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Hirabah in the Perspective of the Qur'an and the Indonesian Criminal Code: A Maqasid al-Sharia and Deterrence Theory Analysis

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Abstract:

This study examines the relationship between the Qur'anic concept of *ḥirābah* and violent theft under Article 479 of Indonesia's Law Number 1 of 2023 concerning the Criminal Code. While previous studies have discussed *ḥirābah* from doctrinal, comparative, and contextual perspectives, they have not sufficiently clarified the limits of equivalence between *ḥirābah* and violent theft within Indonesian positive law. This article addresses that gap by employing a qualitative normative method and a functional-comparative framework. The analysis focuses on legal foundations, protected interests, elements of offense, public-security implications, structure of sanctions, and procedural safeguards. The findings show that *ḥirābah* and Article 479 KUHP overlap in their concern with violence, intimidation, protection of property, and disruption of public security. However, they differ significantly in legal ontology, scope, penal logic, and normative justification. *Ḥirābah* is framed as a grave offense

against public order and social security, whereas Article 479 KUHP remains doctrinally anchored in the offense of theft aggravated by violence. Through *maqāṣid al-sharī'ah*, the punishment for *ḥirābah* is understood as a mechanism for protecting life, property, and public security. Through contemporary deterrence theory, the study argues that the effectiveness of punishment depends not merely on severity, but also on certainty, consistency, proportionality, and procedural legitimacy. The article also addresses contemporary human rights concerns surrounding *ḥudūd* punishments, emphasizing due process, evidentiary safeguards, and protection against arbitrary enforcement. The study contributes an integrative model for reading Islamic criminal law and modern criminal law as distinct yet dialogical legal traditions.

Keywords: hirabah, maqasid al-sharia, deterrence, criminal code, public security

A. Introduction

The phenomenon of crime involving violence, dispossession, and terror against society constitutes a crucial issue within modern legal systems. Crimes such as robbery and theft accompanied by acts of violence not only result in material losses but also generate widespread fear among the public. This condition has implications for the disruption of social order and the decline of public trust in law enforcement. In Indonesia, such acts are regulated under the Criminal Code (Kitab Undang-Undang Hukum Pidana / KUHP), particularly in provisions governing theft involving elements of violence, which carry prison sentences for specified periods. This reflects a characteristic of modern law that emphasizes the principle of balance in punishment, both in terms of proportionality and an orientation toward the rehabilitation of offenders. However, the effectiveness of this approach in producing a deterrent effect remains a subject of debate, especially amid the increasing complexity of crime and the phenomenon of recidivism.[1]

On the other hand, within the corpus of Islamic law, crimes with similar characteristics are known as hirabah, which normatively has a strong foundation in the Qur'an, particularly in Surah al-Mā'idah verses 33–34. Hirabah is viewed as an act with serious consequences due to its potential to undermine public security and disrupt social order. Scholars have emphasized that hirabah encompasses acts of violence that instill public fear, thus placing it within the

[1] Wayne R. LaFave, *Criminal Law*, Sixth edition, Hornbook Series (West Academic Publishing, 2017), https://lawcat.berkeley.edu/record/97384.

category of crimes requiring firm and preventive legal responses.[2] From this perspective, the role of law is not limited to resolving individual justice but also extends to safeguarding collective security and public interests.

Comparisons between these two legal systems often give rise to simplistic and dichotomous understandings. Islamic law is frequently perceived as repressive due to its severe sanctions, while modern law is regarded as more humane but less effective in creating a deterrent effect. Such a dichotomy is not only conceptually problematic but also risks closing off the space for dialogue between two legal traditions that essentially share the same objectives. In fact, upon closer examination, the difference does not lie in the goals they seek to achieve, but rather in the approaches and mechanisms employed to realize those goals.[3]

The problem, however, is not merely that Islamic criminal law and modern criminal law are often contrasted in a binary manner. A more specific problem lies in the tendency of previous studies to equate ḥirābah with violent theft without carefully examining the conceptual limits of such comparison. Although the two concepts share elements of violence, intimidation, and threats to property, they do not operate within the same legal structure. Ḥirābah is rooted in the Qur'anic discourse of fasād fī al-arḍ and is treated in Islamic criminal law as a grave offense against public security, whereas Article 479 of the Indonesian Criminal Code remains structurally connected to theft as the principal offense aggravated by violence or threats of violence. This distinction is important because a purely descriptive comparison risks reducing ḥirābah to ordinary robbery and overlooking its broader public-security dimension.[4]

Previous scholarship has generally moved in three directions. First, some studies focus on doctrinal debates among Muslim jurists concerning the definition, elements, and sanctions of ḥirābah. Second, other works contextualize ḥirābah in relation to contemporary crimes such as thuggery, organized violence, and public intimidation. Third, several studies compare ḥirābah with positive criminal law, but mostly at the level of similarities in elements and sanctions. These studies are valuable, yet they have not sufficiently explained how ḥirābah and violent theft differ in terms of legal foundation, protected interests, penal rationality, public-security implications, and procedural safeguards. This article therefore does not seek merely to show that ḥirābah resembles Article 479 KUHP, but to examine

[2] Wahbah al-Zuhaili, *Al-Fiqh al-Islami Wa Adillatuhu* (Dar al-Fikr, 1989).

[3] Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (IIIT, 2008).

