

## **Comparative Study on the Crime of *Hirābah* (Robbery) According to Imam Abu Hanifah and Imam Syafi'i**

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### **Abstract**

The crime of robbery, known as *hirābah*, falls under the category of crimes punishable by punishment (*hadd*). However, there are differences of opinion between Imam Abu Hanifah and Imam Syafi'i regarding certain aspects of the criminal provisions for *hirābah*. These differences pertain to the location of the crime, the legal status of multiple conspiring perpetrators, and the legal status of female perpetrators. To comprehend the perspectives of the two Imams, a thorough understanding of their respective methods for determining the law is necessary. This study employs library research as the methodology, utilizing document studies and secondary data sources for analysis. The descriptive-analytic and comparative data analysis approach is applied. The research findings reveal two key points. First, according to Imam Syafi'i, the letter "aw" in Surah Al-Mā'idah verse 33 signifies clarification and specification (*bayān wa tafshil*), implying that punishment should be based on the actions of the Muḥārib. In contrast, Imam Abu Hanifah argues that the letter "aw" represents an option, allowing judges flexibility to select the most suitable sentence. Second, the disagreement between Imam Abu Hanifah and Imam

Syafi'i regarding the criminal culpability component of *jarmah ḥirābah* can impact the application of non-discriminatory laws if not adequately addressed, potentially leaving gaps in their implementation.

## Keywords

*Ḥirābah, Imam Abū Ḥanīfah, Imam Syāfi'ī, Crime of Robbery*

## Introduction

Robberies have been reported often recently in a number of Indonesian cities. This is undoubtedly enough to make the community feel worried. Motor vehicles are violently taken or stolen as part of burglary crimes. These burglaries typically target motorcycle riders.

The incident is undoubtedly quite upsetting for the neighborhood, especially for the victims themselves. In addition to losing their possessions, victims frequently experienced bodily and psychological harm, and some even lost their lives. Because of an act that was inadvertent and coupled with the brutality that befell him, the victim of the robbery suffered severe trauma.<sup>1</sup>

The term "*ḥirābah*" is then often used within Islam itself, and is seen to encompass all aspects (behavior) of phrases like *qat}'u at}-t}ari>q*, *riddah*, *sa'au fil ard}*, *qit}a'u as-sabi>l*, *al-qatlu*, and others. Al-hirabah is the phrase in dispute. According to a number of analyses, the meaning of the word "*ḥirābah*" in surah Maidah's 33 is remarkably similar to that of the word "*ḥirābah*": "*There is no other penalty for those who battle against Allah and His Messenger and commit evil on the globe but death, hanging (cross), amputation of their various hands and feet, or exile (banishment) from the planet. That serves as their compensation in this life, and they will face harsh punishment in the hereafter.*". (Q.S. 5 [Al-Maidah]: 33)<sup>2</sup>

*Ḥirābah* is also known as *qat}'u at}-t}ari>q* or *sirqah kubra*; these names refer to it metaphorically rather than literally. In essence, *qat'u at-tariq* is stealing property publicly, whereas theft (*sirqah*) is taking property covertly. However, there is a type of stealth used in *qat}'u at}-t}ari>q*, meaning the

<sup>1</sup> Lomba Sultan and Yusran, "Penanganan Terhadap Perilaku 'Begal' Dalam Al-Quran: Pendekatan Hukum Islam Dan Solidaritas Sosial," *Jurnal Sosioreligius*, Vol.1, No.IV, Juni 2019,: 61–62.

<sup>2</sup> Tim Penerjemah, *Al-Qur'an Dan Terjemahannya* (Jakarta: Departemen Agama RI, 1990), p. 164.

criminal concealing from law enforcement or security personnel. As a result, *sirqah* cannot be defined as *qat}'u at}'-t}ari>q* without the addition of the phrase *sirqah al-kubra*, not just *sirqah*. If it's referred to as theft, the phrase won't be understood as *qat}'u at}'-t}ari>q*, and some of these requirements are figures of speech.<sup>3</sup>

Additionally, *hadd hira'bah* may only be imposed on men who are already mukallaf, that is, mature and intellectual, according to Imam Abū Ḥanīfah. According to Imam Abū Ḥanīfah, the *hira'bah* culprit must be a man in order for the female robbery victim to be exempt from any penalty.<sup>4</sup> Contrary to Imam Syafi'i belief, which holds that *hadd hira'bah* can be applied to both men and women. According to Imam Syafi, it makes no distinction between male and female offenders, meaning that all add *hira'bah* penalties are meted out to all offenders and they are all required to uphold the law and religious regulations, regardless of gender.

According to madzhab Imam Abū Ḥanīfah in the fourth chapter of the book of fiqh, if there are little children among the thugs, they are exempt from the hadd penalty since they do not fit the requirements for its imposition. According to Imam Abū Ḥanīfah, a man is not considered mature before he had a wet dream among males, did not have menstrual blood among women, or did not become 18 years old. According to Ibnu 'Abbas, boys become mature around the age of 18. Since females mature and become aware of the world more quickly than boys do, the age of early maturity is lowered by one year, making girls adults at the age of 17.<sup>5</sup>

Imam Syafi'i asserts that those who have not been subject to the duty of hadd are not susceptible to the qisas penalty. All those who have lost their minds, regardless of the causes, with the exception of drunken drinking, as *qisas* and *hudud* on people who are drunk like *qisas* and *hudud* on people who are normal in their minds, have not been subject to the obligation of *hadd*. These individuals include those who have not had wet dreams from among men, bled from women, or reached the age of fifteen.<sup>6</sup> Due to this, juvenile offenders who have reached puberty may receive hadd punishment. If the minor is still a minor, however, he or she may receive ta'zir punishment in the

<sup>3</sup> Abdul Qadir 'Audah, *Ar-Tasyri' Al-Jinā'i Al-Islāmi Jilid I* (Beirut: Dār al-Kutub al-'Ilmiyah, 2011), p. 638.

<sup>4</sup> 'Alauddin Al-Kasāni, *Badā'i' Al-Sanā'i Fi Tartīb Al-Sharā'i Juz 7* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1997), p. 91.

<sup>5</sup> Noercholis and Saidah Rafid, "Sanksi Pidana Bagi Anak Yang Berhadapan Dengan Hukum Perspektif Fiqih Jinayah," *Jurnal Al-Maiyyah*, Vol. 11, No. 2, 2018: 333.

