

Analysis of Criminal Responsibility of Perpetrators of Aggravated Theft Based on Article 477 of The National Criminal Code and Fiqh Jinayah

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Abstract. *The reform of national criminal law through the enactment of the National Criminal Code introduces a new paradigm in the regulation and punishment of criminal offenses, including aggravated theft. Aggravated theft is classified as an offense with a higher degree of culpability and social harm compared to ordinary theft, thereby requiring a proportional and just concept of criminal liability. This study aims to analyze the concept of criminal liability for perpetrators of aggravated theft under the National Criminal Code and to compare it with the concept of criminal liability in Islamic criminal law, particularly in relation to jarimah and hudud, within the framework of substantive justice. This research employs a normative legal research method using statutory, conceptual, and comparative law approaches. The data were collected through a literature review of legislation, criminal law doctrines, and Islamic criminal law literature. The findings indicate that the National Criminal Code has incorporated principles of differentiated punishment and fault-based criminal liability; however, it still tends to emphasize a retributive approach. In contrast, Islamic criminal law through the concepts of Jarimah and Hudud emphasizes a balance between retribution, victim restoration, and social welfare. The comparison of these two legal systems demonstrates the relevance of substantive justice values in Islamic criminal law as a normative reference for developing a more humane and socially oriented national criminal sentencing policy.*

Keywords: *Aggravated Theft; Criminal Liability; Islamic Criminal Law; Jarimah And Hudud; National Criminal Code; Substantive Justice.*

1. Introduction

Indonesia constitutionally affirms itself as a state of law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The concept

of a state of law contains the meaning that all aspects of social, national and state life must be organized based on just laws, uphold human rights, and guarantee legal certainty. The principle of the Indonesian state of law cannot be separated from the values of Pancasila as the philosophical basis of the state, which places social justice, humanity, and order as the main orientation of the formation and enforcement of national law.¹

In the context of criminal law, the state has an obligation to protect the legal interests of society by formulating proportional and just criminal norms. One of the legal interests that receives fundamental protection is property rights, which are implicitly part of human rights. Therefore, the crime of theft is seen as an unlawful act that not only causes material harm to individuals but also has the potential to disrupt the sense of security and social order more broadly.²

With the development of modern society, characterized by social, economic, and technological dynamics, the pattern of theft crimes has also undergone a transformation, both in terms of *modus operandi* and level of complexity. Theft is no longer committed simply, but is often accompanied by certain circumstances that aggravate the nature of the act, such as being committed in a conspiracy, at a specific time, or in ways that indicate more serious planning and intent. These conditions have given rise to the construction of aggravated theft as a crime that carries a higher level of culpability and danger than ordinary theft.

Aggravated theft requires a more rigorous application of the concept of criminal responsibility. This is due to the close relationship between *actus reus* and *mens rea*, which must be fully proven to ensure that punishment does not conflict with the principle of "geen straf zonder schuld." Therefore, determining criminal responsibility does not solely rely on the external act, but also on the subjective culpability of the perpetrator as a legally responsible subject.³

The history of Indonesian criminal law demonstrates that the national criminal justice system is inextricably linked to the influence of Dutch colonialism, with the enactment of the *Wetboek van Strafrecht* (WvS), which was later adopted as the Criminal Code (KUHP). This colonial legacy of the KUHP was in effect for a very long time and became the primary foundation for regulating criminal acts, including theft and aggravated theft. However, its long-standing validity has

¹Asshiddiqie, J. (2018). *The Indonesian Constitution and Constitutionalism*. Jakarta: Sinar Grafika, pp. 127–129.

²Wahyuningsih, SE, & Soponyono, E. (2019). *Criminal law policy from a substantive justice perspective*. Semarang: UNISSULA Press, pp. 45–47.

