



## The Crime of Corpse Theft in Cemeteries in the Perspective of Islamic Criminal Law

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**Abstract** - The theft of corpses in Indonesian cemeteries, often for black magic and rituals, is a growing concern. The Criminal Code (KUHP) penalizes this act with up to one year and four months in prison and a fine of 4,500 rupiahs under Article 180. The Draft Criminal Code proposes harsher penalties, including up to two years in prison and a higher fine, under Article 271. This study examines corpse theft from the perspective of Islamic criminal law and assesses the relevance of current KUHP sanctions. The findings reveal that Islamic law strictly prohibits corpse theft, categorizing it as a serious violation of human dignity and a jarimah hudud crime for sariqah, rather than jarimah ta'zir. However, ta'zir sanctions apply if the conditions for hudud are unmet. This research aims to contribute to the discourse on the various forms of theft in society, emphasizing the importance of context and the evolving nature of legal issues in Islamic criminal law.

**Keywords:** Corpse Theft, Islamic Criminal Law, Positive Criminal Law

### I. INTRODUCTION

The crime of theft of corpses in a cemetery is an act that violates the norms found in society, both positive legal norms and religious law. In positive criminal law, the crime of theft of corpses in a cemetery is regulated in the Criminal Code (KUHP) in chapter V of book II on crimes against law order which is regulated in article 180 with a prison sentence of one (1) year and four (4) months and a fine of 4,500 rupiah. If we look to other countries, countries that adhere to the Islamic legal system, namely Saudi Arabia, the application and determination of a law in that country is taken from Islamic religious law which uses the Qur'an and Hadith as the basis for taking the sentence. The rapid and unique development of the times has not made the crime rate in the community decrease, but rather the crime has increased with the emergence of new modes, especially in the crime of theft.

The object of the crime of theft is not only in the form of goods such as houses, televisions, radios and other items that have economic value, but the theft has now led to the theft of corpses in the cemetery (Saputra, 2019). The theft of corpses at funerals has become widespread in Indonesia. An example of a case is the theft of a corpse in a cemetery on May 30, 2020 in Tanjung Boleng Village, Komodo District, East Nusa Tenggara. A grave of a resident who became a coronavirus was dismantled by an unknown person. Not only was it dismantled, the body was also stolen. (*DPD's grave was dismantled and the body was stolen*, n.d.) And on May 20, 2024 there was a dismantling of the grave of a medical student at the University of Muhammadiyah Yogyakarta (UMY), a 19-year-old girl in Binangun Village, Mberebet District, Purbalingga, Central Java. With the demolition of the tomb it is suspected that the perpetrator tried to steal the corpse. (*Medical Student's Tomb in Purbalingga Vandalized by OTk. Suspected Hendah's Body Stolen*, n.d.)

Related to the above case, that the criminal act of theft of corpses in the cemetery that occurred in Indonesia made people feel uneasy about the act of theft of corpses in the cemetery. So that the police agency must work extra hard to eradicate the criminal act of corpse theft, which is classified as a criminal act of theft with aggravation in the scope of society due to the use of black magic rituals. And the perpetrators carry out the action quite easily and quickly, without being noticed by the owners and guards of the cemetery. Islamic criminal law and positive criminal law have different legal systems and sanctions against the criminal act of stealing a corpse in a cemetery. In positive criminal law, the regulation comes from the Criminal Code (KUHP), while in Islamic criminal law the regulation comes from the Al-Qur'an and Al-Hadith.

This study wants to examine how the sanctions for the crime of theft of corpses in the cemetery in the perspective of Islamic criminal law? Furthermore, it wants to discuss how the positive criminal law regulations on theft of corpses in the cemetery? This study is expected to contribute to the development of discourse by developing the study of criminal cases that arise in society according to the times and the context of different places, both from the aspect of Islamic criminal law.

