

Criminalization of Beheading Perpetrators in the Digital Era: A Comparative Study between *Jarīmah Ḥirābah* and Indonesia's New Criminal Code

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Abstract:

Beheading in the digital era not only threatens the property and life safety of victims, but is also increasingly complex due to the use of information technology in planning, implementing, and spreading the impact of crime that causes fear in society. In Islamic criminal law, the act can be categorized as *jarīmah ḥirābah* because it contains elements of violence, property grabbing, and terror to public security, while in Indonesia's New Criminal Code, beheading is regulated as a criminal act against property accompanied by violence. This study aims to analyze and compare the purpose of punishment for the perpetrators of beheading in the perspective of *jarīmah ḥirābah* and the Indonesian New Criminal Code. The research uses normative legal methods with legislative, conceptual, and comparative approaches. Data was obtained through literature studies of Islamic legal sources, laws and regulations, and relevant scientific literature. The results of the study show that the purpose of criminalization in *jarīmah ḥirābah* is oriented towards community protection, crime prevention, justice enforcement, and maintenance of the public welfare, while Indonesia's New Criminal Code emphasizes a balance between community protection, perpetrator development, victim recovery, and social reintegration. The novelty of this research lies in a comparative study of the purpose of criminal beheading in the digital era by placing the concept of *jarīmah ḥirābah* as a framework of analysis in the context of contemporary Indonesian criminal law.

Kata Kunci:

Pembegalan, Era Digital, *Jarīmah Ḥirābah*, KUHP Baru Indonesia, Tujuan Pidanaan.

Abstrak:

Pembegalan di era digital tidak hanya mengancam harta benda dan keselamatan jiwa korban, tetapi juga semakin kompleks akibat pemanfaatan teknologi informasi dalam perencanaan, pelaksanaan, dan penyebaran dampak kejahatan yang menimbulkan rasa takut di tengah masyarakat. Dalam hukum pidana Islam, perbuatan tersebut dapat dikategorikan sebagai *jarīmah ḥirābah* karena mengandung unsur kekerasan, perampasan harta, dan teror terhadap keamanan publik, sedangkan dalam KUHP Baru Indonesia pembegalan diatur sebagai tindak pidana terhadap harta benda yang disertai kekerasan. Penelitian ini bertujuan menganalisis dan membandingkan tujuan pidanaan terhadap pelaku pembegalan dalam perspektif *jarīmah ḥirābah* dan KUHP Baru Indonesia. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-undangan, konseptual, dan komparatif. Data diperoleh melalui studi kepustakaan terhadap sumber hukum Islam, peraturan perundang-undangan, dan literatur ilmiah yang relevan. Hasil penelitian menunjukkan bahwa tujuan pidanaan dalam *jarīmah ḥirābah* berorientasi pada perlindungan masyarakat, pencegahan kejahatan,

penegakan keadilan, dan pemeliharaan kemaslahatan umum, sedangkan KUHP Baru Indonesia menekankan keseimbangan antara perlindungan masyarakat, pembinaan pelaku, pemulihan korban, dan reintegrasi sosial. Kebaruan penelitian ini terletak pada kajian komparatif terhadap tujuan pembedaan pembegalan di era digital dengan menempatkan konsep *jarimah hirabah* sebagai kerangka analisis dalam konteks hukum pidana Indonesia kontemporer.

Introduction

Beheading is a form of street crime that is still a serious problem in the legal and security system in Indonesia. This crime not only causes material losses in the form of loss of the victim's property, but also has an impact on the safety of life, a sense of security, and social order of the community. In practice, beheading is often carried out using threats, violence, sharp weapons, and often even leads to serious injuries or death of the victim. The high level of violence that accompanies the crime of beheading makes this crime a form of crime that receives special attention from the public and law enforcement officials. This phenomenon shows that beheading can no longer be seen as an ordinary crime of theft, but rather as a crime that threatens public safety and social stability at large.¹

In recent years, various cases of beheading that have occurred in Indonesia show an increasingly alarming rate of escalation of violence. One of the cases that captured public attention was the beheading that killed a student in Medan City after the perpetrator seized the victim's motorcycle using a sharp weapon. Similar cases also occurred in Jakarta, Yogyakarta, Makassar, and various other areas, where the perpetrators did not hesitate to injure and even take the victim's life in order to obtain property. In addition, some of the perpetrators of the beheading are known to operate in groups, plan in advance, and make quiet streets and areas with minimal supervision as crime locations. This condition shows that beheading has evolved into a crime that not only harms individuals, but also creates fear and insecurity for society at large. This phenomenon shows that there is a real threat to the right of the community to obtain protection of life and property as guaranteed by law.²

In Indonesia's positive legal perspective, beheading is basically not known as a separate nomenclature in laws and regulations. However, the elements contained in the beheading are regulated through provisions on theft by force, extortion, persecution, and other criminal acts related to the use of violence against the victim. This regulation is currently contained in Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code). In the construction of national criminal law,

¹ Ahmad Rifqi Abdurrahman et al., "Perancangan Sistem Informasi Geografis Wilayah Rawan Pembegalan Menggunakan Metode Aaod," *JATI (Jurnal Mahasiswa Teknik Informatika)* 9, no. 1 (2025): 1643-50.

² Nunung Unayah and Muslim Sabarisman, "Fenomena Kenakalan Remaja Dan Kriminalitas," *Sosio Informa* 1, no. 2 (2015).

beheading is seen as a crime that attacks two legal interests at once, namely property rights and the safety of human life. Therefore, the state provides a heavier criminal threat if the crime results in serious injury or death.³

The purpose of punishment in the New Criminal Code is explicitly regulated in Article 51 which states that punishment aims to prevent criminal acts through the enforcement of legal norms, socialize convicts through coaching, resolve conflicts caused by criminal acts, restore balance, and bring a sense of security and peace in society. These provisions show that Indonesia's penal system is no longer solely *retributive* justice-oriented, but also accommodates rehabilitative, restorative, and reintegrative aspects. Thus, the punishment of the perpetrators of beheading is not only directed to punish, but also to correct the perpetrators and restore the social impact caused by the crime.⁴