[4] Ralf Michaels, *The Functional Method of Comparative Law*, n.d.

where the comparison is valid, where it becomes limited, and what such limits reveal about the relationship between Islamic criminal law and Indonesian positive law.[5]

The novelty of this study lies in its functional-comparative approach. Instead of comparing ḥirābah and Article 479 KUHP only through their textual formulations, this article compares the social functions performed by both legal concepts: protection of life, protection of property, prevention of public fear, and maintenance of social order. In this regard, maqāṣid al-sharī'ah is used not as a broad theoretical ornament, but as a focused evaluative framework for assessing the protection of life, property, and public security. Deterrence theory is also used not merely to describe the purpose of punishment, but to critically examine whether severity, certainty, consistency, and procedural legitimacy contribute to the preventive function of criminal law.[6]

Accordingly, this article argues that the relationship between ḥirābah and violent theft under Article 479 KUHP should be understood as one of functional overlap and conceptual divergence. They overlap because both address violence, intimidation, and threats to public order. They diverge because ḥirābah is a Qur'anic-legal category connected to public corruption and collective security, while Article 479 KUHP is a statutory offense constructed within the framework of modern criminal legality. By integrating maqāṣid al-sharī'ah, deterrence theory, and human rights considerations, this study offers a more nuanced model for understanding how Islamic legal values may enter into dialogue with modern criminal law without collapsing the distinction between the two legal systems.

B. Literature Review

Previous studies indicate that discussions on hirabah in Islamic criminal law have been examined from various perspectives, including normative, comparative, and contextual approaches. In comparative studies between Imam Abu Hanifah and Imam Syafi'i, it is explained that there are fundamental differences in understanding the sanctions for hirabah, particularly in interpreting QS. Al-Mā'idah verse 33. Imam Syafi'i argues that punishments must be adjusted according to the type of offense committed by the perpetrator, whereas Imam Abu

[5] Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 1–9, https://doi.org/10.22219/aclj.v4i1.24855.

[6] Daniel S. Nagin, "Deterrence in the Twenty-First Century," *Crime and Justice* 42, no. 1 (2013): 199–263, https://doi.org/10.1086/670398.

Hanifah allows judicial discretion in determining the appropriate sanction.[7] Meanwhile, other studies define hirabah in Islamic criminal law as an act of violent robbery in public spaces, classified as a jarimah hudud, with forms of punishment explicitly stipulated in the Qur'an. Its proof can be established through confession, testimony, and strong indications.[8]

In addition, empirical studies show that the concept of hirabah is also relevant to modern criminal phenomena, such as thuggery and street crimes, which are characterized by violence, extortion, and threats to public safety. Within the framework of Islamic criminal law, such acts are classified as jarimah hirabah, requiring firm and clear law enforcement to maintain social order.[9] This is further supported by research on organized gangs in Indonesia, which states that organized crimes causing public fear share essential elements with hirabah, particularly in terms of disrupting security and being carried out collectively.[10]

On the other hand, recent developments in scholarship indicate an expansion in the meaning of hirabah within the context of contemporary law, including the categorization of acts such as sexual harassment as part of hirabah, as both violate personal security and dignity. However, in practice, there remain significant challenges related to victim protection and the implementation of sanctions in Indonesia.[11] Furthermore, studies on QS. Al-Mā'idah verse 33–34 highlight that the issue of repentance (tawbah) for perpetrators of hirabah is also debated, particularly regarding the timing of its acceptance and its implications for the

[7] Taufiq Ali Romdloni, "Comparative Study on the Crime of Ḥirābah (Robbery) According to Imam Abu Hanifah and Imam Syafi'i," *Journal of Law and Legal Reform* 4, no. 1 (2023): 141–62, https://doi.org/10.15294/jllr.v4i1.61311.

[8] Nur Najwa et al., "Perampokan Dalam Perspektif Hukum Pidana Islam," *Terang : Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 1, no. 2 (2024): 165–75, https://doi.org/10.62383/terang.v1i2.215.

[9] Muhammad Fauzan Husin and Ramadani Ramadani, "A Review Of Islamic Criminal Law On Thughthrough On The North Sumatra-Riau Border," *Journal Analytica Islamica* 14, no. 2 (2025): 1043–53, https://doi.org/10.30829/jai.v14i2.25780.

[10] Abdul Karim Munthe et al., "Fenomena Preman Berkelompok Di Indonesia (Bentuk Praktik Hirabah Dalam Hukum Islam)," *Al-Jinayah Jurnal Hukum Pidana Islam* 9, no. 2 (2023): 236–65, https://doi.org/10.15642/aj.2023.9.2.236-265.

[11] Yanuriansyah Ar Rasyid and Djamaludin, "Konsekuensi Hukum Tindakan Hirâbah (Pelecehan Seksual) Di Indonesia: Kajian Terhadap Hukum Pidana Islam Dan Undang-Undang Indonesia," *Jurnal Ilmiah Living Law* 16, no. 2 (2024): 105–18, https://doi.org/10.30997/jill.v16i2.8641.

annulment of punishment, demonstrating the dynamic nature of interpretation in Islamic criminal law.[12]

Although previous studies have examined hirabah from normative, comparative, and contextual perspectives, several gaps remain insufficiently explored. Most research tends to focus on differences among Islamic legal scholars regarding definitions, elements, and forms of sanctions, or on linking hirabah to social phenomena such as thuggery and street crime. However, these studies generally do not directly connect such analyses to the Qur'an as the primary source of law, particularly in exploring the meaning and objectives behind the establishment of sanctions as outlined in QS. Al-Mā'idah verse 33–34. Moreover, efforts to extend the concept of hirabah to contemporary crimes, such as sexual harassment, have not been accompanied by a comprehensive analytical framework to assess their compatibility with the fundamental principles of Islamic criminal law.

Meanwhile, studies linking hirabah with positive law in Indonesia remain largely descriptive and limited to comparing forms of punishment. In fact, a deeper approach is needed to understand the underlying objectives of such sanctions. In this regard, the maqāṣid al-sharī'ah approach can be used to examine the protection of life and property, while deterrence theory can explain the preventive function of imposed sanctions. Therefore, this study aims to fill this gap by examining hirabah comprehensively through the perspectives of the Qur'an and the Indonesian Criminal Code (KUHP), and by analyzing it using the approaches of maqāṣid al-sharī'ah and deterrence theory. It is expected that this research will provide a more comprehensive contribution to the development of Islamic criminal law studies and its relevance to national law.