## II. METHOD

This research is normative legal research. The reason for using normative legal research is because this research describes literature studies, legal rules and legal norms. The approach used is a *library research* approach. The data sources used are secondary legal materials such as supporting books and tertiary legal materials such as dictionaries and others. Data analysis uses qualitative descriptive analysis which will describe the legal and normative existence related to the research topic.

## III. RESULT AND DISCUSSION

### 1. Theft of corpses in cemeteries according to Islam

Islamic law highly values human beings, and humans are the most noble of all creatures. (Basri, 2022) Based on the words of Allah SWT.

*وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَّالَهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا*

Meaning: "And indeed We have honored the sons and daughters of adam, and We transported them on land and sea, and We gave them sustenance from that which is good, and We favored them over many of the creatures We created. and We gave them sustenance from the good, and We favored them above many of the creatures that We created with perfect advantages" (QS. Al-Isra: 70)

Among these advantages are the body and physique, as well as the mind and heart, which enable them to think and contemplate. It is for this reason that humans are always respected and valued. In fact, respect for humans is not only when they are alive, but continues even when they have died. Thus, hurting humans who have died is as legal as hurting them when they were alive. Based on the Hadith narrated by Imam Ahmad, Abu Daud and Ibn Majah from Aisha radhiyallahu anha the Prophet said (كسر عظم الميت كسرة حيا) which means "breaking the bones of a person who has died is the same as breaking his bones when he was still alive". The above Hadith, according to the majority of scholars, emphasizes the prohibition of harming a dead body in any way and by any person. Some scholars have permitted the cutting open of a corpse's stomach in order to save the baby inside the womb.

This permissibility is based on a form of belief and strong suspicion that the benefit will actually be realized (Febriansyah Dwi Aryanto, "Perspectives on Corpses in Criminal and Civil Law," Lontar Merah, 2003). Even corpses that have been buried in cemeteries are forbidden by some fiqh scholars to be dismantled and moved. Yusuf Al-Qardawi said "when the corpse is buried, it means that he lives in that place, the grave becomes a waqf for him. (Putri & Sabir, 2023). The Shāfi'i scholars are of the opinion that moving a buried corpse from the place where it died to another place for possession is forbidden. Thus, according to the Shāfi'iyah Ulama,

it is forbidden to dismantle the tomb and move the corpse for possession. This is intended to maintain the honor of the corpse as a creature glorified by Allah SWT.

From the above information, theft of a corpse in a cemetery is the dismantling and taking of a corpse from a tomb for possession and control. In Islam, the theft of a corpse is clearly prohibited.

## **2. Characteristics of theft of corpses in cemeteries as Jarimah Hudud Theft**

Whether the theft of a corpse in a cemetery can be categorized as jarimah hudud theft to explain the theft, it is necessary to explain the elements of the crime of theft that fall into the category of jarimah hudud. In Islamic criminal law the crime of theft that fulfills the jarimah hudud and the provision of witnesses must fulfill the following elements.

### **1. Taking in secret.**

This must fulfill three conditions as explained below.

The taking process must be complete, and it is not enough for the perpetrator to be near the stolen goods. The act of taking someone else's goods must fulfill three conditions. First, the thief takes the stolen goods from the storage place. Secondly, the stolen goods are removed from the victim's care. Third, the stolen goods change hands from the victim to the perpetrator. If these conditions are not met then the theft is considered incomplete and the punishment is *ta'zir*, not cutting off the hand. This must fulfill three conditions as explained below (Audah, 1992).

### **2. The stolen item must be property.**

The concept of property in Islam seems to have shifted in meaning between before and after the abolition of slavery by the UN. In the past, when slavery still existed, male or female slaves were considered as property so that people who stole slaves could be subject to the legal sanction of cutting hands. However, since the UN agreement on the abolition of slavery, slaves are no longer considered as property. As a result, kidnapping or human trafficking is not included in the scope of the discussion on theft. However, *human trafficking* has now become one of the modern criminal offenses that must be scrutinized and handled properly.