<sup>6</sup> Imam Syafi'i, *Al-Umm Jilid 11*, ed. Misbah (Jakarta: Pustaka Azzam, 2015), p. 150.

form of *diyath*, alternative, or substitute punishment (*'uqu>bah badaliyah*), which aims to teach the offender and others not to commit the same crime.<sup>7</sup>

## Definition and Meaning of *Hirābah*

Road robbery is another name for *hirābah*. *Hirābah* refers to the attempt of armed organizations in Islamic countries to undermine the rule of law, morality, and legislation by wreaking havoc, killing people, robbing people of their property, dishonoring people's reputations, and destroying crops and progeny. There is no difference (in this regard) between the Muslims, the protected unbelievers (*kafir dhimmī*), the unbelievers who are bound by the agreement (*kafir mu'ahadd*), and the unbelievers who fight the Muslims (*harbi*), so long as it occurs in the Islamic country and as long as their hostility is directed at everyone whose soul is protected before *hirābah* from among the Muslims and the protected unbelievers. The phrase "*hirābah*" refers to a variety of criminal activities, including murder, kidnapping children, robbing homes and banks, stealing women and girls to be sold as slaves, and murdering law enforcement officers to defame them. as well as compromising security, obliterating vegetation, putting cattle and animals required for transportation to death.<sup>8</sup>

*Hirābah* is also known as *sirqah kubra* or *qaṭ'u al-ṭariq*. Not in the sense of essence in this instance, but rather in the sense of figure of speech. In essence, *qaṭ'u al-ṭariq* is the taking of property openly, whereas *sirqah* is the taking of property covertly. However, there is a type of stealth used in *qaṭ'u al-ṭariq*, meaning the culprit concealing from law enforcement or security personnel. Because of this, *sirqah* is not a part of the category of *qaṭ'u al-ṭariq*, unless it is used in conjunction with the phrase *sirqah kubra*. The phrase will not be understood *qaṭ'u al-ṭariq* if it is termed *sirqah*.<sup>9</sup>

In the book *Fiqh Sunnah*, Sayyid Sabiq explains that the term "*hirābah*" refers to the act of releasing an armed force to cause disorder, bloodshed, confiscate property, harm honor, destroy crops, harm livestock, and disrupt public order among Muslims and unbelievers. According to *Fuqahā'*, the definition of *hirābah* is "taking up weapons," and those who carry out *hirābah* are Muslims and *zimmī*, whose blood is conserved prior to *hirābah*.<sup>10</sup>

<sup>7</sup> Imam Syafi'i, *Ibid.*, p. 367.

<sup>8</sup> Sayyid Sabiq, *Fikih Sunnah* (Jakarta: Darul Fath, 2004), p. 320-321.

<sup>9</sup> Abdul Qadir 'Audah, *At-Tasyri' Al-Jinā'i Al-Islāmi Juz II* (Beirut: Dār al-Kutub al-'Ilmiyah, 2011), p. 638.

<sup>10</sup> Sabiq, *Fikih Sunnah*, p. 365.

In Al-Umm, Imam As-Syfi'i explains that those who commit *qat'u al-tariq* robbery are those who use weapons to attack a group of people before taking their wealth in plain sight. He also holds the view that even though the type of legal punishment is the same whether the act is committed in public or not, the perpetrators' hands should not be severed until after the crime has been completed.<sup>11</sup>

The Hanafī priest believes that *ḥirābah* is going out to obtain riches via violence, whether it is by just frightening bystanders, robbing people of their possessions, or killing them. In the meanwhile, *ḥirābah*, according to Imam Malik, is the seizure of property via trickery or other means, whether it is carried out with or without the use of force.<sup>12</sup>

*Ḥirābah* (armed robbery), *qat'u al-tariq* (road robbery), and *sirqah kubrā* (huge theft) are the three phrases most frequently used to characterize this sort of crime. *Ḥirābah* is seen to be the most representative term because to its close proximity to the verse text that serves as the argument, *yuhāribu*. As a result, even among the majority of the *fuqahā'*, the term "*ḥirābah*" has come to denote armed robbery. However, it seems overly simple and out of place to confine the concept of the crime of *ḥirābah* to armed robbery. There are at least two significant factors. The first is the evidence provided by the Qur'an in verse 5:33. The verse includes particular phrases, but they also have a broader connotation that distinguishes the crime of *ḥirābah* from other udd sins like adultery, *qadzaf*, *sirqah*, and *shurb al-khamr*. *yuhāribūna Allāh wa rasūlahu*, and *ya's'una fī al-arḍi fasādan* are these phrases. In order to comprehend the intent behind the two limitations, at the very least, one must have a thorough comprehension of the two sentences that criminalize the offense of *ḥirābah*. The meaning of the term "*ḥirābah*" must thus be understood in a wider sense (see "extended definition" below).<sup>13</sup>

In the criminal act of *ḥirābah*, those who are found to have participated in *ḥirābah* are required to fulfill a number of requirements before their penalty for the crime (committing *ḥirābah*) may be carried out. The relevant circumstances are: Mukallaf; Armed; Far from any population centers; Fight in public.<sup>14</sup> Mukallaf, being intellectual and mature are prerequisites for mukallaf, which are required for the imposition of legal punishments, therefore those who are found to be participating in *ḥirābah* must achieve these standards. Even though both little children and insane people engage in a variety of *ḥirābah* activities, neither qualifies as a *muharib* since, in either case,

<sup>11</sup> Imam Syafi'i, *Al-Umm Jilid 10* (Kuala Lumpur: Victory Agencie, n.d.), p. 87.

<sup>12</sup> Abdul Qadir 'Audah, *Ar-Tasyri' Al-Jinā'i Al-Islāmi Juz II*, p. 530.

<sup>13</sup> Moh Khasan, "From Textuality To Universality: The Evolution of Ḥirābah Crimes in Islamic Jurisprudence," *Journal of Islamic Studies*, Vol. 59, No. 1, 2021, (2021): 7.

<sup>14</sup> Sayyid Sabiq, *Fikih Sunnah*, p. 323.

the Shari'ah requirements for mukallaf have not been met. Armed, Both Imam Abu Hanifah and Imam Ahmad bin Hanbal stipulated that criminals must possess weapons or comparable objects, such as rocks, sticks, or wooden blocks. Imam ash-Shafi'i asserts that neither the Fuqaha' Zahiriyyah nor the Fuqah' Shia Zaidiyyah mandate that the offender carry a weapon. They claim *Muharib* just depends on his strength. Even utilizing deception without resorting to physical violence, such as punching or striking with the fist, according to Imam Malik, qualifies as performing *muharib*. Fight in Public, to steal things out in the open is one of the requirements for thieves. They are thieves if they steal it covertly. If they rob and flee, they are usurpers and are exempt from being charged with robbery. The same applies if one or two individuals block the route and take the prize. They lack the authority of the robbers above, thus they cannot be feared. However, the Hanafi School considers them to be robbers if a small gang of persons sets out to ambush other road users and can be stopped.