C. Research Methods

This study employs a qualitative normative legal method using library research. It is normative because the analysis focuses on legal norms, doctrines, principles, and statutory provisions rather than empirical field data. The study treats law as a structured system of rules and values that can be analyzed through textual, conceptual, and comparative methods.[13] The primary legal materials consist of QS. al-Mā'idah 33–34 as the principal Qur'anic basis for ḥirābah and Law Number 1 of 2023 concerning the Indonesian Criminal Code, particularly Article 479 on theft accompanied by violence or threats of violence. Secondary materials

[12] Makinuddin Makinuddin, "Tobat Bagi Pelaku Tindak Pidana HIraBah Dalam Alquran (Kajian Surat Al-Maidah: 33-34)," *Al-Jinayah : Jurnal Hukum Pidana Islam* 5, no. 2 (2019): 311–37, https://doi.org/10.15642/aj.2019.5.2.311-337.

[13] Negara, "Normative Legal Research in Indonesia."

include classical Qur'anic exegesis, Islamic legal literature, contemporary scholarship on maqāṣid al-sharī'ah, criminological studies on deterrence, and human rights literature related to ḥudūd and due process.

The selection of sources was based on three criteria. First, Qur'anic and exegetical sources were selected because ḥirābah derives its normative foundation from QS. al-Mā'idah 33–34. Classical works such as Jāmi' al-Bayān by al-Ṭabarī, Tafsīr al-Qur'ān al-'Aẓīm by Ibn Kathīr, al-Jāmi' li Aḥkām al-Qur'ān by al-Qurṭubī, and Aḥkām al-Qur'ān by Ibn al-'Arabī were used to identify the interpretive foundations of ḥirābah. Second, Islamic legal works such as al-Fiqh al-Islāmī wa Adillatuhu and related fiqh jināyah literature were used to explain the legal classification, elements, and sanctions of ḥirābah. Third, statutory and criminological sources were selected to analyze Article 479 KUHP and the preventive function of punishment in modern criminal law.[14]

The analysis proceeded in five stages. First, the study identified the concept of ḥirābah through textual analysis of QS. al-Mā'idah 33–34 and its interpretation in classical tafsir. Second, it extracted the legal elements of ḥirābah from Islamic legal literature, including violence, intimidation, seizure of property, killing, and disruption of public security. Third, it compared these elements with Article 479 KUHP through a functional-comparative framework. Fourth, it evaluated the objectives of punishment through maqāṣid al-sharī'ah, focusing specifically on the protection of life, property, and public security. Fifth, it assessed the preventive logic of punishment through deterrence theory, especially the relationship between severity, certainty, consistency, and procedural legitimacy.[15]

The comparative framework used in this study does not assume that ḥirābah and Article 479 KUHP are identical. Rather, it compares them through six analytical categories: legal foundation, protected interests, elements of offense, scope of public-security harm, structure of sanctions, and procedural safeguards. This framework allows the study to identify both convergence and divergence. Convergence refers to shared concerns such as violence, intimidation, protection of property, and public order. Divergence refers to differences in normative source, legal classification, scope of protected interests, and human rights implications. Through this framework, the study avoids a simplistic equation

[14] Republik Indonesia, *Undang-Undang Nomor 1 Tahun 2023* (2023).

[15] "Five Things About Deterrence | National Institute of Justice," accessed May 30, 2026, https://nij.ojp.gov/topics/articles/five-things-about-deterrence.

between Islamic criminal law and positive law while still allowing constructive dialogue between them.[16]

D. Findings

1. The Concept of Hirabah in the Qur'an

Allah the Almighty says:

اِنَّمَا جَزٰۤؤُا الَّذِيْنَ يُحَارِبُوْنَ اللّٰهَ وَرَسُوْلَهٗ وَيَسْعَوْنَ فِى الْاَرْضِ فَسَادًا اَنْ يُّقَتَّلُوْٓا اَوْ يُصَلَّبُوْٓا اَوْ تُقَطَّعَ اَيْدِيْهِمْ وَاَرْجُلُهُمْ مِّنْ خِلَافٍ اَوْ يُنْفَوْا مِنَ الْاَرْضِ ۗذٰلِكَ لَهُمْ خِزْيٌ فِى الدُّنْيَا وَلَهُمْ فِى الْاٰخِرَةِ عَذَابٌ عَظِيْمٌ ۙ﴿٣٣﴾

اِلَّا الَّذِيْنَ تَابُوْا مِنْ قَبْلِ اَنْ تَقْدِرُوْا عَلَيْهِمْ ۚ فَاعْلَمُوْٓا اَنَّ اللّٰهَ غَفُوْرٌ رَّحِيْمٌ ﴿٣٤﴾

> "Indeed, the recompense of those who wage war against Allah and His Messenger and strive to spread corruption on earth is only that they be killed or crucified, or that their hands and feet be cut off on opposite sides, or that they be exiled from the land (their place of residence). That is a disgrace for them in this world, and in the Hereafter they will receive a great punishment. Except for those who repent before you are able to overpower them; then know that Allah is Most Forgiving, Most Merciful." QS. Al-Mā'idah [5]: 33–34[17]

Linguistically, the term hirabah derives from the word ḥarb, which in Lisan al-Arab is understood as the opposite of peace (as-silm), namely a condition of hostility, warfare, and acts of mutual aggression. From this root meaning, hirabah indicates a form of aggressive action that is not limited to conflict, but also reflects elements of violence, hostility, and threats against others, thereby creating fear within society.[18]

As for the reason for the revelation of this verse, as explained in Asbab al-Nuzul, it is related to a group from 'Ukl and 'Uraynah who came to the Prophet ﷺ, then after receiving assistance, instead killed a shepherd and seized livestock. For this act, the Prophet ﷺ imposed punishment in the form

[16] Michaels, *The Functional Method of Comparative Law*.