On the other hand, Islamic criminal law has long regulated various forms of crimes that threaten public safety through the concept of *jarimah hirabah*. Etymologically, *hirabah* is derived from the word *haraba* which means to fight or seize. Terminologically, *jarimah hirabah* is understood as an act of robbery, confiscation of property, use of violence, or the spread of fear that is carried out openly so as to disturb the security of the community. The main legal basis of *jarimah hirabah* is found in the Qur'an Surah Al-Mā'idah verse 33: "Indeed, the retribution of those who fight against Allah and His Messenger and cause damage on the earth is only that they be killed, or crucified, or their hands and feet crossed, or exiled from the land where they dwell."⁵

This verse is the normative basis for scholars in formulating *hirabah* as one of the serious crimes that threaten public security (*public security crime*). The majority of the fuqaha of the Hanafiyah, Malikiyah, Shafi'iyah, and Hanabilah schools agree that the main elements of *hirabah* include the use of force or threats, the confiscation of property, the spread of fear, and the disturbance of public order. If contextualized with the development of modern crime, beheading has characteristics very close to the elements of *jarimah hirabah*, since they both involve violence, confiscation of property, and the creation of fear in the public sphere.

Criminality in *jarimah hirabah* is not only aimed at inflicting suffering on the perpetrator, but also on safeguarding the public good (*maṣlaḥah 'āmmah*) and protecting the main purposes of the Shari'ah (*maqāṣid al-syarī'ah*), especially the protection of the soul (*ḥifẓ al-naḥs*) and the protection of property (*ḥifẓ al-māl*). Therefore, the sanctions given to the perpetrators of *hirabah* tend to be strict as a form

³ Yohanis Sudiman Bahkti and Roida Hutabalian, "Pembegalan Ditinjau Dari Perspektif Kriminologis Di Wilayah Hukum Polres Jayapura," *Jurnal Hukum Ius Publicum* 2, no. 1 (2021): 11–23.

⁴ Michael Adyhaksa Padang, Billi J Siregar, and Rosmalinda Rosmalinda, "Keberpihakan Pemidanaan Dalam Undang-Undang Nomor 1 Tahun 2023," *Locus: Jurnal Konsep Ilmu Hukum* 4, no. 2 (2024): 64–71.

⁵ Д. В. Шестопалец, "Constructing the Will of God: The Interpretations of Al-Mā'idah: 33–34 in Medieval and Modern Quranic Exegesis," *Східний Світ*, no. 3 (88) (2015): 61–68.

of prevention (*zajr*) so that similar crimes do not repeat themselves and the community gains a sense of security. In this perspective, public security is seen as a fundamental need that must be maintained by the state and society.⁶

Although both aim to maintain social order and protect society from crime, there is a fundamental paradigm difference between Islamic criminal law and the Indonesian New Criminal Code in formulating the purpose of punishment. Islamic criminal law emphasizes aspects of community protection, crime prevention, and justice enforcement through a strong deterrent effect. In contrast, Indonesia's New Criminal Code integrates various penal objectives, ranging from community protection to perpetrator coaching and victim recovery. These differences have led to an academic debate about the most effective criminal model in dealing with the increasingly complex and brutal crime of beheading.⁷

To clarify the position and academic contribution of this research, the following section describes a number of previous studies that are relevant to the theme of the study; Research conducted by Noor Fatma Zahura et al,⁸ titled "*Revolutionizing the Understanding of *Ḥirābah*: The Integration of *Maqāṣid al-Syarī'ah* in Indonesian Criminal Law Reform for Restorative Justice*" shows that *ḥirābah* is classified as *jarimah ḥadd* in Islamic criminal law because it threatens the safety of life and public safety (*amān al-nās*). The sanctions imposed on the perpetrators of *ḥirābah* vary according to the level of the crime committed, ranging from the cutting of limbs to the death penalty as stipulated in QS. al-Mā'idah [5]: 33. The study also revealed that comparatively the Criminal Code is more oriented towards social protection and public order, while Islamic criminal law integrates the dimensions of divine justice and *maqāṣid al-sharī'ah* in protecting the basic values of human life, such as the protection of life (*ḥifẓ al-naḥs*) and property (*ḥifẓ al-māl*). Thus, the purpose of punishment in Islamic law serves not only as a means of retribution, but also as an instrument of crime prevention and the maintenance of social harmony. This study concludes that the integration of Islamic law principles with positive Indonesian law has the potential to strengthen a more fair and benefit-oriented criminal justice system.

Furthermore, Nawawi Marhaban's research⁹ entitled "*The Criminalization of the Qur'an Perspective and Its Contextualization in Indonesia*" explains that criminalization in Islamic law can be classified based on the existence or absence of a normative basis (*naṣ*) in the Qur'an and hadith. First, the punishments that have a direct basis of *naṣ*, namely *ḥudūd*, *qisās*, *diyāt*, and *kafārāt*. Second, punishment that does not have specific

⁶ Kritik kontruksi hukum pidana Islam, "Kritik Kontruksi Hukum Pidana Islam," n.d.

⁷ Yandi Maryandi, "Hukuman Mati Bagi Terpidana Narkoba Menurut Hukum Positif Dan Hukum Pidana Islam," *Tahkim* 3, no. 2 (2020): 131-54.

⁸ Noor Fatma Zahura, Siti Khadijah, and Sri Helma Hidayah, "Perampokan Menurut Perspektif Hukum Pidana Islam," *Ahsan: Jurnal Ilmiah Keislaman Dan Kemasyarakatan*, 2025.

⁹ Nawawi Marhaban, "The Criminalization Of The Qur'an Perspective And It's Contextualization In Indonesia," *Jurnal At-Tibyan: Jurnal Ilmu Alqur'an Dan Tafsir* 6, no. 2 (2021): 361-77.

provisions of *naş*, namely *ta'zīr*. The study also stated that the relationship between types of crimes in Islamic law consists of four forms, namely principal crime, substitute crime, additional crime, and complementary crime. In addition, ten forms of acts that can be sanctioned *ḥadd* and *qisās* are found to be sanctioned, namely *zinā*, *qazf*, *ḥirābah* (robbery), *sariqah* (theft), *syurb al-khamr*, *maisīr* (gambling), *riddah* (apostasy), murder, persecution, and *al-Baghyu* (rebellion). This research confirms that the Islamic penal system has a comprehensive normative structure and aims to maintain order and the benefit of the community.

