

## COMPARATIVE ANALYSIS OF LOOTING CRIMES: A LEGAL PERSPECTIVE FROM INDONESIA'S POSITIVE CRIMINAL LAW AND ISLAMIC CRIMINAL LAW

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### Abstract

Looting is a serious criminal act that not only leads to material losses but also disrupts societal stability and security. This study aims to comparatively analyze the handling of looting crimes within Indonesia's positive criminal law and Islamic criminal law to identify key differences and potential areas for legal integration. This research employs a qualitative approach with a normative juridical method, focusing on literature analysis, doctrinal studies, and relevant legal regulations. The study examines legal texts and interpretations to understand how looting is categorized and sanctioned within both legal frameworks. The findings indicate that under Indonesia's positive criminal law, looting is classified as theft with violence under Article 365 of the Criminal Code (KUHP), with penalties in the form of imprisonment, adjusted based on the crime's circumstances and impact. In contrast, Islamic criminal law categorizes looting as *hirabah*, a severe offense punishable by *hudud* sanctions, such as cross-amputation, to uphold *maqasid shari'ah*, ensuring the protection of religion, life, lineage, property, and intellect. The primary difference lies in the flexibility of sentencing in positive law versus the fixed and deterrent nature of Islamic law. This study provides a unique comparative perspective by analyzing both legal systems in the context of looting crimes. While existing research often examines these legal frameworks separately, this study explores their intersections and the potential for legal integration to enhance justice and crime prevention. The integration of Indonesia's positive criminal law and Islamic criminal law could establish a more comprehensive, effective, and just legal framework for addressing looting crimes. By combining the proportional sentencing of positive law with the strong deterrence of Islamic law, policymakers may develop a more balanced approach to crime prevention and law enforcement.

**Keywords:** Positive Criminal Law, Islamic Criminal Law, Looting, *Maqasid Shari'ah*

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### INTRODUCTION

As science, culture, and technology continue to progress, human behavior in social life becomes more varied. Legally, this behavior can be categorized into actions that conform to established norms and those that diverge from them. Any violation of current

regulations in Indonesia has the potential to disturb social stability and public order.<sup>1</sup> Every individual living in society is governed by legal rules, whether customary laws specific to their region or positive laws established by the Indonesian government. Consequently, law is inseparable from the mutual influence of various aspects that serve as legal benchmarks to maintain order in society. However, in reality, many people still commit legal violations, whether intentionally or unintentionally.

One example is looting, which is a crime against property. Looting is a criminal act in which an individual or a group openly takes someone else's belongings, often in large numbers and under specific circumstances. It is considered a form of theft. Looting typically occurs in unstable situations, such as during natural disasters, when perpetrators act spontaneously due to chaos and take advantage of available opportunities. One of the fundamental principles of national development is based on respect for law enforcement officers in upholding the rule of law, justice, and human dignity. At the same time, this policy direction ensures order and legal certainty in protecting every individual, which remains closely linked to Indonesian culture and the values of *Pancasila*.<sup>2</sup>

In the *Kamus Umum Bahasa Indonesia* (General Dictionary of the Indonesian Language), the term *penjarahan* (looting) is derived from the word *jarah*, which means to seize or confiscate. *Penjarahan* refers to the act of seizing or confiscating someone else's property. The perpetrator of looting is called a *penjarah* (looter).<sup>3</sup> Based on this definition, looting can be understood as forcibly taking someone else's belongings, sometimes involving violence, such as robbery, intimidation, and even threats.

The term *penjarahan* is not explicitly mentioned in the Indonesian Penal Code (KUHP). However, it is classified under Article 365 of the Penal Code, which deals with *gequalificeerde diefstal* or qualified theft, a form of theft that includes aggravating factors. Aggravated theft refers to theft that is committed under certain conditions, such as when it involves multiple perpetrators or occurs during extraordinary circumstances, including

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<sup>1</sup> Komang Gede Reska Joanykernia Pradila, Anak Agung Sagung Laksmi Dewi, And I Made Minggu Widyantara, "Tinjauan Yuridis Pidana Terhadap Pelaku Tindak Pidana Penjarahan," *Jurnal Preferensi Hukum* 3, No. 2 (2021): 497.