Furthermore, in order for the perpetrator of theft to be subject to the punishment of cutting hands, must meet several requirements as stated by Abdul Qadir Audah below. The stolen property must fulfill several conditions in order for the perpetrator to be punished by hand cutting. The conditions are (1) it must be movable property, (2) it must be a valuable object, (3) it must be kept in a storage place, and (4) it must reach the nisab. With regard to the stolen property, which is a valuable object and reaches the nisaab, the author has already mentioned this. Abdul Qadir Audah has explained what is meant by movable assets that are kept in storage. According to him, assets in the form of movable objects are objects that are possible to transfer and do not have to be objects that can be physically seen by the eye.

Therefore, someone who steals electricity or telephone credit is considered a thief because these objects, although not visible, are still of nominal value and can be identified in price. Meanwhile, regarding the place of storage, Abdul Qadir Audah said: The essential element in the crime of theft is taking something secretly, whereas taking something not from its place of storage does not need to be secretive, so the essential element in theft is not realized if it is not taken from its place of storage.

### **3. The property taken belongs to someone else**

This is important, because if it turns out that the property taken belongs to the perpetrator, even if it is done secretly, it still cannot be called theft. Similarly, if the property is jointly owned by the perpetrator and the victim, it is also not considered theft. The same applies if the perpetrator and the victim are related, such as the father taking the son's property or, according to Imam al-Shafi'i and Ahmad, vice versa. The reason for this is the following hadith. From Amr bin Shu'aib from his father, from his grandfather; that there was a man who came to the Prophet to file a case against his father. He said, "O Messenger of Allah, he wants my property." The Prophet said, "You and your property belong to your father." (HR Ahmad and Ibn Majah) (Sagir, 2010).

Based on the above Hadith, a person who takes property belonging to his biological children is not punished by cutting off his hand because the children and their property are

considered to belong to their father. Similarly, if the son does not own any property but has a steady income, he is obliged to give the proceeds of his business and support his father if he is in need and there is no one to support him. The Messenger of Allah (SAW) said to someone, "You and your property belong to your parents." This means that if your parents want your property, they can take it from you as much as they need it as they take it from their own property. If it turns out that you do not have property, but you have a business; you are obliged to work and provide for him. (Abadi, 1968).

From Syamsul Haq Azim Abadi's statement, it can be seen that Islam highly values the services of parents in educating children. Therefore, it is not appropriate for a child to file a case against his biological father in front of a judge, because he is unhappy that his father is asking for the child's property.

#### 4. Against the Law

Regarding this, Abdul Qadir Audah argues. Taking secretly cannot be considered as stealing unless in the mind of the perpetrator there is an element against the law. This unlawful attitude can occur when the perpetrator takes someone else's property, even though he knows that it is forbidden. He does this in order to own the property for himself (the element of self-enrichment) without the knowledge and permission of the victim. Therefore, if a person takes something with the belief that it is permissible or that it will be tolerated (not prosecuted), he will not be punished because there is no unlawful element, because he believes that it is permissible to take it. Similarly, if a person takes something belonging to another person not with the intention of possessing it, but to use it and return it, or he takes it only on pretense, or he believes that the victim will accept it, then all of this cannot be called theft, because there is no unlawful element. (Audah, 1992).

From the description of *jarimah hudud* above, it can be concluded that in order to enforce the punishment of cutting hands, the elements and conditions must first be examined. If one of the elements or conditions is not met, then the punishment of cutting hands must be canceled and transferred to *ta'zir* law. In applying the sanction of cutting hands, important aspects must be considered relating to the conditions and elements. In this matter Shalih Sa'id Al-Haida, in his book *Hal Al- Muttaham Fi Majlis Al-Qada*, suggests five conditions for the enactment of this law. Namely as follows (Al-Khaidan, 1984).