³Hamzah, A. (2017). *Principles of criminal law*. Jakarta: Rineka Cipta, pp. 93–95.

drawn criticism as it is considered to not fully reflect the values of Pancasila, societal development, and the principles of human rights protection.⁴

The push for national criminal law reform subsequently gave rise to a lengthy process of formulating the National Criminal Code, culminating in the ratification of Law Number 1 of 2023 concerning the Criminal Code. The National Criminal Code is expected to be a manifestation of criminal law that is Indonesian in character and humanistic, and able to balance legal certainty, substantive justice, and social benefit. This new paradigm aligns with Sudarto's view, which emphasizes that criminal law must function as a means of protecting society without neglecting humanitarian values.⁵

One of the important provisions in the National Criminal Code is the provision regarding aggravated theft, formulated in Article 477. This provision regulates various circumstances that aggravate the act of theft, so that the perpetrator is threatened with a heavier penalty than ordinary theft. This formulation shows the differentiation of the level of seriousness of the crime based on the context and method of implementation of the criminal act, which in principle aims to achieve proportional justice.

However, although the National Criminal Code has embraced the spirit of reform, there remains room for critical examination of whether the concept of criminal responsibility applied to perpetrators of aggravated theft truly reflects substantive justice. This issue becomes even more relevant when linked to the reality that overly repressive punishments have the potential to disregard humanitarian values, while overly lenient punishments can diminish the deterrent power of criminal law itself.⁶

From the perspective of Islamic criminal law, theft is an act that is strictly regulated with the primary objective of protecting property as part of the public interest (*maṣlaḥah 'āmmah*). Although theft is classically known as *السَّرْقَةُ* within the framework of *ḥudūd*, Islamic criminal law also recognizes the concept of accountability and punishment that is oriented towards proportional justice, particularly through the mechanisms of *قصاص* (*qisāṣ*) and *دية* (*diyah*) in the context of violations that cause serious harm to individuals. The principle of caution (*iḥtiyāt*) and the rule of *idrā'ū al-ḥudūd bi al-syubuhāt* show that Islamic criminal law is not rigid, but rather places justice and humanity as the primary objectives of punishment.⁷

⁴Soponyono, E. (2020). National criminal law reform. Semarang: UNISSULA Press, pp. 61–63.

⁵Sudarto. (2013). Law and criminal law. Bandung: Alumni, pp. 32–34.

⁶Wahyuningsih, SE (2021). Restorative justice in the criminal justice system. Semarang: UNISSULA Press, pp. 88–90.

⁷Al-Zuhaylī, W. (2011). *Al-Fiqh al-Islāmī wa Adillatuhu*. Damascus: Dār al-Fikr, Volume VI, p. 503–506.

These values have not only developed at the normative level but have also been implemented in diverse ways in the legal systems of countries that utilize Islamic law as a source of national law, such as Saudi Arabia, Iran, and Sudan. These varied applications demonstrate the dynamic and contextual nature of Islamic criminal law, making it relevant for comparison in assessing the concept of criminal responsibility in Indonesian positive law.⁸

However, until now there has been no study that comprehensively analyzes the concept of criminal responsibility for perpetrators of aggravated theft in the National Criminal Code by comparing it with the values of substantive justice that have developed in Islamic criminal law, in particular *jarimah hudūd*. This lack of research is the primary catalyst for this research, given that Indonesia, as a religious nation-state, allows for constructive dialogue between positive law and Islamic legal values without neglecting the principles of a modern constitutional state.⁹

This study strictly limits the research subjects to perpetrators of aggravated theft committed by adults as natural persons (natural persons). Child perpetrators are not included in the research because they are subject to a special juvenile criminal justice regime that has different principles, objectives, and mechanisms for criminal accountability. This limitation is intended to allow for a more focused and in-depth analysis in accordance with the characteristics of adult criminal accountability.¹⁰

Based on this description, this research is relevant and urgent to conduct. Therefore, this thesis is entitled "Analysis of Criminal Responsibility for Aggravated Theft Perpetrators Based on the National Criminal Code and Islamic Criminal Law (*Jarimah Hudūd*)" as an academic effort to study and compare the concept of criminal responsibility from the perspective of Indonesian positive law and Islamic criminal law, in order to encourage the development of national criminal law that is just, humanistic, and based on Pancasila values.

2. Research Methods

This research uses normative legal research, namely research that is based on the study of positive legal norms and legal doctrine.¹¹ Normative research was chosen because the focus of the research is to analyze the provisions of the National Criminal Code and the norms of Islamic jurisprudence as a living legal system.