Every offense required an evidence before it could be punished, of course. The evidentiary system, in its simplest form, governs the types of evidence that may be presented, how it is described, how it is utilized, and how the judge must come to a conclusion prior to a court session. Two types of evidence—witnesses and confessions from the perpetrators—can be used to establish the existence of the crime of *ḥirābah*. As with other *jarimah*'s, witnesses for *ḥirābah* are at least two male witnesses who fit the criteria for testifying. Witnesses are powerful evidence for *ḥirābah*, just as they are for *jarimah* theft. The victims of the crime of robbery as well as those who participated in it may serve as witnesses. In the absence of a male witness, one male and two female witnesses, or four female witnesses, may be utilized.<sup>15</sup> Confession (*Iqrar*), An accused robber's confession may be used as proof. The criteria for this confession are the same as those for confession in a theft-related offense. Most academics agreed that making the confession just once was sufficient. Hanabilah and Imam Abul Yusuf contend that the confession must be repeated at least twice.<sup>16</sup>

## Participate in *Jarimah Ḥirābah*

Participation is *isytirak* in Arabic etymologically. This situation is referred to as *isytirak al-jarimah* in Islamic criminal law (inclusion offense). Participating in *finger mah* means committing a crime with others, whether via agreement or happenstance, and commanding or urging others to exercise discretion or help in other ways. According to this definition, there must be at least two

<sup>15</sup> Ibnu Qoyyim, *Hukum Acara Peradilan Islam* (Yogyakarta: Pustaka Pelajar, 2006).

<sup>16</sup> 'Audah, *At-Tasyri' Al-Jinā'i Al-Islāmi Juz II*.

criminals who either jointly sought, coincidentally carried out, or provided a facility for the holding of a *jarimah*.<sup>17</sup> The act of *jarimah* that is performed collectively or in conjunction, and that is carried out in accordance with shared intentions, is also referred to as cooperation in performing *jarimah*. It should be highlighted, nonetheless, that the crime of affiliation emphasizes the fact that both are the primary offenders.<sup>18</sup>

If all the criteria are satisfied, a new act is regarded as a crime (*jarimah*). Four categories can be used to group the finger elements: formal, material, moral, and special. There is a statute or text in the formal component. This issue is known as the concept of legality in positive law, which states that an act cannot be judged unlawful and that the offender cannot face punishment before the laws that govern it. "There is no punishment for the act of mukallaf before the stipulations of the Quran," is the norm that underpins this component. Muslim agreement-making is permitted by Islam if it is not explicitly stated in the books (*ijma'*). The *ijma'* agreement is local in origin, derived from the scriptures, and does not contradict the Qur'an or al-*hadis*.<sup>19</sup> Material components and nature's opposition to law indicate that there is conduct that points the finger, both in the form of actual deeds (which are good) and attitudes of not acting (negative). doing anything that is prohibited, stopping something that has been commanded, or disobeying a directive. The moral component of the crime is that the culprit is mukallaf, or someone who can be prosecuted for what they have done. That those who commit crimes are to blame implies that they are not done so by insane individuals, youngsters, or in self-defense. The aforementioned broad principles are not always crystal obvious, but they are presented to make it simpler to assess Islamic criminal law concerns in terms of when the criminal incident took place.<sup>20</sup> Special Components specific sorts of fingers must meet certain requirements. The particular ingredient in question is one that is exclusively present in specific criminal incidents (*jarimah*), and it varies across special components in various types of fingers. For instance, the elements of action and fines must be met in the case of theft. The prerequisites connected to the object are that the thing is in the form of property, is in a storage place, and measures one nisab. The act was carried out covertly, the item belongs to another person perfectly, and the fine is already in the thief's hands.<sup>21</sup>

<sup>17</sup> Sahid, *Epistemologi Hukum Pidana* (Surabaya: Pustaka Idea, 2015), p. 79.

<sup>18</sup> Djazuli, *Fiqh Jinayat* (Jakarta: Grafindo Persada, 1996), p. 176.

<sup>19</sup> Abdurrahman Doi, *Tindak Pidana Dalam Syariat Islam* (Jakarta: Rineka Cipta, 1991), p. 15.

<sup>20</sup> Halimah, *Hukum Pidana Islam Menurut Ajaran Ahli Sunnah Wal-Jama'ah* (Jakarta: Bulan Bintang, 1968), p. 48.

<sup>21</sup> Abu Zahrah, *Al-Jarimah Wa Al-Uqubah Fi Al-Fiqh Al-Islam Juz 1* (Mesir: Dar al-Bab, 1998), p. 147.

If more than one jurist commits a *jarimah*, it is determined whether the perpetrator will be punished for his or her activities individually or as a result of the collective actions of the offenders. Direct Participation comes first. In accordance with Islamic criminal law, direct participation can happen if someone does something that is considered to be the start of implementing *jarimah* and is sufficient to be deemed immoral. However, if someone commits a probationary crime, whether it is finished or not, his actions have no bearing on the person. direct involvement, but influence the severity of the penalty. Therefore, if the finger being worked on is finished and is in the shape of add, the offender is punished to add; nevertheless, if the finger is not finished, the offender is sentenced to *ta'zir*. Islamic criminal law generally holds that the severity of the penalty meted out to each offender is unaffected by the number of offenders. Abu Hanifah asserts that the punishment for those who commit tamalu and jarimah tawfuq is the same since they are regarded as having done the same crime and are accountable for everything.<sup>22</sup> Second, take part covertly. People who do not directly engage in Jarimah are condemned to *ta'zir* because, according to Islamic criminal law, the quantity of law that has been defined in *jarimah hudud* and *qisās* is only inflicted on direct perpetrators, not indirect perpetrators. However, the indirect perpetrator may receive an *hudud* or *qisās* sentence if the direct perpetrator directly assists the indirect perpetrator in committing Jarimah. A witness to a finger pointing, in Maliki's opinion, might make an indirect culprit appear to be a direct perpetrator.

*Jarimah Ta'zir* is exempt from the distinction between direct and indirect punishment for offenders, which is present solely in *hudud* and *qisās* punishments. Because the conduct is *jarimah ta'zir* and the penalty is *ta'zir* punishment, there is no distinction in the punishment for a *ta'zir* crime. The five fingers of qi diyat, according to Abdul Qadir 'Audah, are: purposeful murder, semi-intentional murder, accidental murder, intentional persecution, and accidental persecution.<sup>23</sup>

## ***Hirābah* According to Imam Abū Hanīfah and Imam Syafi'i**

Anyone who does an act of *hirābah*, whether directly or indirectly, is considered to be the perpetrator, according to Imam Abū Hanīfah. Imam Abū Hanīfah holds that anyone directly involved in stealing, murdering, or terrorizing others qualify as *hirābah* actors. Similarly, those who offer assistance—whether by agreement, directives, or assistance—are likewise

<sup>22</sup> Sahid, *Epistimologi Hukum Pidana*, p. 85.