[17] Departemen Agama Republik Indonesia, *Al-Qur'an dan Terjemahnya* (1971), http://archive.org/details/alqurandanterjemahnya.

[18] Ibnu Mandzur, *Lisān al-'Arab*, vol. 2 (Dar al-Ma'arif, n.d.), accessed April 2, 2026, http://archive.org/details/LissanuAlArab.

of cutting off hands and feet as well as other penalties, until this verse was revealed as a legal affirmation regarding the act of hirabah.[19]

As a foundation prior to the determination of sanctions in the following verse, the Qur'an first introduces the concept of fasād fī al-arḍ in QS. al-Mā'idah verse 32. Scholars have provided diverse interpretations of this term. In Ahkam al-Qur'an by Ibn al-Arabi, it is explained that fasād fī al-arḍ may encompass various forms of deviation, such as disbelief, acts that disturb security—including cutting off roads—as well as other actions that damage the order of life. Linguistically, fasād is understood as the loss of function and benefit of something, even transforming into a source of destruction. From this, it can be understood that fasād essentially refers to any action that causes harm to others, both individually and on a broader scale within society. Meanwhile, in Tafsir Ibn Kathir, it is explained that killing without a justified reason is also a form of fasād, as it indicates the loss of respect for human life and has the potential to expand into social disorder. Thus, fasād fī al-arḍ in this verse is not limited to a single type of crime, but encompasses various actions that threaten public security and order. On this basis, when such corruption develops into a greater threat to society, the Qur'an prescribes firm sanctions as explained in QS. al-Mā'idah verse 33.

In the interpretation of Tafsir al-Tabari, this verse is explained as a legal provision for perpetrators of fasād fī al-arḍ (corruption on earth). This form of corruption is not limited to a single type of crime, but includes unlawful killing, robbery, highway disruption (disturbing public security), as well as other actions that damage the social order. Therefore, Allah prescribes several alternative sanctions adjusted to the level of the crime, namely capital punishment, crucifixion, the cutting off of hands and feet on opposite sides, and exile from one's place of residence. These punishments constitute a form of disgrace in this world, while in the Hereafter the perpetrators will receive a great punishment if they do not repent. In the following verse (QS. al-Mā'idah: 34), it is stated that perpetrators who repent before being apprehended may obtain forgiveness from Allah, particularly for disbelievers who embrace Islam. As for Muslim perpetrators, according to the explanation reported by al-Ṭabarī, repentance does not nullify worldly

[19] 'Alī ibn Aḥmad al-Wāḥidī, *Asbāb al-Nuzūl* (Dār al-Aṣlaḥ, 1992), http://archive.org/details/asbab_nozol.

punishment related to human rights, and therefore it must still be enforced by the authority.[20]

The explanation in Tafsir Ibn Kathir emphasizes that hirabah is closely related to the concept of fasād fī al-arḍ as mentioned in QS. al-Mā'idah: 32. Unlawful killing or acts that cause destruction on earth are regarded as major crimes with far-reaching impacts; thus, hirabah is included among serious violations that threaten human life collectively.[21] Meanwhile, in Tafsir al-Qurtubi, it is emphasized that the majority of scholars associate this verse with the case of al-'Uraniyyīn, who committed murder, robbery, and spread fear. From this, it is evident that the main elements of hirabah are open violence, the seizure of property, and threats to public security. [22]

From the perspective of Islamic law, Ahkam al-Qur'an by Ibn al-Arabi provides an important explanation that the phrase "waging war against Allah and His Messenger" is understood metaphorically, namely as a violation of Allah's law and acts of harming others. He also explains that fasād fī al-arḍ can be broadly interpreted to include disbelief, disturbing road security, and all forms of actions that eliminate public welfare and cause harm to humanity. Thus, hirabah is part of general corruption that afflicts society, and therefore its punishment is firm and severe.[23] Furthermore, in Al-Hawi al-Kabir, a more detailed explanation is provided regarding the implementation of hirabah punishment. If a perpetrator commits several crimes simultaneously—such as murder, robbery, and theft—the execution of punishment is carried out by considering the order of rights, especially human rights. For example, if there is a right of qishash, it is given priority according to the choice of the victim's guardian. In certain cases, the amputation of limbs (hands and feet on opposite sides) is applied as part of the punishment for hirabah. However, if the crime reaches the level of murder within hirabah, then capital punishment becomes a definite ruling

[20] Abū Ja'far Muḥammad ibn Jarīr al-Ṭabarī, *Jāmi' al-Bayān 'an Ta'wīl Āy al-Qur'ān*, vol. 8 (Badar Hajar, 2001), http://archive.org/details/TafsirTabariTurki.

[21] smā'īl ibn 'Umar Ibn Kathīr, *Tafsīr al-Qur'ān al-'Aẓīm* (Dar Tayyibah, 1999), http://archive.org/details/tafsir-ibn-kathir.

[22] Abū 'Abd Allāh Muḥammad ibn Aḥmad Al-Qurṭubī, *Al-Jāmi' li Aḥkām al-Qur'ān* (Al-Resalah, 2006), http://archive.org/details/20191231_20191231_1313.