⁸Audah, AQ (2010). *At-Tashrī' al-Jinā'ī al-Islāmī*. Cairo: Dār al-Kitāb al-'Arabī, p. 412–415.

⁹Asshiddiqie, J. (2015). *The rule of law of Indonesia*. Jakarta: Rajawali Pers, pp. 201–203.

¹⁰Maerani, IA (2018). *Criminal law & the death penalty*. Semarang: UNISSULA Press, pp. 56–58.

¹¹Marzuki, PM (2017). *Legal research*. Kencana, p. 35.

3. Results and Discussion

3.1. Regulations and concepts of criminal responsibility for perpetrators of aggravated theft in the National Criminal Code

The regulation and concept of criminal responsibility for perpetrators of aggravated theft in the National Criminal Code is an important part of understanding the construction of punishment adopted by Indonesian criminal law after the reform.

The National Criminal Code not only regulates prohibited acts and their criminal penalties, but also emphasizes the fundamental principles that form the basis for sentencing perpetrators of criminal acts.

In the context of aggravated theft, legal regulations cannot be separated from the concept of criminal responsibility which places guilt and the ability to take responsibility as the main conditions for punishment.

Therefore, before analyzing the positive norm regarding aggravated theft, it is necessary to first understand the theoretical basis of criminal responsibility in national criminal law. This understanding is crucial so that the analysis of the provisions of the National Criminal Code is not merely normative but also reflects the values of substantive justice that are the goal of criminal law reform.

1. The Concept and Theoretical Basis of Criminal Responsibility in National Criminal Law

Criminal responsibility is a central concept in national criminal law, determining whether a criminal act can be legally and fairly imposed on the perpetrator. In modern criminal law doctrine, criminal responsibility requires not only an unlawful act (*wederrechtelijk*) but also inherent fault (*schuld*) on the part of the perpetrator. Without fault, criminal punishment cannot be justified, both legally and morally.¹²

The National Criminal Code emphasizes that criminal penalties can only be imposed if the perpetrator committed the crime intentionally (*dolus*) or negligently (*culpa*), and has the capacity to take responsibility (*toerekeningsvatbaarheid*). This provision reflects the principle of *geen straf zonder schuld*, namely, there is no punishment without fault, which is a universal principle in modern criminal law and also serves as an instrument for protecting human rights.¹³ With this principle, criminal law rejects punishment that is purely objective without considering the subjective condition of the perpetrator.

¹²Sudarto. (2018). Law and criminal law. Bandung: Alumni, p. 72.

¹³Andi Hamzah. (2019). Principles of criminal law. Jakarta: Rineka Cipta, p. 113.

Furthermore, criminal responsibility in the National Criminal Code is understood not only in a normative-formal sense, but also in an evaluative manner. This means that judges must not only prove that the elements of a crime as defined in the law have been fulfilled but must also assess whether the act can be properly accounted for by the perpetrator (*normatieve toerekening*). This assessment encompasses the psychological, social, and situational aspects underlying the criminal act.¹⁴

From this perspective, criminal responsibility serves as a filtering mechanism between abstract legal norms and the concrete reality of criminal acts. Criminal law is not positioned merely as a means of retribution, but rather as a means to achieve rational and humane justice. This approach demonstrates that the National Criminal Code adopts a modern criminal law paradigm that focuses on a balance between legal certainty and substantive justice.¹⁵

In relation to aggravated theft, the concept of criminal liability becomes even more relevant because such acts are generally committed with a higher degree of intent and in specific ways that indicate planning. Therefore, judges are required to carefully assess the perpetrator's level of culpability, the background to their actions, and the legal awareness that accompanies them. Therefore, the application of criminal liability in aggravated theft is not mechanical, but rather contextual and oriented toward substantive justice.

