, but does not rob the property and does not kill the victim. Third, the perpetrator came out with the aim of looting, then committed murder but did not control the victim's property. Fourth, the perpetrator came out with the intention of robbing and then acted to rob the property and kill the owner.<sup>15</sup>

### ***Hira>bah* In the Study of *Asba>b al-uzu>l* and Munasabah QS. Al-Ma'idah[5] : 33**

The redaction of *asba>b al-nuzul* in the 33rd verse described by Imam al-Qurt}ubi in his commentary shows the existence of lafadz الله فَأَنْزَلَ which is *fa>' ta'qi>biyah* where in the study of science *asba>b al-nuzul* this is included in the category of *asba>b al-nuzul* which is *s}ari>kh*. Scholars have different opinions about the reason for the revelation of this verse Al-Ma'idah [5]: 33. The opinion agreed upon by the majority of scholars indicates that this verse was revealed in connection with the Urainah people who committed theft and murder.<sup>17</sup> Starting from this group of people from 'Urainah who were originally non-Muslims who came to Medina to meet the Messenger of Allah. and asked for an explanation of Islamic religious information, in short they immediately embraced Islam. After some time they developed a stomachache or some reports suffered from body aches because the temperature in Medina did not match with their bodies. Then the Messenger of

<sup>13</sup> Shihab, *Tafsi>r Al-Misbah* 'Pesan, Kesan dan keserasian Al-Qur'an', 79.

<sup>14</sup> Syihab al-Di>n Sayyid Mah{mu>d al-Alu>si, *Ruh} al-Ma'ani> fi> Tafsi>r al-Qur'an al-Az{im wa al-Sab al-Mathani* (Beirut: Dar Ih}ya> al-Turas al-'Arabi, t.t), 118.

<sup>15</sup> A. Djazuli, *Fiqh Jinayah*, (Jakarta : Raja Grafindo Persada, 1997), 97.

<sup>16</sup> قال أبو قلابة : فهُؤْلَاءُ قَوْمٌ سَرَقُوا وَقَتَلُوا وَكَفَرُوا بَعْدَ إِيمَانِهِمْ وَخَارِبُوا اللَّهَ وَرَسُولَهُ وَفِي رِوَايَةٍ : [ فَأَمَرَ بِمَسَامِيرَ فَأَحْمَيْتَ فَكَحَلْتَهُمْ وَقَطَعْتَ أَيْدِيَهُمْ وَأَرْجُلَهُمْ وَمَا خَسَمْتَهُمْ ] وَفِي رِوَايَةٍ : [ فَبَعَثَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي طَلَبِهِمْ قَافَةً فَأَتَى ] بِحَمٍ قَالَ : فَأَنْزَلَ اللَّهُ تَبَارَكَ وَتَعَالَى فِي ذَلِكَ : ( إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا )

<sup>17</sup> Al-Qurt}ubi, *Tafsi>r al- Qurt}ubi al-Jami>' li Ah}kam al-Qur'an*, 431.

Allah ordered them to go to the camel, which was pregnant and about to give birth, to drink its milk, and they carried out the order. After they recovered from their illness, they did *wrong* by killing the camel herder of the Messenger of Allah and taking the red camel away. The news of the crime they had committed did not take long to reach the Messenger of Allah the next day.

When the news reached the prophet as explained in the hadith <sup>18</sup> that the Messenger of Allah immediately sent an army (trackers) to track, chase and arrest them. When the group that carried out the *hira>bah* was caught, the messengers of the Messenger of Allah cut off their hands and punished them by piercing their eyes with hot irons, as they had done with the camel herders they had stolen. then left the *hira>bah* group in Harrah's field, until they finally died.

