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ANALYSIS OF THEFT SANCTIONS: A COMPARISON OF INDONESIAN POSITIVE LAW, ISLAMIC CRIMINAL LAW, AND MUHAMMAD SYAHRUR'S CONTEMPORARY PERSPECTIVE

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ABSTRACT

This study compares theft sanctions in the Indonesian Criminal Code (KUHP), classical Islamic criminal law, and Muhammad Syahrur's Theory of Hudud. The findings show fundamental normative and practical differences among the three systems. KUHP emphasizes flexibility, rehabilitation, and human rights, while classical Islamic law stipulates strict hudud amputation under very specific conditions. Syahrur offers a contextual reinterpretation by viewing amputation as the maximum limit, allowing alternative sanctions such as imprisonment or fines that remain within sharia boundaries. His approach provides a more humane and adaptable model suitable for Indonesia's pluralistic legal context. Although Syahrur's theory is widely appreciated in theft cases, its broader application in other areas of Islamic law remains controversial. This study contributes to ongoing efforts to harmonize divine principles with modern legal and human rights standards.

ARTICLE INFORMATION

Keywords:

Theft, Indonesian Criminal Code, Islamic criminal law, Syahrur's hudud.

1. Introduction

The crime of theft constitutes one of the most frequently occurring conventional crimes in Indonesia, playing a central role in national crime statistics, and having a significant impact on the quality of public life. This crime not only results in direct material losses for individual victims but also expands into a serious threat to security, public order, and the erosion of public trust in the guarantee of legal protection. By disrupting the fundamental right of ownership and creating a sense of vulnerability, theft inherently disrupts the social and economic stability of communities. In efforts to counter it, Indonesia's positive legal system regulates the offense strictly under the Criminal Code (KUHP), where the sanctions imposed are flexible and tiered. These punishments include imprisonment, fines, and may involve the obligation to provide compensation (restitution), with the variation in sanctions proportionally adjusted based on the severity, *modus operandi*, and losses caused by the act. In stark contrast to the positive law's approach, which tends to be oriented toward restoration and general prevention, Islamic criminal law stipulates the punishment of hand amputation (*hadd*) as an absolute and strict sanction (*deterrence*) for perpetrators of theft who meet specific criteria, placing two diametrically different philosophies of punishment in the arena of law enforcement discourse in Indonesia. (Ulmuftia et al., 2024).

Indonesia, as the country with the world's largest Muslim-majority population, faces a unique and complex challenge within its law enforcement framework. The prevailing legal system is not only required to ensure certainty and order but must also strive to integrate and

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consider religious values and the principles of social justice adhered to by its citizens. This dynamic is profoundly felt in the issue of punishment, particularly for offenses like theft. The fundamental difference in sanction philosophy between positive law (which tends to be restorative and preventive, with a focus on rehabilitation) and Islamic criminal law (which is strict/absolute and oriented toward strong deterrence) creates tension and a continuous dynamic in law enforcement in Indonesia. This normative and philosophical conflict necessitates a careful legal synthesis to ensure the national legal system remains relevant, just, and widely accepted without compromising constitutional principles.(Ulmuftia et al., 2024)

This research is compelling and relevant for several fundamental reasons. First, the crime of theft remains a pressing social issue, and its relevance increases in line with the growing complexity of economic and social problems within society. Second, the fundamental difference in sanction approaches between positive law and Islamic criminal law necessitates in-depth analysis. This analysis is crucial for evaluating the effectiveness and implications of each system within the context of law enforcement in pluralistic and multicultural Indonesia.

Previous studies have extensively discussed the comparison of sanctions for the crime of theft between the two legal systems, covering the type of sanctions, the philosophy of punishment, and implementation challenges. For instance, research by Ulmuftia et al. (2024) and other related studies have shown that the Indonesian Criminal Code (KUHP) regulates sanctions in the form of imprisonment and fines (according to Article 362), whereas Islamic criminal law stipulates hand amputation as the primary sanction (*hadd*), which is supplemented by ta'zir sanctions for cases that do not meet the strict requirements of *hudud*.(Darmawan & Wahyudi, 2022)