<sup>2</sup> Pradila, Dewi, And Widyantara.

<sup>3</sup> Tim Redaksi, *Kamus Besar Bahasa Indonesia* (Jakarta: Pusat Bahasa, 2019).

natural disasters. Natural disasters, in particular, can create conditions that drive individuals to commit theft—not only due to their personal circumstances but also because of external factors such as hardship and crisis.

In Islamic law, looting is referred to as *hirabah*, which involves a group or an armed individual attacking travelers or passersby. Looting is not merely an offense against individuals or society; it is considered an act of war against Allah and His Messenger due to its violent nature.<sup>4</sup> In Islamic criminal law, looting is categorized as a special criminal offense (*jarimah khusus*), defined as the forced seizure of another person's property through violence or the threat of violence. According to Muhammad Abu Syahbah, theft (*sariqah*) in Islamic jurisprudence (*syara'*) is the act of secretly taking another person's property by a legally responsible adult (*mukallaf*) with full mental capacity. The stolen property must meet a minimum value threshold (*nisab*) and be taken from a secure storage place without any ambiguity (*syubhat*) regarding ownership.<sup>5</sup>

Islam provides strict legal consequences for theft. In Islamic criminal law, theft is classified into two categories: Theft punishable by *hudud*, which includes: *Minor theft (al-sariqah sughra)* and *Major theft (al-sariqah al-kubra)*. Theft punishable by *ta'zir*, which includes: Theft that would normally warrant *hudud* punishment but is exempt due to the presence of *syubhat* (doubt). The open taking of another person's property with their knowledge but without force or consent.<sup>6</sup>

Given the increasing cases of crime that harm society, it is crucial to analyze looting from the perspectives of both positive criminal law and Islamic criminal law. Looting does not only cause material losses but also instills fear and insecurity within communities. Islamic criminal law employs a different approach by focusing on justice and the protection of individual rights, particularly as outlined in *maqasid shariah* (the objectives of Islamic law). Principles such as fair retribution and crime prevention in Islamic criminal law may provide a more effective solution for addressing looting. Therefore, studying the application of Islamic criminal law in looting cases can help develop a more effective legal system that aligns with societal values. To prevent the

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<sup>4</sup> Abdur Rahman Doi, *Tindak Pidana Dalam Syariat Islam* (Jakarta: Rineka Cipta, 1992).

<sup>5</sup> Ahmad Wardi Muslich, *Hukum Pidana Islam* (Jakarta: Sinar Grafika, 2005).

<sup>6</sup> Hm Sahid, *Pengantar Hukum Pidana Islam* (Surabaya: Uin Sunan Ampel, 2014).

recurrence of such incidents in the future, this study seeks to answer two key research questions: What are the legal provisions regarding looting in positive criminal law and Islamic criminal law? How do the legal differences between positive criminal law and Islamic criminal law apply to looting cases?

## **METHOD**

This research is a qualitative study employing a normative juridical approach, which involves legal research conducted to analyze the application of law based on library materials. This type of research aims to examine legal aspects through a library research approach, specifically focusing on the analysis of Islamic criminal law perspectives. The data sources in this study consist of primary and secondary data. Primary legal materials include laws, the Indonesian Penal Code (KUHP), books, and scholarly journals related to Islamic criminal law provisions concerning looting. Data collection is carried out through documentary research, while data analysis employs qualitative analysis to systematically examine the data based on legal principles and theories.

## **RESULT AND DISCUSSION**

### **1. Provisions on Looting Crimes in Indonesia's Positive Law**

In the Kamus Umum Bahasa Indonesia (General Dictionary of the Indonesian Language), the term *penjarahan* (looting) originates from the word *jarah*, which means to seize or plunder. *Penjarahan* refers to the act of forcibly taking and seizing someone else's property, and those who commit looting are called *penjarah* (looters).<sup>7</sup> In Indonesia's Kitab Undang-Undang Hukum Pidana (Criminal Code), looting is categorized as theft with violence. Meanwhile, in the Dutch-Indonesian Dictionary, looting is translated as *plunderen*, meaning complete robbery. Based on these definitions, looting can be understood as the process or act of plundering, which itself means forcibly seizing and taking possession of someone else's property, particularly during wartime or periods of social unrest.