The next explanation is in the narration of Abu Daud from Abu Zinad quoted by Hamka <sup>19</sup> and is also in accordance with the opinion of Imam al-Shaukani <sup>20</sup> that the verse of QS. Al-Ma>idah[5]:33 this came down not long after the tragedy of cutting hands and stabbing by people who acted tyrannically *hira>bah* (plundering and murder). From this, it is known that the crime of *hira>bah* in this verse is specifically related to robbery and looting, as well as persecution and murder at a certain location. Understanding the context of the verse, in addition to studying the *asba>b al-nuzu>l*, is also very necessary to study the *muna>sabah al-aya>t*. Interrelation *muna>sabah this al-aya>t* is known as a prominent alternative in exploring the context of a text of the Qur'anic verse that has a relationship between one verse and another<sup>21</sup> and is based on the interrelation of meanings between the Qur'anic and the interconnection between the preceding and following verses, which in this case has a focal point in the QS. Al-Ma>idah[5]: 33. The study of the *munasabah* of this verse shows the existence of a major theme of thought related to the behavior of *hira>bah* which is related to several previous verses starting from QS. Al-Ma>idah[5]: 27 to QS. Al-Ma>idah[5]: 31, namely Allah SWT explains the story of the two sons of the Prophet Adam AS, namely Qa>bil and Habil, which involves the term *hira>bah*. This is focused on the story of the cruel character (character) of the Bani Adam in the terror incident. murder.

Stories or stories in QS. Al-Ma>idah[5]: 27-31 shows that Qa>bil killed Habi>l motivated by lust and jealousy to seize the favors contained in the possession of his brother (other) by forcing with *z}alim* which led to murder of his own brother, habil. This cruelty continues in the verse after QS. Al-Ma>idah[5]: 32 regarding a concept of "killing acts" that this kind of killing, even though it is aimed at one individual, has actually carried out the killing (genocide) of many people and many parties. In the sense that it will have consequences on the lives of other humans around it, descendants, families and disturbances to those who have something to do with it.

Study of *muna>sabah al-aya>t* shows the sustainability of the consequences of actors *hira>bah* with the perspective of legal handling which is considered in the

<sup>18</sup> HR. al- Bukhari no. 3956, dan , Sunan Kubra an-Nasa'i 8/282, terdapat juga dalam Ibnul Jarud dalam al-Muntaqa hlm. 846 dan lainnya

<sup>19</sup> Hamka, *Tafsi>r Al-Azhar*, Vol. 6 (Jakarta: Pustaka Panjimas, 1982), 289.

<sup>20</sup> Imam Al-Shaukani, *Tafsir Fath}ul Qa>dir*, (Kairo: Da>r al – Hadith), 50.

<sup>21</sup> Muhammad Quraish Shihab, *Kaidah Tafsi>r*, Cet. 1 (Tangerang: Lentera Hati, 2013), 244.

form of sanctions (which are executed) against tawaghu, *hira>bah* which is explained in the QS. Al-Ma'idah[5]: 33. The aspect of handling and enforcing the law is an indication of an act of courage in warding off the crime of *hirabah* which seems to be running freely in all parts of the world. Enthusiasm in handling the law against the crime of robbery is a positive thing in reducing all kinds of variations of trouble and crime on earth, which has the function of inhibiting at least minimizing the increase in robbery in the community. Understanding the context of the QS verse. Al-Ma'idah[5]: 33 when viewed with munasabah in the following verse (Surah Al-Ma'idah[5]: 34) is aimed at the perpetrators of the crime *hira>bah* which ends with regret to realize that the act of *hira>bah* This must be avoided by every human being, before being persuaded by a lust so that he is trapped to join in committing crimes. It looks so clear in the sentence *illa lladhina ta>bu> min qabli antaqdiru> alaihim*. The sentence according to Ibn Kathir shows the repentance of a person who is received from the punishment described in the QS. Al-Ma'idah [5]: 33 and it should be underlined that the case is before the court process.<sup>22</sup> And this happened to Ali al-As'adi when he was in the Umayyad regime. He frightens, commits murder and takes property but then repents after knowing the sentence *illa lladhina ta>bu> min qabli antaqdiru> 'alaihim*. He entered the mosque and performed the morning prayer then headed for Abu Hurairah. And at that time the ruler was Marwan ibn al-Hakam, Marwan came to the mosque and declared "This person (Ali al-Asadi) has come to meet me and repented truly, so there is no right for anyone to arrest and punish him"

### Application of Punishment Against Perpetrators *Hira>bah* In the Qur'an,

Mufasssir discusses a lot about the application of this form of crime punishment *hira>bah* based on the QS. Al-Ma'idah[5]: 33, the scholars have many differences in the interpretation of the lafadz "*au*" which is located between the interpretation of one sentence and another in sequence in the verse. Fragmentary scholars interpret lafadz *au* to indicate the intention of selecting the punishment options that have been determined, so that legal determination is in the order of the priest or leader.<sup>23</sup> Of course, it involves considerations with experts who weigh the severity of the burden of punishment for crimes that have occurred.