Furthermore, previous comparative studies—such as that highlighted by Adnan Lutfi et al. (2022)—underscore a fundamental commonality in the objective of sanctions, namely achieving a deterrent effect and ensuring public protection. However, they also reveal a fundamental difference concerning sanction flexibility: Indonesian positive law is considered more adaptive to the context of the crime, while Islamic criminal law tends to adhere strictly to *hudud* provisions(Sarmin, 2023). The research gap lies precisely in the lack of in-depth study of contemporary thought among Muslim scholars. Specifically, prior studies have generally not thoroughly examined the thought of Muhammad Syahrur, who offers a contextual and flexible approach to the application of *hudud* through his Theory of Limits (*nazhariyyah al-hudud*)(Sarmin, 2023). This idea is crucial, especially in cases of theft, as it potentially allows for the formulation of sanctions within the maximum boundary (*hadd*). Moreover, there has been no specific exploration of how Syahrur's ideas can be constructively integrated into the pluralistic and dynamic Indonesian legal system(Elkarimah, 2014), Therefore, this research seeks to fill this gap by analyzing the relevance and potential application of Syahrur's thought to formulate a solution for theft sanctions that is more inclusive and responsive to the needs of justice and the current social reality of Indonesian society.

One of the latest journals addressing this topic is an article in the Al-Bayan Journal (2025) titled "Muhammad Syahrur's Thought; Theory of Limit (Nazhariyyah al-Hudud)". This journal examines Syahrur as a thinker who offers a contemporary interpretation of the hudud verse on theft in QS Al-Ma'idah verse 38. He proposes the concept that the punishment of hand amputation is the maximum limit (al-hadd al-ala) that may be imposed, not an absolute obligation. With this approach, judges are given broad discretion to adjust the punishment according to humanitarian values and social context, including imprisonment or fines, as long as it does not exceed the maximum limit specified by Sharia. This bridges the gap between the strict hudud punishment and the more flexible KUHP system.

The journal employs textual analysis, legal literature review, and contemporary hermeneutics to support the relevance and adaptability of Syahrur's approach within the pluralistic Indonesian criminal law context. His thought is deemed a solution to meet the need for just and humane law in the modern era, especially for theft sanctions.

Furthermore, several other 2025 journals emphasize the necessity to reformulate hudud theories to align with contemporary societal

dynamics without abandoning Sharia principles, enriching the discourse on Islamic criminal law reform in Indonesia.

Overall, the journal confirms that Muhammad Syahrur's theory of limits is highly relevant to theft cases and provides a significant contribution toward bridging classical Islamic law and Indonesia's progressive and humane positive law. However, its application is limited to specific cases and requires thorough contextual study for broad adoption in the national judicial system.

This study utilizes the normative legal research method (*metode penelitian yuridis normatif*) with a comparative law approach. The data used include primary legal materials (statutes and regulations, court decisions) and secondary legal materials (legal literature, journals, and related books).

Furthermore, the research also employs a conceptual approach to understand the underlying values and philosophies of sanctions within both legal systems being compared. Data collection is carried out through a literature review (*studi kepustakaan*) of relevant legal sources. Meanwhile, data analysis is performed qualitatively using a deductive technique, which involves drawing conclusions from existing theories and concepts and applying them to their actual implementation in society. This research also integrates the contemporary thought of Muhammad Syahrur regarding the theory of limits (*nazhariyyah al-hudud*) in analyzing the sanction for theft."

2. Literature Review

One of the latest journals addressing this topic is an article in the Al-Bayan Journal (2025) titled "Muhammad Syahrur's Thought; Theory of Limit (Nazhariyyah al-Hudud)". This journal examines Syahrur as a thinker who offers a contemporary interpretation of the hudud verse on theft in QS Al-Ma'idah verse 38. He proposes the concept that the punishment of hand amputation is the maximum limit (al-hadd al-ala) that may be imposed, not an absolute obligation. With this approach, judges are given broad discretion to adjust the punishment according to humanitarian values and social context, including imprisonment or fines, as long as it does not exceed the maximum limit specified by Sharia. This bridges the gap between the strict hudud punishment and the more flexible KUHP system. The journal employs textual analysis, legal literature review, and contemporary hermeneutics to support the relevance and adaptability of Syahrur's approach within the pluralistic Indonesian criminal law context. His thought is deemed a solution to meet the need for just and humane law in the modern era, especially for theft sanctions.

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Recent journals reviewing KUHP, specifically on theft offenses, emphasize that Indonesia's positive legal system offers considerable flexibility in imposing sanctions through imprisonment, fines, or a combination thereof. This is reflected in the penal boundaries and regulations aiming to align with restorative justice needs and contemporary social requirements. Accordingly, the KUHP pragmatically and adaptively handles theft based on current socio-economic contexts.