Finally, the research of Muhammad Faqih Asyiddiqie et al¹⁰ entitled "*Criminal Provisions for Theft Cases Based on the Value of Goods from the Perspective of Jinayah Fiqh and Positive Law*" shows that in *jiyah fiqh*, the application of the punishment of cutting off the hand (*ḥadd*) to the perpetrator of theft can only be carried out if a number of conditions are met, including the value of the stolen goods has reached *nişāb* (a quarter of a gold dinar or the equivalent of around Rp2,045,000), the item has economic value, is taken from a legitimate storage place (*ḥirz*), and is carried out secretly. Meanwhile, in Indonesia's positive law, the value of stolen goods is the basis for distinguishing between petty theft and ordinary theft as stipulated in Article 362 and Article 364 of the Criminal Code and strengthened through Supreme Court Regulation Number 2 of 2012 with a nominal limit of Rp2,500,000. This study emphasizes the importance of considering the value of goods in the criminal process in order to realize proportional justice. In addition, the results of the study show that there are opportunities to integrate the values of substantive justice in Islamic law into the national legal system as part of efforts to reform criminal law that is more just, proportionate, and responsive to the social development of society.

The three previous studies have similarities with this study because they both examine the criminal aspects of Islamic criminal law and its relevance to the Indonesian criminal law system. In addition, these studies also discuss the concept of *ḥirābah*, the classification of criminal acts in Islamic law, and the purpose of punishment oriented towards the protection of the community and the enforcement of justice. However, there are significant differences. The research of Noor Fatma Zahura et al. focuses on the integration of the concepts of *ḥirābah* and *maqāṣid al-syarī'ah* in the reform of criminal law oriented towards restorative justice, Nawawi Marhaban's research examines the criminalization and classification system of punishment in the perspective of the Qur'an, while the research of Muhammad Faqih Asyiddiqie et al. focuses on the provisions of the criminalization of theft based on the value of goods in

¹⁰ Muhammad Faqih Asyiddiqie, Khaerul Aqbar, and Awal Rifai, "Ketentuan Pemidanaan Kasus Pencurian Berdasarkan Nilai Barang Perspektif Fikih Jinayah Dan Hukum Positif: Criminal Sentencing Provisions in Theft Cases Based on the Value of Stolen Property: A Comparative Study of Islamic Criminal Jurisprudence (Fiqh Jinayah) and Positive Law," *AL-MUNTAQA: Jurnal Studi Islam Dan Bahasa Arab* 2, no. 1 (2026): 1-22.

the jurisprudence and positive law. Meanwhile, this study specifically examines beheading as a modern form of *jarimah hirabah* and compares the purpose of punishment with the penal paradigm in the Indonesian New Criminal Code. Thus, the *novelty* of this research lies in a comparative analysis of the purpose of criminalizing the crime of beheading in the perspective of *jarimah hirabah* and the Indonesian New Criminal Code, which not only examines normative aspects and criminal sanctions, but also examines the philosophical orientation of criminalization, community protection, the effect of crime prevention, rehabilitation of perpetrators, and its relevance to the development of legal policies contemporary Indonesian Criminal Justice.

Academically, research on beheading has focused more on factors that cause crime, the effectiveness of law enforcement, or the comparison of sanctions between Islamic law and positive law. Meanwhile, studies that specifically compare the purpose of punishment against beheading in the perspective of *jarimah hirabah* and the Indonesian New Criminal Code are still relatively limited. In fact, the purpose of criminalization is a fundamental aspect that determines the direction of criminal law policy, the type of sanctions applied, and the effectiveness of legal protection for the community. The limitations of the study show that there is a *research gap* that needs to be filled through more in-depth and comprehensive research.

In addition, the increasing cases of beheading accompanied by extreme violence shows that this problem is not only related to law enforcement, but also concerns the effectiveness of the purpose of criminalization in creating the effect of prevention and protection of the community. The question of whether a criminal paradigm that emphasizes rehabilitation and social reintegration is able to provide an adequate deterrent effect, or whether an approach oriented towards community protection such as the concept of *jarimah hirabah* is more relevant to overcome beheading, is an important academic issue to be studied.

Based on this description, this study is important to analyze comparatively the purpose of punishment for the crime of embalming from the perspective of *jarimah hirabah* and the Indonesian New Criminal Code. This study is expected to identify similarities, differences, and the relevance of the two legal systems in responding to beheading as a crime that threatens public safety. In addition to contributing to the development of Islamic criminal law and national criminal law, this research is also expected to be able to offer a conceptual formulation of the goal of punishment that is more effective, fair, and oriented towards community protection in the midst of increasing street crime in Indonesia.

Method

This research uses a type of normative *legal research* that focuses on the analysis of the legal norms that govern the crime of embalming in the perspective of *jarimah*

ḥirābah and the Indonesian New Criminal Code.¹¹ Normative research was chosen because this study aims to examine the concepts, principles, and objectives of punishment contained in both legal systems, as well as compare the construction of punishment applied to acts that have similar characteristics to beheadings. The approaches used include a statute *approach*, a *conceptual approach*, and a *comparative approach*.¹² The legislative approach is used to review the provisions in Law Number 1 of 2023 concerning the Criminal Code, especially norms related to the purpose of punishment and criminal acts that have elements of beheading. A conceptual approach is used to understand the concept of *jarimah ḥirābah*, the purpose of punishment in Islamic criminal law, as well as the theories of punishment that have developed in modern criminal law. The comparative approach is used to identify similarities, differences, and the relevance of the purpose of punishment in the two legal systems.¹³

The research data source consists of primary, secondary, and tertiary legal materials. Primary legal materials include the Qur'an, hadith, fiqh books that discuss *jarimah ḥirābah*, and Law Number 1 of 2023 concerning the Criminal Code. Secondary legal materials are obtained from books, scientific journal articles, previous research results, and literature relevant to Islamic criminal law and Indonesian criminal law. Meanwhile, tertiary legal materials are in the form of legal dictionaries, encyclopedias, and other supporting sources.¹⁴

The data collection technique is carried out through library *research* by examining various legal sources and literature related to the research object.¹⁵ The data obtained was then analyzed qualitatively using descriptive-analytical and comparative methods. The analysis was carried out by describing the concept and purpose of punishment in *jarimah ḥirābah* and the Indonesian New Criminal Code, then comparing the two to find similarities, differences, and implications for the prevention of the crime of beheading in the context of contemporary criminal law.¹⁶

Result and Discussion

The Concept of Beheading and Its Qualification as Jarimah Ḥirābah in Islamic Criminal Law

Beheading is a form of crime that in practice is committed by seizing other people's property through the use of violence, threats, intimidation, or other actions

¹¹ Nanda Dwi Rizkia and Hardi Fardiansyah, *Metode Penelitian Hukum (Normatif Dan Empiris)* (Penerbit Widina, 2023).