2. Regulation of the Criminal Act of Theft in the National Criminal Code

The regulation of the crime of theft in the National Criminal Code is not merely a normative formulation prohibiting the taking of another person's property, but also reflects the direction of national criminal law reform, which places the protection of property rights within the framework of Pancasila justice. In this context, criminal law is positioned as an instrument of social defense and a means of enforcing the values of justice, oriented toward a balance between legal certainty and expediency.¹⁶

This concept is in line with the view that modern criminal law must be built on the basis of the principles of legality and the principle of fault, so that every formulation of a crime, including theft, must contain clear elements of the act and fault as a condition for criminal responsibility.¹⁷ Therefore, the analysis of Article 476 of the National Criminal Code needs to be placed within a broader theoretical framework, namely as part of the national criminal law policy which

¹⁴Muladi. (2019). Human rights and criminal law reform. Bandung: Alumni, p. 101.

¹⁵Wahyuningsih, SE (2018). Criminal law and Pancasila justice. p. 121.

¹⁶Wahyuningsih, SE (2018). Criminal law and Pancasila justice. p. 128.

¹⁷Hamzah, A. (2019). Principles of criminal law. p. 115.

aims to maintain social order and protect the property rights of the community.¹⁸

a. Normative Construction of Theft in the National Criminal Code

The crime of theft in the National Criminal Code is formulated in Article 476, which states:

Article 476 of the National Criminal Code

"Any person who takes something which belongs wholly or partly to another person, with the intention of possessing it unlawfully, shall be punished for theft with a maximum prison sentence of 5 (five) years or a maximum fine of category V."

This formulation demonstrates that lawmakers have classified theft as a property offense, aiming to protect property rights as part of the material rights guaranteed by the national legal system. Protection of property rights is not only private but also has a public dimension, as it concerns public order and security within society.¹⁹

Systematically, Article 476 contains both objective and subjective elements. Both elements must be cumulatively met for a person to be held criminally responsible. Thus, the construction of the crime of theft in the National Criminal Code reflects a balance between *actus reus* (the act) and *mens rea* (the perpetrator's mental state).²⁰

b. Objective Element Analysis

1) The act of "Taking"

The first element is the act of "taking." In criminal law doctrine, taking is understood as an active act that results in the transfer of factual control (*feitelijke heerschappij*) over an object from the victim to the perpetrator.²¹

This act does not have to be committed openly; even acts committed secretly still fulfill the element of taking as long as there is a transfer of control. The crime of theft is considered complete (*voltooid delict*) when the perpetrator has successfully taken possession of the item, even if only for a short time.

In the context of evidence, the judge must assess whether there has been a real transfer of control. If the goods were not taken into possession because the perpetrator was apprehended before the transfer of control occurred, then the

¹⁸Arief, BN (2011). Anthology of criminal law policies. p. 42.

¹⁹Barda, NA (2020). Criminal law policy. Jakarta: Kencana. p. 130.

²⁰Sudarto. (2018). Law and criminal law. Bandung: Alumni. p. 75.

²¹Hamzah, A. (2019). Principles of criminal law. Jakarta: Rineka Cipta. p. 148.

act can be classified as attempted (poging) according to the general provisions of the National Criminal Code regarding attempted criminal acts.²²

2) Objects in the form of "Goods"

The term "goods" in Article 476 encompasses any object that has economic value and can be controlled by humans. In modern legal developments, the definition of goods is no longer limited to movable objects, but can also encompass certain forms of valuable, transferable property.²³

It should be emphasized that economic value is a crucial aspect in determining whether an object falls under the category of assets protected by criminal law. Therefore, legal protection for property rests not only on its material value but also on its social function and economic benefits.

3) Belonging to Others

The next element is that the goods "wholly or partly belong to another person." This element confirms that theft is a violation of property rights (eigendomsrecht).²⁴

If the item belongs entirely to the perpetrator, the element of theft is not met. However, if the item is jointly owned, taking it without the consent of the other party entitled to it can still be categorized as theft. This demonstrates that criminal law protects every form of legally valid ownership right.

c. Subjective Element Analysis: Intent to Possess Unlawfully

The subjective element in Article 476 lies in the phrase "with the intent to possess unlawfully" (opzet als oogmerk). This element indicates that theft is an intentional crime (opzettelijk delict) that requires a specific purpose from the perpetrator.²⁵

The intent referred to is not merely knowing or intending to take the property, but also having the intention to illegally make the property one's own. This form of intent is referred to in doctrine as *dolus directus*, that is, intent that is directly directed toward a result prohibited by law.