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<sup>7</sup> Redaksi, *Kamus Besar Bahasa Indonesia*.

Looting is essentially another term for theft, as both involve taking another person's belongings. However, the terminology differentiates them. In Indonesia's Positive Criminal Law, looting falls under the category of aggravated theft, in which an individual commits an act that meets the fundamental elements of theft but with additional aggravating factors. These aggravating factors are conditions that increase the severity of the crime, leading to harsher penalties if the perpetrator is proven to have met these additional criteria.

Looting involves forcibly taking someone else's belongings, often using violence, such as robbery, intimidation, or threats – sometimes even resulting in injuries to the victims. This act commonly occurs during periods of national instability or insecurity. Aggravated theft and theft with violence are social diseases closely associated with crime, and throughout history, they have continuously harmed and oppressed others. Therefore, efforts must be made to prevent people from committing aggravated theft or theft with violence.

The legal basis for looting is stipulated in the Criminal Code (KUHP), specifically in Book II, Chapters XII and XIII, Article 365, which states:

1. Theft preceded, accompanied, or followed by violence or threats of violence against a person, with the intent to prepare or facilitate the theft, or when caught in the act, to enable escape for themselves or accomplices, or to retain possession of the stolen goods, is punishable by imprisonment for up to nine years.
2. The penalty is twelve years' imprisonment if:
  - a. The crime is committed at night in a house or enclosed yard with a residence.
  - b. The act is carried out by two or more persons in collaboration.
  - c. The crime involves breaking in, climbing, using a counterfeit key, false orders, or a fraudulent official uniform.
  - d. The act results in serious injuries.
3. If the act results in death, the penalty is imprisonment for up to fifteen years.
4. If the act involves extreme circumstances, the punishment can be death, life imprisonment, or a prison term of up to twenty years.

The offense of theft regulated in Article 365 of the Criminal Code (KUHP) is also classified as *gequalificeerde diefstal*, meaning theft with qualifying or aggravating circumstances. According to an arrest by the Hoge Raad (Supreme Court of the Netherlands), the term "aggravated" refers to the use of violence or threats of violence during the commission of theft. In practice, this provision aligns with real-world cases of looting, where violence, group involvement, property destruction, and injuries – even fatalities – are often present.

Under Article 365 of the Criminal Code, looting is defined as the forcible seizure of another person's property through the use of violence or threats of violence. The elements required to classify an act as looting include: The forced seizure of property, The use of violence or threats, and Harm to the victim.<sup>8</sup> Based on these definitions, the elements of looting under **Article 365** can be divided into subjective elements, such as the intent to facilitate theft, escape when caught, or retain possession of stolen goods.

Aside from Islamic criminal law, the looting committed by motorcycle gangs in Medan can also be examined under Indonesia's Positive Criminal Law, specifically the Criminal Code (KUHP). Article 365(2) of the KUHP states that looting committed at night, inside a house, and by a group of people carries a severe penalty. The violent attacks between motorcycle gangs in Medan align with the criteria outlined in this article, as the looting occurred at night, targeted another gang's headquarters (a house), and was carried out collectively. Moreover, the act caused injuries to victims, making the perpetrators liable to a maximum prison sentence of 12 years, as stipulated in the Criminal Code (KUHP). Therefore, under Indonesia's Positive Law, the perpetrators of inter-gang looting can face imprisonment for up to 12 years.

A comparison between Islamic criminal law and Indonesia's Criminal Code (KUHP) regarding looting reveals several key similarities and differences. Both legal systems define looting as the act of forcibly taking someone else's property, often involving violence. In Islamic criminal law, looting is classified as "hirabah" and is subject to fixed punishments (hudud), whereas in the KUHP, looting is categorized as theft with violence, as regulated in Article 365.

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<sup>8</sup> Michael Limbong, "Tinjauan Yuridis Terhadap Penjarahan Menurut Kuhp," *Jurnal Hukum Khaira Ummah* 6, No. 11 (2016): 23.