[23] Abū Bakr Muḥammad ibn 'Abd Allāh Ibn al-'Arabī, *Ahkām Al-Qur'ān* (Dār al-Kutub al-'Ilmiyyah, 2003).

and may be followed by crucifixion. This shows that the type of punishment in hirabah is highly dependent on the form of the crime committed.[24]

Moreover, in Syarh Zad al-Mustaqni', it is explained that the term hirabah has a broad scope, not limited to robbery on highways or in remote areas, but also includes crimes occurring within cities, including organized criminal acts carried out openly and causing fear within society. Therefore, hirabah is viewed as a major crime against public security, and its punishment falls under hudud, which is not nullified merely by forgiveness from the victim, as it relates to the rights of Allah and public welfare.[25]

In the development of contemporary scholarship, the view that Islamic criminal law is cruel and inhumane, particularly in the context of hudud, needs to be corrected proportionally. Essentially, sanctions in Islamic criminal law, including in cases of hirabah, are not intended merely as acts of violence, but as mechanisms for protecting human life and maintaining social order. Even in its implementation, there are considerations regarding the condition of the perpetrator and social circumstances, indicating a dimension of flexibility in the application of the law. Thus, the firm sanctions in hirabah actually serve a preventive purpose to maintain social stability and prevent greater harm.[26]

This approach is also in line with the idea of moderate jurisprudence, which emphasizes the importance of balancing textual and contextual understanding in Islamic law. Therefore, understanding the concept of hirabah should not rely solely on the textual meaning of the verse, but must also consider the objectives of the Sharia and the ever-evolving social dynamics. Through this approach, Islamic law can present a legal system that is not only firm, but also contextual and adaptive in responding to challenges in the modern era.[27]

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[24] Abū al-Ḥasan ʻAlī ibn Muḥammad al-Māwardī, *Al-Ḥāwī al-Kabīr*, vol. 13 (Dār al-Kutub al-ʻIlmiyyah, 1994), http://archive.org/details/AlhawiAlkabir.

[25] Mansur bin Yunus al-Buhuti, *Al-Raudh al-Murbi' Syarh Zad al-Mustaqni'* (Dar al-Fikr, 1990).

[26] Fathuddin Abdi, "Keluwesan Hukum Pidana Islam Dalam Jarimah Hudud (Pendekatan Pada Jarimah Hudud Pencurian)," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 14, no. 02 (2014): 369–92, https://doi.org/10.30631/alrisalah.v14i02.456.

[27] Muh Nashiruddin, "Fikih Moderat Dan Visi Keilmuan Syari'ah Di Era Global: (Konsep Dan Implementasinya Pada Fakultas Syari'ah IAIN Surakarta)," *DIKTUM: Jurnal Syariah Dan Hukum* 14, no. 1 (2016): 29–43, https://doi.org/10.35905/diktum.v14i1.221.

Therefore, it can be concluded that hirabah in the Qur'an is not only understood as robbery in a narrow sense, but encompasses all forms of crime that involve elements of violence, threats, and cause widespread harm within society. This concept shows that hirabah is closely related to disturbances of public security, whether committed individually or collectively, and results in significant social impacts such as the emergence of fear, instability, and disruption of public order. Therefore, the Qur'an prescribes firm and varied forms of sanctions, ranging from exile, amputation of limbs, to capital punishment, the application of which is adjusted according to the level and form of the crime committed by the perpetrator.

This Qur'anic and juristic construction shows that ḥirābah should not be reduced to theft or robbery in the narrow sense. Its distinctive feature lies in the combination of violence, intimidation, and public insecurity. The protected interest is therefore broader than private property; it includes life, bodily integrity, freedom from fear, and the stability of public order. This point is crucial for the subsequent comparison with Indonesian positive law, because Article 479 KUHP shares some elements with ḥirābah but does not fully reproduce its broader Qur'anic category of fasād fī al-arḍ.[28]

2. Hirabah in the Perspective of Positive Law (KUHP)

Within the framework of positive law in Indonesia, the term hirābah is not explicitly used as in Islamic criminal law. However, the essence of acts with similar characteristics can be found in the regulation of the crime of theft with violence in Law Number 1 of 2023 concerning the Criminal Code (KUHP), particularly Article 479. This provision regulates acts of theft carried out preceded by, accompanied by, or followed by violence or threats of violence against others, with the intent of facilitating the commission of the theft or retaining the proceeds of the crime.[29] If analyzed further, the elements in Article 479 of the KUHP demonstrate substantive similarities with the concept of hirābah, particularly in terms of the use of violence, threats to individual safety, and the potential to generate fear within society. In this context, crime is not only understood as a violation of individual property rights, but also as a threat to public security.

A more precise comparison requires distinguishing between points of convergence and divergence. The convergence lies in the fact that both ḥirābah and Article 479 KUHP address acts involving violence, threats, intimidation, and the seizure or attempted control of property. Both also

[28] Al-Qurṭubī, *Al-Jāmi' li Aḥkām al-Qur'ān*.
[29] Indonesia, *Undang-Undang Nomor 1 Tahun 2023*.

recognize that violence accompanying the taking of property is not merely a private violation but may produce broader social fear. In this sense, Article 479 KUHP can be understood as sharing a functional concern with ḥirābah: the protection of property and personal security from violent aggression.[30]

The divergence, however, is equally important. First, ḥirābah is normatively rooted in the Qur'anic category of fasād fī al-arḍ, whereas Article 479 KUHP is a statutory offense within the modern Indonesian criminal law system. Second, ḥirābah is classified in Islamic criminal law as a grave offense against public security, while Article 479 KUHP remains doctrinally structured as theft aggravated by violence. Third, the scope of ḥirābah is broader because its essential harm includes the creation of public fear and disruption of social order, even when the material objective of taking property is not fully achieved. Article 479 KUHP, by contrast, is more closely linked to the act of theft and the use of violence to prepare, facilitate, or maintain control over stolen property. Fourth, the sanctioning logic differs: ḥirābah contains a Qur'anic structure of severe and differentiated punishments, while Article 479 KUHP uses graded imprisonment and, in the gravest circumstances, life imprisonment or capital punishment according to statutory conditions.