1. The perpetrator is an adult and of sound mind. If the perpetrator is sleeping, a child, a lunatic, and a forced person cannot be prosecuted.
2. Theft is not committed because the perpetrator is desperate for the necessities of life. An example is the case of a slave belonging to Hatib bin Abi Balta'ah who stole and slaughtered a camel belonging to someone who was eventually reported to Umar bin Al-Khaththab. However, Umar acquitted the perpetrator because he was forced to do so.
3. There is no relative relationship between the victim and the perpetrator, such as the son stealing the father's property or vice versa.
4. There is no element of doubt in terms of ownership, such as the stolen property being jointly owned by the thief and the owner.
5. Theft does not occur during warfare in the cause of Allah. At such times, the Prophet did not impose the penalty of cutting hands. However, it can be sanctioned in other forms, such as flogging or imprisonment.

These are the conditions that must be met in order for the punishment of cutting off hands to be applied. In addition, this penalty can only be implemented after fulfilling several pillars. Abdul Qadir Audah suggests the following pillars. Furthermore, whether the elements of theft of a corpse in a cemetery fulfill the above elements of theft.

**Table of categories of whether or not the elements of *jarimah hudud* are fulfilled**

No.	Jarimah Hudud Theft	Corpse Theft	Categories of <i>jarimah hudud</i>
1.	Hide Hide	The theft of corpses is also done secretly, usually at night without the	Fulfilled

		knowledge of the community and cemetery guards.	
2.	The stolen item must be property.	A corpse is conceptually not someone's property or not someone's property. However, the position of a corpse as a lifeless body is an object that is respected and honored. Therefore, this corpse is something valuable and valuable to the victim's family and we cannot measure its value.	Fulfilled
3.	The property taken belongs to someone else	A corpse is not property, but it is the body of a deceased human being and is considered an object that must be respected and which cannot be valued. The theft of a corpse belongs to another person and is taken for the benefit of the perpetrator.	Fulfilled
4.	Against the Law	The theft of a corpse involves dismantling it and taking it for possession, without the knowledge and permission of the victim and the government. The perpetrator knows that the act is forbidden. This is an unlawful act.	Fulfilled
5.	Stolen goods reach the nisab of ¼ dinar	<p>a. A corpse is not an item of property or goods, but a corpse that must be respected and honored. A corpse is something that cannot be valued at any price.</p> <p>b. If the thief of the corpse sells it to a place that accepts corpses for sale and it sells, then it will reach the nisaab of ¼ dinar.</p> <p>c. When the corpse cannot be traded in one place, it does not reach the nisaab.</p>	<p>Fulfilled</p> <p>Fulfilled</p> <p>Not Fulfilled</p>

So the theft of a corpse in a cemetery can be categorized as *jarimah hudud* theft. Because the elements and conditions of *jarimah hudud* are fulfilled. If one of the elements and conditions is not fulfilled, then the punishment for cutting hands must and is transferred to *ta'zir* law.

### Sanctions for theft of corpses in cemeteries according to Islam

The theft of a corpse is not specifically described, however, it is clear that the theft of a corpse in the cemetery is categorized as theft. In Islamic law, theft of corpses can fulfill the categories of *jarima hudud sariqah* and *ta'zir*. Entering the *jarimah sriqah* because of the fulfillment of the elements of theft as described above. The elements of the fulfillment of *jarimah sriqah*. (1) Taking secretly. (2) The stolen item must be in the form of property. (3) The property taken belongs to another person (4) Against the Law (5) The stolen goods reach the nisab of theft.

The witness of theft that fulfills the *jarimah hudud* is cutting off the hand. However, the sanction of cutting hands must fulfill the following conditions. (1) The perpetrator is an adult. (2) The theft was not committed because the perpetrator was desperate for the necessities of

life. (3) There is no relative relationship between the victim and the perpetrator. (4) There is no element of *shubhat* in ownership. (5) The theft does not occur during warfare in the way of Allah. (Audah, 1992).