²²Saleh, R. (2017). Criminal acts and criminal responsibility. Jakarta: Aksara Baru. p. 61.

²³Muladi. (2019). Human rights and criminal law reform. Semarang: UNDIP Publishing Agency. p. 112.

²⁴Wahyuningsih, SE (2018). Criminal law and Pancasila justice. Semarang: UNISSULA Press. p. 128.

²⁵Hamzah, A. (2020). Indonesian Criminal Law. Jakarta: Sinar Grafika. p. 154.

The phrase "unlawfully" also has a broad meaning. It not only means something that violates the law (formal law) but also something that violates the sense of justice and prevailing social norms (material law).²⁶

Thus, if the taking is based on a legitimate right or permission, the element of unlawfulness is not met. This is where the judge's analysis is crucial in assessing the context of the act, including the perpetrator's motives and background.

d. Dimensions of Criminal Responsibility

The provisions on theft in the National Criminal Code are inseparable from the concept of criminal responsibility. A person can only be punished if they possess the capacity to take responsibility (toerekeningsvatbaarheid) and commit the act with fault.²⁷

In this case, criminal liability includes three main aspects:

- 1) Ability to take responsibility;
- 2) There was an error;
- 3) There is no excuse or justification.

If any of these elements is not met, then a sentence cannot be imposed. This demonstrates that the National Criminal Code remains consistent with the principle of "geen straf zonder schuld."

e. Theoretical Relevance and Criminal Law Policy

From a criminal policy perspective, the regulation of theft in the National Criminal Code reflects the state's efforts to maintain a balance between protecting property rights and protecting the individual rights of the perpetrator.²⁸

This approach demonstrates that criminal law is not solely oriented toward retributive justice, but also toward prevention and development. This aligns with emerging thinking in national criminal law literature that places substantive justice as the primary focus of criminal law reform.²⁹

Thus, the regulation of the crime of theft in the National Criminal Code is not only a technical normative formulation, but also reflects the paradigm of modern

²⁶Barda, NA (2021). Criminal law formulation policy. Jakarta: Kencana. p. 89.

²⁷Sudarto. (2018). Law and criminal law. Bandung: Alumni. p. 82.

²⁸Muladi & Barda, NA (2019). Criminal theories and policies. Bandung: Alumni. p. 59.

²⁹Nurjanah, S. (2021). Criminal liability from the perspective of the National Criminal Code. *Khaira Ummah Journal*, 16(1), 40.

criminal law which is based on a balance between legal certainty, utility, and justice.

3.2. The concept of criminal responsibility for the crime of theft in Islamic criminal law, particularly in relation to the principles of justice, restitution, and welfare within the framework of Jarimah Ḥudūd

The concept of criminal responsibility for the crime of theft in Islamic criminal law must be positioned appropriately within the framework of jarimah ḥudūd, namely a category of offenses that have special characteristics because the form of the act and the type of sanctions have been explicitly determined by Allah SWT through the Qur'an and Sunnah. In this perspective, theft (السَّرِقَةُ) is not only understood as a violation of legal norms alone, but also as a form of violation of the boundaries of divine provisions (ḥudūd Allāh) which has both theological and social dimensions. Therefore, criminal responsibility in this case is not merely formal juridical, but also contains moral and spiritual responsibilities inherent in the perpetrator.³⁰

Conceptually, jarimah ḥudūd is a manifestation of ḥaqq Allah, namely rights directly related to the public interest and social order. This fundamentally distinguishes it from jarimah qisās-diyah which places more emphasis on ḥaqq al-ādamī or individual rights. In the context of theft, the dominance of ḥaqq Allah places the interests of society as the main priority, so that law enforcement aims to maintain social stability and protect property as part of the maqāṣid al-syarī'ah, especially in the aspect of ḥifẓ al-māl.³¹

The normative basis for the crime of theft as part of jarimah ḥudūd is explicitly stated in the Qur'an, especially in QS. al-Mā'idah verse 38, which states:

love

Wa al-sāriqu wa al-sāriqatu faqṭa'ū aydiyahumā.