These differences show that Article 479 KUHP cannot be treated as a direct equivalent of ḥirābah. It is better understood as a partial functional counterpart. It corresponds to ḥirābah in relation to violence, intimidation, and protection of property, but it does not fully encompass the theological, moral, and public-order dimensions of ḥirābah. Thus, the comparison should not be framed as identity, but as functional overlap within different legal epistemologies.

The comparison may be summarized as follows:

Aspect	Hirabah	Article 479 KUHP
Legal foundation	Qur'an, tafsir, and fiqh jināyah	Statutory criminal law
Legal classification	Grave offense against public security and fasād fī al-arḍ	Theft aggravated by violence or threat
Protected interests	Life, property, public security, social order	Property, bodily security, public order
Central harm	Violence, intimidation, public fear, disruption of order	Theft accompanied by violence or threat

[30] Indonesia, *Undang-Undang Nomor 1 Tahun 2023*.

Aspect	Hirabah	Article 479 KUHP
Scope	Broader; not limited to ordinary theft	Narrower; linked to theft as principal offense
Sanctions	Graded statutory penalties	Graded statutory penalties

From a broader perspective, hirābah is not only understood as a crime against individuals, but also as a violation of universal humanitarian values, particularly the right to security and protection from violence. This is in line with the view that Islamic law and human rights share the same objectives, namely to uphold justice, equality, and humanity. Therefore, the regulation of theft with violence in the KUHP can be understood as a form of protection of these fundamental rights within the context of positive law.[31]

Article 479 of the KUHP also regulates various forms of aggravated punishment that indicate differentiation in the severity of the crime. Paragraph (1) provides that the perpetrator is subject to imprisonment for a maximum of 9 years. Meanwhile, paragraph (2) stipulates a maximum sentence of 12 years under certain conditions, such as when the act is committed at night or jointly. Furthermore, paragraph (3) provides that if the act results in death, the perpetrator may be sentenced to imprisonment for a maximum of 15 years, and under certain conditions may be subject to the death penalty or life imprisonment as regulated in paragraph (4). The structure of punishment demonstrates that the KUHP applies a graded punishment system that takes into account the level of danger and the impact of the crime. This indicates that positive law does not merely focus on retribution, but also considers the protection of society and the proportionality of punishment.[32]

When compared more specifically, the sanction systems in positive law and Islamic criminal law show differences in form, yet share similarities in considering the severity of the crime. In the KUHP, variations in criminal sanctions are determined based on the elements and impact of the offense, such as the degree of violence and the consequences caused. Meanwhile, in Islamic criminal law, sanctions for crimes such as theft and hirābah are determined based on the fulfillment of certain normative conditions. This difference shows that both legal systems have their own mechanisms in

[31] Febri Hijroh Mukhlis, "International Human Right And Islamic Law: Sebuah Upaya 'Menuntaskan' Wacana-Wacana Kemanusiaan," *Dialogia* 15, no. 2 (2017): 285–307, https://doi.org/10.21154/dialogia.v15i2.1195.

[32] Muladi Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung, 2010).

determining the proportionality of punishment, although they employ different approaches.[33]

On the other hand, in Islamic criminal law, the crime of hirābah is viewed as an offense with broader impact than ordinary theft, as it not only targets property but also the life and dignity of the victim, and creates fear within society. Even the minimum impact of hirābah is the emergence of social fear, even if the crime does not succeed in achieving its material objective. In contemporary developments, the concept of hirābah is also used to understand modern crimes such as terrorism, which share similar characteristics in generating mass fear and undermining public security. In this regard, the perpetrators of such crimes are regarded as muḥāribūn or parties who "wage war against society."[34]

The comparison between ḥirābah and Article 479 KUHP should therefore be placed within the framework of public security. Article 479 KUHP is primarily structured as theft aggravated by violence or threats of violence, whereas ḥirābah has a broader public-order dimension because it is connected to intimidation, social fear, and disruption of public safety. Thus, Article 479 KUHP may correspond to ḥirābah only in a limited functional sense, particularly in relation to violence, protection of property, and public security, but it does not fully represent the Qur'anic category of fasād fī al-arḍ.

E. Discussion

1. Maqāṣid al-Sharī'ah Analysis: Protection of Life, Property, and Public Security

Within the framework of maqāṣid al-sharī'ah, the punishment for ḥirābah should be analyzed through the concrete interests that the law seeks to protect. In this study, the relevant maqāṣid are not discussed in a broad and abstract manner, but are focused on three directly related objectives: protection of life (ḥifẓ al-nafs), protection of property (ḥifẓ al-māl), and protection of public security. These three objectives explain why ḥirābah is treated as a grave offense in Islamic criminal law. It is not merely because

[33] Faizul Akmal Siregar, "Perbandingan Tindak Pidana Pencurian Dengan Kekerasan Dalam KUHP Dan Hukum Pidana Islam," *Yustisi* 10 (2023).