<sup>23</sup> 'Audah, *At-Tasyri' Al-Jinā'i Al-Islāmi Juz II*, p. 145.



*ḥirābah* actors. Imam Malik, Imam Ahmad, and Zahiriyah all agreed with the Hanafiyah viewpoint.<sup>24</sup> According to Imam Abū Hanīfah, the person who commits *ḥirābah* must be a man in order for the female member of the robbery gang to not be liable to further penalty. Because of their tender hearts and frail bodies, women are incompatible with aggressive Jinyah, which is why assault, kidnapping, and theft committed under pressure and violence are rarely committed by them.<sup>25</sup> The conspirators of the crime, particularly foreigners, mukallaf, and males, must not have any ties to the mahram victims of the heist, according to Imam Abū Hanīfah and Imam Muhammad. The penalty of *ḥadd* cannot be applied to all of them if one of them has a mahram relative or a young child.<sup>26</sup>

Regarding the location of *ḥirābah*, Imam Abū Hanīfah asserts that this offense is committed outside of the city. According to this regulation, seizing property in broad daylight must take place outside of cities, maybe on a route across the desert. Because robbing involves blocking a road (*qath'u al-thariq*), it must be done in a calm area or distant from where assistance may be requested. Users of the roads here may only rely on Allah to keep them safe. As a result, those who obstruct them (the other road users) are essentially battling Allah. In the meanwhile, if the city's streets are filled with people, asking for assistance is simple. Authorities who manage security are also there. Therefore, city robbery is not strictly prohibited by Allah and cannot be added to the *ḥirābah* list.<sup>27</sup>

*Hirābah* is a crime that calls for the use of a sharp object by the criminal. Imam Abū Hanīfah said that in this situation, using force to take property qualifies as *jari>mah ḥirābah* if the culprits are armed. The justification is that *ḥirābah* cannot be achieved without the use of fear-inducing weapons. Both Imam Abū Hanīfah and Imam Ahmad stipulate that the culprit must be in possession of a weapon or an item that resembles one, such as a stick, stone, or wooden block.<sup>28</sup> Regarding *ḥirābah*, Imam Abū Hanīfah also has another viewpoint on the subject of *nisʿab* for confiscated property. According to Imam Abū Hanīfah and certain Syāfi'iyah, *nisʿab* is calculated for each actor separately rather than as a total. As a result, each culprit is exempt from the

<sup>24</sup> Al-Kasāni, *Badā'i' Al-Sanā'i Fi Tartīb Al-Sharā'i Juz 7*, p. 90. See also, Ahmad Wardi Muslich, *Hukum Pidana Islam*, (Jakarta: Sinar Grafika, 2005), p. 96.

<sup>25</sup> Al-Kasāni, *Ibid.*, 91. See also, Muhammad Ustman Al-Khasyt, *Fikih Wanita 4 Mazhab*, (Jakarta: Kunci Aman, 2014), p. 517.

<sup>26</sup> Abdurrahman al-Jaziri, *Al-Fiqh 'Ala Mazāhib Al-Arbā'Ah Jilid 5* (Beirut: Dar al-Fikr, 1986), p. 409.

<sup>27</sup> Al-Kasāni, *Badā'i' Al-Sanā'i Fi Tartīb Al-Sharā'i Juz 7*, p. 92.

<sup>28</sup> Abdul Qadir 'Audah, *Ensiklopedi Hukum Pidana Islam Jilid V* (Bogor: Kharisma Ilmu, 2008), p. 200.

add punishment as the taker of the property if the property they get does not reach the *nisʿab*.<sup>29</sup>

There are other obligations in relation to victims in addition to the ones mentioned above. According to the scholars, those who are robbed are those who are *maʿshum ad-dam*, that is, those whose life and property are protected by Islam. If a person is a Muslim or a dhimmi infidel, they are regarded as *maʿshum*. Muslims are protected due to their faith, whereas dhimmis are protected due to a security pact. Despite the fact that the unbelievers *mustaʿman* (*muʿadd*) get assurances as well, the *fuqahāʾ* continues to question the penalty for those who committed *mustaʿman*'s robbery because the promise is not total. According to Hanafiyah, robbery against *mustaʿman* is not subject to *ḥadd* penalty. Imam Abū Ḥanīfah also shared his thoughts on *ḥadd* for *ḥirābah* practitioners. The punishment for *ḥirābah*, according to Imam Abū Ḥanīfah, should be banishment in order to scare the offenders. There's no end to this exile. Therefore, there is no set period of time for the incarceration of an *ḥirābah* offender. If a someone steals property without murdering someone, they will have their hands and feet cut off with a cross, specifically their right hand and left leg.<sup>30</sup>

An other form of *ḥadd ḥirābah* is when someone commits a murder without taking anything in return. According to Imam Abū Ḥanīfah, the punishment for adding without being crucified is to be murdered (the death sentence). Imam Abū Ḥanīfah holds that the judge may select one of three alternative punishments for *ḥirābah* perpetrators who kill and steal: first, cutting off his hands and feet, followed by being killed or crucified; second, being killed without being crucified and without cutting off hands and feet; and third, being crucified and then being killed.<sup>31</sup> The academics hold contrasting views on the use of the death penalty and the cross. Some claim that the death punishment came later after the crucifixion. Others contend that the cross is subordinate to the death penalty. Imam Abū Ḥanīfah decided to use the first method, giving the crucifixion and later the death punishment top priority. They contend that crucifixion is a sort of punishment that the offender must experience, and that experience can only occur while the offender is still alive. Because the crucifixion has no impact on the offender if the death sentence is the priority.<sup>32</sup>

<sup>29</sup> Al-Kasāni, *Badāʾiʾ Al-Sanāʾi Fi Tartīb Al-Sharāʾi Juz 7*, p. 92.

<sup>30</sup> Al-Kasāni, *Ibid.*, p. 93. See also, Ahmad Wardi Muslich, *Hukum Pidana Islam*, (Jakarta: Sinar Grafika, 2005), p. 98.

<sup>31</sup> Al-Kasāni, *Ibid.*, 93. See also, Rokhmadi, *Hukum Pidana Islam*, (Semarang : CV. Karya Abadi Jaya, 2015), p. 80.

<sup>32</sup> Al-Kasāni, *Ibid.*, p. 94. See also, Rahmat Hakim, *Hukum Pidana Islam*, (Bandung: Pustaka Setia, 2000), p. 91.

