

Violent Extortion and Criminal Prosecution: Comparative Insights from Positive Law and Islamic Criminal Law

Warisman ^{a,1,*}

^c Institut Agama Islam Negeri Bone, Jl. H.O.S Cokroaminoto No. 1, Watampone, Kabupaten Bone, Sulawesi Selatan 92713, Indonesia

¹ warisman.wtmp45@gmail.com*

* Corresponding Author

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ABSTRACT

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This study aims to review criminal acts of extortion accompanied by violence and threats from the perspective of Indonesian positive law and Islamic criminal law, whether committed by individuals or groups. The problem formulation focuses on the mechanisms for imposing sanctions and regulating punishment for extortion accompanied by violence in both legal systems. The method used is normative legal research with a doctrinal approach and relevant legislation. The results of the study show that Indonesian positive law regulates acts of extortion with violence in Article 368 of the Criminal Code, which carries a maximum prison sentence of four years, while Article 369 carries a maximum sentence of nine years. In Islamic criminal law, similar acts are associated with *jarimah hirabah*, so that the main sanction is *ta'zir*, the degree and form of which is left to the *ijtihad qadhi*; if the act causes physical disability, *diyat* is imposed. If it results in death, *qishash* may be imposed, unless the victim's family forgives the perpetrator and demands payment of *diyat*. The recommendations from this study include that further research should be conducted empirically, analyzing state court decisions and qadhi practices, to assess the consistency of the application of sanctions and the factors that influence the judge's considerations.

1. Introduction

Humans are social beings who live in interdependence and influence each other, with most people seeking prosperity through work, but some resorting to illegal or unethical means to earn an income (Morris et al., 2021; Nguyen et al., 2025; Robeyns, 2019). Among these destructive and unethical illegal practices is extortion, whether committed by individuals or groups, which violates legal and humanitarian norms and damages the social order in society (Milinski, 2022; Weinstein, 2023).

Extortion is often accompanied by violence or what is commonly referred to as thuggery, a term used to describe social deviance that usually occurs in crowded places, but can also occur in quiet locations, which is often anarchic, violent, and sometimes even results in the death of the victim (Bergmann et al., 2024; Estévez-Soto, 2021; Harahap & Hasugian, 2024; Yunus et al., 2025). As a social phenomenon, thuggery is seen as a problem that often arises in social life, which is in line with the criminal personality theory which states that the tendency to commit crimes is an innate human trait (Ai Nhi, 2022; Ozer & Akbas, 2023). Therefore, it is necessary to examine the extent to which the law addresses such actions, as well as the preventive measures that can protect against and prevent these actions, both in positive law and Islamic law.

Tzani et al. (2024) and other recent studies by Alemi et al. (2025) reveal that violent extortion is generally carried out through blackmail and coercion accompanied by threats of violence, whether physical, psychological, or even sexual. This is the main cause of public unrest regarding the

phenomenon of thuggery. These actions often occur in quiet places with a modus operandi of extortion that is often accompanied by abuse, and often even leads to psychological distress and the loss of the victim's life (Estévez-Soto, 2021; Vargas et al., 2024). From the perspective of Indonesian positive law, every action of a citizen must comply with the provisions of laws and regulations, including in the realm of criminal law (Bustomi, 2021). An act can be declared unlawful if it fulfills the elements of a criminal offense as stipulated in the Criminal Code (KUHP), which provides clear boundaries to distinguish one criminal offense from another in order to achieve legal certainty (Susanto et al., 2022; Zulfahmi et al., 2025).

Islam emphasizes the teaching of compassion among all creatures and prohibits all forms of violence, including seeking wealth by extorting others, especially if accompanied by violence or even taking lives (Fahmi, Hasibuan, et al., 2025). Islam strictly prohibits acts of terror, intimidation, and threats against others, as stated by the Prophet, *"It is not lawful for a Muslim to terrorize another Muslim"* (Hadith narrated by Ahmad, Abu Daud, and Al-Baihaqi) (Anggraini, 2024). Similarly, in Indonesian positive law, there are no provisions that justify extortion, especially when accompanied by violence. Such actions are not justified by religion, the state, or any human values, and the perpetrators deserve to be punished severely in accordance with applicable laws (Susanto et al., 2022; Zulfahmi et al., 2025).

