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Selective Integration of Hudud Criminal Law Rules in Indonesia's New Penal Code

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ABSTRACT: As the country with the largest Muslim population in the world, Indonesia demonstrates a significant contribution of Islamic law in shaping its new Criminal Code (Law No. 1 of 2023). The concept of hudud crimes, which are considered serious offenses under Islamic law, served as a key reference in the formulation of the Code. This article aims to examine the role of Islamic legal principles related to hudud crimes in the new Penal Code. Employing a qualitative, normative-juridical approach, data were collected through library research and analyzed inductively. The findings reveal eight categories of hudud rules with varying degrees of incorporation into the Code. None of the rules on qadzaf (false accusation of adultery) and riddah (apostasy) are included. Conversely, both rules on khamr are adopted (Article 424 Paragraph 1), four of seven theft-related rules are included (Articles 476, 478, 481 Paragraphs 1–3), two of three robbery-related rules are reflected (Article 479 Paragraphs 1–3), and one of two rebellion-related rules is adopted (Article 196 Paragraphs 1–2). The study highlights the selective integration of hudud principles into the new Penal Code, reflecting a deliberate balance between Islamic values and Indonesia's modern national legal framework.

Keywords: Hudud Criminal Law Rules, New Penal Code, legal integration.

I. INTRODUCTION

It cannot be denied that Indonesia, as a former Dutch colony, certainly inherited various aspects from the colonialists in its current national and state life, one of which is the legal aspect. It must be acknowledged that many of the laws in force today are colonial legacies. With the end of colonialism, the Indonesian people should have the opportunity to create their own rules, which are unique and in harmony with the philosophy, customs, and culture of the Indonesian people (Fardiansyah et al., 2019). Various efforts during the 78 years of Indonesia's independence have been made to create its laws, but a lot of homework still needs to be done (Nasril & Akuntari, 2021). Historical facts have indeed proven that in partial legal aspects, the Indonesian people have succeeded in creating laws unique to the Indonesian nation's characteristics. However, in the leading legal elements, the Indonesian people still need to advance in creating their own. They still use legal products inherited from the Netherlands, such as the Criminal Code, Criminal Code Criminal Code, etc (Bahiej, 2006).

One of the legal regulations that has been around for quite a long time and has received the attention of experts is the legislation regarding criminal law in Indonesia. Our country still uses *Wetboek van Strafrecht* (WvS), or what we often call the Criminal Code, which is a law made in the Netherlands. (Irsan, 2015, hal. 89) Therefore, it is very appropriate for Indonesia to reform its criminal law system. The need for reform is because, in the Dutch *Wetboek van strafrecht*, many articles still need to be more relevant to the philosophy, culture, customs, and social religion of the Indonesian people, such as the article on adultery.¹ After a long delay, finally, on Tuesday, December 6, 2022, the DPR passed the Draft Criminal Code (RKUHP) into law. Then, on January 2, 2023, President Joko Widodo signed this law. So, officially starting January 2, 2023, the Indonesian nation will have a new Criminal Code, although this law will only become formally compelling three years later, namely in 2026 (Binangkit, 2023).

In the context of Indonesian society, some still think that positive law in Indonesia is secular, meaning law that is far from religion, especially Islam. Many laws issued by the government and the DPR are intensely nuanced with religious values. One of the newest is Law No. 1 of 2023 concerning the Criminal Code (KUHP). The birth of Law no. 1 of 2023, which abolishes the old Dutch colonial legacy of the Criminal Code (*Wetboek van Starfrecht*), is a breath of fresh air in the development of positive law in Indonesia that is in harmony with the character, culture, customs and social circumstances of Indonesian society (Faisal, 2012). As a country with the largest Muslim population in the world, the contribution of Islamic law in the formation of this new Criminal Code is certainly not small, if not significant. The concept of hudud crime in Islamic criminal law is undoubtedly one of the references in forming the new Criminal Code (Faisal, 2012).

Research on the relationship between positive law (criminal law) and Islamic law, especially the rules of fiqh, has been done quite a lot. However, to the best of the author's knowledge, research that focuses on the study and concentrates on discussing the application of the rules of Islamic criminal law on hudud in Law no. 1 of 2023 concerning the Criminal Code has never been implemented. This is normal considering

¹ Sri Dwi Friwanti, Tinjauan Yuridis Perbandingan Delik Pembunuhan Dalam KUHP dan Hukum Pidana Islam, *Constituio: Jurnal Riset Hukum Kenegaraan dan Politik*, Vol. 1 No. 1 (2022), 2

²⁴ Law No. 1 of 2023 concerning the new Criminal Code, which will be inaugurated ³⁷ 2023. Several studies that examine the relationship between positive law (criminal law) and Islamic law, especially the rules of fiqh, include the writings of Teguh Luhuringbudi and Achmad Yani; in their article, they analyze the attitude of fiqh rules towards punishment for criminal acts of corruption methodologically using six categories of rules (central theory), which consists of fourteen applied rules (minor theory) (Luhuringbudi & Yani, 2018). Ainun Najib, Mohammad Aqil Al-Huda, and Jundullah Faqihuddin Ramadhan, in their article, review dualistic teachings (teachings in criminal responsibility that separate criminal acts and responsibility) from the perspective of the rules of dharar jurisprudence (Najib et al., 2023).

There is also an article by Ahmad Ropei that ¹⁹ reviews the rule of intent in Islamic law as an essential and relevant theory for determining the element of intent in murder cases. The main rule is the "al-umuru bi maqashidiha" rule, which in its application is supported by two rules, namely: the "al-'amdu huwa bima yaqtalu ghaliban" rule and the "al-'amdu huwa kullu qathlin 'a wajh al-'udwan" rule (Ropei, 2021). Nur Lailatul Musyafaah, in his article, explains that the rules of fiqh have a very urgent position in determining Islamic law, including Islamic criminal law, because these rules aim to maintain the spirit of Islam in developing law and realizing high ideas regarding rights, justice, equality, preserving maslahah, rejecting mafsadah, and paying attention to conditions and atmosphere (Musyafaah, 2018). Armaya Azmi, in her article, also highlights the position and function of the rule of intent in Islamic criminal law (Azmi, 2019).

In Islamic legal discourse, Islamic legal rules (fiqh rules) specifically discuss hudud criminal themes. These rules can be used as a benchmark in determining Islamic law or analyzing legal products that will be reviewed and analyzed from an Islamic perspective. This article aims to investigate the application of the principles of Islamic criminal law for Hudud in Law no. 1 of 2023 concerning the Criminal Code (new Criminal Code). The hope is that this article will inform the public that Islamic law (in this case, Islamic criminal law) contributes to the development of Indonesian criminal law as reflected in the new Criminal Code. It also provides insight into the scientific development discourse on the rules of jinayah jurisprudence and Islamic criminal law in Indonesia.