It then goes on to describe Imam Abū Ḥanīfah viewpoint on *ḥirābah* before moving on to Imam Syāfi'ī viewpoint. According to Imam Syāfi'ī, *ḥirābah* is to leave to engage in acts of aggression, such as stealing, killing, or frightening others, while remaining independent and far from assistance (help). In order to ensure that all *ḥadd ḥirābah* sanctions are applied to all *ḥirābah* actors and that they are all committed to abiding by the law and religious regulations, Imam Syāfi'ī claims that it does not differentiate between male and female violators.<sup>33</sup>

The offenders of *ḥirābah*, in the opinion of Imam Syāfi'ī, are those who really carry out the heist. People who only assist in the deed but do not take part in it are being threatened with *ta'zir* penalty. Additionally, according to Imam Syāfi'ī, using sharp objects is not necessary to commit the crime of *ḥirābah*. Weapons are not necessary for Imam Malik, Imam Syāfi'ī, and Imams Zahiriyah and Zaidiyah of Shia; instead, they adhere to physical prowess and aptitude. Even Imam Malik is content to utilize trickery, tactics, or strategy in certain situations in place of utilizing physical force, such as using hands or feet.<sup>34</sup>

The Qur'an's Surah al-Maidah verse 33 is the basis for Imam Syāfi'ī argument to establish *ḥadd ḥirābah*. It reads as follows: "*Indeed, only they will get the retribution for their actions in fighting against Allah and His Messenger and causing mayhem on earth. slain, crucified, or having their hands and feet severed in retaliation, or having their citizenship revoked (where he lived). That is a slight against them in this life, and they will suffer much in the hereafter.*" (Q.S. 5 [Al-Maidah]: 33)<sup>35</sup>

As long as someone has been involved in the crime of robbing him, the penalty is stated in the verse without restriction, and according to other jurists than Imam Abū Ḥanīfah, the punishment in issue is applied to women in the same way that it is applied to males.<sup>36</sup>

The punishment of *ḥadd ḥirābah* is nonetheless meted out to the offenders, according to Imam Syāfi'ī, even though some of them are young children or family members of *mahram* robbery victims. Although it may cause uncertainties, such doubts only apply to them, allowing other gang members to continue to administer the punishment.<sup>37</sup>

<sup>33</sup> Muhyiddin Abu Zakaria Yahya Bin Syarof Al-Syāfi'ī, *Majmu' Syarah Muhazzab Juz 20*, n.d., p. 104.

<sup>34</sup> Syāfi'ī, *Al-Umm Jilid 10*, See also, Abu Ishaq asy-Syairazī, *At-Tanbīh Fi al-Fiqh asy-Syāfi'ī*, jilid I, (tt: tp,tth), 247.

<sup>35</sup> Penerjemah, *Al-Qur'an Dan Terjemahannya*, p. 164.

<sup>36</sup> Syaikh Ahmad Musthafā Al-Farran, *Tafsir Imam Syāfi'ī Juz 2*, ed. Fedrian Hasmand (Riyadh: Dar At-Tadmuriyyah, 2006), p. 337.

<sup>37</sup> Syāfi'ī, *Al-Umm Jilid 10*, p. 32.

*Hirābah* can be committed inside or outside of a city, according to Imam Syāfi'ī argument on the crime's location. Jumhur asserts that *hirābah* is not only restricted to the streets outside of cities; it may also occur inside of them and is susceptible to punishment. The verse that serves as the foundation for the naqli add *hirābah* is generic in nature; it does not discriminate between the streets inside and outside of the city. Additionally, robberies in urban areas demonstrate that these offenses are more serious than those committed elsewhere, because it is safer and simpler to obtain aid in the city. Therefore, those who violate the congregation's rights in the city do so with tremendous bravery. Compared to crimes committed outside of the city, these actions merit being treated as robberies.

The opinion of the assets taken is a different viewpoint on the *jarimah hirābah*. The prerequisites for assets in the *jarimah hirābah* are, in theory, the same as the prerequisites for theft. These requirements are that the items be kept (*muhraz*), *mutaqawwim*, belong to others, be beyond a doubt, and comply with the *nishab*. The fuqaha' still contest this *nishab* criterion, nevertheless. According to Imam Malik, there is no need for *nishab* for things collected in *jarimah hirābah*. Some Syafi'iyah fuqah adhere to this viewpoint. Therefore, even when the distribution of property for each offender falls short of the *nishab*, all offenders must still face the *hadd* penalty.<sup>38</sup>

Regarding the *hadd hirābah* penalty, there is another viewpoint that is as essential. When compared to stealing, the punishment for those who commit *hirābah* is more severe: they face death, crucifixion, the amputation of their hands and feet, or disposal. These punishments, in accordance with Imam Syāfi'ī, are meted out in accordance with the gravity of the deed (*jarimah*) performed by the person who committed the crime of *hirābah*. Imam Shafi' claims that adding *hirābah* to fear is a *ta'zir* penalty that results in exile or incarceration, much like adding *hirābah* to frighten. He believes that there is no set period of time for the incarceration of those who committed the criminal act of *hirābah*.<sup>39</sup> However, according to the majority of academics, the punishment of exile for theft is equivalent to that of adultery, which is a one-year exile.<sup>40</sup>

In contrast to frighten, *hadd hirābah* is significantly heavier while obtaining riches without killing. Similar to Imam Abū Ḥanīfah, Imam Syāfi'ī contends that the punishment for committing *hirābah* is to have his hands and legs chopped off specifically, his right hand and left leg. This is due to the fact that this kind of *hirābah* is a significant theft, and the hand-cutting is the primary

<sup>38</sup> Ahmad Wardani Muslich, *Hukum Pidana Islam* (Jakarta: Sinar Grafika, 2005), p. 97.

<sup>39</sup> Syafi'i, *Al-Umm Jilid 10*, p. 33.

<sup>40</sup> Rahmat Hakim, *Hukum Pidana Islam* (Bandung: Setia Pustaka, 2000), p. 94.

punishment for theft. Therefore, it shouldn't be any lighter than amputating the hand for this second sort of *ḥirābah*. A judge may select any sentence from the four categories of punishment given in Surah Al-Maidah verse 33 under Zuhairiyah's absolute alternative (*khīyar*) doctrine.<sup>41</sup>

Another change would be the addition of *ḥirābah* killing and the absence of riches. The death sentence, according to Imam Syāfi'ī, should be used as the penalty for adding without being crucified. Additionally, the death sentence is categorized as a hudud punishment rather than a qisas punishment. Therefore, it is not pardonable. The murder also had some connection to robbery or theft of items. The fact that the offender did not steal the victim's goods might have been due to a variety of factors, including lack of time. Regarding the penalty for killing someone and stealing their property, *ḥadd ḥirābah*, the punishment is to be executed (death sentence) and crucified without having his hands and feet severed.<sup>42</sup>

## ***Hirābah* Analysis According to Imam Abū Hanīfah and Imam Syāfi'ī**

One of the *jarimah* in Islam whose add is explicitly specified in the Qur'an is *ḥirābah*. *Jarimah ḥirābah* can be seen as a criminal act, such as a robbery or seizure committed by an individual or gang that is accompanied by violence and the use of sharp objects, or even as the routine killing of victims, who are mostly motorcyclists.