Extortion with violence is an act that greatly disturbs society, even though law enforcement officials have attempted to take preventive measures. This phenomenon still occurs frequently, both in rural and urban areas (Habeahan et al., 2021; Lie et al., 2023). As revealed by sociological theories in studies by Sugiharti et al. (2023) and Septriani (2024), crime arises due to disparities in the social order, particularly economic inequality and inconsistencies in group deliberation processes.

Based on these conditions, this study formulates the problem of how Islam views criminal acts of extortion with violence or thuggery, as well as how the provisions for punishment are reviewed from the perspective of Islamic criminal law and Indonesian positive law. This paper will analyze acts of extortion accompanied by violence and threats from the perspective of Islamic law and Indonesian positive law, whether committed by individuals or groups, including the forms of sanctions imposed in both legal systems.

2. Methods

This research is normative in nature with a doctrinal approach to explain legal theories, which are linked to relevant legislation. Normative legal research includes studies of legal systematics and principles, the level of synchronization of regulations, legal history, and comparative legal studies (Negara, 2023). The materials in this study were collected from the literature, which included a series of activities to collect, read, record, and process library data. The legal sources used are secondary materials, including the Indonesian Criminal Code (KUHP), relevant fiqh literature, and relevant previous studies. The analysis of legal materials is carried out using descriptive qualitative methods, through procedures of description, assessment, argumentation, and systematization to obtain comprehensive and logical conclusions (Disemadi, 2022).

3. Results and Discussion

3.1. Extortion with Violence in Positive Law

The criminal act of extortion and threats refers to a perpetrator's conduct involving the use of violence or intimidation against an individual with the intention of coercing that person, who has control over a particular object, to surrender the object under pressure and fear. In such circumstances, the victim has no reasonable alternative but to comply and hand over the property due to the perpetrator's violent coercion and threats (Bergmann et al., 2024; Estévez-Soto, 2021; Harahap & Hasugian, 2024; Yunus et al., 2025).

In Indonesia, this conduct is regulated under Article 368 of the KUHP, which defines extortion as the act of unlawfully compelling another person, through violence or threats of violence, to surrender an object that wholly or partially belongs to that person or a third party, or to assume a debt or to discharge an existing debt, for the benefit of the perpetrator or another party (Zulfahmi et al., 2025). This offense is legally classified as *afpersing* (extortion) and is punishable by imprisonment for a term of

up to nine years (Hasugian et al., 2025). The criminal offense of extortion is closely related to robbery with violence as regulated in Article 365 of the KUHP. However, the distinction lies in the manner of obtaining the property. In robbery, the perpetrator seizes the property directly, whereas in extortion, the victim (after being coerced through violence or threats) hands over the property to the perpetrator (Hanafi et al., 2024).

Acts of intimidation or violence committed by an offender against a victim, as regulated in Article 368 paragraph (1) of the KUHP, are defined as unlawful conduct in which a person intentionally seeks to benefit themselves or another party by coercing someone, through violence or threats of violence, to surrender an object wholly or partly belonging to that person, or to assume or cancel a debt. This offense is punishable by imprisonment for up to nine years (Soesilo, 2013). The provision clearly establishes that extortion involving violence, whether committed by an individual or a group against another individual or group, is subject to the sanction stipulated in the article, namely imprisonment for a maximum of nine years.

Article 368 paragraph (2) of the KUHP provides an expanded interpretation of extortion. The broader interpretation covers acts of unlawfully compelling a person through violence or intimidation, or robbery preceded or accompanied by violence or threats of violence, regardless of whether the perpetrator takes the property directly or the victim hands it over. Book II, Chapter XXIII of the KUHP actually distinguishes two related offenses, derived from Dutch terminology: *afpersing* (extortion) and *afdreiging* (threat). However, because both forms of conduct share similar characteristics and the same objective (coercing others for unlawful gain) they are generally referred to collectively as extortion (Soesilo, 2013). Extortion, therefore, is defined as an act intended to obtain unlawful personal gain, either for oneself or another person, by compelling someone to act through violence or threats of violence as stipulated in Article 368 of the KUHP (Milinski, 2022; Zulfahmi et al., 2025).