This article aims to examine the extent to which ²³ jinayah rules, particularly those related to hudud crimes, are normatively reflected in Law No. 1 of 2023 on Indonesia's new Criminal Code (KUHP). The urgency of this study stems from the lack of focused research mapping the relationship between hudud jurisprudence and the substantive provisions of the new KUHP, despite the relevance of fiqh as a normative framework for assessing the alignment between Islamic and national law. The study contributes theoretically by advancing scholarly discourse on the integration of Islamic legal values into Indonesia's positive law, positioning fiqh rules as analytical tools in contemporary legal development. Practically, this research offers insights for policymakers, academics, and legal practitioners in formulating criminal law that is not only constitutional and contextually grounded but also embodies the universal principles of Islamic law—such as justice, protection of life, dignity, and public welfare.

II. METHOD

This study employed a qualitative research design using a normative-judicial approach (Kusumastuti & Khoiron, 2019). This approach was chosen to analyze legal materials and Islamic jurisprudence texts systematically, especially those related to hudud criminal law. The normative-judicial method focuses on examining written legal norms, both from Islamic law (fiqh) and positive law, to determine their compatibility, interaction, and integration (Masrofah, 2022). The data in this study were collected through comprehensive library research (George, 2008), which involved reviewing authoritative sources from both classical and contemporary Islamic law, as well as official statutory instruments. Primary data were obtained from two key sources: Islamic legal principles (fiqh) and formal legal documents. The main fiqh reference was the book *Kaidah Fikih Jinayah* by Jaih Mubarak and Enceng Arif Faizal, which presents an organized classification of hudud-related rules. Meanwhile, the legal reference used as the primary source was Law No. 1 of 2023 concerning the new Indonesian Criminal Code (KUHP), which serves as the object of comparison and analysis.

In addition to the primary sources, this research also utilized secondary data to enrich the theoretical and contextual foundation of the analysis. These secondary sources included books, peer-reviewed journal articles, dissertations, and other academic publications relevant to the theme of hudud crimes, Islamic criminal law, and Indonesian legal reform. The data collection technique was conducted through documentation, emphasizing the identification, selection, and categorization of relevant texts. The nature of this study is analytical-descriptive, where collected data were first described to present a clear overview of the legal norms, followed by a critical qualitative analysis. The analysis process involved organizing, reducing, and verifying data obtained from library materials, ensuring that only valid and relevant information was used. The data were then processed using an inductive reasoning model to draw conclusions that reflect both textual coherence and contextual relevance between Islamic criminal law principles and their selective adoption in the new Criminal Code.

III. RESULT AND DISCUSSION

Identify of Islamic Legal Rules

The term "Islamic legal rules" in this article refers to *fiqh* rules, also known as *qawā'id fiqhiyyah* or *qawā'id al-ahkām*. Etymologically, "rule" refers to something fixed, fundamental, or universal (Falusi, 2003), while "fiqh" means understanding (Askar, 2010) or deep comprehension (Munawwir, 1997). Terminologically, a "rule" is something universal (*kulliyah*) that applies to many particular cases (*juz'iyah*) (Al-Jurjani, 1405), and *fiqh* refers to knowledge of sharia law concerning human actions, derived from detailed evidences (Zahrah, 1958). Thus, *fiqh* represents the outcome of *ijtihad* through scholarly interpretation of the Qur'an and Sunnah (Andiko, 2014). When combined, the phrase "fiqh rules" refers to a distinct discipline within Islamic legal theory. Classical and contemporary scholars have defined these rules in various ways. Imam Suyuthi defined *fiqh* rules as general principles from which many particular laws are known. Ali Ahmad

an-Nadwi offered two definitions: as *sharia* rules that govern the majority of legal cases, and as foundational universal principles applicable across legal chapters (Al-Nadwi, 1994). Similarly, Musthafa Ahmad Az-Zarqa described them as concise formulations encapsulating general *sharia* laws (Al-Zarqa', 1967).

From these perspectives, *fiqh* rules can be understood as a set of universal legal norms summarizing broad jurisprudential issues, from which specific rulings may be derived. Scholars differ, however, in whether these rules are fully universal (*kullī*) or mostly applicable (*aghlabī*). Those favoring the *aghlabī* view argue that *fiqh* rules allow exceptions (*istithnā*), thereby challenging their universality. Meanwhile, those supporting the *kullī* perspective assert that exceptions are rare and do not negate the general applicability of these rules. Both camps agree on the existence of exceptions, but they differ on whether those exceptions diminish the universal scope of *fiqh* rules (Andiko, 2014).

Identify of Islamic Criminal Law

Islamic criminal law, known in Indonesian as *fiqh jinayah*, is a branch of Islamic jurisprudence that focuses on criminal acts and their corresponding punishments. Linguistically, the term *jinayah* derives from the Arabic root *jana-yajni-jinayah*, which means to commit a wrongdoing or sin (Al-Yassu'i, 2002). In legal usage, *jinayah* often refers to criminal acts, particularly those involving harm to the body or life, such as murder, assault, or abortion (Hamim, 2020). According to Abdul Qadir Audah, *jinayah* refers to any act prohibited by sharia, whether it relates to life, property, or other protected values (Audah, 1963). Sayyid Sabiq similarly defines *jinayah* as any action prohibited by Islamic law due to the harm it poses to religion, life, intellect, dignity, or wealth (Sabiq, 1970). When combined with the term *fiqh*, *fiqh jinayah* becomes a distinct legal science that addresses sharia rules regarding prohibited acts and their punishments. Haliman defines *fiqh jinayah* as sharia law that prohibits certain acts and prescribes penalties involving physical or financial suffering (Haliman, 1971). Sahid HM adds that *fiqh jinayah* is the study of sharia law pertaining to crimes and punishments, based on detailed legal evidence. In the Indonesian legal context, criminal law refers to the body of laws governing offenses and their punishments under national jurisdiction (HM, 2015).

In Islamic criminal law, criminal acts are termed *jarimah*, while the punishments are called *uqubah*. The word *jarimah* stems from *jarama*, meaning to commit a wrong or sinful act (Munajat, 2004). Terminologically, *jarimah* refers to acts prohibited by sharia, with punishments determined by God—either explicitly (*hadd*) or left to judicial discretion (*ta'zir*) (Al-Mawardi, 1992). In common usage, *jarimah* refers to actions such as theft, murder, rape, or political crimes (Hamim, 2020). These are categorized based on whom they harm: (1) offenses against individual rights (*haqq al-adami*), including crimes against life and bodily integrity; and (2) offenses against public or divine rights (*haqq Allah*), which threaten religious honor, public order, and lineage (Musa, 1975). This classification helps determine which party has the authority to prosecute and carry out sentences. Islamic criminal law generally categorizes crimes into two major components: *jinayah* and *hudud*. *Jinayah* concerns crimes involving murder, with punishments such as

qisas, diyyah, and kafarah. Hudud, on the other hand, includes fixed punishments for offenses such as adultery, false accusation (*qadzaf*), theft, alcohol consumption, robbery, and rebellion (*bughat*) (Sunarto, 2020).