The forms of punishment in the verse *muha>rabah* interspersed with the lafadz *au* are :

1. ان يقتلوا, which is a form of punishment to be killed without mercy.<sup>24</sup> This case contains the paradigm that the *muharib* committed a great injustice, namely carrying out a robbery with the intentional killing of the victim which cannot be justified for any reason.
2. يصلبوا, which is a form of punishment by being crucified on a wooden cross, the perpetrator is raised on the cross, punished and left alone until he dies.<sup>25</sup> Some literature describes being killed after some time he was hanging from

<sup>22</sup> Ibnu Kathir, *Tafsi>r al-Qur'an al-Az>jim*, Vol. 2, (Mesir: Da>r al-Ba>b al-H{alabi, t.t.), 52.

<sup>23</sup> Ah{mad Wardi Muslich, *Hukum Pidana Islam*, Cet. 1 (Jakarta: Sinar Grafika, 2005), 18.

<sup>24</sup> Jala>l al-di>n al-Suyuti dan Jala>l al-di>n al-Mah>jalli, *Tafsi>r al-Jalalain*, terj. Bahrin Abu Bakar, *Terjemahan Tafsi>r al-Jalalain*, (Bandung: Sinar Baru Algesindo, 1997), 465.

<sup>25</sup> Hamka, *Tafsi>r Al-Azha>r*, Vol. 6, 295.

the cross. This penalty applies if the *muharib* commits a murder accompanied by the confiscation of property the size of the theft *nis}ab* or greater. The Maliki school of thought is of the view that after the crucifixion, it is either killing or being killed. The Shafi'i school of thought initiated the execution of the murder followed by the crucifixion. This matter contains general prevention, namely showing the verdict to the community so they don't imitate their actions.

3. تقطع ايديهم وارجلهم من خلف, which is a form of punishment by cutting his legs and arms crosswise. This sentence is applied if the perpetrator confiscates the property of a minimum level of the theft *nis}ab* and the perpetrator do not commit murder so that the perpetrator may still be allowed to live with this punishment.
4. ينفوا من الارض, which is punished by being banished from the earth.<sup>26</sup> The purpose of this sentence is exile or imprisonment. This punishment is applied if the perpetrators *hirabah* scare the victim, intimidate and cause trouble and the perpetrator does not take property and does not commit murder.

Although with the law in the world as described above al-Baidhawi reminded that in QS. Al-Ma'idah [5]: 33 confirms that there are two torments that will surely be accepted by the perpetrator, namely the torment in the world in the form of humiliation and disgrace that is more nuanced in learning or education, and the second is the torment of the hereafter, namely a very painful punishment, in accordance with the sin -sins ever committed.<sup>27</sup> The punishment in the hereafter is certainly more severe and very just, even so, the punishment in this world must still be carried out for injustice to the victims of robbery. Al-Sha'rawi describes the punishment in this world as a reproach, humiliation, or disgrace,<sup>28</sup> because robbery is so cruel and is strongly condemned by the Qur'an.