It means:

“As for the man who steals and the woman who steals, cut off their hands as a punishment for what they have done and as a punishment from Allah.”³²

The provisions of this verse reflect the principle of legal certainty in the Islamic criminal law system, where the types of prohibited acts and their legal consequences are clearly and firmly defined by sharia. However, this normative certainty cannot be understood narrowly or applied rigidly. Scholars emphasize

³⁰Kamali, M.H. (2003). Principles of Islamic Jurisprudence. Cambridge: Islamic Texts Society, p. 342–345.

³¹Shatibi, A.I. (2005). Al-Muwafaqat fi Usul al-Shari'ah. Beirut: Dar al-Kutub al-'Ilmiyyah, p. 88–90.

³²Al-Qur'an, QS. al-Mā'idah: 38.

that the implementation of ḥudūd sanctions must be based on a very strict evidentiary process and the fulfillment of certain, limited and selective requirements.

In this context, Islamic criminal law demonstrates a highly cautious character, as the imposition of sanctions is not solely based on normative texts but also considers aspects of substantive justice and the protection of individual rights. Therefore, the imposition of sanctions on perpetrators of theft is not automatic, but rather requires careful verification of the elements of the act, the perpetrator's condition, and the possibility of syubhat (doubt) that could invalidate the application of the ḥudūd.

Thus, this verse not only represents the firmness of Islamic law in maintaining social order but also reflects the balance between legal certainty and humanistic principles of justice. This demonstrates that Islamic criminal law is built on a strong normative foundation, while also possessing ethical and contextual dimensions in its application within society.

Classical scholars such as Ibn Qudāmah and Al-Māwardī emphasized that ḥudūd sanctions cannot be applied immediately without careful verification. This reflects the principle of caution (al-iḥtiyāt) in Islamic criminal law, which aims to avoid errors in sentencing. Thus, even though sanctions have been explicitly determined, their implementation still takes into account aspects of substantive justice.³³

In the context of criminal liability, theft can only be subject to ḥudūd sanctions if several elements defined in Islamic jurisprudence are met. These elements include malicious intent (al-qaṣd al-jinā'i), the minimum value of the goods (niṣāb), the goods being in a suitable storage place (ḥirz), and the absence of doubt (syubhat). If any of these elements are not met, ḥudūd sanctions cannot be imposed.³⁴

The Islamic jurisprudence principle, which states: "The only thing that is doubtful is the doubt of the law" (dar'u al-ḥudūd bi al-syubuhāt), emphasizes that any form of doubt must be prioritized to avoid the imposition of ḥudūd sanctions. This principle demonstrates that Islamic criminal law highly values the protection of individual rights and avoids the potential for arbitrariness in law enforcement.³⁵

Although the jarimah ḥudūd is known to have a firm and definite normative character, the principle of justice in Islamic criminal law remains central as the primary foundation for all forms of criminal accountability. Justice in the Islamic

³³Qudamah, I. (1997). *Al-Mughni*. Beirut: Dar al-Kutub al-'Ilmiyyah, pp. 245–248.

³⁴Zuhayli, W. (2006). *Al-Fiqh al-Islami wa Adillatuh*. Damascus: Dar al-Fikr, p. 287–289.

³⁵Awdah, A. Q. (2001). *Al-Tashri' al-Jina'i al-Islami*. Cairo: Dar al-Hadith, p. 512–515.

perspective, known as al-'adl (العدل), is not only interpreted as imposing sanctions on perpetrators, but also includes guarantees of protection for individual rights, including the perpetrators themselves, from possible errors in the law enforcement process.

The concept of al-'adl (al-'adlu), which etymologically means "putting something in its place" or "giving rights to those who deserve it," has a broader dimension than mere retribution. In the context of criminal law, justice must be realized through an objective, transparent, and proportional judicial process, so that arbitrary actions (ẓulm / الظلم) do not occur. Thus, the application of ḥudūd sanctions is not only oriented towards normative certainty, but also towards achieving substantive justice that upholds human dignity.