Criminal (Jarimah) Hudud

In fiqh literature, criminal acts in Islamic law are generally categorized into three types: hudud, qishash/diyat, and ta'zir crimes. The term *hudud* derives from the Arabic word *hadd*, meaning a boundary or fixed limit (Ibnu Manzur, 1956). According to Abdul Qadir Audah, *jarimah hudud* refers to crimes punishable by hadd sanctions—penalties that are divinely determined in both type and amount and represent the rights of Allah (Audah, 1963). These punishments are considered fixed and immutable, making reinterpretation or modification impossible. The legal texts must be applied as they are, with no room for discretionary judgment. Hudud crimes include:

1. Sariqah (theft): stealing property secretly from its usual place by a mature and sane individual without valid justification (Al-Sabuni, 1980). The punishment, under specific conditions, is amputation of the hand.
2. Hirabah (robbery): forcibly taking property with violence or murder (Al-Zarqa', 1967). The punishment includes death, crucifixion, alternate amputation, or exile.
3. Zina (adultery): unlawful sexual intercourse between a man and a woman (Muslich, 2005). The punishment is 100 lashes for the unmarried (*ghair muhshan*) and stoning for the married (*muhshan*).
4. Qadzaf (false accusation of zina): accusing someone of adultery without four reliable witnesses (Al-Zarqa', 1967). The punishment is 80 lashes.
5. Syurbul khamr (consumption of intoxicants): drinking substances that cause intoxication (Hamim, 2020). The punishment is 40 or 80 lashes, depending on scholarly views.
6. Bughat (rebellion): unlawfully resisting legitimate state authority (Audah, 1963). The punishment is death.
7. Riddah (apostasy): leaving Islam through intention, word, or action, and deliberately abandoning faith. The prescribed punishment is the death penalty (Al-Zuhayli, 1998).

Background to the Establishment of Law (UU) no. 1 of 2023 concerning the Criminal Code

The enactment of Law No. 1 of 2023 concerning the Criminal Code is a major legal milestone for Indonesia, marking the culmination of a legislative process that spanned six decades, from 1963 to 2023. After years of debate and drafting, the new Criminal Code (KUHP) was officially passed in a DPR RI plenary session on December 6, 2022, and signed by President Joko Widodo on January 2, 2023 (Ariyanti, 2024). This Code replaces the colonial-era Wetboek van Strafrecht (Dutch Penal Code), which had been enforced since 1918 and adapted under Law No. 1 of 1946. The new KUHP, consisting of 37 chapters, 624 articles, and 345 pages, is structured into two main books: Book One (general

provisions) and Book Two (specific offenses), with an explanation section. Book One not only serves as a guide for Book Two but also applies to other legal frameworks, including regional regulations unless specified otherwise. This unified codification reflects Indonesia's sovereign legal identity (Widijowati, 2023).

Law No. 1 of 2023 will officially take effect in 2026, allowing for a three-year transitional period for socialization and implementation (*Indonesia's New Criminal Code and Intellectual Property*, 2023). The Ministry of Law and Human Rights has outlined three main steps during this phase. First, a staged and comprehensive socialization campaign will begin with law enforcement officers and extend to academics and the broader public to ensure uniform understanding. Second, the government will develop a new Criminal Code module that explains the contents in detail through structured discussions and Q&A formats—intended as a training guide. Third, supporting regulations will be drafted to align existing laws with the new KUHP (3 *Langkah Kemenkumham Untuk Menyosialisasikan KUHP Baru*, 2023). These efforts aim to ensure a smooth transition and provide legal clarity for practitioners and the public alike. The KUHP's underlying philosophy represents a shift from the classical doctrine of the Dutch Penal Code to a neo-classical model that integrates both objective elements (acts) and subjective elements (intent or mindset), offering a more holistic view of criminal responsibility (*UU 1/2023: Kitab Undang-Undang Hukum Pidana (KUHP)*, 2023).

In addition, post-WWII developments such as victimology have influenced the KUHP's formation by emphasizing fair treatment of victims and the abuse of power. This aligns with the broader transformation in criminal law thinking, impacting how offenses, liability, and sanctions are defined (<https://www.jogloabang.com/pustaka/uu-1-2023-kuhp-buku-kesatu>, n.d.) According to legal expert Sudarto, the replacement of the Dutch legacy Code is justified on political grounds (national pride), sociological grounds (misalignment with Indonesian values), and practical grounds (language barriers and interpretive inconsistency) (Sudarto, 1983). Prof. Muladi of Diponegoro University further emphasized that national criminal law should be rooted not only in sociological and practical considerations but also ideologically anchored in Pancasila (Muladi, 1990). Altogether, the new KUHP reflects Indonesia's aspiration to develop a national criminal legal system that is culturally relevant, politically sovereign, and aligned with constitutional ideals.

Islamic Law Principles of Criminal Hudud and Its Application to the Criminal Code

In the book *Rules of Jinayah Fiqh* by Jaih Mubarak and Enceng Arif Faizal regarding the rules of Jinayah fiqh relating to the qualifications of the jarimah hudud (Mubarak & Enceng Arif Faizal, 2004), it is stated that there are four general rules for hudud, 8 for the crime of adultery, 5 for the crime of qadzaf, and 2 for the crime of drinking khamr. Rules: the crime of theft has seven rules, the crime of robbery has three rules, the crime of rebellion has three rules, and the crime of riddah has three rules. If the rules of jinayah fiqh are applied in Law no. 1 of 2023 concerning the Criminal Code, the following data will be produced: General hudud rules are included in Article 1 paragraphs (1) and (2), general adultery criminal rules are included in articles 411-423, qadzaf criminal rules do

not exist, the general criminal rules for drinking wine are included in article 424, the general criminal rules for theft are included in articles 476-481, the general criminal rules for robbery are included in articles 479-481, the general criminal rules for rebellion are included in articles 191-196, and no one enters the criminal law of riddah.

As a form of a concise and comprehensive explanation of the description above, data on the Islamic legal rules of criminal hudud and their application in Law no. 1 of 2023 concerning the Criminal Code is presented below.

1. Islamic law rules general criminal hudud (4 rules)

The fiqh rules relating to Islamic criminal law hudud are generally four rules (Mubarak & Enceng Arif Faizal, 2004); (Musadad & Mustaniroh, 2020). These rules are:

Table 1: General Hudud Criminal Jurisprudence Rules

No	Text and Meaning of Rules	Article of the Criminal Code
1	الْحُدُودُ تَسْقُطُ بِالشُّكِّ "Hudud sanctions are void due to skepticism/doubt."	None
2	الْعَبْرَةُ فِي الْحُدُودِ بِخَالِ وَجُودِهَا لِحَالِ اسْتِقَائِهَا "What is the guideline in determining hudud criminal acts is when the crime is committed, not when the crime is completed."	None
3	إِقَامَةُ الْحُدُودِ وَرَفْعُ التَّنَازُعِ فِي الْحَقُوقِ يُخْتَصُّ بِالْحُكَمِ "Implementing hudud (criminal) sanctions and resolving disputes regarding (civil) rights are left to the courts."	None
4	لَا يَجُوزُ اثْبَاتُ الْحُدُودِ مِنْ طَرِيقِ الْقِيَاسِ وَأَمَّا طَرِيقُ اثْبَاتِهَا فَالتَّوْفِيقُ "It is not permissible to apply the radius of hudud by means of qiyas, but the way to determine it is the text."	Article 1 paragraphs (1) and (2)

From the table above, it can be concluded that there is only one rule that is relevant to the Criminal Code (KUHP), Article 1 paragraphs (1) and (2), otherwise it is not relevant.