¹² S H I Kristiawanto, *Understanding Normative Law Research* (Prenada Media, 2022).

¹³ Suhaimi Suhaimi, "Problem Hukum Dan Pendekatan Dalam Penelitian Hukum Normatif," *Jurnal Yustitia* 19, no. 2 (2018).

¹⁴ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33.

¹⁵ Iman Jalaludin Rifa'i, "Ruang Lingkup Metode Penelitian Hukum," *Metodologi Penelitian Hukum* 6 (2023).

¹⁶ Derita Prapti Rahayu, M SH, and Sesi Ke, "Metode Penelitian Hukum," *Yogyakarta: Thafa Media*, 2020.

that cause fear in the victim. In the context of Indonesian criminal law, the term beheading is not explicitly recognized as a juridical nomenclature in laws and regulations. However, substantially these acts include elements of theft with violence, robbery, persecution, and even murder if it results in the loss of the victim's life. Beheading generally occurs in public spaces such as highways, residential areas, or relatively quiet places so that the perpetrator has the opportunity to carry out his actions by taking advantage of the victim's vulnerable condition. Therefore, beheading is not only seen as a crime against property, but also as a threat to public security, order, and safety.¹⁷

The development of the crime of beheading shows an increase in complexity both in terms of modus operandi and the impact caused. Perpetrators often operate in groups, use sharp weapons or other weapons, and commit physical violence that causes the victim to suffer serious injuries and even die. This condition makes beheading a form of serious crime that not only harms the individual victim, but also creates fear in the community. From a criminological perspective, beheading is included in the category of *violent crime* because the element of threat and the use of physical force are an integral part of the crime. As a result, people lose their sense of security in carrying out their daily activities, especially when in public spaces.¹⁸

In Islamic criminal law, acts that have characteristics such as beheading have a very strong resemblance to the concept of *jarimah hirabah*. Etymologically, the word *hirabah* comes from the root *ḥ araba* which means to fight, seize, or commit acts of hostility. Terminologically, scholars define *hirabah* as an act committed by a person or a group of people by using force or threats to deprive property, injure, kill, or spread fear so as to disturb public security. Thus, the main focus of *jarimah hirabah* lies not only on the confiscation of property, but also on the existence of elements of terror, intimidation, and disturbance of social order.¹⁹

The basis of the law of *jarimah hirabah* is found in the Qur'an Surah Al-Mā'idah verse 33 which states: "Indeed, the retribution of those who fight against Allah and His Messenger and cause damage on the earth is only that they be killed, or crucified, or their hands and feet crossed, or exiled from the land where they live. That is a humiliation for them in this world and in the Hereafter they will have a great punishment."²⁰

¹⁷ Nathanael Pratama Rezky, Aji Wibowo, and Edo Saputra, "Kajian Kriminologi Batasan Pembelaan Terpaksa (Noodweer) Dalam Kasus Pembunuhan Begal: Perspektif Hak Membela Diri Di Indonesia," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 2 (2025): 216-27.

¹⁸ Ryan Dirgantara, "Analisis Kejahatan Begal Dengan Motivasi Perampokan Di Kota Palu," *Tadulako Master Law Journal* 4, no. 2 (2020): 159-73.

¹⁹ Muhammad Fajar, "Tinjauan Jarimah Hudud (Hirabah) Dalam Penegakan Hukum Terhadap Pelaku Begal (Studi Kasus Di Polres Parepare)" (IAIN Parepare, 2025).

²⁰ Moh Yardho, Fadhil Achmad Agus Bahari, and Abdul Rohman, "Intertextual Reading of Qisas in QS Al-Maidah: 32-33: A Comparative Analysis of Islamic Scholars and Orientalists," *Jurnal Ushuluddin* 33, no. 1 (2025): 136-55.

This verse is the main basis in the discussion of *ḥirābah* because it contains provisions regarding sanctions for perpetrators who do damage (*fasād fi al-arḍ*) through actions that threaten public safety. The scholars then developed the concept through the study of *jiyah* fiqh by formulating elements that must be fulfilled in order for an act to be categorized as *jarimah ḥirābah*.

According to the Hanafiyah madhhab, *ḥirābah* is an act of going out to take another person's property forcibly in a way that creates fear so that the victim is unable to defend himself. The Malikiyah school defines *ḥirābah* as the act of spreading fear on the street or public place with the aim of seizing property, injuring, or killing. Meanwhile, the Shafi'iyah and Hanabilah schools emphasized the elements of the use of force and threats that resulted in the disruption of public security. Despite editorial differences, all schools agree that *ḥirābah* is a crime that not only attacks individuals, but also disturbs public order and social security.²¹

Based on the views of the jurists, there are several main elements of *jarimah ḥirābah*. First, there is the use of force, threats, or intimidation against the victim. Second, there is a purpose to seize property, injure or take the victim's life. Third, acts are carried out openly or in conditions that cause fear for the public. Fourth, these actions result in the disruption of public security. If these elements are compared with the characteristics of modern beheading, there is a very significant similarity. Beheading is generally carried out with the threat of weapons, physical violence, property confiscation, and causes fear not only for the victim but also for the public who know about the incident.