On the other hand, Muhammad Syahrur's hudud theory presents a contextual and innovative Islamic criminal law perspective. With the "maximum limit" (nazhariyyah al-hudud) concept, Syahrur prioritizes judicial ijtihad flexibility in sanction determination, including milder punishments than hand amputation prescribed in classical Islamic law. This concept responds to criticisms of rigidity and harshness in classical hudud punishments, offering Sharia-compliant yet socially contextual solutions. Integrating Syahrur's thoughts within the KUHP framework can enrich Indonesia's criminal law formulation, sustaining moderate Islamic values while respecting positive law principles that uphold social justice and human rights. This approach is particularly relevant in

theft cases that require balancing normative legality with empathetic social realities. Thus, combining KUHP studies with Syahrur's hudud theory can lay the foundation for reforming Indonesia's criminal justice system. This approach allows Islamic criminal law to transform into a more contextual, adaptive, and humane system without abandoning Sharia principles, thereby enhancing the law's legitimacy and acceptance in diverse and dynamic societies(Jordan et al., 2023).

The 2025 Lex Privatum journal systematically examines the KUHP provisions categorizing various types of theft, ranging from minor theft to aggravated theft punishable by up to nine years in prison. The journal emphasizes the importance of updating the threshold value for minor theft through PERMA No. 02 of 2012, aiming to create more adaptive regulations in response to Indonesia's evolving social and economic conditions. The analytical approach underscores the necessity for proportional and fair application of criminal law that avoids excessive penalties while sufficiently protecting victims and society at large(Jequeen et al., 2025).

From the perspective of Islamic criminal law, the principles of proportionality and justice in sanctioning align closely with the maqashid sharia framework that prioritizes welfare, justice, and harm prevention. In this context, Muhammad Syahrur's Theory of Limits (nazhariyyah al-hudud) is highly relevant as it positions hudud punishments as maximum boundaries rather than rigid mandatory measures, thereby granting judges discretion to impose humane sanctions suited to social realities. Syahrur's approach serves as an important reference for harmonizing Indonesian criminal law with Islamic law in a manner responsive to modern societal dynamics. Thus, this journal highlights the urgent need for criminal law reform that goes beyond literal textual provisions to integrate universal values of justice and humanity within the judicial system. Combining the KUHP's flexible framework with Syahrur's Theory of Limits can contribute to developing a progressive and fair Islamic criminal law that accommodates the social complexity and pluralism of Indonesian society.

This comparison shows that although all three journals discuss theft sanctions within KUHP and/or Islamic criminal law, the research "Analysis of Theft Sanctions: A Comparison of Indonesian Positive Law, Islamic Criminal Law, and Muhammad Syahrur's Contemporary Perspective" has not been comprehensively addressed in literature. This research is significant as it integrates Indonesian positive law, classical Islamic criminal law, and Syahrur's progressive thought, which opens room for ijtihad and contextual solutions. In other words, this study fills a research gap by offering new and integrative perspectives that have not been deeply explored, making it highly relevant for developing a more inclusive, progressive, and contextual Indonesian criminal law system.

3. Methodology

This study uses qualitative research, the use of theory is only a guide so that the research focus is in accordance with the facts in the field (Nurdin & Pettalongi, 2022; Nurdin, Stockdale, & Scheepers, 2016). The data was collected through direct observation, in-depth interviews, and written document analysis at the research site (Rusli, Hasyim, & Nurdin, 2021; Rusli & Nurdin, 2022). The object of this research is a comparative analysis of theft sanctions in the Indonesian Criminal Code (KUHP), classical Islamic criminal law, and Muhammad Syahrur's contemporary theory of hudud.

The results of the transcripts were consulted with the participants to obtain their consent (Nurdin, Scheepers, & Stockdale, 2022). The data analysis technique in this research used a deductive thinking technique, which can be interpreted as a research procedure that produces deductive data from the interviews and field notes. Data analysis was conducted using thematic analysis from Strauss and Corbin (1998). The analysis started with open, axial, and selective coding. The final result of the data analysis is themes found from the data.

4. Results and Discussion

4.1 Methodology and Paradigms of Interpretation

The Indonesian Criminal Code (KUHP) is founded upon a secular and rational positive law paradigm, where criminal regulations are formulated through social consensus and adapted to the needs of a pluralistic society, based on the principle of universal justice. In the

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context of the crime of theft, the KUHP regulates the offense in detail across Articles 362–367, covering various forms of theft ranging from ordinary theft, aggravated theft, to minor theft and robbery.