### Sanctions for the Crime of Robbery Perspective of Islamic Criminal Law

The word *hirabah* in the explanation of Islamic criminal law has the meaning of attacking and taking property.<sup>29</sup> The sentence imposed on the perpetrators of the crime of robbery when viewed from the perspective of Islamic criminal law certainly refers to the interpretation of the QS. Al-Ma'idah[5]: 33 as previously explained. The handling of the legal provisions for the crime of robbery in Islamic law is the same as discussing the *fiqh* of *jinayah*, where the law is broadly discussed by the imams of the schools of thought, namely Maliki, Shafi'i, Hanafi, and

<sup>26</sup> Scholars differ on the interpretation of *lafadz yunfau min al-ard*. According to Imam Ahmad, exile is carried out by expelling the perpetrator from his country forever or until he repents truly. Imam Maliki's opinion that exile is sentenced to prison in a place outside the area where the robbery took place, while Imam Hanafi is similar to Imam Malik that exile in question is a prison sentence, but the location does not have to be outside the location of the area where the robbery tragedy occurred. As for Imam Shafi'i interpreting with detention, both in his own country, but he prioritizes to be carried out in other areas. see Sayyid Sa'biq translate, Nabhan Husein, *Fiqih Sunnah*, (Bandung: Al-Ma'arif, 1984), 187.

<sup>27</sup> Nasir al-Din Abi al-Khaer 'Abdullah bin 'Umar al-Baidhawi, *Anwar al-Tanzil wa Asrar al-Ta'wil*. Vol. 2, (Mesir: Mustafa al-Halabi, 1958), 321.

<sup>28</sup> Syaikh Mutawalli al-Sha'rawi, *Tafsir al-Sha'rawi*, Vol. 6, (Mesir: Akhbar al-Yaum, t.t), 3103.

<sup>29</sup> Rasyid Ridla, *Tafsir Al-manar* (tt, Dar Al-fikr, tt), 356.



Hambali priests. Differences of opinion among fiqh scholars are a necessity, including this crime of robbery. Hanafiyah, Syafi'iyah and Hanabilah scholars as quoted by Wahbah Zuhaili[31] state that the level of punishment for *h}ad* robbers or robbers must be in line with the order of sanctions that have been described in the *muha>rabah* verse (QS. Al-Ma>idah (5) : 33) and see the motive or form and weight of the crime committed in the robbery.

The scholars of the Abu Hanifah school stated that if the perpetrator only took or confiscated his property, then the punishment was to have his legs and arms cut off on a cross. And if the perpetrator only commits murder, then he is sentenced to death. However, if the perpetrator commits both crimes, namely killing and seizing the victim's property at the same time, then the priest can choose the punishment, between cutting his legs and arms crosswise and then being sentenced to death or crucifixion, or not being sentenced to having his legs and hands cut off but immediately being executed with the death penalty or crucified. And if the crime is only frightening without killing and confiscation of property, then the punishment is an exile from the earth, namely being imprisoned and sentenced to *ta'zir*.

The Hanabilah and Shafi'iyah scholars state that if the perpetrator of a robbery confiscates his property, the punishment that applies is to have his legs and arms cut off on a cross. And if the perpetrator kills the victim and is not accompanied by confiscation of property, then he is sentenced to death without having to be crucified. However, if you commit murder as well as confiscation of property, then the punishment is death and crucifixion. If the perpetrator intimidates by simply frightening him, then he is punished by being expelled from his country or exiled. The Maliki school of thought is of the opinion that the handling of robbery by determining the sentence *h}ad* that was sentenced to the perpetrator of this crime must refer to the *ijtihad* and considerations (estimation and evaluation) of the imam and be accompanied by considerations (input comments and criticisms) from the *fuhaha>* (legal experts), so that it can be wisely determined the sanctions or *h}ad* that are imposed with precise and efficient accuracy, this matter needs to be emphasized that the executive decision must not be based on the individualistic egoism of the priest.

Differences in interpretation that arise among scholars in deciding the form of sanctions for actors *hira>bah* are due to differences in interpreting the word "*au*" in the QS. Al-Ma>idah [5]: 33. that is, some interpret it with "or". In Arabic grammatical rules, the lafadz "*au*" can provide the purpose of description and explanation as is the terminology of lafadz *au* well-known, namely *baya>n wa al-tafs}il*.<sup>30</sup> Imam Shafi'i's opinion, the word "*aw*" in the verse is an explanation and detail, namely the quantity of punishment contained in four along with the details as described earlier. However, Maliki's opinion quoted by Al-Shaukani<sup>31</sup> understands that the word "*aw*" means *li al-takthir*, namely to choose. So Imam Malik is of the view that the enumeration of these four forms of punishment is an

<sup>30</sup> Rahmat Hakim, *Hukum Pidana Islam (Fiqh Jinayah)*, (Bandung: Pustaka Setia, 2000), 89.