Threats constitute a criminal offense capable of inflicting both physical and psychological harm. A threatening act involves compelling another person to perform an action in accordance with the threat, which may range from the use of violence to homicide (Budoyo et al., 2024). Such threats are intended to instill fear so that the victim accedes to the perpetrator's demands under coercion. By coercion is meant the application of physical pressure that causes an individual to act against their will, thereby producing a result that benefits the intimidator (Hermanto et al., 2022; Yunus et al., 2025).

Acts of intimidation are also regulated under Article 369 paragraph (1) of the KUHP, which stipulates that any person who, with the intent of unlawfully benefiting themselves or another party, compels someone, through threats of defamation, whether verbal or written, or by threatening to disclose a secret, to surrender an object wholly or partially belonging to another person, or to assume or cancel a debt, shall be subject to imprisonment for a maximum term of four years (Soesilo, 2013).

As previously discussed, the criminal acts of extortion and intimidation are separately codified within the KUHP: the principal form of extortion is regulated under Article 368 paragraph (1), while the principal form of intimidation is stipulated under Article 369. Both offenses, however, share a common characteristic, namely the use of threats or coercion to compel another person's actions. Consequently, both are classified within the same section, Book II, Chapter XXIII of the KUHP, entitled *Extortion and Threats* (Soesilo, 2013).

The imposition of criminal sanctions serves multiple objectives: to protect society, resolve disputes, restore balance, and promote public order by upholding the rule of law. Punishment further aims to rehabilitate offenders by providing correctional programs designed to encourage moral reform and alleviate their sense of guilt (Fahmi, Al Hakimi, et al., 2025; Khan et al., 2022). Whenever a person engages in conduct that contradicts legal norms, they cannot avoid criminal responsibility on the basis of justification. Accountability is determined by examining both the character of the act and the mental intent accompanying it. Criminal liability is therefore imposed solely on individuals who possess the legal capacity to be held responsible, reflecting the doctrinal principle of culpability within criminal law (Abdillah et al., 2024).

According to the principle of criminal liability, a criminal offense exists only when there is fault. Consequently, whether an individual may be punished for conduct involving threats depends on whether that person can be attributed with culpability. As a prerequisite for culpability, the offender's responsibility for the act must be capable of legal attribution (Habeahan et al., 2021; Lie et al., 2023).

Therefore, although a person may be held criminally liable for their conduct under statutory provisions, such liability applies only when no reasonable doubt exists regarding the necessity of imposing such responsibility.

In practice, the element that determines whether an individual can be held responsible for an act forms an essential component of every criminal offense. Only those who genuinely commit the unlawful act may be held accountable under criminal law. Fault is a decisive factor in imposing punishment; without fault, criminal liability cannot arise. This principle is encapsulated in the doctrine *nullum crimen sine culpa*, there is no crime without culpability (Jacobsen, 2024; Keiler, 2024).

3.2. Extortion with Violence in Islamic Criminal Law

Premanism, referred to in Arabic as *al-baltajab*, denotes the use of violence and force to intimidate others or to seize their property. Islam regards such conduct as a form of corruption on earth and classifies it as a grave sin that attracts severe punishment, since it falls within the category of *hirabah*, understood as waging war against Allah SWT and His Messenger Prophet Muhammad PBUH (Husin & Ramadani, 2025; Siagian et al., 2025).

Classical jurists (*fuqaha*) also describe *hirabah* by the terms *qat'u al-tariq* (highway robbery) or *al-sari'ah al-kubra* (major theft). Fiqh scholars frequently refer to *hirabah* as *al-sariqah al-kubra*, because it involves the appropriation of property on a scale that may cause bodily injury, death, or a serious disruption of public order and security. Although jurists typically require the presence of violence in order to qualify an act as *hirabah*, the precise contours of the requisite violence and the threshold for public disorder are not uniformly specified (Anggraini, 2024; Chun-Leung et al., 2024).