The sanctions imposed are in the form of imprisonment with a range of sentences from three months up to a maximum of twenty years, or even life imprisonment or the death penalty for cases that are exceptionally severe, as well as fines according to applicable provisions. The primary emphasis of this system is the protection of individual property rights, crime prevention, and the rehabilitation of the perpetrator to enable them to return and contribute positively to society. Judges are granted the discretion to adjust the sanction to the degree of fault, the circumstances, and the social impact caused by the perpetrator's actions, thereby ensuring that law enforcement remains relevant and adaptive to ever-evolving social dynamics (Rigen Mas Respati Artika et al., 2020).

Classical Islamic criminal law is anchored in the divine texts (nash) of the Qur'an and Hadith, relying on a literal and normative interpretation. The hudud sanction (hand amputation) is imposed only if extremely strict conditions are met, emphasizing strict adherence to the Sharia and safeguarding divine justice. Meanwhile, Syahrur utilizes a hermeneutic approach and the theory of limits (*nazariyyat al-hudud*), emphasizing a productive and contextual re-reading of the sacred text so that Islamic law remains relevant in every time and place.

4.2 Philosophy and Objectives of Sanctions

The philosophy of sanctions in the Indonesian Criminal Code (KUHP) is rooted in the principles of justice, human rights (HAM) protection, and the social reintegration of the offender into society. The penal system in Indonesia does not merely aim to provide a deterrent effect or retribution but also emphasizes corrective and restorative aspects, both toward the offender and the victim. This is reflected in the formulation of sanctions for theft in Articles 362–367 of the KUHP, where the threat of punishment varies from imprisonment, fines, to additional penalties, depending on the severity of the offense committed. The KUHP also grants discretion to judges to consider objective and subjective factors when rendering a decision, such as the degree of fault, motive, social situation, and the impact of the act on the victim and society. The modern criminal law paradigm adopted by the KUHP positions the law not merely as a means of retribution, but also as a tool to shape an ideal society, uphold noble values, and provide an opportunity for offenders to rehabilitate themselves through the correctional system (Sahabuddin, 2017).

Classical Islamic criminal law emphasizes deterrence, divine justice, and the protection of property rights as part of the *maqashid sharia* (objectives of Islamic law), with the *hudud* sanction serving as a form of strict and deterrent retribution. Syahrur criticizes the rigidity of classical law and offers flexibility: hand amputation is merely the maximum limit (*al-hadd al-a'la*), not the only option. Judges are free to choose lighter sanctions (e.g., imprisonment, fines) according to the social context and humanitarian values, as long as they do not exceed the maximum limit set by the *sharia*.

4.3 Sanctions for Theft in Three Legal Systems

Sanctions for Theft in Indonesian Positive Law (KUHP)

The crime of theft is regulated in Chapter XXII of the KUHP (Criminal Code), specifically in Articles 362–367. Article 362 of the KUHP defines theft as the act of taking property belonging to another person with the intent to possess it unlawfully, punishable by a maximum imprisonment of five to seven years, depending on the version of the KUHP being applied. Article 363 of the KUHP regulates aggravated theft (theft under aggravating circumstances), such as theft committed at night, by two or more persons, or by means of damage/breaking and entering, which is punishable by a maximum imprisonment of nine years (Adnan Lutfi et al., 2022).

Furthermore, the sanctions for more serious offenses are regulated in Article 365 of the KUHP, which specifically covers theft with violence resulting in severe injury or death. For these cases, the maximum penalty is life imprisonment or even the death penalty. Complementary to imprisonment, the KUHP also stipulates fines and the obligation to compensate the victim (restitution). As asserted by Simbala et al. (2023), the objectives of sanctions in the KUHP holistically include

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restoration, prevention (deterrence), and education, all carried out while upholding the principles of justice and humanity (Simbala et al., 2023).