<sup>31</sup> Muh}ammad bin 'Ali bin Muhammad al-Shaukani, *Fath} al-Qa>dir*, Vol.2 (Beirut: Dar al-Fikr, t.t), 37.

alternative preference option and the Imam will determine the sanctions according to policy and benefit.

### **Handling of Robbery Perspective of The Criminal Law in Indonesian**

Handling of all forms of criminal acts in the country of Indonesia refers to and is guided by the Criminal law book (KUHP) where the rules and explanations in the Criminal law book itself do not recognize the term "robbery" but can be identified with the term theft with violence. Matters regarding the crime of robbery are listed in Chapter XXII Article 365 of the Criminal law book concerning theft. Then Article 365 of the Criminal law book contains the term theft accompanied by violence, namely theft in a substantial form, namely ordinary theft (article 362) which is added to the factor of violence. Therefore, to apply the provisions of Article 365 of the Criminal law book (KUHP), one must meet the requirements of Article 362 of the Criminal law book (KUHP) concerning Ordinary Theft and have aggravating circumstances as stipulated in Article 365 of the Criminal law book.

The definition of theft with violence according to Sudradjat Bassar, namely special theft or forced theft (*geweld*) which adds a special or special element on the basis of ordinary theft is the use of violence or the threat of violence. First, the goal is to prepare for theft, i.e. violence or threats of violence before the item is taken. For example, tying up house guards, beating people, etc. Second, the intention is to facilitate theft, which is to facilitate the taking of goods by means of violence or threats of violence. For example, hold the victim's hand so that he is still and cannot move, while other thieves immediately take things from the house.<sup>32</sup> The violence or threats of violence that occur must actually be proven to be carried out against the victim. And such violence or threats can be carried out before or after the theft occurs, namely in the context of preparing for theft or facilitating the confiscation of stolen goods. The violence that occurs is basically directed at the physical which is severe enough to make the victim feel sick and helpless.

### **Sanctions for the Crime of Robbery in the Criminal Law Book (KUHP)**

The crime of theft accompanied by violence as regulated in Article 365 of the Criminal law book shows the meaning of theft in its essential form, namely ordinary theft plus the notion of violence. Among the average Indonesian (public at large), this type of violent theft is called robbery. The punishment for the crime of robbery or theft with violence as contained in Article 365 of the Criminal law book has a variety of sanctions in terms of the consequences incurred due to the criminal form of the robber. The sanctions that must be accepted are 9 years in prison, 12 years, 15 years, or imprisonment for a maximum of 20 years, and the death penalty, or life imprisonment.<sup>33</sup> Robbery (*hira>bah*) has a different scope from ordinary theft, because theft has the meaning of taking property secretly, while robbery is carried out openly.<sup>34</sup> Although there is little indication that the robbery also has some

<sup>32</sup> M. Sudradjat Bassar, *Tindak-Tindak Pidana Tertentu di Dalam Kitab Undang-Undang Hukum Pidana*, Cet. I, (Bandung: Remadja Karya, 1984), 71.

<sup>33</sup> Wirjono Prodjodikoro, *Tindak-Tindak Pidana Tertentu di Indonesia*, Cet. 3, (Jakarta-Bandung: Eresco, 1980), 25.

<sup>34</sup> Abdul Qadir Audah, *Al-Tasyri' Al-Jina'i Al-Islam*, (Beirut: Mu'assasah Al-Risalah, 1992), 638.

hidden factors, such as the actions of the perpetrators hiding from the police in certain areas or from certain security officers. Regarding this, the scope of the meaning of the *sariqah* does not include robbery except with other explanations, therefore robbery is known as grand theft.