2. Islamic law rules for the crime of adultery (8 rules)

There are eight fiqh rules related to the criminal law of hudud zina (Mubarak & Enceng Arif Faizal, 2004); (Musadad & Mustaniroh, 2020). These rules are:

Table 2: Rules of Jurisprudence on The Crime of Adultery

No	Text and Meaning of Rules	Article of the Criminal Code
1	الْأَوْطَاءُ كَالرِّبَا None	None

	"Homosexuality is like adultery".	
2	الْمُشَاحَقَةُ لَيْسَ كَالزَّانَا "Jarimah Lesbian is not the same as adultery".	None
3	لَا حَدَّ عَلَى مَنْ وَطِئَ الْبَهِيمَةَ "There are no hadd on people having sex with animals".	None
4	لَا حَدَّ عَلَى مَنْ وَطِئَ الْمَرْأَةَ الْمَيِّتَةَ "There is no hadd against a man having sexual intercourse with a woman's corpse".	Article 415 point a (ta'zir punishment)
5	لَا حَدَّ لِمَنْ أَدْخَلَتْ ذَكَرَ مَيْتٍ فِي فَرْجِهَا "There is no hadd for women who insert the genitals of dead men into their farji".	Article 415 point a (ta'zir punishment)
6	لَا حَدَّ عَلَى الْمَرْأَةِ الَّتِي طَاوَعَتِ الصَّبِيَّ أَوْ الْمَجْنُونِ "There is no hadd for women who have sex with boys or crazy people".	Article 418 (1)
7	يُحَدُّ مَنْ وَطِئَ امْرَأَةً صَغِيرَةً أَلَّا يَكُنْ وَطْئُهَا عَادَةً "Hadd is imposed on men who have sex with women who are not yet mature enough to be able to have sex".	Article 413
8	لَا يُحَدُّ مَنْ وَطِئَ زَوْجَتَهُ فِي دُبُرِهَا وَلَكِنْ يُؤَدَّبُ "There is no hadd for a husband who has sexual intercourse with his wife through her anus, but ta'zir".	None

From the table above, it can be concluded that not all rules are relevant to the Criminal Code, there are only four rules that are relevant, article 415 point a (ta'zir punishment), article 415 point a (ta'zir punishment), article 418 (1), article 413, other than irrelevant.

3. The rules of Islamic criminal law qadzaf (5 rules)

There are five fiqh rules related to the criminal law of hudud qadzaf (Mubarak & Enceng Arif Faizal, 2004); (Musadad & Mustaniroh, 2020). These rules are:

Table 3: Rules of Jurisprudence on The Crime of Qadzaf

No	Text and Meaning of Rules	Article of the Criminal Code
1	15 مَنْ زَعَىٰ إِنْسَانًا يَؤَاقِعُهُ أَوْ صِفَةً مُّخَرَّمَةً وَجَبَ عَلَيْهِ أَنْ يَنْبُتَ صَبْحَتُهُ مَا زَمَاهُ بِهِ فَإِنْ عَجَزَ عَنْ إِنْبَاتِهِ أَوْ امْتَنَعَ وَجَبَتْ عَلَيْهِ الْعُقُوبَةُ "Whoever accuses someone of an event or situation that is forbidden, it is obligatory for him to prove the	None

	truth of his accusation. If he cannot prove it then he must be punished".	
2	<p>مَنْ سَبَّ إِنْسَانًا أَوْ شَتَمَهُ فَعَلَيْهِ الْعُقُوبَةُ وَلَيْسَ لَهُ الْحَقُّ فِي إِثْبَاتِ صِحَّةِ مَا قَالَ</p> <p>"Whoever mocks or insults someone, punishment is obligatory for him without having to prove the truth of what he said".</p>	None
3	<p>كُلُّ مَا يُؤْجِبُ حَدَّ الزُّنَا عَلَى مَا فَعَلَهُ يُؤْجِبُ حَدَّ الْقَذْفِ عَلَى الْقَازِفِ بِهِ</p> <p>"Everyone who is punished with the had of zina for the perpetrator must also be punished with the had of qadzaf for the accuser".</p>	None
4	<p>يُشْتَرَطُ فِي الْقَذْفِ أَنْ يَكُونَ الْمَقْدُوفُ مَعْلُومًا وَيَجِبُ أَنْ يَكُونَ الْقَذْفُ مُطْلَقًا غَيْرَ الْمَرْطُوبِ وَالْإِضَافَةِ إِلَى وَقْتٍ مُعَيَّنٍ</p> <p>"It is required in a charge of zina (which is subject to hadd) that the accused person be known and the accused be free from conditions and ties within the specified time".</p>	None
5	<p>يُشْتَرَطُ فِي الْمَقْدُوفِ أَنْ يَكُونَ مُحْصَنًا رَجُلًا كَانَ أَوْ أَمْرَأَةً</p> <p>"It is required that the accused person must be a muhshan (a person who protects himself from committing adultery) whether male or female".</p>	None

From the table above, it can be concluded that none of the rules are relevant, because this criminal offence is not regulated in the Criminal Code.

4. Islamic legal rules for the crime of drinking khamr (2 rules)

There are two fiqh rules related to the criminal law of hudud drinking khamr (Mubarak & Enceng Arif Faizal, 2004); (Musadad & Mustaniroh, 2020). These rules are:

Table 4: Rules of Jurisprudence of Drinking Khamr

No	Text and Meaning of Rules	Article of the Criminal Code
1	<p>كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ خَمْرٍ حَرَامٌ</p> <p>"Every intoxicant is khamr and every khamr is haram".</p>	None
2	<p>لَا عِزَّةَ بِقُوَّةِ الْإِسْكَارِ فِي الْمَشْرُوبِ فَمَا أَشْكُرَ كَثِيرُهُ فَقَلِيلُهُ حَرَامٌ</p> <p>"The intoxication power of a drink (alcohol content) is not a measure (haram), a drink that can be intoxicating in large quantities is haram even in small amounts".</p>	Article 424 (1)

From the table above, it can be concluded that there is only one rule that is relevant to the Criminal Code, namely Article 424 (1).