In Islamic criminal law, looting is considered a serious crime because it not only harms individuals but also disrupts public order. The penalties can be severe, including cross-amputation of hands and feet, especially if the act results in injury to the victim. This reflects Islamic law's emphasis on deterrence and its goal of protecting society from crime. On the other hand, the KUHP also imposes significant penalties for looting. Article 365 provides for varying prison sentences, depending on factors such as the number of perpetrators and whether the crime occurred at night. This demonstrates that national law considers the context and impact of criminal acts when determining punishments.

Both legal systems aim to ensure security and social justice. Islamic criminal law adopts a stricter stance by implementing hudud punishments, while the KUHP provides more flexibility in sentencing, based on individual case circumstances. Despite their differences, both systems share the ultimate goal of establishing a safe and orderly society. In the context of motorcycle gang attacks in Medan, both legal frameworks can be applied. Islamic criminal law offers harsher penalties and a stronger stance against crimes that threaten public order, while the KUHP provides a practical legal framework for law enforcement at the national level.

Integrating Islamic legal values into criminal justice presents an opportunity to create a fairer and more effective legal system. Islamic criminal law not only prescribes punishments for offenders but also emphasizes prevention and rehabilitation. By incorporating principles such as justice, individual rights protection, and social responsibility, national legal systems can be strengthened. For instance, the strict punishments of hadd in Islamic law could serve as a strong deterrent against crime, potentially reducing criminal activity. Additionally, Islamic law's restorative justice approach, which focuses on reconciliation between offenders and victims, can aid in offender rehabilitation while ensuring justice for victims. Such integration could be further supported by legal education that promotes Islamic values, increasing public awareness of the consequences of criminal acts and the importance of maintaining social order. Therefore, integrating Islamic legal principles into the criminal justice system not only enhances law enforcement effectiveness but also contributes to building a harmonious and just society.

## 2. Provisions on the Crime of Looting in Islamic Criminal Law

According to Abdul Qadir Audah, forcibly seizing someone else's property is not considered petty theft but rather classified as extortion or robbery. Looting, mugging, and robbery all fall under the category of theft crimes (*jarimah sariqah*) and are subject to ta'zīr punishment.<sup>9</sup> A clear distinction can be made: grand theft occurs with the victim's knowledge but without their consent, often involving violence. Abdul Qadir Audah asserts that the defining indicator between grand theft and petty theft is the presence of violence. If an act does not involve violence, it is classified as looting, mugging, or robbery.<sup>10</sup>

Wahbah Zuhaili defines *hirābah* as any act of forcefully seizing property in circumstances where victims are unable to seek help or assistance. The concept of petty theft extends beyond simple theft to include acts such as usurpation, looting, betrayal, embezzlement, and pickpocketing. Meanwhile, grand theft refers specifically to *hirābah*. In Islamic law, theft is classified into two types:

1. Theft subject to hadd punishment (hand amputation).
2. Theft subject to ta'zīr punishment.

Theft that incurs hadd punishment (hand amputation) is further divided into two categories: petty theft (سرقة صغيرة) and grand theft (سرقة كبرى), which are defined as follows:

1. Petty theft (سرقة صغيرة): "The act of secretly or stealthily taking someone else's property."
2. Grand theft (سرقة كبرى): "The act of forcefully seizing someone else's property through violence."<sup>11</sup>

Islamic jurists (*fuqahā'*) also refer to grand theft (*sariqah kubrā*) as *hirābah* (armed robbery) or *qat' u aṭ-ṭarīq* (highway robbery). Additionally, they use terms such as usurpation (*ghaṣb*) and embezzlement (*ikhtilās*) to describe similar offenses. Abdul Qadir Audah classifies *hirābah* as grand theft, not in its literal meaning but in a figurative sense. However, robbery may also involve an element of stealth, particularly when linked to authorities or security personnel. For this reason, *hirābah* is often referred to as *sirqaḥ*

<sup>9</sup> Abdul Qadir Audah, *At-Tasyri'i Al-Jina'i Al-Islami* (Beirut: Dar Al-Kitab Al-'Arabi, 1989).

<sup>10</sup> Wahbah Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu* (Damaskus: Dar Al-Fikr, 2011).