In the framework of *maqāṣid al-syarī'ah*, beheading is an act that is contrary to the main purpose of Islamic law. The crime threatens the protection of life (*ḥifẓ al-naḥs*) because it has the potential to cause injury or death to the victim. In addition, beheading also violates the principle of property protection (*ḥifẓ al-māl*) because it involves the unlawful deprivation of other people's property. In fact, the social impact caused can disrupt the stability of people's lives and weaken the sense of security as one of the basic human needs. Therefore, Islamic criminal law places *jarimah ḥirābah* as one of the serious crimes that require strict handling in order to maintain the public interest.²²

The qualification of beheading as *jarimah ḥirābah* can also be understood through the concept of *fasād fi al-arḍ* or acts that cause damage to the earth. The damage in question is not only in the form of material losses, but also includes the destruction

²¹ Syuhada Syuhada and Zulkiram Zulkiram, "Ibnu Taimiyyah on Repentance as Eliminating the Punishment for Adultery [Taubat Sebagai Penghapus Had Zina Menurut Ibnu Taimiyyah]," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 10, no. 2 (2021): 189–216.

²² Try Sa'adurrahman H M Kafrawi, Muh Ilham Azis, and Mursyid Fikri, "Korupsi Sebagai Extraordinary Crime: Telaah Maqāṣid Al-Syari 'Ah Dan Implementasi Sanksi Ta 'Zir Dalam Hukum Islam," *Jurnal Tana Mana* 6, no. 3 (2025): 226–34.

of a sense of security, the disruption of social order, and the emergence of fear in society. In the modern context, beheading often creates a wide psychological impact because people become worried about their activities in public spaces. Thus, beheading is no longer just seen as a crime against a certain individual, but as a threat to collective security which is one of the foundations of social life.²³

Based on this description, it can be understood that beheading has characteristics that are very close to the concept of *jarimah hirabah* in Islamic criminal law. These similarities can be seen in the elements of the use of violence, confiscation of property, the spread of fear, and its impact on public security. Therefore, beheading can be qualified as a modern form of *jarimah hirabah* that threatens the protection of life and property while undermining social order. This qualification shows that Islamic criminal law already has a comprehensive normative framework for responding to the crime of beheading through an approach oriented to the protection of the community, the enforcement of justice, and the maintenance of the public good. Thus, the concept of *jarimah hirabah* remains of strong relevance in analyzing and understanding the phenomenon of beheading in the context of contemporary society's life.

Regulation of the Crime of Beheading in Indonesia's New Criminal Code

Beheading is a form of street crime that in practice is carried out by seizing other people's property through violence or threats of violence. Although the term "beheading" is very well known in people's lives, Indonesia's New Criminal Code does not regulate it as a stand-alone criminal act. Juridically, the act of beheading is qualified as a criminal act of theft that is preceded, accompanied, or followed by violence or threats of violence against the victim. Therefore, the regulation regarding beheading can be found in the provisions of the crime of theft regulated in Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code). The New Criminal Code came into effect on January 2, 2026 and brought about a number of fundamental changes in Indonesia's criminal law system, including a change in the criminal paradigm that is more oriented towards community protection, rehabilitation of perpetrators, and victim recovery.²⁴

In the construction of Indonesian criminal law, beheading is basically a special form of theft by force. The main element that distinguishes it from ordinary theft is the use of physical force, threats, intimidation, or other actions aimed at paralyzing the victim's resistance. Therefore, beheading not only attacks legal interests in the form of a person's property rights, but also threatens the safety of life and public safety. These

²³ Edwin Isa Mahendra, "Tinjauan Yuridis Tentang Pemidanaan Pelaku Tindak Pidana Pencurian Dengan Kekerasan Berbasis Keadilan Sosial (Studi Putusan Nomor: 470/PID. B/2024/PN. MTR)" (Universitas Islam Sultan Agung Semarang, 2025).

²⁴ Maghfiratul Ismi, "Pertanggungjawaban Pelaku Pembegalan Yang Menyebabkan Korban Meninggal Dunia (Studi Kasus Putusan Nomor 305/PID. B/2021/PN. BIL)" (Universitas Merdeka Pasuruan, 2024).

characteristics make beheading one of the criminal acts that has a high level of seriousness because the impact is not only felt by the victim individually, but also causes fear and insecurity in the community.²⁵

The regulation regarding theft in the New Criminal Code is contained in Chapter XXIV concerning the Crime of Theft. Article 476 regulates the crime of theft in its basic form, namely the act of taking goods that partially or fully belong to another person with the intention of illegally owning them. However, beheading does not stop at the element of taking goods alone, but involves violence or threats of violence against the victim. Therefore, a more relevant provision is Article 479 of the New Criminal Code which regulates theft that is preceded, accompanied, or followed by violence or threats of violence against a person with the aim of preparing or facilitating theft, allowing the perpetrator to escape, or maintaining control of the proceeds of crime.²⁶

From this formulation, it can be understood that there are several important elements in the crime of beheading according to the New Criminal Code. First, there is an act of taking someone else's property illegally. Second, there is the use of violence or threats of violence against the victim. Third, the violence has a direct relationship with the act of theft, whether committed before, during, or after the taking of goods. Fourth, there is a certain goal, namely to facilitate the implementation of crimes or to maintain the proceeds of crime. With the fulfillment of these elements, an act can be categorized as theft with violence which in social practice is known as beheading.

The New Criminal Code also provides a heavier criminal threat if the criminal act is committed under certain circumstances. Criminal charges can be imposed if the crime is committed at night, committed by two or more people together, committed by damaging or dismantling security barriers, or committed by using dangerous weapons or tools. In addition, if the act of beheading results in serious injury or death of the victim, the criminal threat imposed becomes much heavier than ordinary theft. This arrangement shows that the lawmakers view beheading as a crime that has a high level of danger because it attacks two legal interests at once, namely property and human safety.

In addition to regulating the elements of criminal acts and the threat of sanctions, the New Criminal Code also introduces a new paradigm in the Indonesian criminal system. Article 51 of the New Criminal Code emphasizes that criminalization aims to prevent the occurrence of criminal acts through the enforcement of legal

²⁵ Kurnia Ratna, "Perlindungan Hak Pelaku Tindak Pidana Pembegalan Pada Tahap Penyidikan (Studi Pada Polres Ogan Komering Ulu Timur)," 2024.