5. Islamic law rules for criminal theft (7 rules)

There are seven fiqh rules related to the criminal law of hudud theft (Mubarak & Enceng Arif Faizal, 2004); (Musadad & Mustaniroh, 2020). These rules are:

Table 5: Rules of Jurisprudence of Criminal Theft

No	Text and Meaning of Rules	Article of the Criminal Code
1	أَخَذَ الْعَاقِلُ الْبَالِغَ عَشْرَةَ دَرَاهِمَ أَوْ مَقْدَارَهَا خَفِيَةً عَمَّنْ هُوَ مُنْصِدٌّ لِلْجَفْظِ مِمَّا لَا يَتَسَارَعُ إِلَيْهِ الْفَسَادُ مِنَ الْمَالِ الْمَتَمُورِلِ لِلْغَيْرِ مِنْ حِزْزٍ بِلَا شَكِّهِ <i>"Theft is taking property carried out by a reasonable person (not crazy) and an adult; at least ten dirhams; which is done secretly; These assets are stored in a safe (proper) place, are not easily damaged and belong to other people without any doubt".</i>	Article 476
2	كُلُّ مَا اسْتَهْلَكَ فِي مَحَلِّ الْخَادِثِ فَهُوَ مُثْلِفٌ لَا مَسْرُوقٌ <i>"Any (property) that is used up (disappeared) during theft is considered destruction, not theft".</i>	None
3	يَبْطُلُ الْجُرُؤُ بِفَتْحِ الْبَابِ وَالنُّقْبِ <i>"Hiriz fell (disappeared) because the door was open or there was a hole".</i>	None
4	لَا قَطْعُ فِي السَّيِّئِ الْبَاطِلِ <i>"There is no cutting off of hands for (theft of) something trivial".</i>	Article 478
5	لَا قَطْعُ فِي سَرْقَةِ مُحَرَّمَ وَأَلَابِ الْبُهْوَى <i>"There is no cutting of hands for theft of prohibited items and immoral tools".</i>	None
6	لَا قَطْعُ قَبْلَ النَّصَابِ <i>"There is no cutting of hands before the nishab".</i>	Article 478
7	لَا قَطْعُ عَلَى الْأَصُولِ إِذَا سَرَقُوا مِنْ الْفُرُوعِ <i>"There is no amputation of the father's hand (and so on) who steals his son's property (and so on down)".</i>	Article 481 paragraphs (1), (2) and (3)

From the table above, it can be concluded that there are only four rules that are relevant to the Criminal Code, namely articles 476, 478, 481 (1) (2) (3).

6. Islamic law rules for criminal robbery (3 rules)

There are three fiqh rules related to the criminal law of hudud robbery (Mubarak & Enceng Arif Faizal, 2004); (Musadad & Mustaniroh, 2020). These rules are:

Table 6: Rules of Jurisprudence of Criminal Robbery

No	Text and Meaning of Rules	Article of the Criminal Code
1	الْجَرَاةُ هُوَ أَخْذُ الْغَالِ عَلَى سَبِيلِ الْمَغَالَبَةِ "Robbery is the taking of property carried out openly".	Article 479 paragraph (1)
2	أَنْ تَفْعَ جَنَائِيَةَ الْجَرَاةِ فِي خَارِجِ الْمَضَرِّ "The robbery was carried out outside the city."	None
3	أَنْ يَكُونُ مَعَ الْمَخَارِبِينَ سِلَاحٌ "The people who robbed them had to use weapons."	Article 479 paragraph (1), (2) points a, b, c, or d, paragraph (3), paragraph (41)

From the table above, it can be concluded that there are only four rules that are relevant to the Criminal Code, namely articles 479 (1), 479 (1) (2) items a, b, c, or d, paragraph (3), paragraph (41).

7. Islamic legal rules for criminal rebellion (2 rules)

There are two fiqh rules related to the criminal law of hudud robbery (Mubarak & Enceng Arif Faizal, 2004); (Musadad & Mustaniroh, 2020). These rules are:

Table 7: Rules of Jurisprudence of Criminal Rebellion

No	Text and Meaning of Rules	Article of the Criminal Code
1	الْإِمْتِنَاعُ عَنِ الطَّاعَةِ فِي مَعْصِيَةِ لَيْسَ بَغْيًا "Refusing to obey (the priest's orders) to commit immoral acts is not a tawamah bughat"	None
2	الْخُرُوجُ عَلَى الْإِمَامِ بِعَدَمِ الْقُوَّةِ لَيْسَ بَغْيًا "Opposing an imam without using force is not a jarimah bughat".	Article 196 paragraphs (1) and (2)

From the table above, it can be concluded that there is only one rule that is relevant to the Criminal Code, namely article 196 (1), and (2).

8. Riddah criminal Islamic law rules (3 rules)

There are three fiqh rules related to the criminal law of hudud riddah (Mubarak & Enceng Arif Faizal, 2004); (Musadad & Mustaniroh, 2020). These rules are:

Table 8: Rules of Jurisprudence of Criminal Riddah

No	Text and Meaning of Rules	Article of the Criminal Code
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1	كُلُّ مَنْ امْتَنَعَ عَنْ إِنِّيَانِ فِعْلٍ يُوجِبُهُ الْإِسْلَامُ مَعَ اسْتِحْلَالِ عَدَمِ إِنِّيَانِهِ فَهُوَ رَاجِعٌ عَنِ الْإِسْلَامِ "Any person who refuses to carry out an action that is required of him by Islam accompanied by the belief that it is halal to leave it, then he has left Islam".	None
2	كُلُّ مَنْ أَى الْمُحَرَّمَاتِ مَعَ اسْتِحْلَالِ إِنِّيَانِهَا فَهُوَ رَاجِعٌ عَنِ الْإِسْلَامِ "Every person who commits an act that is forbidden (Islam) and believes it is halal to do so has left Islam".	None
3	يُعْتَرِ خُرُوجًا عَنِ الْإِسْلَامِ كُلُّ اغْتِقَادٍ مُنَافٍ لِلْإِسْلَامِ "Every belief that is contrary to Islamic (aqidah) shows that you have left Islam"	None

The Role of Hudud Criminal Islamic Law Rules in the Criminal Code

From the explanation of the Islamic legal rules of criminal hudud and their application in Law No. 1 of 2023 concerning the Criminal Code, the details can be formulated in the following table:

Table 9: Rules of Islamic Law Criminal Hudud and in Law No. 1 Year 2023 on Criminal Code

No.	Jarimah Hudud	Number of Rules Included in the Criminal Code
1.	General rules of hudud	Of the 4 rules, there is only one rule that can be included in the Criminal Code and this is only in one article, namely article 1 paragraph 1.
2.	In the crime of adultery	Of the 8 rules, there are only 4 rules that can be applied to the Criminal Code, namely article 415, article 418 paragraph 1, article 413 and article 418 paragraph 1.
3.	In the qadzaf crime	Of the 5 rules, none of them can be applied to the Criminal Code
4.	In the crime of drinking khamr	Of the 2 rules, both can be applied, namely in article 424 paragraph 1.
5.	In criminal theft	Of the 7 existing rules, there are only 4 rules that can be applied, included in articles 476, 478 and 481 paragraphs 1, 2 and 3.
6.	In robbery crime	Of the 3 rules, there are only two rules that can be applied to the Criminal Code, namely article 479 in paragraphs 1, 2 and 3.
7.	In the crime of rebellion	Of the 2 rules, only one can be applied to the Criminal Code,

		namely article 196 paragraph 1 and paragraph 2.
8.	In the punishment of riddah	Of the 3 rules, none of them are ² included in the Criminal Code

From the table data, a comprehensive ⁹ analysis of the application of each rule in the Criminal Code is presented as follows:

1. Analysis of the Islamic legal rules of general criminal hudud

In Islamic law, the general criminal law of hudud, as ⁵ explained in the previous sub-chapter, is that of the four (4) rules, there is only one rule that is included in the Criminal Code, and that rule is:

لَا يَجُوزُ اثْبَاتُ الْحُدُودِ مِنْ طَرِيقِ الْقِيَاسِ وَأَيْمًا طَرِيقُ اثْبَاتِهَا التَّوْفِيقُ

"It is not permissible to apply the radius of hudud by means of qiyas, but the way to determine it is the text."