In the discipline of fiqh, Imam Abū Hanīfah and Imam Syāfi'ī are two academics whose ideas are well respected around the globe, particularly in Indonesia. Even in Indonesia, the four Imams of the Madzhab Imam Abū Hanīfah School, Imam Malik School, Imam Syafi's School, and Imam Hanbali School—receive the bulk of the support when it comes to resolving fiqh disputes.

If we examine the reasons for the disparities and the creation of the aforementioned schools, the author concurs with Taha Jabir Fayyadh al-Alwani, who was cited by Khairul Anwar, and who stated that generally speaking, among other reasons:

First, language-related causes—specifically those associated with texts whose pronunciation takes the form of *musytarak*, *'am*, *muḥmal*, and so on, i.e., words with many meanings—are overly vague and all-encompassing.

<sup>41</sup> Muslich, *Hukum Pidana Islam*, p. 102.

<sup>42</sup> Rokhmadi, *Hukum Pidana Islam* (Semarang: Karya Abadi Jaya, 2015), p. 80.

According to the basis chosen, the *fuqaha* interpret the Musytarak Lafaz that gives the 'am and *mujmal* Limits in various ways.

Second, the reasons behind the sunnah's storytelling. The differences in how this sunnah is narrated are brought about, among other things, by addits that reach one mujtahid but not another, addits that reach one mujtahid but not the other with different pronunciations, addits that reach mujtahids with different reasons for wurud, addits that arrive at one mujtahid with perfect pronunciation but are accepted by another mujtahid with imperfect pronunciation, and so on.

Third, the causes associated with istinbat's restrictions and ushul's rules. Various mujtahids utilize varied techniques when applying the restrictions of *ushul fiqh*, which results in different fiqh.

The fourth factor is political. As is well known, Usman bin 'Affan's death led to the emergence of Muslim political problems and disputes as a result of Usman's slaying. Since then, a number of political and theological groups within Muslims have arisen, including the Murji'ah, Khawarij, and Shi'ah.<sup>43</sup>

It is clear from the above explanation that language issues, particularly those involving texts whose pronunciation takes the form of *musytarak*, 'am, *mujmal*, and other similar sounds, such as lafaz, which have multiple meanings and are overly general, are contributing factors to the difference of opinion. , and too broad, causing, depending on the foundation employed, the fuqaha' or mufassir to interpret the Musytara'k Lafaz to establish different boundaries of 'am and *mujmal*. just like Allah swt said. which translates to: "Indeed, the punishment for those who oppose Allah and His Messenger and cause calamity on the earth is only death or the cross, or the cutting off of their hands and feet in return for reciprocity, or the exile from the land (where they reside), and (in the Hereafter) they will suffer a great torment". (QS. Al-Maidah [5]:33)<sup>44</sup>

Many scholars believe that the law of *muharabah* (attacks) in cities and on the streets is the same, and they have utilized the broad definition of yuharibuna as evidence for this claim. Founded on His word, it "*wrecks havoc on the planet*." According to Malik, al-Auza'i, al-Laits bin Sa'ad, ash-Shafi'i, and Ahmad bin Hanbal, this is the case. even about those who convince someone, trick him, bring him into the home, kill him, and then grab the riches they brought. The wide meaning of yuharibuna has been used by several scholars to support their assertion that the law of *muharabah* (attacks) in cities and on the streets is the same. According to Malik, al-Auza'i, al-Laits bin Sa'ad, ash-Shafi'i, and Ahmad bin Hanbal, it "*wrecks havoc on the globe*" and is

<sup>43</sup> Ahmad Syifa'ul Anam (ed.), *Mengelola Khilafiyah Menggapai Rahmat* (Semarang: Walisongo Press, 2009), p. 26-27.

<sup>44</sup> Penerjemah, *Al-Qur'an Dan Terjemahannya*, p. 164.

based on His word. even about those who deceive someone into coming into their house, kill them, and then take the money they brought with them.<sup>45</sup>

Three key factors that lead someone to rebel against Allah and the Messenger are listed in the literature of fiqh, including: First, they have weapons. It is not included if you are not armed. However, Imam Shafi'i and Abu Thaur clarified that if they had used sticks or stones, that would also count as carrying weapons; that their activities were being carried out in the Sahara (even though in our country, this would be a quiet area outside of the city); and that they had come out in the open and taken property from people by force. If you sneak up and steal your wealth, you are not robbing and robbing; you are being thieves.<sup>46</sup>

The letter "*athaf aw*" in the passage above, according to Imam Abū Ḥanīfah, denotes the freedom to make a decision (*takhyir*). This is consistent with both the content of the passage above and the grammar of the Arabic language. Furthermore, the Sunnah provides no evidence to support a change in the original meaning. Therefore, any penalties for those who oppose Allah (swt). And His Messenger is one of the four things mentioned above; the court will decide which of the four punishments to impose after weighing the pros and cons of each one. This is evident from Imam Abū Ḥanīfah viewpoint on the additional punishment for killing someone and stealing their property, according to which the additional punishment depends on the judge conducting the trial and may include having the person's hands and feet amputated before being killed or crucified, being killed without being crucified and having those parts removed, or being crucified first and then being killed.<sup>47</sup>

Nevertheless, Imam Syafi'i claims that the letter "*athaf aw*" in letter al-Maidah verse 33 has a taqsim meaning, i.e., as a bayan and details (*tafsihil*). This is in accordance with linguistic principles that all of the letters 'athaf have meaning. One of these is distinct, and one of them denotes taqsim (explanation and details), which is the division of still-global entities into their component pieces.

In this instance, the author concurs with Imam Shafi'i assertion that the letter "*athaf aw*" appears in QS. According to linguistic conventions, the words "explanation" (*bayan*) and "details" (*tafsihil*) are used in al-Maidah verse 33. Those who combine those behaviors are robbers or road breakers. This leads to the conclusion that a court must punish criminals in accordance with the seriousness of their actions rather than choosing their punishment at random.