²⁶ Azizah Salsabilla, Endra Syaifuddin, and Roli Pebrianto, "Perbandingan Penanganan Tindak Pidana Pencurian Dalam Undang-Undang Nomor 1 Tahun 1946 Tentang Pengaturan Hukum Pidana Dan Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *Jurnal Hukum Perjuangan* 4, no. 1 (2026): 477-86.

norms, socialize convicts through coaching and guidance, resolve conflicts arising from criminal acts, restore social balance, and foster a sense of remorse in the perpetrator. The article also affirms that punishment is not intended to degrade human dignity. Thus, the penal policy in the New Criminal Code is not only oriented towards retributive *justice*, but also integrates rehabilitative, corrective, and restorative approaches.

In the context of beheading, this paradigm has important implications. On the one hand, the state continues to provide strict criminal threats as a form of protection for the community and efforts to prevent crime. On the other hand, the penal system also provides space for the development of offenders so that they can return to become responsible members of society after serving a sentence. This approach reflects a shift in the orientation of modern criminal law that not only views the perpetrator as an object of punishment, but also as an individual who has the potential to be corrected through the coaching process.

However, the increase in cases of beheadings, which are often accompanied by extreme violence, has raised a debate about the effectiveness of the criminal approach applied. Some argue that the crime of beheading requires a more decisive response because of its far-reaching impact on public safety. On the other hand, the New Criminal Code paradigm still seeks to maintain a balance between the interests of community protection and respect for the rights of perpetrators. The debate shows that the regulation of the crime of beheading is not only related to the formulation of criminal offenses and threats, but also concerns the philosophy of punishment that underlies the Indonesian criminal law system.²⁷

Based on this description, it can be concluded that Indonesia's New Criminal Code regulates beheading through the provision of theft with violence which places the crime as a serious crime because it attacks property and life safety at the same time. The regulation not only contains elements of crime and relatively severe criminal threats, but also reflects a modern criminal paradigm that integrates community protection, perpetrator development, conflict resolution, and restoration of social balance as the main goals of criminal law enforcement.

The Purpose of Criminalizing the Crime of Beheading in the Perspective of Jarimah Hīrābah and the Indonesian New Criminal Code

Criminalization is a legal instrument used by the state to respond to violations of the law committed by a person. In its development, the purpose of punishment is no longer understood solely as a means of retribution against the perpetrators of crimes, but also as an effort to maintain social order, protect the community, improve the perpetrators, and recover losses caused by criminal acts. Differences in

²⁷ Zarma Putra, "Peranan Kepolisian Menciptakan Efektivitas Hukum Dalam Menghadapi Dinamika Sistem Pidanaan Indonesia" (Universitas Islam Sultan Agung, 2025).

philosophical and normative backgrounds cause each legal system to have a different criminal orientation. This is also seen in Islamic criminal law through the concept of *jarimah ħirābah* and in the Indonesian New Criminal Code which explicitly regulates the purpose of punishment. Beheading as a crime that contains elements of violence and property confiscation is a relevant object to see how the two legal systems formulate the purpose of punishment in order to protect society and realize justice.²⁸

In the perspective of Islamic criminal law, beheading that meets the elements of the use of force, confiscation of property, and spreading fear in the community can be categorized as *jarimah ħirābah*. The purpose of punishing the perpetrators of *ħirābah* is basically not only oriented towards punishing the perpetrators, but also aims to safeguard the public interest (*maṣlahah 'āmmah*) and protect the main objectives of the shari'a (*maqāṣid al-syarī'ah*). The crime of beheading is seen as a threat to the protection of life (*ḥifẓ al-nafs*) and the protection of property (*ḥifẓ al-māl*), so the state has an obligation to take measures that are able to prevent the recurrence of such crimes.²⁹

One of the main purposes of punishment in *jarimah ħirābah* is prevention (*zajr wa الردع*). The application of strict sanctions is intended to create a deterrent effect, both for the perpetrators and the community in general. In Islamic criminal law theory, punishment not only has a repressive function against the perpetrator, but also a preventive function to prevent others from committing similar crimes. Therefore, the sanctions against the perpetrators of *ħirābah* are heavily formulated because such crimes not only harm certain individuals, but also threaten public safety and create widespread social unrest.³⁰

In addition to the preventive function, criminalization in *jarimah ħirābah* also aims to realize substantive justice. In an Islamic perspective, justice does not only mean punishing the perpetrators, but also ensuring that the rights of victims and society are protected. Security is one of the basic human needs that must be maintained by the state. When beheading occurs, the loss experienced is not only in the form of loss of property, but also a loss of security. Therefore, criminalization is seen as an instrument to restore public trust in the law and create social stability.³¹

On the other hand, Indonesia's New Criminal Code adopts a more comprehensive criminal paradigm. Article 51 of Law Number 1 of 2023 concerning the Criminal Code emphasizes that the purpose of criminalization includes the prevention of criminal acts, the development of perpetrators, conflict resolution, balance restore,

²⁸ Sahat Maruli Tua Situmeang and Krusitha Meilan, "Evolusi Kejahatan Dan Pidana: Tantangan Dalam Penegakan Hukum Dan Penologi Modern: The Evolution of Crime and Punishment: Challenges in Law Enforcement and Modern Penology," *Res Nullius Law Journal* 7, no. 2 (2025): 87-97.

²⁹ Zahura, Khadijah, and Hidayah, "Perampokan Menurut Perspektif Hukum Pidana Islam."

³⁰ Ahmad Syarbaini, "Konsep Ta'zir Menurut Perspektif Hukum Pidana Islam," *Jurnal Tahqiq: Jurnal Pemikiran Hukum Islam* 17, no. 2 (2023): 37-48.