This rule is included in and in line with Criminal Code Article 1, paragraphs (1) and (2). The article reads: "Article 1 (1) No act can be subject to criminal sanctions and action, except on the strength of criminal regulations in laws and regulations that existed before the act was committed. (2) In determining the existence of a criminal act, analogies are prohibited."

From this article, it can be ⁸ analyzed that the text of the rules and their application are the same as the principles or principles in Islamic criminal law, namely the principle of legality ¹⁰ and the principle of rejecting the use of qiyas or analogies in determining a criminal act. The principle of legality is the principle that determines that no act is prohibited and punishable by criminal law if it is not previously defined in legislation (Khasan, 2018). Meanwhile, analogy is the application of a legal rule to an event (law) that is not actually included in the scope of that rule by abstracting the rule (Endrawati, 2018). The prohibition on analogies is the impact of the principle of legality to close gaps in interpretation by authorities or judges, which can lead to arbitrariness and injustice in the application and enforcement of the law (Endrawati, 2018). From this, it can be concluded that the general criminal law rules of hudud played a role in the formation of article 1, paragraphs (1) and (2), at least strengthening the formation of this article.

2. Analysis of Islamic legal rules for the crime of adultery

In the Islamic legal rules of the crime of adultery, as ⁵ explained in the previous sub-chapter, of the eight (8) rules, four (4) rules play a role and are included in the Criminal Code; these rules are:

a. First rule

لَا حَدَّ عَلَى مَنْ وَطِئَ الْمَرْأَةَ الْمَيِّتَةَ

"There is no hadd against a man who has sexual intercourse with a woman's corpse".

This rule is included in and in line with Criminal Code Article 415 point a (ta'zir punishment), where the article reads, "Sentenced with a maximum imprisonment of 9

(nine) years, every person who: a. committing obscene acts with someone who is known to be unconscious or incapacitated."

From this article it can be analyzed that the text of the rule and its application are precisely the same, have the same elements and types of punishment. The elements are the element of coitus and the element of helplessness (unable to resist) because he has died/fainted. While the sentence is the same, it falls into the category of ta'zir punishment; the difference is that the figure is stated in the Criminal Code in the form of a prison sentence with a maximum duration of nine (9) years in Islamic criminal law the figure is not stated.

For your information, Islamic law does not explain in detail the criminal act of sexual immorality. Still, this act is analogous to the criminal act of adultery because sexual immorality itself is considered an attempt or act that is close to adultery. In contrast, the act of approaching adultery is prohibited by Allah SWT (Annas, 2017). In addition, the MUI fatwa Number 57 of 2014 concerning Lesbians, Gays, Sodomy and Obscenity stipulates that what is meant by obscenity is the term for sexual activity carried out on someone who is not in a husband and wife relationship, such as touching, squeezing, rubbing and other activities, both committed against members of the opposite sex or same sex, adults or children, which is not permitted by Islamic law because it is a haram act. The perpetrator can be punished with ta'zir (Fatwa Majelis Ulama Indonesia, 2014).

b. Second rule

لَا حَدَّ لِمَنْ أَدْخَلَتْ ذَكَرَ مَيْتٍ فِي فَرْجِهَا

"There is no hadd for a woman who inserts the genitals of a dead man into her farji."

This rule is included in and in line with Criminal Code Article 415 point a (ta'zir punishment), where the article reads, "Sentenced with a maximum imprisonment of 9 (nine) years, every person who: a. committing obscene acts with someone who is known to be unconscious or incapacitated."

The analysis of this second rule is the same as the rule above (first rule) in that the text of the rule and its application are the same, both in terms of elements and types of punishment. The difference is that in the Criminal Code, the figure is stated in the form of a prison sentence with a maximum duration of nine (9) years, while in Islamic criminal law, the figure is not stated. Everything is returned to the policy of the legitimate leader.

c. Third rule

لَا حَدَّ عَلَى الْمَرْأَةِ الَّتِي ظَاوَعَتِ الصَّبِيَّ أَوِ الْمَجْنُونِ

"There is no hadd for women who have sexual relations with boys or crazy people."

This rule is included in and in line with the Criminal Code Article 418 (1) (ta'zir punishment), where the article reads, "Every person who commits fornication with his biological child, stepchild, adopted child, or child under his supervision who is entrusted to his care." or educated, shall be punished with imprisonment for a maximum of 12 (twelve) years."

From this article, it can be analyzed that the text of the rule and its application have similarities in the concept of Islamic criminal law, both in the criminal elements and in the type of punishment, namely ta'zir punishment. Acts of sexual immorality in Islamic law are classified as jarimah ta'zir, which are related to crimes against honor and damage to morals. Regarding the act of sexual immorality, Islamic law does not yet regulate it specifically. Still, this criminal act is equated with an act that is close to adultery and is haram (Hasanuddin, 2022).

d. Fourth rule

يُحَدِّدُ مَنْ وَطِئَ امْرَأَةً صَغِيرَةً الَّتِي يُفَكِّنُ وَطْئُهَا غَاذَةً

"A hadd is imposed on men who have sexual intercourse with women who are not yet mature enough to be able to have sexual intercourse".

This rule is included in and in line with the Criminal Code Article 413 and Article 418 (1), where the words of the two articles are: Article 413 "Every person who has sexual intercourse with someone who he knows is a member of his inner family, shall be punished with imprisonment for a maximum of 10 (ten years)". Article 418 (1) "Any person who commits sexual immorality with his biological child, stepchild, adopted child, or child under his supervision who is entrusted to his care or education, shall be punished with imprisonment for a maximum of 12 (twelve) years."

From this article, it can be analyzed that the text of the rule and its application have similarities in the concept of Islamic criminal law, namely in the elements of criminal acts, both in article 413 and article 418, both of which fall into the category of adultery. In Islamic law, adultery is an act of having sexual relations without any marital ties, and it does not only damage the perpetrators but has an immense influence on public order regarding other impacts that could arise (Supardin & Syatar, 2021). What is different is the type of punishment; where in Islamic criminal law, the act should be punished with hadd punishment, either stoning or binding, depending on the category of adultery (Jamhari, 2012), while in the Criminal Code, the sanction is punishable by ta'zir, namely a maximum imprisonment of ten (10) years each. And twelve (12) years

3. Analysis of Islamic legal rules for the crime of drinking khamr

In Islamic law, the crime of drinking khamr, as explained in the previous sub-chapter, is that of the two (2) rules, both of which can play a role and are included in the Criminal Code, these two rules are:

كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ خَمْرٍ حَرَامٌ

"Every intoxicant is khamr and every khamr is haram".