[34] Abdul Basit Junaidy, *Hukum Pidana Islam* (Rajawali Buana Pusaka, 2020).

property is taken, but because the act combines violence, intimidation, and social terror in a way that threatens the foundations of safe communal life.[35]

The first objective is the protection of life. Ḥirābah often involves direct violence, threats of killing, bodily harm, or situations in which victims are exposed to serious danger. From the perspective of ḥifẓ al-nafs, the legal response to ḥirābah aims to protect human life from aggression and to prevent the normalization of violence in public space. This is consistent with the Qur'anic placement of ḥirābah after the discussion of unlawful killing and fasād fī al-arḍ in QS. al-Mā'idah 32–33, which indicates that the offense is connected to the broader protection of human life and social order.[36]

The second objective is the protection of property. In ordinary theft, the principal harm lies in the unlawful taking of property. In ḥirābah, however, the violation of property is aggravated by violence and intimidation. This transforms the offense from a private property violation into a crime with wider public implications. The protection of property in maqāṣid al-sharī'ah therefore does not only mean preserving individual ownership, but also maintaining the social conditions under which people can safely move, work, trade, and live without fear of violent dispossession.[37]

The third objective is the protection of public security. This is the most important point for distinguishing ḥirābah from ordinary theft. The defining feature of ḥirābah is not merely the taking of property, but the production of fear and insecurity in society. A crime becomes socially destructive when it undermines public confidence in safety, disrupts mobility, and weakens trust in legal authority. Therefore, the severe sanctions associated with ḥirābah should be understood as an attempt to prevent collective harm and preserve public order. In this sense, ḥirābah is not only a crime against individual victims, but also a crime against social security.[38]

This focused maqāṣid analysis also helps clarify the relationship between ḥirābah and Article 479 KUHP. Article 479 protects property and bodily security through the criminalization of theft accompanied by violence or threats of violence. However, maqāṣid allows the analysis to go further by asking whether the law also protects the wider social interest in public

[35] Abū Isḥāq Ibrāhīm ibn Mūsā al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah* (Mansyūrāt al-Basyīr Bin'aṭiyyah, 2017; repr., Mansyūrāt al-Basyīr Bin'aṭiyyah, 2017), http://archive.org/details/Al_Mowafa9at.

[36] Ibn Kathīr, *Tafsīr al-Qur'ān al-'Aẓīm*.

[37] Mohammad Hashim Kamali, *Maqasid Al-Shariah Made Simple* (International Institute of Islamic Thought, 2008), https://doi.org/10.2307/j.ctvkc67vz.

[38] Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

security. The comparison therefore shows both convergence and limitation: Article 479 KUHP may functionally protect some of the same interests as ḥirābah, but its doctrinal structure remains narrower because it is tied to theft as the core offense.

2. Critical Analysis of Deterrence Theory in Modern Criminal Justice

Deterrence theory is useful for analyzing ḥirābah and Article 479 KUHP because both legal concepts contain a preventive dimension. However, deterrence should not be understood simplistically as the assumption that harsher punishment automatically produces greater crime prevention. Classical deterrence theory, influenced by utilitarian thought, assumes that individuals may refrain from crime when the expected cost of punishment outweighs the expected benefit of offending. In contemporary criminology, however, this assumption has been refined and criticized.[39]

Modern deterrence theory generally distinguishes between general deterrence and specific deterrence. General deterrence refers to the effect of punishment on the wider public, while specific deterrence refers to the prevention of reoffending by the punished offender. This distinction is important because the punishment of ḥirābah has both dimensions. It is intended to prevent the offender from repeating the offense and to warn society against crimes that create public fear. Similarly, Article 479 KUHP aims not only to punish individual offenders but also to prevent violent theft as a threat to public order.[40]

Nevertheless, contemporary criminological research shows that the effectiveness of deterrence depends less on severity and more on certainty and consistency of enforcement. Daniel S. Nagin argues that evidence supporting the deterrent effect of certainty of punishment is more consistent than evidence supporting the deterrent effect of severity. The National Institute of Justice similarly emphasizes that the certainty of being caught is generally a stronger deterrent than the severity of punishment. This finding is significant for the present study because it challenges the assumption that the severity of ḥudūd punishments or the length of imprisonment under modern law is sufficient to prevent crime.[41]

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[39] Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, 1823.

[40] katharina.kiener-manu, "Crime Prevention & Criminal Justice Module 7," accessed May 30, 2026, //www.unodc.org.

[41] Nagin, "Deterrence in the Twenty-First Century."

From this perspective, the preventive function of ḥirābah sanctions should be read in relation to their normative seriousness, but their contemporary relevance must also be assessed through procedural legitimacy, consistency, and legal certainty. Severe sanctions without reliable enforcement, fair procedure, and public trust may fail to produce deterrence and may instead weaken legal legitimacy. Likewise, Article 479 KUHP may provide graded penalties for violent theft, but its deterrent effect depends on effective policing, prosecutorial consistency, judicial fairness, and public confidence in the criminal justice system.

Deterrence theory also raises a moral problem. If punishment is justified only by its future preventive benefit, there is a risk that punishment may become disproportionate to the offender's actual wrongdoing. UNODC notes that deterrence has been criticized for both effectiveness and moral acceptability, especially when it allows disproportionate punishment or punishment driven mainly by anticipated social benefit. Therefore, the integration of deterrence theory with maqāṣid al-sharī'ah is important. Maqāṣid provides a normative limit: punishment must protect life, property, and public security, but it must also avoid injustice, arbitrariness, and disproportionate harm.[42]

Thus, deterrence theory does not weaken the maqāṣid-based justification of punishment; rather, it sharpens it. It shows that the purpose of punishment cannot be achieved by severity alone. A penal system that seeks to protect society must combine proportional sanctions, certainty of enforcement, procedural fairness, and institutional credibility. In this sense, both Islamic criminal law and modern criminal law require more than textual severity; they require legitimate implementation.