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

*"And the man who steals and the woman who steals, let them both be cut off the hands of both of them as a recompense for what they have done and as a punishment from Allah. And Allah is the Mighty, the Wise. QS Al-Ma'idah (38).Fuad Thohari, Hadith Ahkam (Cv Budi Utama, N.D.)."*

From the explanation above, if the conditions of the *jarimah sayariqah* are fulfilled, the punishment for stealing a corpse in the cemetery is *had* cut hands as explained in the verse above. Sanctions for theft of corpses are not explicitly mentioned in the Qur'an or Hadith in the same detail as penalties for theft of property or other criminal offenses. However, there are general principles in Islamic law that can be used to determine appropriate sanctions. Here are some guidelines that can be used; (1) Respect for the dead, Islam strongly emphasizes respect for the dead body. Disturbing or damaging a corpse is considered a highly reprehensible act. The Hadith states, "Breaking the bones of a dead person is like breaking his bones when he was alive" (HR Abu Dawud and Ibn Majah). This indicates that harming a dead person is considered equivalent to harming a living person. (Sharbaini, 2023).

In the Indonesian context, theft of corpses in cemeteries falls into the category of *jarimah ta'zir*. *Jarimah Ta'zir* is a punishment that is not specifically determined by Allah and His Messenger, so that the form and level of punishment are determined by the judge based on discretion, situation, and conditions. *Ta'zir* is applied when one or more of the conditions of *hudud* are not met. *Ta'zir* punishments can vary widely, depending on the judge's decision and can include: (Panji Adam, 2019)

1. Fines: The perpetrator is subject to a fine that must be paid to the victim or the state.
2. Imprisonment: The offender is sentenced to imprisonment for a certain period of time.
3. Whipping: The offender is flogged with the number of strokes determined by the judge.
4. Social Obligation: The offender is required to do social work as a form of penance.

*Ta'zir* provides flexibility for the judge to tailor the punishment to the severity of the crime, the condition of the offender, and the situation, with the aim of educating, deterring, and rehabilitating the offender. With these two types of punishment, Islamic law seeks to uphold justice by providing sanctions that are appropriate to the level of the crime and the circumstances, while still taking into account the elements of humanity and rehabilitation. (Ahmad Syarbaini, 2023).

Meanwhile, witnesses to the theft of corpses in the cemetery in Indonesian criminal law are regulated in article 180 of the Criminal Code (KUHP) which reads:hanafi, "The Philosophical Foundation for the Policy Formulation of Crimes Against Corpses in Article 180 of the Kuhp," Voice Justisia: Journal of Law and Justice, 2019.

*"Any person who with deliberate intent damages, takes away or removes a dead body from a lawful burial place shall be punished by a maximum imprisonment of one year and four months or a maximum fine of three hundred Rupiahs."*

The theft of a corpse in Article 180 emphasizes the act of damaging, taking, or removing a corpse from a legal burial place, which focuses on the act against the corpse and its burial place from its owner. Based on the formulation of Article 180 of the Criminal Code above, the elements of the crime of theft of a corpse in a cemetery are as follows: Bintang Christian Boeky, "Causal Factors and Countermeasures for Recidivism in the Crime of Theft with Violence (Residiv) in the Legal Area of the Kupang City

a. Intentionally

This element indicates that the act was committed with clear intention or will, not by accident or negligence. The perpetrator must be aware of and desire the consequences (Sinaga & Hadi, 2018).

b. Damaging, Taking, or Removing a Corpse

There are three actions described in this article:

1. Damaging: To do an act that causes damage to a corpse.
2. Pick up: The act of lifting or removing a corpse from its original place.
3. Moving : changing the position or location of a corpse from where it should be.

c. From a legal burial place

Such measures must be taken on bodies that are in a legally recognized place of burial or a place designated for burial. This includes graveyards, mausoleums or other places recognized as the final resting place of the body.

d. Shall be punished by a maximum imprisonment of one year and four months or a maximum fine of three hundred Rupiahs.