In contrast, in Islamic criminal law, theft (*sariqah*) is classified as one of the hadd crimes (*hudud*) whose provisions are explicitly stipulated in the Qur'an (QS. Al-Maidah: 38). The prescribed sanction is hand amputation for the perpetrator who is lawfully proven guilty and meets a set of extremely strict conditions. This punishment of hand amputation is intended as a form of strict retribution and deterrence, as well as a preventative measure to ensure society respects individual property rights. However, the imposition of this punishment must pass through a judicial process that is extremely fair and meticulous, requiring strong evidence (*bayyinah*), the confession of the perpetrator, and careful consideration of the circumstances. It should also be noted that there are differences of opinion among Islamic scholars regarding the technical criteria for applying this sanction, including the requirements for the minimum value of stolen goods (*nishab*) and the categorization of the type of theft as either *hudud* or *ta'zir* (discretionary punishment) (Surya, 2018).

Sanctions for Theft in Classical Islamic Law

In Classical Islamic Law, the crime of theft (*sariqah*) is explicitly regulated as one of the Hadd crimes (*hudud*), whose sanctions are directly prescribed by the sacred texts (*nash*). The primary legal basis is the word of Allah in QS. Al-Maidah: 38, reinforced by the Prophet's Hadith and explanations found in *fiqh* (jurisprudence) books. The hand amputation sanction (*hudud*) is mandatory for perpetrators who satisfy extremely strict and specific criteria, including: the value of the stolen item reaching the *nishab* (minimum threshold), the item being taken from a secured place, the perpetrator being an adult (*baligh*) and sane, the absence of any doubt (*syubhat*), and being supported by strong evidence. The philosophy behind this *hudud* sanction is to provide strict retribution (*qisas*), create a powerful deterrent effect, and safeguard property rights while upholding divine justice (the right of Allah and public interest). However, if the strict requirements for *hudud* imposition are not met, the judge has the authority to impose a ta'zir sanction, which is more flexible and varied, such as imprisonment, fines, flogging, or other social penalties, according to careful and just judicial consideration. There are also differences of opinion among scholars regarding the criteria for the *nishab* and which types of theft fall into the *hudud* or *ta'zir* categories (Muhammad Afriza Rifandy et al., 2024).

Syahrur's Theory of Hudud

Muhammad Syahrur offers an approach through his theory of limits (*nazhariyyah al-hudud*). Syahrur argues that the term "cut off the hand" (*qatha'a*) in QS. Al-Maidah: 38 must be understood as the maximum punishment (the upper limit) that may be applied, not the sole form of punishment that is mandatory to be physically executed in every case (Fanani, 2005).

According to Syahrur, physical hand amputation is the highest permissible punishment (the upper limit). Below that limit, law enforcement officials may choose other forms of punishment—such as the amputation of the perpetrator's power or ability to steal by imprisoning them. Thus, imprisonment can be considered a form of non-physical amputation that remains within the limit set by the *Sharia*(Hannani, 2017).

Syahrur's thought opens the door for ijtihad (independent reasoning in Islamic law) among scholars and policymakers to determine the criteria and form of sanctions that are appropriate for the contemporary conditions and needs of society, provided they do not exceed the maximum limit that has been prescribed. This approach is highly relevant in the pluralistic and multicultural context of Indonesia because it grants flexibility in formulating criminal sanctions that remain rooted in the principles of *Sharia*, while also considering the values of justice, humanity, and human rights (Sugiarto et al., 2021).

4.4 Comparison and Implications

The discourse concerning the determination of sanctions for the crime of theft shows significant variation across legal systems, reflecting differences in philosophy and social context. In the Indonesian context, the Criminal Code (KUHP) regulates theft comprehensively through Articles 362 to 367. The KUHP stipulates sanctions in the form of a maximum of five years' imprisonment or a fine for ordinary theft, while aggravated theft, such as that involving violence

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(Article 365), can lead to the death penalty. The primary characteristic of the KUHP is its high degree of sanction flexibility, without involving physical punishments. Judges are given the discretion to consider the specific conditions of the perpetrator, the victim, and the case situation, in line with a philosophy centered on social protection, upholding justice, creating a deterrent effect, and especially, the rehabilitation of the perpetrator. This KUHP is designed to be easily applicable in a pluralistic and modern society, and to ensure the protection of Human Rights (HAM**)** (Ulmuftia et al., 2024)**.**