<sup>11</sup> Audah, *At-Tasyri'i Al-Jina'i Al-Islami*.



kubrā (major theft) to differentiate it from *sirqah sughrā* (petty theft). In addition to *sirqah kubrā* and *hirābah*, the term *qat' uṭ-ṭarīq* is frequently used, particularly by Hanafi scholars.

The *Ẓāhirī* school defines *muhārib* (perpetrators of *hirābah*) as individuals who intimidate and terrorize people, causing chaos in society. This includes bandits and thieves. However, they differentiate between thieves who act in secret for theft, illicit sexual relations, or murder and those who commit open violence. The former are punished according to the specific crime they commit, while grand theft (*hirābah*) is subject to the most severe form of *hadd* punishment. In contrast, petty theft incurs a lighter punishment, as its harm is limited to the individual owner of the stolen property.<sup>12</sup>

Linguistically, *hirābah* means "waging war" or "causing disorder," the opposite of peace and security. Etymologically, *hirābah* refers to rebellion, while in religious terminology, it is synonymous with *qat' uṭ-ṭarīq* (highway robbery), referring to armed attacks where perpetrators seize property by force.<sup>13</sup> *Hirābah* involves violent acts committed by individuals or groups against others, whether inside or outside homes, with the intent to seize property or instill fear through threats, intimidation, and physical violence. As such, *hirābah* is classified as a *ḥadd* crime (*jarīmah ḥudūd*).<sup>14</sup>

The elements of looting, as defined in Islamic criminal law, include:

- a. The use of violence against others. This distinguishes looting from theft, as looting is carried out openly, often involving threats or physical force.
- b. The act occurs in a location where assistance is unavailable, causing fear and insecurity in society.

Looting committed in an overt manner is subject to *hadd* punishment. However, if an act of looting is done secretly, it is categorized as theft. If the perpetrator seizes property and then flees, they are classified as a mugger or robber. The legal basis for *hirābah* is found in *Surah Al-Mā'idah* (5:33–34):

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<sup>12</sup> Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*.

<sup>13</sup> Mardani, *Hukum Pidana Islam* (Jakarta: Prenada Media, 2019).

<sup>14</sup> Shella Auliana, "Sanksi Pidana Perampokan Menurut Hukum Pidana Islam Dan Kuhp," *Skripsi-Uin Walisongo*, 2017, 44.

"Indeed, the penalty for those who wage war against Allah and His Messenger and spread corruption on the earth is death, crucifixion, the amputation of their hands and feet on opposite sides, or exile from the land. That is their disgrace in this world, and for them in the Hereafter is a great punishment. Except for those who repent before you apprehend them. Know that Allah is Forgiving and Merciful." (Al-Mā'idah 5:33-34)

This verse specifically addresses punishment for those who cause corruption on the earth, including acts of looting and destruction of others' property.<sup>15</sup> This verse was revealed concerning a case of *hirābah* involving members of the *Uraniyyūn* tribe who came to Madinah, converted to Islam, and later fell ill.<sup>16</sup> The Prophet (PBUH) instructed them to seek treatment by drinking the milk of charity camels. After recovering, they murdered the camel herders, renounced Islam, and stole the camels.<sup>17</sup> The Prophet then sent his companions to track them down. Upon capture, they were subjected to severe punishment, including hand and foot amputation and being left to die in the desert without water, as retribution for their crimes.<sup>18</sup>

M. Quraish Shihab explains that the phrase "those who wage war against Allah and His Messenger" in the verse refers specifically to those who commit acts of *hirābah*, disrupting public security through violence and robbery.<sup>19</sup>

### **3. Analysis of Looting in the Perspective of Positive Criminal Law and Islamic Criminal Law**

The comparison between positive criminal law in Indonesia and Islamic criminal law in the context of looting provides a profound understanding of how both legal systems address the same crime with different approaches. Under Indonesia's positive law, looting falls under the provisions of the Indonesian Penal Code (*Kitab Undang-Undang Hukum Pidana*, or *KUHP*), specifically Article 365, which classifies looting as theft with violence. In this context, looting is defined as the act of seizing another person's property

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<sup>15</sup> Ishaq, "Sanksi Pidana Perampokan Dalam Kuhp Dan Hukum Pidana Islam," *Ahkam* 15, No. 2 (2015): 148.