Furthermore, Islamic criminal law emphasizes that every individual has equal standing before the law, therefore, the evidentiary process must be conducted strictly and carefully. This principle aims to avoid errors in imposing severe and irrevocable sentences. Therefore, protecting perpetrators from potential miscarriages of justice is an integral part of the concept of justice in Islam.

In line with this, Sri Endah Wahyuningsih's thinking emphasizes that punishment should not be understood solely as an instrument of retribution, but rather should be oriented toward humanistic values that uphold human rights. Ideal punishment is one that not only provides a deterrent effect but also takes into account the protection of the perpetrator as a legal subject who still possesses dignity and fundamental rights.³⁶

Although Islamic criminal law contains strict sanctions, its implementation must remain within a comprehensive framework of justice, integrating legal certainty, human rights protection, and respect for humanitarian values. This demonstrates that Islamic criminal law is not only normative but also contains strong ethical and humanistic dimensions in its practice.

In addition to the principle of justice (al-'adl / العدل), Islamic criminal law also contains a restorative dimension known as al-iṣlāḥ (الإصلاح). The concept of al-iṣlāḥ (al-iṣlāḥu) etymologically means "reparation," "reconciliation," or "restoration of a situation to a better condition." In the context of criminal liability, particularly for the crime of theft as part of jarimah ḥudūd, this restorative dimension remains important, even though the normative character of ḥudūd is known to be strict and limitative.

In cases of theft (السَّرِقَة), restitution can be achieved through the return of stolen goods or compensation by the perpetrator to the victim before the case reaches the stage of complete proof before the judicial authorities. This mechanism

³⁶Wahyuningsih, SE (2020). Humanitarian Value-Based Criminalization. Semarang: UNISSULA Press, pp. 64–67.

demonstrates that Islamic criminal law is not solely oriented toward punishment (retributive justice), but also opens up space for solutions that improve social relations and repair the losses incurred.

The *islāḥ* approach within the framework of *jarimah ḥudūd* reflects an ethical dimension that prioritizes a balance between the firmness of norms and humanitarian values. Although *ḥudūd* sanctions are essentially fixed punishments, their application still takes into account the concrete circumstances underlying the crime, including the perpetrator's good faith in correcting their mistake. Thus, Islamic criminal law provides room for remedial efforts before the final sanction is imposed.

Furthermore, this restorative dimension aligns with Sri Endah Wahyuningsih's view that punishment should not only focus on inflicting suffering, but also on efforts to improve the situation and uphold humanitarian values. In this regard, restorative justice encompasses not only the material aspects of the victim's losses but also the restoration of social relationships and the reintegration of the perpetrator into society.³⁷

Thus, although the crime of theft falls under the category of *ḥudūd* crimes characterized by normative strictness, Islamic criminal law still accommodates the *islāḥ* dimension as part of a more humanistic and just approach. This demonstrates that the Islamic legal system is not solely oriented toward enforcing norms but also toward creating social balance and broader public welfare.

The principle of public interest (*al-maṣlaḥah*) is also an important basis for imposing sanctions against theft. The primary purpose of imposing sanctions is not merely to provide a deterrent effect, but also to maintain social order and protect community property rights. Thus, Islamic criminal law functions as a preventive instrument aimed at creating a sense of security in social life.³⁸

From a modern perspective, scholars such as Mohammad Hashim Kamali and Abdullahi Ahmed An-Na'im emphasize that the application of *ḥudūd* must be understood contextually, taking into account the social conditions of society. This demonstrates that Islamic criminal law possesses a flexible dimension that allows for adaptation to changing times without neglecting its fundamental principles.³⁹

This flexibility is further demonstrated through the *ta'zīr* mechanism, which allows judges to impose alternative sanctions if the requirements of *ḥudūd* are

³⁷Wahyuningsih, SE (2020). *Humanitarian Value-Based Criminalization*. Semarang: UNISSULA Press, pp. 64–67.

³⁸Soekanto, S. (2014). *Factors Influencing Law Enforcement*. Jakarta: RajaGrafindo Persada, pp. 110–112.