Djazuli in his *fiqh jinayah* explains that the differentiation between thieves and robbers is seen in the process of taking their property. theft is carried out by stealth, while the robbery is carried out in a frontal and open manner even accompanied by blusters of intimidation and violence.<sup>35</sup> So, the theft of goods or property is followed by violent violence, and this form of threat is called robbery, the sanction of which is nine years if the perpetrator of the theft acts in a preceded, followed, and accompanied by violence or threat of violence.<sup>36</sup> he purpose of being preceded, followed, and accompanied by violence is all ways to facilitate the actions of the perpetrators, and if surrounded and cornered, they are able to escape, even the tactics of the band of robbers so that other members of the herd can still take the stolen property.

The meaning of "preceded" by violence or intimidation by threats is the use of violent crimes before the theft, while the meaning of "accompanied by" violence or threats of violence is an effort to facilitate and launch the theft. The purpose of "following" by violence or threats of violence is a form of violence carried out with the aim of opening opportunities for oneself or other members of the herd to escape.<sup>37</sup> The term violence means to act with physical movements whose concretization is in the form of deliberate beatings, either bare-handed or armed, binding, stabbing, detaining, and holding the victim.

The stipulation of a sentence of 12 years in prison is sentenced to the perpetrator of the crime of theft with violence (robbery) if the theft is carried out at night and is carried out in the residence of the house or in a closed yard. Regarding this matter, R. Soesilo added that the sanctions could be increased and increased if the theft with violence was carried out accompanied by other crimes such as breaking walls or breaking security, making false orders, and so on.<sup>38</sup> A sentence of 15 years in prison for perpetrators of violent theft, which in this case means robbery, is imposed if the act of theft results in the loss of a person's life. As for the death penalty and 20 years imprisonment along with life imprisonment, it is considered if the act of theft with violence, namely robbery, results in serious injury or death to the victim, and this criminal crime is carried out by the cooperation of two people or in greater numbers.

Further explanation of the specifics of this crime is detailed in paragraph 3 of Article 365 of the Criminal law book which discusses the implementation of theft with violence accompanied, preceded, or followed by violent treatment of others. And this crime resulted in the death of a person. So that this incident can be

<sup>35</sup> Djazuli, *Fiqh Jinayah*, 86.

<sup>36</sup> SR. Sianturi. *Tindak Pidana di KUHP Berikut Uraianannya*, (Jakarta: Alumni AHM-PTM, 1983), 609-610.

<sup>37</sup> H.A.K. Moch. Anwar, *Hukum Pidana Bagian Khusus (KUHP Buku II)*, Jilid I, (Bandung: Alumni, 1986), 26.

<sup>38</sup> R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, (Bogor :Politeia, t.th), 254.

juxtaposed with the criminal law in Article 339 of the Criminal law book, namely the act of murder is accompanied, preceded, and followed with the intention of preparing and launching the crime. This shows that both (KUHP articles 339 and 365) have two events of the same form<sup>39</sup> namely first, the crime of theft, and second, resulting in the victim being killed.

As for what needs to be considered in the two articles above (365 of the Criminal law book and 339 of the Criminal law book), namely in the application of the Criminal law book article 339, the murder of the victim is the desire and intentional intention of the perpetrator, while in applying the Criminal law book article 365, it must be proven by the actual killing of the victim not the will of the perpetrator from the start. the beginning, but the impact of the violence that occurred. Therefore, the provisions for criminal sanctions carried out in handling robbery or theft with violence are different.

### Comparative Analysis

Comparative analysis of the applicable law in Indonesia, namely the Criminal law book legislation with Islamic criminal law (*fiqh jinayah*) shows a paradigmatic existence, including in the Criminal law book robbery is called theft accompanied by violence, namely theft in substantial form (ordinary theft) equipped with the presence of violence factor, while in Islamic law it is included in a crime or *jarimah*, where robbery (*hira>bah*) is categorized as a criminal act of theft in the form of the definition *majazi*, because robbery is an open and coercive taking of property. So *hirabah* (robbery) can be labeled the term heavy theft (*sira>qah kubra*).