<sup>45</sup> Ismail bin Umar Ibnu Katsir, *Tafsir Ibnu Katsir Jilid 3*, ed. M. Abdul Ghaffar (Bogor: Pustaka Imam Syafi'i, 2003), p. 75.

<sup>46</sup> Hamka, *Tafsir Al-Azhar Juz VI* (Jakarta: Gema Insani, 2015), p. 292.

<sup>47</sup> Rokhmadi, *Hukum Pidana Islam*, p. 80.

Imam Abū Ḥanīfah then asserts that anybody who engages in *ḥirābah*, whether directly or indirectly, is a perpetrator. Imam Abū Ḥanīfah holds that anyone directly involved in stealing, murdering, or terrorizing others qualify as irbah actors. Similarly, those who offer assistance—whether by agreement, directives, or assistance—are likewise *ḥirābah* actors.<sup>48</sup> According to Ulama' Malikiyah and Hanabilah, if a band of thieves comes together, some of them will directly take part in killing people and seizing property, while others will just serve as *ar-rid'u* (those who support *ḥirābah*). The fact that there have been thefts there, regardless of whether any of them were directly or indirectly involved in the deaths, means that even the member who merely performs the role of *ar-rid'u* is nonetheless susceptible to the law as a thug.<sup>49</sup>

Contrary to Imam Syafi's viewpoint, which holds that individuals who carry out robberies directly qualify as *ḥirābah* culprits, is this one. People who only assist in the deed but do not take part in it are being threatened with *ta'zir* penalty. According to Syafi'iyah scholars, if Ar-involvement *Rid'u's* in a gang of thieves only served to increase the number of conspirators, not more, so that their number looked to be big, he would only be liable to *ta'zir* punishment, which includes imprisonment, exile, and other forms of punishment. Because the direct offender of the crime of irbah is the focus, not the one who is just acting in the capacity of *ar-rid'u*.<sup>50</sup>

Therefore, *ar-rid'u* according to Imam Abū Ḥanīfah opinion states that anybody connected to theft can be punished with *ḥadd ḥirābah*, however if you adopt Imam Syafi's position, those who are susceptible to *ḥadd ḥirābah* are those who actually carry out the beheading. This refers to in accordance with Imam Shafi'i. Only *ta'zir* penalty applied to those who issued the order, furnished the sharp object for the beheading, and were somehow connected to the theft without taking part themselves.

The author claims that those personally involved in carrying out the beheading are the ones who may be punished with extra *ḥirābah*. In this instance, the author concurs with Imam Shafi'i's viewpoint. Anyone who actively takes part in perpetrating the crime of *ḥirābah* is subject to the imposition of *ḥadd ḥirābah*. It is appropriate to subject those who carry out these acts to additional *ḥirābah* because they are inherently directly involved in the act of *ḥirābah*; however, it is not appropriate to subject those who are not directly involved to additional *ḥirābah* because their actions did not

<sup>48</sup> Al-Kasāni, *Badā'i' Al-Sanā'i Fi Tartīb Al-Sharā'i Juz 7*, p. 90.

<sup>49</sup> Syeikh Abdul Wahab, *Al-Mizān Al-Kubra Li Asy-Sya'rāni Juz 2* (Lebanon: A'lam al-Kutūb, 1989), p. 169.

<sup>50</sup> Abū Ishaq Asy-Syairazi, *At-Tanbih Fi Al-Fiqh Asy-Syafi'i Jilid I*, n.d., p 247.



directly lead to the beheading. Therefore, it is better if the penalty is administered in the form of *ta'zir* punishment.

Women who participate in *ḥirābah* are still subject to punishment. As in other situations, there is no differentiation between male and female offenders. Of course, this difference of view has substantial legal ramifications. First, in terms of how the criminal element is applied. The use of various criminal aspects will be impacted by different classifications of *ḥirābah* actors. All of the ingredients of the *ḥirābah* crime, according to the group that holds this viewpoint, are present in every criminal, regardless of who they are, what they do, or what contributions they make. In contrast, the camp that contends there is only one principal actor holds that each person participating in the *ḥirābah* crime speaks for himself and that as a result, just a little portion of the crime is actually committed. They are thus exclusively accountable for their own duties and contributions.<sup>51</sup>

The second is the consequences of criminal responsibility. Obviously, the viewpoint that claims that everyone engaged is the principal actor does not apply the concept of engaging in criminal activity (*isytirāk*) in the crime of *hirbah*. This is due to the fact that all parties engaged are considered actors with the same status, namely primary actors. On the other hand, the inclusion of a criminal act (*isytirāk*) principle will be applied to those who only hold one key player in the criminal act of *ḥirābah*. He is founded on a theory that separates the legal standing of one perpetrator from another in grounds of their roles and contributions to the crime.<sup>52</sup>

The consequences for the imposition of punishment come in third. The second implication explains that this circumstance is a result of the many criminal views. Depending on the type of crime and the perpetrator's involvement in the crime, different punishments may be imposed when *hirbah* is classified as *isytirāk* through *ḥirābah*. The criminal penalty for *ḥirābah* is also applied in the form of one comparable sentence, namely *ḥadd ḥirābah*, if it is not considered as *isytirāk*.<sup>53</sup>

The author concurs with Imam Shafi'i's viewpoint. The author claims that men and women are two equal persons who are subject to the same penalty. This is also a result of non-discriminatory components being enforced in law enforcement. Many nations now believe that men and women may get the same degrees. As in Indonesia, laws that uphold the right to equality, such as those that provide equality before the law, equal legal protection, and protection from discrimination, are the foundation for non-discrimination as

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<sup>51</sup> Khasan, "From Textuality To Universality: The Evolution of *Ḥirābah* Crimes in Islamic Jurisprudence", p. 21.

<sup>52</sup> Khasan, *Ibid.*, p. 22.

<sup>53</sup> Khasan, *Ibid.*, p. 23.

a fundamental human right. Everyone has the right to recognition, guarantees, protection, fair legal certainty, and equality before the law, according to Article 28 D paragraph (2) of the 1945 Constitution.<sup>54</sup>

Imam Abū Ḥanīfah believes that discrimination against *ḥirābah* actors is incompatible with the features of contemporary criminal law. Discrimination between Muslims and non-Muslims as well as between males and women is not recognized by contemporary criminal law. It must uphold human rights and treat all citizens equally. This is why contemporary nation-state regulations mandate that any criminal provisions must first go via contemporary statutory procedures (tested legislatures) for pre-approval before being issued. If it can't be agreed upon, it should be dropped.