3. Ḥudūd, Human Rights, and Procedural Safeguards

A contemporary discussion of ḥirābah cannot ignore human rights concerns surrounding the implementation of ḥudūd punishments. Sanctions associated with ḥirābah, such as amputation, crucifixion, and capital punishment, raise serious questions in modern human rights discourse, especially concerning the right to life, bodily integrity, proportionality of punishment, and the prohibition of torture or cruel, inhuman, or degrading treatment. The International Covenant on Civil and Political Rights protects the right to life and prohibits torture or cruel, inhuman, or degrading punishment. In addition, the UN Special Rapporteur on Torture has stated that corporal

[42] katharina.kiener-manu, "Crime Prevention & Criminal Justice Module 7," accessed May 30, 2026, //www.unodc.org.

punishment is contrary to the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment.[43]

Human rights critiques of ḥudūd should not be dismissed as merely external to Islamic law. They are relevant because they raise questions about the conditions under which punishment is imposed, the possibility of state abuse, the vulnerability of defendants, and the fairness of criminal procedure. Human Rights Watch's study of the application of Shari'a criminal law in Northern Nigeria, for example, identified serious concerns not only about the severity of punishments such as death penalty, amputation, and flogging, but also about lack of legal representation, unfair trials, and weak procedural safeguards.[44] These concerns show that the problem is not only the textual form of punishment, but also the institutional conditions of its implementation.

From a maqāṣid-oriented perspective, the objective of ḥirābah punishment is the protection of life, property, and public security. However, the same maqāṣid framework also requires protection against injustice and arbitrary state power. A punishment that claims to protect public order but is imposed without due process would contradict the very purpose of the law. Therefore, any contemporary engagement with ḥirābah must emphasize strict evidentiary standards, legality, judicial independence, access to legal counsel, proportionality, and protection against coerced confession.[45]

This point is particularly important for the comparison with Indonesian positive law. Article 479 KUHP operates within a modern criminal justice framework that formally requires legality, criminal procedure, judicial process, and evidentiary rules. Islamic criminal law, when read through maqāṣid, also contains strong procedural and moral concerns aimed at preventing wrongful punishment. The dialogue between ḥirābah and Article 479 KUHP should therefore not be limited to the severity of sanctions, but

[43] "STATEMENT BY THE SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS ON TORTURE," OHCHR, accessed May 30, 2026, https://www.ohchr.org/en/statements-and-speeches/2009/10/statement-special-rapporteur-commission-human-rights-torture-0.

[44] "'Political Shari'a'?," *Human Rights Watch*, September 21, 2004, https://www.hrw.org/report/2004/09/21/political-sharia/human-rights-and-islamic-law-northern-nigeria.

[45] Sadiq Reza, "Due Process in Islamic Criminal Law," *George Washington International Law Review* 46, no. 1 (2013): 1.

must include procedural legitimacy and human rights safeguards as necessary conditions for just punishment.

4. Synthesis of Maqāṣid al-Sharī'ah, Deterrence Theory, and Human Rights Safeguards

The synthesis of maqāṣid al-sharī'ah and deterrence theory shows that the comparison between ḥirābah and Article 479 KUHP should be understood through both normative and functional dimensions. Maqāṣid al-sharī'ah explains why ḥirābah is treated as a serious offense: it threatens life, property, and public security. Deterrence theory explains how punishment is expected to prevent similar crimes, but it also reminds us that prevention cannot depend on severity alone. Human rights safeguards further insist that punishment must be imposed through fair, proportional, and procedurally legitimate mechanisms.

This integrated framework produces three findings. First, ḥirābah and Article 479 KUHP converge at the level of protected social interests. Both respond to violence, threats, and dispossession that endanger victims and disturb public order. Second, they diverge at the level of legal structure. Ḥirābah is a Qur'anic-legal category associated with fasād fī al-arḍ and collective security, while Article 479 KUHP is a statutory offense of theft aggravated by violence. Third, their penal rationalities must be evaluated not merely by the severity of sanctions, but by their capacity to protect society without violating justice, proportionality, and due process.

Through this synthesis, the article avoids two extremes. The first extreme is reducing ḥirābah to ordinary violent theft, which ignores its broader public-security dimension. The second extreme is treating Islamic criminal law and modern criminal law as completely incompatible systems. A more balanced approach recognizes that they operate within different legal epistemologies but may still be compared functionally when they address similar social harms. The relevance of ḥirābah to Indonesian criminal law therefore lies not in transplanting ḥudūd sanctions into the KUHP, but in illuminating how criminal law should protect life, property, and public security while maintaining legal certainty and procedural justice.[46]

F. Conclusion

This study concludes that ḥirābah in the Qur'an and violent theft under Article 479 of the Indonesian Criminal Code share an important functional concern: both

[46] Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach*.

address violence, intimidation, threats to property, and disturbance of public security. However, they should not be treated as identical legal concepts. Ḥirābah is rooted in the Qur'anic category of fasād fī al-arḍ and is constructed in Islamic criminal law as a grave offense against public security and social order. Article 479 KUHP, by contrast, is a statutory offense that remains doctrinally connected to theft aggravated by violence or threats of violence.

The maqāṣid al-sharī'ah analysis shows that the seriousness of ḥirābah lies in its simultaneous threat to life, property, and public security. The deterrence analysis further shows that the preventive function of punishment cannot be measured merely by the severity of sanctions. Contemporary criminology emphasizes the importance of certainty, consistency, and legitimacy of enforcement. Therefore, both Islamic criminal law and modern criminal law require not only firm sanctions but also credible institutions, fair procedure, and proportional application.

This study also demonstrates that any contemporary discussion of ḥirābah must engage human rights concerns surrounding ḥudūd punishments. Issues such as the right to life, bodily integrity, prohibition of cruel punishment, fair trial, access to legal counsel, and protection against arbitrary enforcement are not external to the objectives of law. When read through maqāṣid, procedural safeguards are part of the effort to prevent injustice and protect human welfare.

The contribution of this article lies in its functional-comparative framework. It shows that ḥirābah and Article 479 KUHP can be placed in dialogue without collapsing their differences. Such a framework allows Islamic criminal law values to be discussed in relation to modern criminal law through the shared aims of protecting life, property, and public security. Future research may develop this study further through empirical analysis of court decisions, crime data, or comparative studies involving countries that apply Islamic criminal law and modern penal codes in different institutional settings.

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