³⁹An-Na'im, AA (2008). *Islam and the Secular State*. Harvard: Harvard University Press, p. 145–148.

not met. In this case, judges have the discretion to determine the form of sanction most appropriate to the perpetrator's circumstances and the social impact of their actions. This approach reflects a balance between legal certainty and substantive justice.⁴⁰

Furthermore, the ta'zir approach aligns with the concept of restorative justice in modern law, where case resolution is oriented not only toward punishment but also toward restoring social relations between the perpetrator and the victim. Thus, the values of Islamic criminal law have universal relevance that can be contextualized within contemporary legal systems.⁴¹

A study in the *Khaira Ummah Law Journal* also shows that the application of Islamic criminal law must prioritize a balance between legal certainty, justice, and expediency. This approach emphasizes that law functions not only as a tool of social control but also as a means to achieve dignified justice.⁴²

From a sociological perspective, the imposition of sanctions against theft has a significant preventive effect in maintaining social order. The threat of punishment in the jarimah hudūd serves as an effective deterrent, preventing similar crimes from occurring. This demonstrates that Islamic criminal law has a strategic function in maintaining social stability.⁴³

However, the application of hudūd sanctions cannot be separated from the context of social justice. Scholars emphasize that under certain circumstances, such as extreme poverty or emergencies, sanctions can be suspended due to doubtful elements. This demonstrates Islamic criminal law's sensitivity to the socio-economic conditions of society.⁴⁴

Thus, it can be concluded that criminal liability for the crime of theft in Islamic criminal law is a complex and comprehensive construct. Theft, as a sin of the hudūd, reflects the existence of Allah's law, yet it is implemented within a framework of justice, restitution, and public welfare.⁴⁵

4. Conclusion

1. Based on the overall discussion regarding criminal liability for aggravated theft in the National Criminal Code and its comparison with Islamic criminal law, it can

⁴⁰Santoso, T. (2016). *Principles of Islamic Criminal Law*. Jakarta: RajaGrafindo Persada, pp. 98–101.

⁴¹Marshall, T. (1999). *Restorative Justice: An Overview*. London: Home Office, p. 5–8.

⁴²Khaira Ummah Law Journal. (2021). "Substantive Justice in Islamic Criminal Law", pp. 45–49.

⁴³Soekanto, S. (2014). *Factors Influencing Law Enforcement*. Jakarta: RajaGrafindo Persada, pp. 120–122.

⁴⁴Taymiyyah, I. (1998). *Al-Siyasah al-Shar'iyyah*. Riyadh: Dar al-Watan, p. 134–136.

⁴⁵Shatibi, A.I. (2005). *Al-Muwafaqat fi Usul al-Shari'ah*. Beirut: Dar al-Kutub al-'Ilmiyyah, p. 102–105.

be concluded that both legal systems share the same orientation in realizing justice that is not only formal-legalistic, but also substantive in character and oriented towards protecting human values and social order. The National Criminal Code emphasizes legal certainty through normative construction, while Islamic criminal law strengthens the dimensions of justice through a moral and spiritual approach. 2. In the National Criminal Code, aggravated theft is defined as a crime with a higher level of seriousness than ordinary theft, both in terms of the elements of the act and the resulting social impact. Therefore, the aggravation of the sentence is based on the principles of proportionality, degree of culpability, and the function of protecting the legal interests of society. This approach reflects the integration of the theory of culpability and the retributive and preventive objectives of punishment within the modern national criminal law system. 3. Meanwhile, in Islamic criminal law, theft (*al-sariqah* / السرقة) is included in the category of *jarimah ḥudūd*, namely a crime whose type of act and the threat of punishment have been expressly determined by Allah SWT. However, its application is not absolute because it requires strict proof and the fulfillment of very specific elements. From the perspective of substantive justice, the two legal systems have a meeting point in the principles of proportionality, victim protection, and social stability, so that criminal responsibility is not only understood positivistically, but also within the ethical, sociological framework and the values of justice that live in society (living justice), including the integration of the values of *maqāṣid al-syarī'ah* in the renewal of national criminal law.

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