³¹ Kafrawi, Azis, and Fikri, "Korupsi Sebagai Extraordinary Crime: Telaah Maqāṣid Al-Syarī 'Ah Dan Implementasi Sanksi Ta 'Zir Dalam Hukum Islam."

and bringing a sense of security and peace in society. The formulation shows that Indonesia's criminal law system is no longer solely oriented towards retributive *justice*, but integrates rehabilitative, restorative, and corrective approaches.³²

In the context of beheading, the purpose of punishment according to the New Criminal Code is not only directed to inflict suffering on the perpetrator, but also to improve the behavior of the perpetrator so that he can return to becoming a responsible member of society. This approach is based on the view that criminals are essentially still likely to change through the proper coaching process. Therefore, crime is not only seen as a means of punishment, but also as a means of social education that aims to encourage the reintegration of perpetrators into community life.³³

In addition, the New Criminal Code also pays attention to the interests of victims through a restorative approach. Recovery of victim losses and conflict resolution are an important part of the purpose of the penalty. In this paradigm, the success of punishment is not only measured by the severity of the sentences imposed, but also by the ability of the legal system to restore social relations disrupted by criminal acts. Thus, the orientation of punishment in the New Criminal Code emphasizes more balance between the interests of the perpetrator, the victim, and the community.³⁴

According to the author, there is a fairly fundamental philosophical difference between the purpose of punishment in *jarimah hirabah* and the Indonesian New Criminal Code. Islamic criminal law places community protection as the main orientation so that the aspects of prevention and deterrence effects get a very large portion. This is understandable because *hirabah* is a crime that directly threatens public safety and social stability. Therefore, strict punishment is seen as an instrument to protect the public interest and prevent wider damage.

Meanwhile, Indonesia's New Criminal Code seeks to balance the interests of community protection with the protection of the rights of perpetrators. This approach reflects the development of modern criminal law that increasingly emphasizes the value of humanity, rehabilitation, and social reintegration. However, the authors argue that the implementation of penal goals that are too rehabilitation-oriented has the potential to cause problems when faced with the crime of beheading which has a high level of violence and a wide social impact. In cases of beheading that cause serious injury or death, the community's need for a sense of justice and security is often more dominant than the perpetrator's rehabilitation needs.

³² Ayu Agustin and Achmad Sulchan, "Dualisme Keadilan Retributif Dan Restoratif Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Sosial Teknologi* 5, no. 10 (2025): 3988–94.

³³ Muchlas Rastra Samara Muksin, "Tujuan Pemidanaan Dalam Pembaharuan Hukum Pidana Indonesia," *Sapientia Et Virtus* 8, no. 1 (2023): 225–47.

³⁴ Nadia Permata Sari et al., "Reorientasi Tujuan Pemidanaan Dalam Sistem Peradilan Pidana Indonesia: Analisis Penologi Antara Pendekatan Retributif Dan Restoratif," *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 2, no. 3 (2026): 649–53.

The author is also of the view that the concept of *jarimah ħirābah* has strong relevance in the development of criminal policies against beheading in Indonesia. Not in the sense of adopting textually the form of sanction, but adopting the spirit of social protection which is the main purpose of punishment in Islamic law. The crime of beheading is a form of crime that attacks the right to life, property rights, and the sense of security of the community at the same time. Therefore, the policy of criminalizing perpetrators of beheading should emphasize more balance between the deterrent effect, victim protection, public safety, and the development of perpetrators.

Thus, the purpose of criminalizing the crime of beheading in the perspective of *jarimah ħirābah* and the Indonesian New Criminal Code basically has a common point in the form of community protection and crime prevention. The difference lies in the level of emphasis placed on each goal. Islamic criminal law is more oriented towards prevention and protection of the community through a strong deterrent effect, while Indonesia's New Criminal Code integrates these goals with perpetrator coaching, victim recovery, and social reintegration. According to the author, the ideal criminal model for beheading is one that is able to combine firmness in protecting the community as the spirit of *jarimah ħirābah* with the rehabilitative and restorative approach developed in the Indonesian New Criminal Code, so as to create a penal system that is fair, effective, and oriented towards social welfare.

Comparative Analysis of the Purpose of Beheading Criminality in Jarimah Ĥirābah and the Indonesian New Criminal Code

Beheading is a form of crime that has a multidimensional impact because it not only harms victims materially, but also threatens the safety of lives, causes psychological trauma, and creates fear in society. These characteristics make beheading a crime that attacks individual interests as well as public interests. Therefore, the purpose of criminalizing the perpetrators of beheading is a very important aspect in determining the direction of criminal law policy. In this context, Islamic criminal law through the concept of *jarimah ħirābah* and national criminal law through the Indonesian New Criminal Code offer a different paradigm in formulating the purpose of punishment. A comparative analysis of the two legal systems is needed to understand their similarities, differences, and relevance in answering the challenge of the crime of beheading in Indonesia.³⁵

Conceptually, *jarimah ħirābah* is a criminal act committed by using force, threats, or violence to seize property, injure or kill the victim so as to cause fear and disturb public safety. Meanwhile, beheading in Indonesia's New Criminal Code is qualified as theft with violence that attacks the property rights and safety of the victim. Although they come from different legal systems, they have a common point in the form of the

³⁵ Idul Adnan and Basriadi Basriadi, "Kebijakan Yang Bisa Diterapkan Dalam Meminimalisasi Kejahatan Begal Melalui Krimnologi Terapan Di Lombok Tengah NTB," *JURNAL DARUSSALAM: Pemikiran Hukum Tata Negara Dan Perbandingan Mazhab* 1, no. 2 (2021): 98–120.

recognition that beheading is a serious crime that threatens social order and public safety. The similarity of these characteristics is the basis for comparing the penal objectives developed in the two legal systems.³⁶

The first similarity lies in the orientation of social *protection*. In Islamic criminal law, the main purpose of punishing the perpetrators of *ḥirābah* is to maintain public safety and prevent social damage (*fasād fi al-arḍ*). Crimes committed with violence are seen as a threat to people's lives so that they require a legal response that is able to provide maximum protection to the public. Similarly, in the New Indonesian Criminal Code, the protection of the community is one of the main goals of criminalization as affirmed in Article 51. Criminalization is directed to prevent the occurrence of criminal acts and create a sense of security and peace in community life. Thus, both Islamic criminal law and the New Criminal Code view community protection as a fundamental goal of criminalization.

The second equation is the function of *deterrence*. In the concept of *jarimah ḥirābah*, punishment is given to create a deterrent effect (*zajr*) so that the perpetrator does not repeat his actions and the community is not encouraged to commit the same crime. The preventive effect has individual and social dimensions at the same time. Indonesia's New Criminal Code also recognizes the function of prevention as one of the goals of criminalization. Through criminal threats and the implementation of punishments, the state seeks to enforce legal norms so that people do not commit similar violations. Therefore, despite using different approaches, both legal systems equally place prevention as one of the main goals of criminalization.