لَا عِبْرَةَ بِقُوَّةِ الْإِسْكَارِ فِي الْمَشْرُوبِ فَقَدْ أَشْكُرَ كَثِيرُهُ فَقَلِيلُهُ حَرَامٌ

"The drunkenness of a drink (alcohol content) is not a measure of (haram), a drink that can be intoxicating in large quantities is haram even in small amounts."

This rule is included in and in line with the Criminal Code Article 424 paragraphs (1), (2), (3), where the paragraphs in the article are paragraph (1) "Every person who sells or gives drinks or intoxicating substances to people who while being drunk, shall be punished with

a maximum imprisonment of 1 (one) year or a maximum fine of category II." Paragraph (2) "Any person who sells or gives drinks or intoxicating substances to a child shall be punished with a maximum imprisonment of 2 (two) years or a maximum fine of category II. (3) Any person who, by force or threat of violence, forces someone to drink or use intoxicating substances shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of category III." Paragraph (3) "Any person who, by force or threat of violence, forces someone to drink or use intoxicating substances, shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of category III."

From this article, it can be analyzed that the text of the rule and its application are actually not precisely the same because, in Islamic criminal law, the central prohibition is directed at perpetrators who drink khamr. At the same time, the Criminal Code is aimed at other parties who act as intermediaries for people who drink khamr. In Islamic criminal law, a person who is an intermediary in the crime of drinking khamr is punished in the category of ta'zir punishment. The difference is, in the Criminal Code, the number of sentences is stated, while in Islamic criminal law, the amount is left to the leader's discretion.

In Islamic criminal law, the perpetrator of the criminal offense of alcohol trafficking is not explicitly mentioned in the text, so it falls into the category of jarimah ta'zir. Perpetrators of criminal acts of liquor trafficking and also other types of intermediaries such as producers, agents and others are mentioned in the hadith that Allah SWT curses these acts; the hadith is:

عَنْ أَنَسِ بْنِ مَالِكٍ رَضِيَ اللَّهُ عَنْهُ، قَالَ: لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي الْخَمْرِ عَشْرَةَ: غَاصِرَهَا، وَمُعْتَصِرَهَا، وَشَارِبَهَا، وَخَاطِلَهَا، وَالْمُخْمُولُ إِلَيْهِ، وَسَافِقَهَا، وَنَائِعَهَا، وَكَلَّ ثَمَنَهَا، وَالْمُشْتَرِي لَهَا، وَالْمُشْتَرَاةَ لَهَا

"From Anas bin Malik radiyallahu 'anhu, he said, 'Rasulullah shallallahu 'alaihi wa sallam cursed in the matter of wine on 10 things: 1) the person who squeezed it, 2) the person who asked to squeeze it, 3) the person who drank it, 4) the person who brings it, 5) the person who brings it, 6) the person who pours it, 7) the person who sells it, 8) the person who eats the result, 9) the person who buys it, 10) and the person who is bought for it." (HR Tirmidzi).

The hadith only explains the perpetrators involved in drinking khamr but does not explicitly state the type of punishment given, so the sentence is left to the leader's discretion (Jumaylia, 2018).

4. Analysis of Islamic legal rules for criminal theft

In the Islamic legal rules of the crime of adultery, as explained in the previous sub-chapter, of the seven (7) rules, there are four (4) rules that play a role and are included in the Criminal Code, these rules are:

a. First rule

السَّرْقَةُ هِيَ اخْتِادُ الْعَاقِلِ الْبَالِغِ عَشْرَةَ ذَرَاهِمَ أَوْ يَمْدَادُهَا خَفِيفَةً عَمَّنْ هُوَ مُتَّصِدٌ لِلْحِفْظِ مِمَّا لَا يَتَسَارَعُ إِلَيْهِ الْقَسَادُ مِنَ الْعَالِي الْمُتَمَوِّلِ لِلْغَيْرِ مِنْ جِزْرِ بِلَا شُبْهَةٍ

"Theft is taking property carried out by a person who is reasonable (not crazy) and has reached maturity; at least ten dirhams; which is done secretly; The assets are stored in a safe (proper) place, not easily damaged and belong to other people without any doubt."

This rule is included in and in line with Criminal Code Article 476, where the article reads: "Any person who takes an item which partly or wholly belongs to another person, with the intention of possessing it unlawfully, shall be punished for theft, with a maximum imprisonment of 5 (five) years or a maximum fine of category V".

From this article, it can be analyzed that the text of the rule and its application have similarities in the concept of Islamic criminal law, namely in the aspect of the criminal element of theft; there is only a slight difference, namely in the amount of property stolen. In Islamic law, the minimum value is limited to 40 dirhams (according to the Hanafi school of thought) and 3 dinars (according to the Maliki, Shafi'i and Hanbali schools of thought) (Salma, 2020). At the same time, in the Criminal Code, it is 500,000 rupiah. In the aspect of the punishment, there is a difference between the rules and the Criminal Code; in Islamic criminal law, the punishment is cutting off one's hand if one has met the element of the nishab, while in the Criminal Code, the punishment of ta'zir applies, namely a maximum prison sentence of 5 (five) years.

b. Second rule

لَا قَطْعُ فِي السَّيِّئِ التَّافِهِ

"There is no cutting of hands for (theft of) something trivial".

This rule is included in and in line with Article 478 of the Criminal Code, where the article reads, "If the criminal act as intended in Article 476 and Article 477 paragraph (1) letters f and g is committed not in a house or closed yard where there is a house, and the price of the goods he stole were not more than IDR 500,000 (five hundred thousand rupiah), he was punished for petty theft, with a maximum fine of category II".

From this article, it can be analyzed that the text of the rule and its application have something in common, namely that there is no need for hadd punishment (only ta'zir punishment) or heavy punishment (only in the form of a fine), only in the Criminal Code it is stated that the maximum value does not exceed IDR 500,000. Meanwhile, the rules of Islamic criminal law are only mentioned lightly, so the interpretation is returned to the leader (imam/judge), including the amount or severity of the punishment imposed on the perpetrator.

c. Third rule

لَا قَطْعُ قَبْلَ النِّصَابِ

"There is no cutting of hands before the nishab".

This rule is included in and in line with Article 478 of the Criminal Code, as in the second rule above, where the sound of the article is "If the criminal act as intended in Article 476 and Article 477 paragraph (1) letters f and g is committed not in a house or yard. Closed house and the price of the goods stolen is not more than IDR 500,000 (five hundred thousand rupiah) shall be punished for petty theft, with a maximum fine of category II."