In stark contrast to the positivistic approach applied in the Indonesian Criminal Code (KUHP), Classical Islamic Law bases its penal system for the crime of theft (*sariqah*) on sacred normative sources, namely the Qur'an (QS. Al-Maidah: 38) and the Prophet's Hadith, which are then elaborated upon in various *fiqh* (jurisprudence) texts. Within this legal framework, criminal sanctions for theft are divided into two main categories: Hudud punishments and Ta'zir punishments. The Hudud punishment—namely hand amputation—is characterized as a fixed and mandatory sanction (*wajib al-tanfiz*) to be applied by a judge, but only if an extremely strict and specific set of conditions are met flawlessly. These *hudud* conditions include, among others: the stolen item must reach the nishab (minimum value threshold), it must be taken from a secured place (*hirz*), the perpetrator must be an adult and sane (*baligh wa 'aqil*), and crucially, there must be no element of syubhat (doubt or claim of right), and it must be supported by strong evidence (*bayyinah*). The essential uniqueness of the *hudud* punishment lies in its divine nature (*haqqullah*), meaning the sanction is unalterable, unchangeable, or non-forgivable through human intervention. The philosophy behind this *hudud* sanction is an emphasis on substantive justice and absolute deterrence, aiming to protect property rights (*hifz al-mal*) as part of the Maqashid Sharia (objectives of Islamic law) and to uphold God's right and public interest. Although guaranteeing a stern deterrent effect, this classical framework acknowledges that if the stringent *hudud* requirements are not fulfilled, the judge retains full discretion to impose a ta'zir sanction which is more flexible and varied, such as imprisonment, fines, flogging, or other forms of social penalties. Nonetheless, in the context of modern society which upholds Human Rights (HAM) principles, the literal application of *hudud* sanctions potentially faces serious challenges regarding relevance and acceptability (Siagian, 2025).

In an urgent response to the challenges of relevance facing Islamic law in the contemporary era, particularly the conflict between absolute *hudud* sanctions and modern humanitarian and Human Rights values, Muhammad Syahrur offers a radical reinterpretation of the *hudud* verses in the Qur'an. This thought is materialized through his framework of the Theory of Limits (*Nazariyyat al-Hudud*), developed using a linguistic hermeneutic approach. Syahrur fundamentally argues that the phrase "cut off the hand" (*qatha'a al-yad*) recorded in QS. Al-Maidah: 38 should not be understood as the sole mandatory sanction to be physically executed in every case of theft, but rather as the maximum limit (*al-hadd al-a'la*) of punishment permissible. This revolutionary concept of *al-hadd al-a'la* opens up a broad space for *ijtihad* (independent legal reasoning) for legal enforcers. Below the maximum limit of amputation, judges are granted full discretion to choose and impose other lighter and more flexible forms of punishment, such as imprisonment, fines, social sanctions, or even pardon, all carefully adjusted according to the social context, the perpetrator's economic condition, and the humanitarian values of the case at hand. Furthermore, Syahrur opens up the possibility of a symbolic interpretation of the term "cut off the hand." He argues that *qatha'a* can be understood in a non-physical sense, meaning "amputating the power or ability of the hand" of the perpetrator to repeat the crime. In this contextual interpretation, imprisonment can effectively be seen as a form of non-physical amputation of power that substantively remains within the limit (*hadd*) set by the *Sharia*(Rohman & Muafatun, 2021).

The most prominent characteristic of Muhammad Syahrur's Theory of Limits (*Nazariyyat al-Hudud*) is its exceptionally high degree of flexibility and its capacity to explicitly open up space for *ijtihad* (independent legal reasoning) for both judges and policymakers. By defining *hudud* as the maximum limit (*al-hadd al-a'la*), Syahrur cleverly enables Islamic law to

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adapt to the development of time (*waqiyyah*) and the needs of society (*hajat ijtima'iyyah*) without having to erode or violate the fundamental divine principles of *hudud*. The core philosophy underpinning this theory is the fundamental belief that Islam must always be adaptive, contextual, and relevant in every time and place (*shālíh li-kull zamān wa makān*). Consequently, Islamic criminal law, according to Syahrur, must not be trapped in historical textual rigidity. Instead, it must be capable of achieving a crucial balance between the eternal divine boundaries and the contemporary humanitarian needs and principles of universal justice. The result is a legal framework that is not only theologically compliant but also remains humane (*insani*) and applicable in various modern social and cultural contexts(Purkon, 2021).