<sup>16</sup> Ahmad Syarif Abdillah, "Hukuman Bagi Pelaku Tindak Pidana Pencurian Dengan Kekerasan," *Al-Jināyah: Jurnal Hukum Pidana Islam* 1, No. 2 (2015): 291.

<sup>17</sup> Nabila Zatadini, "Konsep Maqashid Syariah Menurut Al-Syatibi Dan Kontribusinya Dalam Kebijakan Fiskal," *Al-Falah: Journal Of Islamic Economic* 3, No. 2 (2018): 587.

<sup>18</sup> Syekh Shalih Bin Fauzan, *Ringkasan Fikih Lengkap, Jilid 1 Dan 2* (Jakarta: Darul Falah, 2005).

<sup>19</sup> Quraish Sihab, *Tafsir Al-Misbah, Pesan, Kesan Dan Keserasian Al-Qur'a* (Jakarta: Lentera Hati, 2002).

using violence or threats of violence. Positive law prescribes varying penalties depending on several factors, such as the time of the crime (whether it occurs at night or not), the number of perpetrators, and the consequences of the act, such as whether it results in injury or even death.

Article 365 of the Indonesian Penal Code categorizes looting as theft with violence, which is considered a serious crime with significant consequences for victims and society. This article outlines several levels of penalties depending on the severity of the offense. First, a maximum prison sentence of nine years is imposed on perpetrators who commit theft preceded by, accompanied by, or followed by violence or threats of violence against a person. In this context, the element of violence or threat serves as an aggravating factor, indicating that the perpetrator's actions not only cause material loss but also endanger the victim's life. Second, if looting occurs at night in a house or enclosed yard, or if it involves two or more individuals, the punishment increases to a maximum of twelve years. This provision reflects the perception that looting committed under specific conditions, such as at night and involving multiple offenders, poses a greater danger and causes more public distress. Additionally, if the crime involves breaking and entering, climbing, or the use of counterfeit keys, the penalty is further increased. Third, if the act of looting results in serious injuries to the victim, the perpetrator may face a maximum prison sentence of fifteen years. This regulation underscores the legal system's concern for the physical harm inflicted on victims, which can lead to long-term trauma and suffering. Fourth, in more severe cases where looting leads to the death of the victim, the applicable penalties include the death sentence, life imprisonment, or a prison term of up to twenty years. This provision demonstrates the strict stance of Indonesia's positive law against acts that not only cause financial loss but also take human lives, representing the gravest violation in society.

Overall, Article 365 of the Indonesian Penal Code highlights that Indonesia's positive legal framework adopts a comprehensive and stringent approach to handling looting crimes. The penalties stipulated under positive law aim to maintain social order and security. By imposing severe punishments, the law seeks to create a deterrent effect on potential offenders and prevent similar crimes from recurring. Furthermore, positive law

emphasizes the protection of individual property rights, which is a fundamental pillar of social justice. Consistent and firm law enforcement is expected to reduce crime rates, particularly those involving violence and looting. However, despite the clarity of the legal framework, its implementation often faces challenges, such as corruption, limited resources, and low public legal awareness.

On the other hand, Islamic criminal law provides a more comprehensive explanation of looting, known as "hirabah." In Islamic law, hirabah is not merely viewed as a criminal offense but also as an act that disrupts public order and damages social values. In Islamic jurisprudence, looting (hirabah) falls under the category of hadd offenses, which are fixed punishments in Islamic criminal law. The conditions that must be met for the hadd punishment to be applied to a thief include legal accountability (taklif), the absence of extreme necessity driving the theft, the lack of familial ties between the victim and the perpetrator, and the theft not occurring during wartime in the path of Allah. Additionally, there must be no ambiguity (syubhat) regarding ownership. If any of these conditions are not met or if there is an element of doubt (syubhat), the hadd punishment does not apply.

Looting, or hirabah, is defined as the act of openly seizing another person's property using violence or threats, in contrast to theft, which is committed covertly. In Islamic law, looting falls under the hadd category, meaning it carries a fixed and severe punishment. Several conditions must be met for the implementation of this penalty. First, the perpetrator must be an adult and fully accountable for their actions. Second, the act of looting must not be committed out of extreme necessity, such as an urgent need to survive. Third, there must be no familial relationship between the perpetrator and the victim, as this factor increases the gravity of the offense. Fourth, the stolen property must clearly belong to someone else, with no ambiguity in ownership.