The third equation is related to efforts to realize justice. In Islamic criminal law, justice is realized through the provision of sanctions that are proportional to the level of error and consequences caused by the perpetrator. Meanwhile, Indonesia's New Criminal Code also requires a balance between the interests of perpetrators, victims, and the community in the criminal process. Both legal systems recognize that criminals must provide a fair response to the acts committed so that the rights of victims and the interests of the community are protected.

Although they have a number of similarities, there are fundamental differences in the orientation of the purpose of punishment between *jarimah ḥirābah* and the Indonesian New Criminal Code. The first difference lies in the philosophical foundation used. Islamic criminal law is based on the principle of *maqāṣid al-syarī'ah* which aims to protect religion, soul, intellect, descent, and property. Therefore, the criminalization of *ḥirābah* is directed to protect these fundamental interests. In this perspective, public security is seen as part of the benefits that must be maintained by the state. On the contrary, Indonesia's New Criminal Code is based on a modern legal

³⁶ Moh Khasan, "From Textuality to Universality: The Evolution of *Ḥirābah* Crimes in Islamic Jurisprudence," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 1 (2021): 1-32.

philosophy that integrates the values of justice, utility, and legal certainty. Criminalization is not only directed at the protection of the community, but also pays attention to human rights and the dignity of the perpetrator as a subject of law.

The second difference can be seen in the orientation towards the perpetrators of criminal acts. In the concept of *jarimah hirabah*, the main focus of criminalization is the protection of society and the prevention of crime. Therefore, the rehabilitation aspect of the perpetrator is not the main goal. On the contrary, Indonesia's New Criminal Code pays great attention to the development and social reintegration of perpetrators. Article 51 expressly states that punishment aims to socialize convicts through coaching and guidance to become a better person. Thus, the Indonesian penal system not only views the perpetrator as a party to be punished, but also as an individual who has the potential to be improved.

The third difference relates to the position of the victim in the purpose of the crime. In *jarimah hirabah*, the protection of victims is realized through the enforcement of justice and the prevention of similar crimes. The main focus is to ensure that public safety is maintained. Meanwhile, Indonesia's New Criminal Code provides a wider space for the interests of victims through a restorative approach. Recovery of victims' losses, conflict resolution, and restoration of social balance are part of the goal of punishment. This approach shows that modern criminal law is not only oriented towards the relationship between the state and the perpetrator, but also pays attention to the recovery of the victim's condition.

The fourth difference lies in the approach to the deterrent effect. In Islamic criminal law, the deterrent effect is one of the main goals realized through the firmness of sanctions. Strict criminalization is seen as an effective instrument to prevent crimes that threaten public safety. On the contrary, Indonesia's New Criminal Code does not solely rely on deterrent effects as a criminal purpose. This system seeks to balance the effects of prevention with rehabilitation, social reintegration, and respect for the rights of perpetrators. As a result, the orientation of punishment in the New Criminal Code becomes more complex than the concept of punishment in *jarimah hirabah*.

According to the author's analysis, these differences reflect the differences in the social and philosophical contexts behind the birth of the two legal systems. Islamic criminal law developed in the context of protecting society from various forms of threats that can disrupt social stability. Therefore, the purpose of the punishment emphasizes more on the aspects of community protection and crime prevention. Meanwhile, Indonesia's New Criminal Code was born in the context of a modern legal state that prioritizes the protection of human rights, so that the purpose of punishment becomes broader by including elements of rehabilitation and restoration.

Nevertheless, the author argues that the increase in cases of beheading accompanied by severe violence shows the importance of strengthening the orientation of community protection in Indonesia's penal policy. In many cases,

beheading not only causes economic losses, but also takes the victim's life and creates collective fear. Therefore, the rehabilitative approach developed in the New Criminal Code needs to be balanced with a criminal policy that has strong deterrence in order to be able to provide optimal protection to the community.

In this context, the concept of *jarimah hirabah* offers relevant values to strengthen the purpose of criminalizing beheadings. The relevance does not lie in the literal application of the form of sanction, but in the orientation of community protection, crime prevention, and justice enforcement which are the basis of punishment. These values can be a source of inspiration in formulating criminal law policies that are more responsive to increasingly complex street crimes.

Thus, a comparative analysis shows that *jarimah hirabah* and the Indonesian New Criminal Code have similarities in the goals of community protection, crime prevention, and justice enforcement. However, the two differ in the level of emphasis on offender rehabilitation, victim recovery, and approaches to deterrents. Islamic criminal law is more oriented towards the protection of the community through prevention and enforcement of justice, while Indonesia's New Criminal Code integrates this goal with the development of perpetrators and victim recovery. Therefore, the ideal criminal model for the crime of beheading is one that is able to combine firmness in protecting the community as reflected in the concept of *jarimah hirabah* with the rehabilitative and restorative approach developed in the Indonesian New Criminal Code. The integrative approach will result in a criminal system that is not only just and humane, but also effective in maintaining public safety and realizing social benefits.

Conclusion

Beheading is a crime that not only attacks the victim's property, but also threatens the safety of life and public safety. From the perspective of Islamic criminal law, beheading has characteristics that are in line with *jarimah hirabah* because it contains elements of violence, property confiscation, and the spread of fear in the community. Meanwhile, in Indonesia's New Criminal Code, beheading is qualified as a criminal act of theft with violence regulated through provisions regarding the protection of property rights and the safety of victims. Despite coming from different legal systems, both view beheading as a serious crime that requires a firm legal response.

The results of the study show that the purpose of punishment in *jarimah hirabah* is oriented towards the protection of the community, prevention of crime (*zajr*), the enforcement of justice, and the maintenance of the public welfare. In contrast, Indonesia's New Criminal Code develops a more comprehensive penal goal by balancing community protection, perpetrator development, victim recovery, conflict resolution, and social reintegration. The similarity between the two lies in efforts to maintain social order and prevent the recurrence of criminal acts, while the difference

is seen in the level of emphasis on the deterrent effect and rehabilitation of the perpetrator. Therefore, an ideal criminal model for the crime of embalming needs to integrate the firmness of community protection as reflected in the concept of *jarimah hirabah* with the rehabilitative and restorative approach developed in the Indonesian New Criminal Code in order to realize justice, benefits, and social security in a sustainable manner.

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