In terms of implications, these differences have significant consequences. The Indonesian Criminal Code (KUHP) is easier to implement within a pluralistic and modern societal framework because it does not involve extreme physical punishments, and it is oriented towards Human Rights (HAM) protection and rehabilitation. Classical Islamic Law, with its strict *hudud* sanction, certainly guarantees substantive justice and a firm deterrent effect, but its literal application in the contemporary era is often considered less relevant. Meanwhile, Syahrur's Theory of *Hudud* emerges as an innovative bridge between divine principle and modern social needs. This theory offers an adaptive legal framework, allowing Islamic law to remain relevant and humane, and opening the door for continuous *ijtihad* in responding to the challenges of time and place.

Below is an expanded comparison of three recent journals regarding Indonesian Criminal Code (KUHP), Islamic Criminal Law, and Muhammad Syahrur's Hudud theory based on the provided table and additional context:

1. The Indonesian Criminal Code (KUHP) Articles 362–367 establishes a flexible criminal justice framework for theft, involving imprisonment, fines, restitution, and other penalties. Judges have broad discretion to tailor sanctions according to case specifics and social context. This flexibility supports restorative justice goals—focusing on public security, rehabilitation, and human rights protection—making the system practicable in Indonesia's pluralistic and evolving society.
2. Classical Islamic Criminal Law, deriving from Quranic (Al-Maidah 38), Hadith, and Fiqh texts, enforces more rigid hudud sanctions, chiefly the mandatory hand amputation for theft that meets stringent evidentiary and contextual thresholds (e.g., minimum value, sane adult perpetrator, no doubt regarding stolen goods). Alternative punishments (ta'zir) may be applied when requirements for hudud are unmet, but overall, the system favors strict deterrence and divine justice principles. Contemporary challenges arise due to this rigidity conflicting with modern human rights values.
3. Muhammad Syahrur's Theory of Hudud introduces an innovative hermeneutic approach through the concept of "maximum limits" (nazariyyat al-hudud). He posits that the hudud punishment of hand amputation represents a ceiling, not a mandatory sanction in all cases. His framework empowers judges to use discretion in prescribing milder, context-sensitive sanctions (such as imprisonment or fines), harmonizing sharia requirements with contemporary social and humanistic norms. This high degree of flexibility situates his theory as a bridge between classical Islamic law and modern Indonesian legal realities.

Overall, the comparative table highlights how KUHP and Syahrur's theory converge on flexibility, human rights adherence, and social responsiveness, contrasting with the traditionally strict and doctrinally bound application of classical hudud laws. Syahrur's framework potentially facilitates ongoing ijtihad, allowing Indonesian criminal law to remain doctrinally sound while being socially viable and humane.

This comparative insight underscores an urgent need for integrated legal frameworks accommodating plural legal orders in Indonesia, particularly regarding theft-related offenses. While each system has merits, a combined approach invoking KUHP's restorative principles alongside Syahrur's contextual hudud interpretation offers promising pathways for

criminal justice reform, enhancing legal legitimacy and societal acceptance.

5. Conclusion

This study affirms the fundamental differences both normatively and practically in the imposition of sanctions for theft crimes between the Indonesian Criminal Code (KUHP), classical Islamic criminal law, and Muhammad Syahrur's hudud theory. The KUHP is flexible with a focus on rehabilitation and prevention through imprisonment, fines, and restitution, while classical Islamic law demands hudud sanctions in the form of hand amputation with very strict criteria. However, the application of classical hudud is increasingly difficult in the modern era due to its rigidity and conflicts with human rights values.

Syahrur's hudud theory emerges as an important innovation with the concept of a "maximum limit" (al-hadd al-ala), making hand amputation the highest possible punishment rather than the only option. Judges may choose lighter sanctions, in accordance with social context and humanitarian values, such as imprisonment or fines, without exceeding the limits set by sharia. This approach opens up a space for adaptive ijtihad, relevant to the pluralistic society of Indonesia, optimizing the balance between divine principles and contemporary social justice.

However, it is important to note that the acceptance of Syahrur's hudud theory is primarily within the specific context of theft cases. In other areas of Islamic law, especially related to milk al-yamin (slave ownership) and women's aurat (modesty), the application of this theory remains controversial and has faced sharp criticism from both traditional and modern scholars. Syahrur's symbolic and contextual approach is often seen as exceeding the consensus of scholars and maqashid sharia in these sensitive matters.

Therefore, although Syahrur's hudud theory offers a progressive and flexible solution relevant in theft cases, it cannot be generalized or broadly accepted for all types of hudud cases without significant debate and resistance. This underscores the need for contextual and selective studies in adopting this theory to ensure alignment between sharia principles and the dynamic needs of modern society.

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