According to Imam Malik and al-Shafi'i, as well as the second opinion among Hanbali scholars, the prescribed punishment involves amputating both hands and feet. The first offense warrants the amputation of the right hand at the wrist. If the offender commits theft again, the left foot is amputated. For a third offense, the left hand is amputated, and for a fourth offense, the right foot is amputated. If the perpetrator continues stealing

beyond this point, the punishment shifts to discretionary (*ta'zir*) penalties, which may include life imprisonment until repentance is evident.

One of the prominent contemporary Islamic scholars, M. Quraish Shihab, explains that looters who do not cause death but instead injure and rob individuals while inciting social unrest may be subjected to cross-limb amputations – meaning the right hand and left foot are amputated. This opinion aligns with the views of two major Islamic legal schools, the Shafi'i and Hanafi schools. Both schools hold that offenders who injure and rob others in an act of looting should face cross-limb amputation.

From the perspective of *maqashid shariah* (the objectives of Islamic law), *hirabah* represents a severe violation of fundamental principles designed to protect religion (*hifzh al-din*), life (*hifzh al-nafs*), lineage (*hifzh al-nasl*), property (*hifzh al-mal*), and intellect (*hifzh al-aql*). Therefore, the enforcement of Islamic law places a strong emphasis on justice that prioritizes societal well-being and the social impact of criminal acts.

First, concerning the protection of religion (*hifzh al-din*), looting contradicts the spiritual and moral values upheld by Muslim societies. Islamic law teaches that individuals are responsible for safeguarding the honor and property of others. Looting creates insecurity and fear, negatively affecting both individual spirituality and the moral integrity of society. In Islam, looting is not only a material crime but also a threat to communal moral values.

Second, the principle of protecting life (*hifzh al-nafs*) emphasizes the necessity of preserving human life. Looting often involves violence, endangering both property and human lives. In this regard, Islamic criminal law takes violations of the right to life seriously, imposing severe penalties on actions that threaten lives. This reflects Islamic law's commitment to safeguarding individuals and ensuring a secure environment for all members of society.

Third, the protection of lineage (*hifzh al-nasl*) is another critical aspect of *maqashid shariah*. Looting disrupts family and social structures, causing psychological trauma to victims and their families. When property is forcibly seized, the economic stability of families is threatened, which may hinder children's education and development. From

the perspective of *maqashid syariah*, creating a safe and prosperous environment is essential to ensure the well-being of future generations.

Fourth, protecting property (*hifz al-māl*) is a primary objective of both legal systems. In Islamic criminal law, looting is subject to strict sanctions, reflecting the importance of safeguarding property as a trust (*amānah*). The *ḥadd* punishment in Islamic law, such as amputation of the hand, aims to deter perpetrators and prevent criminal acts that harm society. On the other hand, the Indonesian Penal Code (*KUHP*) also imposes significant penalties for looting, varying based on the circumstances and impact of the act. This demonstrates that both legal systems strive to protect individual property rights and maintain social order.

Lastly, protecting intellect (*hifz al-'aql*) highlights the importance of preserving individuals' mental and physical well-being. Looting not only causes physical harm but can also create long-term trauma for victims. In this context, education and awareness of the dangers of criminal acts are essential in preventing their recurrence. Islamic criminal law emphasizes rehabilitation and prevention, aligning with the objectives of *maqāṣid shari'ah* to create a just and harmonious society.

Thus, while both legal systems share the same goal of establishing a safe and orderly society, their approaches differ significantly. Indonesia's positive law is more flexible and case-oriented, whereas Islamic criminal law applies stricter sanctions and emphasizes moral values. Integrating principles from both systems in addressing looting cases can create a more comprehensive legal framework, focusing on prevention, rehabilitation, and the enforcement of religious values in society. This is expected to reduce crime rates and foster a more prosperous, secure, and civilized community.