The definitive comparison of these two laws (state and religion) is that the meaning of robbery in criminal law in Indonesia means theft that is preceded, followed, or accompanied by violence or intimidation by threats by the perpetrator to the victim. The purpose of robbery (*hira>bah*) in Islamic criminal law is to depart with the aim of seizing property, or killing, or intimidating terror, and scarring victims with various threats, holding on to strength, and far from help or assistance. Regarding the point of similarity between the two, they both control the victim's goods without rights and are carried out by force and violence. The basic analysis of taking Islamic criminal law (*fiqh jinayah*) in the robbery is based on the QS. Al-Ma'idah[5]: 33. While the Indonesian statutory law (KUHP) is based on:

#### Article 365

- (1) Threatened with imprisonment for a maximum of nine years theft which is preceded, accompanied or followed by violence or threats of violence, against people with the intent to prepare or facilitate theft, or in the case of being caught red-handed, to enable the escape of themselves or other participants, or to retain possession of the stolen goods.
- (2) By a maximum imprisonment of 12 years:
  1. If carried out at night and in a house or a closed yard with a house, or in a train or tram that is running or on a public road;
  2. If the action is carried out by 2 or more people working together;

<sup>39</sup> Prodjodikoro, *Tindak-Tindak Pidana Tertentu di Indonesia*, 26.



3. When entering a place of committing a crime by destroying or dismantling or by using a false key, a false order, or a false official attire.
4. If the act causes serious injury.
- (3) (3) If the act results in the loss of life, the maximum sentence is 15 years in prison.
- (4) Threatened with a death sentence or life imprisonment or maximum imprisonment of 20 years, if the act results in serious injury or death and is carried out by two or more people in cooperation, accompanied by one of the things described in no. 1 and 3.<sup>40</sup>

If viewed from the explanation above, theft with violence can be punishable by a criminal offense as referred to in paragraph 4 of Article 365 of the criminal law book with several provisions, namely:

1. Acts resulting in serious injury or
2. Dead;
3. It is carried out by two or more people

Thus, the comparison with Islamic law becomes clearer, which in Islamic criminal law the provisions for violent theft are:

1. It is carried out on a public road or outside the victim's settlement;
2. Conducted openly;
3. There are indicators of violence or forms of terror threats;
4. Ownership of property that is not their right
5. There is an element of intentionality.

The conclusion from the above provisions shows that in Islamic criminal law there are no conditions that must be carried out by 2 or more people, and there is no provision that criminal acts result in serious injury or death. The fundamental and elementary advantages of Islamic criminal law for handling robbery perpetrators are seen in the sanctions given, in addition to the strictness of Islamic criminal law which provides a deterrent effect, it also provides 2 sanctions at the same time, namely sanctions in the world and punishments in the hereafter which are more severe. Meanwhile, the lack of statutory laws in Indonesia that refers to the Criminal law book shows a less assertive side, namely, it does not result in a deterrent effect and forms of world sanctions, namely death, imprisonment, or a fine.

## Conclusion

This article concludes that the handling of the perpetrators of the crime of robbery is regulated in QS. Al-Ma'idah [5]: 33 in which scholars and commentators have different views in interpreting the word "aw" in the verse to impose sanctions on the perpetrators. The meaning that can be drawn by the red line is to indicate the choice of sanctions or sanctions sequentially according to the type and form of the crime committed. Then it is regulated in the Jinayah Fiqh in Chapter hudud, namely the crime of hira'bah including sira'qah kubra' (heavy theft). As for the punishments in the form of: death penalty, crucifixion until killed or killed after a long time the perpetrator was crucified, punishment for cutting off

<sup>40</sup> Moeljatno, *KUHP (Kitab Undang-Undang Hukum Pidana)*, (Jakarta: Bumi Aksara, 2014), 147-149.

his legs and hands on a cross, and exile from the country or imprisoned. The criminal sanctions for robbery according to statutory law in Indonesia have stated in Article 365 of the Criminal law book which sanctions are in the form of imprisonment for 9 years, 12 years, 15 years, or imprisonment for a maximum of two 20 years and a death penalty, or life imprisonment depending on the circumstances. model of the crime committed.

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