The conversion of the *ḥirābah* performer is a crucial point to take into account. The explicit recognition of the offender's remorse as an action with substantial legal repercussions for the perpetrator of *ḥirābah* is one of the ways in which the *ḥirābah* verse differs from other *ḥudūd* crime verses. The *ḥirābah* may be pardoned if the offender chooses to confess before being apprehended.<sup>55</sup>

In fact, Allah forgives their misdeeds and, in accordance with Allah's command, the unique punishment associated with the crime of *ḥirābah* for them is erased if the group that commits the *ḥirābah* that creates trouble on earth repents before they are caught and the authorities can imprison them. Allah SWT, which translates to mean: "*That is an insult to them in this world, and they will suffer much in the Hereafter, with the exception of those who turn to God before you can control (arrest) them; in that case, know that Allah is Most Forgiving and Most Merciful*". (QS. Al-Maidah [5]:33-34)<sup>56</sup>

Based on explicit passages, Imam Abū Ḥanīfah and Imam Shafi'i contend that repentance cannot stop punishment, with the exception of the offense of *irbah*. The rationale for this is because although the perpetrator of *jarimah ḥirābah* cannot be apprehended, repentance may be used as an alternative if he does so before being taken into custody with the guts to do so and quit harming the land.<sup>57</sup>

The author claims that several laws have evolved in various nations in the contemporary age. Each nation has its own laws in place to ensure that its residents may live in peace and harmony. The author claims that he does not

<sup>54</sup> Pasal 28 D ayat (2) UUD 1945.

<sup>55</sup> Khasan, "From Textuality To Universality: The Evolution of Ḥirābah Crimes in Islamic Jurisprudence", p. 23.

<sup>56</sup> Penerjemah, *Al-Qur'an Dan Terjemahannya*, p. 164.

<sup>57</sup> Makinuddin, "Tobat Bagi Pelaku Tindak Pidana Ḥirābah Dalam Al-Qur'an (Kajian Surat Al-Maidah: 33-34)," *Al-Jinayah: Jurnal Hukum Pidana Islam Vol 5, No. 2, Des 2019 5* (2019): 320–21.

share Imam Abu Hanifah's and Imam Shafi'i's viewpoints. The culprit of the crime of *ḥirābah* may have expressed regret, but it won't make up for what he has done. Because there won't be any penalty if *ḥadd ḥirābah* dies in repentance. This is due to the fact that no illegal act is exempt from penalty under the laws that are in force in any nation. However, this does not imply that those who committed the crime of *ḥirābah* do not benefit from repentance. With this confession of sin, it will become one of the evidences of confession that the judge may later utilize to absolve the *ḥirābah* offenders of their wrongdoing.

The author makes the case that the remorse of those who commit *ḥirābah* before being apprehended (surrendering) is confined to giving up his rights to Allah and not his rights to other people. In the meanwhile, if repentance is practiced after the offender is apprehended, it does not annul God's rights or rights with other people. The rationale behind this is that while repentance that is carried out after being arrested is typically motivated by fear of the prospect of punishment being imposed on him, repentance that is carried out prior to being arrested is a sincere repentance because God emerges from a conscience to become a better person.

In Indonesia, *ḥirābah* is commonly known as "Begal". Begal is an act or crime that, in the Criminal Code, is classified as a crime of theft accompanied by violence, in which the perpetrator of the crime of robbery is punished or charged with Article 365 of the Criminal Code. Sanctions for robbery in Article 365 are imprisonment for 9 years and a maximum of 12 years when committed at night or on public roads. As a consequence, if the victim of the robbery dies, the perpetrator of the robbery can be punished with a maximum sentence of 15 years to death or life imprisonment. If, in committing the crime of robbery, the perpetrator commits the crime of rape against the victim, then it will be followed by threats of rape, which are regulated in the crime of rape under Article 285 of the Criminal Code with a maximum prison sentence of 12 years.

The forms of crime as contained in Article 365 paragraph (2) of the Criminal Code which are punishable by imprisonment for a maximum of 12 years are: if the act is committed at night in a closed house or yard where there is a house, on a public road, or on a train or a running tram; if the act is committed by two or more people in partnership; if you enter the place of committing a crime by breaking or climbing or by using a fake key, a fake order or a fake official dress; if the act resulted in serious injury.<sup>58</sup>

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<sup>58</sup> R. Sunarto Soerodibroto, "KUHP Dan KUHAP Dilengkapi Yurisprudensi Mahkamah Agung Dan Hode Raad," in 5 (Jakarta: Rajawali Pers, 2006), p. 227-228.

If you look at the forms of how to commit acts of robbery and criminal penalties in the articles above, the punishment according to positive law and Islamic law which in this case is taken from the opinion of Imam Abu Hanifah and Imam Syafi'i are not much different. The severity of the punishment received by the perpetrators of robbery is in accordance with how the crime was committed.

## Conclusion

The laws established by the two priests are likewise distinct, notably in the instance of *jarimah ħirābah*, due to the differences in the legal *istinbath* methods utilized by Imam Abū Ḥanīfah with the *ra'yu* pattern and the Imam Syāfi'i with the *al Wasath wa al I'tidal* pattern. The letter *aw* in Surah Al-Maidah verse 33, according to Imam Syāfi'i, is meant for clarification and specifics (*Bayan wa Tafshil*), so that punishment must be meted out in accordance with the *muhārib* acts. In the meanwhile, Imam Abū Ḥanīfah contends that since the letter *aw* stands for option, judges should have the flexibility to select (*takhyir*) the most fitting sentence. This can be seen from his viewpoint on the penalty for killing someone or taking their property, specifically the choice between having his hands and feet cut off, then being killed or crucified, being killed without being crucified and having his hands and feet cut off, or being crucified first and then being killed. The criminal culpability component of *jarimah ħirābah* may be impacted by disagreements between Imam Abū Ḥanīfah dan Imam Syāfi'i. For instance, the legal standing of a woman who committed the crime of *ħirābah* or the legal standing of the *ħirābah* culprits, who are a large group of conspirators (*isytirāk*). Inadequate responses to this issue may leave gaps in the application of non-discriminatory laws. The views of Imam Abū Ḥanīfah dan Imam Syāfi'i are to abort adding for the perpetrator in the case of repentance carried out by the *jarimah ħirābah* culprits. Legal goods from other legal nations frequently conflict with Islam, particularly when it comes to the idea of punishment for those who commit *ħirābah* and for criminals in general. The crime of *ħirābah*'s perpetrator has expressed regret, yet this will not undo what he has done. Because there won't be any punishment for violating the laws that apply in a nation if *ħadd ħirābah* falls with repentance. In Indonesia, the crime of begal (*ħirābah*) is punished or prosecuted under Article 365 of the Criminal Code. Sanctions for robbery in Article 365 are imprisonment for 9 years and a maximum of 12 years when committed at night or on public streets.

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