Stipulate penalties for offenders found guilty in accordance with the provisions of the article. The theft of a corpse in a cemetery is a criminal act that involves serious violations of social and legal norms. The motivations behind this act can vary, ranging from ritual reasons and revenge. All types of corpse theft are considered a violation of the law as stipulated in article 180 of the Indonesian Criminal Code, which provides penalties for convicted offenders.(Hilman, 2020)

Cemetery theft is an act of taking, digging up or removing a corpse from its burial place illegally and without proper authorization. This act is considered a serious violation of social and legal norms, as it not only violates the rights of the family of the deceased but also damages the sanctity and respect for the deceased. In Indonesian law, the theft of a corpse in a cemetery is categorized as Article 180 of the Criminal Code and is punishable by imprisonment of one (1) year (4) four months or a fine of 4,500 rupiah.

The above regulation does not seem to be in accordance with current conditions. Therefore, the government is trying to revise it and is being regulated in the draft Criminal Code Bill, article 271 which reads.

*"Any person who unlawfully digs up or dismantles a grave, takes, moves, or transports a corpse, and/or treats a corpse in an uncivilized manner, shall be punished with a maximum imprisonment of 2 (two) years or a maximum fine of category III".*

Category III fines are explained in article 79 which reads. The maximum fine shall be determined based on;

- a. Category 1, Rp.1,000,000.00 (one million rupiah)
- b. category II, Rp. 10,000,000.00 (10 million rupiah)
- c. category III, Rp. 50,000,000.00 (five million)
- d. category IV, Rp. 200,000,000.00 (two hundred million rupiah)
- e. category V, Rp. 500,000,000.00 (five hundred million)
- f. category VI. Rp. 2,000,000,000.00( two billion)
- g. category VII Rp. 5,000,000,000.00 (five billion)
- h. category VIII Rp. 50,000,000,000.00( fifty billion)

Finally, the theft of a corpse at a cemetery can be subject to the law of hand cutting and *ta'zir*. Theft of a corpse may be punished by cutting off the hand if the elements and conditions are met. If one of the elements or conditions is not met, then the punishment for cutting hands must be transferred to *ta'zir law*. *Ta'zir* is a punishment that is not specifically prescribed in the Qur'an or Hadith but is left to the discretion of the judge. *Ta'zir* includes various forms of punishment that can be adjusted to the severity of the offense, such as imprisonment, fines, flogging, or other forms of punishment deemed appropriate by the judge.

#### **IV. CONCLUSION**

Theft of a corpse in a cemetery in Islamic criminal law is taking another person's corpse from its place of storage (grave) without his right in secret. This theft of a corpse can be subject to the law of hand cutting, because the perpetrator of the corpse thief fulfills the elements and conditions. As the elements and conditions are; (1) Taking secretly. (2) The stolen item must be in the form of property. (3) The property taken belongs to another person (4) Against the law (5) The stolen goods reach the nisab of theft. The conditions for thieves who are sentenced to the sanction of cutting hands are as follows. (1) The perpetrator is an adult. (2) The theft was not committed because the perpetrator was very pressed by the needs of life. (3) There is no relative relationship between the victim and the perpetrator. (4) There is no element of shubhat in ownership. (5) The theft did not occur during warfare in the way of Allah. Thus the theft of a corpse is subject to witnesses cut hands because the perpetrator of theft of a corpse meets the elements and conditions of the law of cutting hands. Whereas in positive criminal law theft of a corpse in a cemetery is an act that involves the taking, removal or destruction of a corpse from a legal burial place without a valid permit. This act is considered a violation of the honor of the corpse and the integrity of the burial place. In the context of Indonesian criminal law, corpse theft is regulated in article 180 of the Criminal Code (KUHP). According to this article, the sanction for stealing a corpse in a cemetery is a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiahs.

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