From this article, it can be analyzed that between the text of the rule and its application, there are similarities in the punishment, namely that there is no maximum sentence for perpetrators of theft whose stolen goods are trivial, not significant. In Islamic criminal law, punishment is left to the discretion of those in power (ta'zir punishment); it can be a light crime (imprisonment) or a fine, as in the Criminal Code (category 2).

d. Fourth rule

لَا قَطْعَ عَلَى الْأُصُولِ إِذَا سَرَقُوا مِنْ الْفُرُوعِ

"There is no cutting off the hands of a father (and so on) who steals his son's property (and so on down)"

This rule is included in and in line with Criminal Code Article 481 paragraphs (1), (2 and (3), where the text of the article is "paragraph (1). "Criminal prosecution will not be carried out if the person commits one of the criminal acts as intended in Articles 476 to Article 479 is the husband or wife of a crime victim who does not have separate tables and beds or separate assets." Paragraph (2): "Criminal prosecution can only be carried out based on the victim's complaint if the perpetrator as intended in paragraph (1) is the victim's husband or wife. Crimes involving separate tables and beds or separate assets, or belonging to a blood or joint family either in a straight line or in a sideways line up to the second degree." Paragraph (3): "In a society that uses a matriarchal system, complaints can also be made by people others who exercise the Father's Power."

From this article, it can be analyzed that the text of the rule and its application have similarities in Islamic criminal law, namely in terms of the absence of punishment or prosecution for perpetrators who are still related to close relatives, such as a father, regarding a child's property (Mardani, 2008). Only in the Criminal Code are the details more detailed, not absolute, as in the rules. Even accommodates the concept of customary law that applies in Indonesian society.

5. Analysis of Islamic legal rules for criminal robbery

In the Islamic legal rules of the crime of adultery, as explained in the previous sub-chapter, of the three (3) rules, there are two (2) rules that play a role and are included in the Criminal Code, these rules are:

a. First rule

الْجَرَائِزُ هُوَ أَخْذُ الْغَالِي عَلَى سَبِيلِ الْمَغَالَبَةِ

"Robbery is the taking of property carried out openly."

This rule is included in and in line with Criminal Code Article 479 paragraph (1), where the article reads: "Every person who commits theft which is preceded, accompanied, or followed by violence or threats of violence against people, with the intention of preparing or facilitating theft or in the event of caught red-handed, to enable himself or another person to retain control of the stolen goods, shall be punished with a maximum imprisonment of 9 (nine) years."

From this article, it can be analyzed that between the text of the rules and their application, there are similarities with Islamic criminal law in the form of elements of the

crime of robbery, namely overt elements. However, in the Criminal Code, the language used is more detailed but contains the same substance.

b. Second rule

أَنْ يَكُونَ مَعَ الْمَخَارِئِ سِلَاحٌ

"People who rob must use weapons".

This rule is included in and in line with the Criminal Code Article 479 paragraph (1), (2) points a, b, c, or d, paragraph (3), paragraph (41). Where the sound of the article is Paragraph (1) Every person who commits a theft that is preceded, accompanied, or followed by violence or threats of violence against a person, with the intention of preparing or facilitating the theft or, in the event of being caught red-handed, to enable himself or another person to remain in possession of the stolen goods, shall be punished with imprisonment for a maximum of 9 (nine) years." Paragraph (2) Any person who commits an act as referred to in Paragraph (1): a. at night in a house or closed yard where there is a house, on a public road, or in a moving public vehicle; b. theft by damaging, dismantling, cutting, breaking, climbing, using a fake key, using a phony order, or wearing counterfeit official clothing to enter the place of committing the crime or get to the goods taken; c. which results in serious injury to people; or d. together and in alliance."

Paragraph (3): "If the act as intended in Paragraph (1) or Paragraph (2) results in the death of a person, he shall be punished with imprisonment for a maximum of 15 (fifteen) years. (41) If the act as intended in paragraph (1) results in serious injury or death of a person who is committed jointly and in association with one of the things as intended in Paragraph (2) letters a and b, he shall be punished with the death penalty or life imprisonment. Life or imprisonment for a maximum of 20 (twenty) years."

From this article, it can be analyzed that between the text of the rule and its application, there are similarities in the elements of the crime of robbery, namely the aspect of using a weapon. However, in the Criminal Code, the language used is more detailed; it contains the same substance. What makes the difference is the type of punishment applied. However, this rule does not state the kind of punishment; in Islamic criminal law, types of robbery that fulfill the elements of jarimah hirabah (the crime of theft) will be subject to hadd punishment. Meanwhile, in the Criminal Code, the type of punishment applied is the tazir punishment category, with varying lengths of prison sentences, depending on the severity of the effects of the act.

6. Analysis of Islamic legal rules for criminal rebellion

In the Islamic legal rules of the crime of adultery, as explained in the previous sub-chapter, of the two (2) rules, only one (1) rule plays a role and is included in the Criminal Code, these rules are:

الْحُرُوجُ عَلَى الْإِمَامِ يَغْتَمُ الْقُوَّةَ لَيْسَ بَغْيًا

"Opposing an Imam without using force is not a jarimah bughat".

"This rule is included in and in line with Criminal Code Article 196 paragraphs (1) and (2), where the text of the article is paragraph (1) Every person who commits an evil

conspiracy or prepares to commit a criminal act as intended in Articles 191 to Article 194 shall be punished." Paragraph (2) Every person who prepares constitutional changes to state administration will not be punished."

From this article, it can be analyzed that the text of the rule and its application has the same substance in the elements of a criminal act, that opposition to the government, which is still within the "constitutional" corridor, does not fall under the criminal aspects of rebellion or treason, and cannot be punished unless it is unconstitutional.

IV. CONCLUSION

From the explanation above, it can be concluded that the rules regarding hudud crimes can be classified into eight (8) categories, namely: general hudud rules, there are four rules, there are eight rules for zina, five qadzaf crimes, two rules for drinking khamr, There are seven rules for theft, there are three rules for robbery, there are three rules for rebellion, and there are three rules for the crime of riddah. Meanwhile, suppose the eight categories of rules are applied to the Criminal Code. In that case, the general rules of hudud can be included in one article, namely Article 1, paragraph 1 of the Criminal Code. In the crime of adultery, of the eight rules, only four rules can be applied in the Criminal Code, namely article 415, article 418 paragraph 1, article 413, and article 418 paragraph 1. In the crime of qadzaf, none of the five rules can be applied in the Criminal Code. In the crime of drinking khamr, both rules can be applied in the Criminal Code, which is included in Article 424, paragraph 1. In the crime of theft, of the seven existing rules, only four rules can be applied, which are included in articles 476, 478, and 481, paragraphs 1, 2, and 3. In the crime of robbery, of the three rules, only two can be applied to the Criminal Code, namely Article 479 in paragraphs 1, 2, and 3. In the crime of rebellion of the two rules, only one can be applied to the Criminal Code, namely Article 196, paragraph 1 and paragraph 2. Lastly, regarding the crime of riddah, none of the three rules are included in the Criminal Code.

Let's look at the analysis in the table above, in principle. It can be analyzed that Islamic law's values, represented in the principles of hudud criminal jurisprudence, have been included in the articles of the Criminal Code, especially in the application of the elements of criminal acts. However, in the punishment, most concepts are different; in the Criminal Code, the application of punishment falls into the category of ta'zir punishment in Islamic criminal law. This difference is very natural, considering that the new Criminal Code originates from Islamic law, Western law, and customary law. The compromises and eclecticism of the three legal systems were ultimately chosen and used as guidelines, adapted to Indonesian society's social character, culture, and customs.

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