This study employs two legal application theories: the theory of legal implementation and Islamic criminal law. According to the theory of legal implementation, the enforcement of criminal law against looting serves as a means to maintain public order and security. The imposition of criminal sanctions, such as imprisonment under positive law or *ḥadd* punishments like amputation of the hand and foot in Islamic law, is intended to deter similar offenses and prevent perpetrators from seizing territories through brutal force to retain control.

Another function of enforcing criminal law in cases of looting is to achieve social justice for both victims and offenders. Victims receive justice for their material and immaterial losses, while perpetrators face sanctions proportional to their crimes. This is expected to create a balance of rights and responsibilities within society. Legal enforcement also plays a crucial role in driving development. A safe and orderly environment, ensured through law enforcement, enables society to engage in productive activities, ultimately boosting regional economic growth.

Furthermore, under Islamic criminal law theory, looting is classified as a criminal offense (*jarimah*) subject to fixed sanctions or *hadd* punishments. In Islamic law, *hadd* refers to a predetermined punishment applied to specific offenses. Looting falls under the category of crimes known as *muhārabah*—acts that disrupt public order. This classification aligns with the consequences of motorcycle gang violence, which not only harms victims but also incites unrest and fear in society.

According to Islamic jurists such as Imam al-Shāfi'ī and Imam Abū Ḥanīfah, the prescribed punishment for looters who do not commit murder but injure victims and seize their property is *hadd*, involving cross-amputation of the right hand and left foot. This view aligns with contemporary Islamic legal scholars such as M. Quraish Shihab. Therefore, from the perspective of Islamic criminal law, motorcycle gang members involved in looting should receive a *hadd* punishment of cross-amputation.

The relevance of Islamic law within the national legal context is evident in how Islamic criminal law addresses crimes like looting. Within the national legal framework, applying these principles could help manage the increasing number of criminal cases. For instance, the punishments proposed in Islamic law, such as amputation, reflect the seriousness of crime prevention efforts. In Islamic law, looting is defined as openly taking another person's property using force, unlike theft, which occurs covertly. Islamic criminal law imposes strict sanctions for looting, classifying it under *hadd* punishments, which are fixed penalties applied when specific conditions are met—such as the perpetrator being an adult and the absence of urgent circumstances justifying the act. Additionally, there must be no family relationship between the perpetrator and the victim. These stipulations illustrate Islam's commitment to ensuring justice and preventing crime.

Scholars such as M. Quraish Shihab, who advocate for cross-amputation as a penalty for looters who harm others, provide insights relevant to the national legal system. By integrating Islamic legal principles into national law, a more just and effective legal framework can be established. This integration is crucial in maintaining public security and instilling a deterrent effect on criminals, ultimately contributing to a safer and more orderly society.

## **CONCLUSION**

The findings of this study reveal that Indonesian positive criminal law and Islamic criminal law adopt distinct approaches in addressing looting. In Indonesian law, looting is classified as theft with violence under Article 365 of the Criminal Code (KUHP), with penalties that vary based on factors such as the time of occurrence, number of perpetrators, and severity of losses. In contrast, Islamic criminal law categorizes looting as *hirabah*, a grave offense punishable by hudud sanctions, such as cross-amputation, to uphold the principles of *maqasid shariah*. This distinction highlights the fundamental differences in legal philosophy, where Indonesian law focuses on proportionality in sentencing, while Islamic law prioritizes deterrence and societal stability.

One of the key strengths of this research lies in its comprehensive comparative analysis of the two legal systems. By examining the flexible and case-specific nature of positive law alongside the fixed and deterrent-based approach of Islamic law, this study provides a nuanced perspective on crime prevention and justice. Furthermore, the research highlights the potential benefits of integrating elements from both systems to create a more balanced and effective legal framework. Such an approach could enhance legal certainty, ensure justice for victims, and maintain social order through a combination of preventive, rehabilitative, and punitive measures. However, this study has certain limitations that should be acknowledged. The analysis primarily focuses on theoretical and doctrinal perspectives without extensive empirical data on the practical implementation of these laws in real-world legal cases. Additionally, the study does not explore the challenges of harmonizing these two legal systems within the Indonesian legal context, particularly regarding human rights concerns and international legal



standards. Future research should consider empirical case studies and explore policy implications to provide a more comprehensive understanding of how these legal principles can be effectively applied in contemporary legal practice.

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