A. Djazuli, for instance, defines *hirabah* as an offense committed openly and accompanied by violence. In other words, *hirabah* comprises criminal acts or destructive conduct committed with weapons or tools in public, whether perpetrated by an individual or by a group, without regard for the identity of the victim and accompanied by acts of violence (Djazuli, 2021). Under Islamic criminal law, violent extortion or “*premanism*” may therefore be classified as *hirabah*. *Hirabah* encompasses actions by one or more persons that create chaos, effect killings, seize property, and openly contravene applicable laws, humanitarian norms, and religious precepts. It is also considered a form of *jarimah ta'zir*, an offense whose type, quantum, and punishment are determined by sharia and subject to judicial discretion (Anggraini, 2024; Chun-Leung et al., 2024).

As stated in the Qur'an Surah (QS) al-Ma'idah verse 33,

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ
مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ جَزَاءُ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ

Meaning: “The recompense for those who wage war against Allah and His Messenger and spread corruption on earth is none other than that they be killed, or crucified, or have their hands and feet cut off on opposite sides, or be exiled from the land. Such is their disgrace in this world, and in the Hereafter they will face a severe punishment” (QS. al-Ma'idah [5]: 33).

Scholars of the Hanafi school maintain that when a perpetrator of *hirabah* merely seizes property without causing death, the prescribed punishment is the crosswise amputation of a hand and a foot (for example, the right hand and the left foot). If the offender's conduct consists solely of killing, the penalty is execution. In cases where property seizure is accompanied by killing, Hanafi jurists allow the judge discretion to choose the appropriate sanction, whether to impose crosswise amputation followed by execution or to impose crucifixion alone. Where the offender's conduct consists only of intimidation and disturbance of public security, the sanction is imprisonment and the application of *ta'zir* (Miski, 2021); the form and implementation of such *ta'zir* penalties are left entirely to the judge's decision (Djalaluddin et al., 2023).

The Syafi'i and Hanbali schools likewise hold that an offender who merely takes property should receive crosswise amputation of the hand and foot, whereas conduct that results in death merits capital punishment. By contrast, Maliki jurists submit that the implementation of the punishments enumerated in the Qur'anic text is entrusted to the judge's discretion, to be exercised after consultation (*musyawarah*) with experts in jurisprudence and other relevant authorities, provided that the judge selects the penalty that best serves the public interest (*maslahah*). Under the Maliki position, where the offender merely

disturbs public security the judge may choose among execution, crucifixion, crosswise amputation, or corporal punishment followed by banishment; however, if the offense results in death, the judge must impose either execution or crucifixion and may not substitute other penalties. If the offense involves only the taking of property, the judge's options include execution, crucifixion, crosswise amputation, or banishment (Anggraini, 2024; Miski, 2021; Zulfahmi et al., 2025).

Some jurists argue that the penalties should be applied sequentially and in the order set out in the verse, matching the sanction to the precise form of *hirabah* committed. Others maintain the view described above, i.e., that where the offender only seizes property without causing death, crosswise amputation is appropriate; where the offender only kills, capital punishment is mandated; and where both theft and killing occur, the judge may elect the suitable punishment. Where the conduct consists merely of intimidation and public disturbance, imprisonment and *ta'zir* are generally considered appropriate, with the specific form and severity of *ta'zir* entrusted to judicial discretion. In Islamic criminal doctrine, *ta'zir* occupies the position of the second-most severe class of punishment after *qishash* (Ad-Damisyqi, 2010).

Any individual, whether acting alone or as part of a group who intimidates, terrorizes, or threatens others has committed a punishable offense and is liable to receive *ta'zir* sanctions (Anggraini, 2024), the form and level of which rest on the *ijtihad qadhi* (Djalaluddin et al., 2023). Where the perpetrator engages in widespread terror or threatens many people, proportionately severe sanctions are merited. Moreover, each episode of violent extortion or "premanism" carries specific shariah consequences: if the act causes permanent bodily impairment, the victim is entitled to *diyat* (compensation). If the act results in intentional killing, *qishash* applies, unless the victim's family pardons the offender, in which case the offender must pay *diyat*. For other categories of unlawful killing, the offender is likewise obligated to pay *diyat*, which classical formulations quantify as 100 camels or 1,000 *dinars* (noted in one source as equivalent to 4,250 grams of gold or approximately IDR 9.35 billion, using an exchange rate of 1 *dinar* = IDR 2.2 million) for each life taken (Ad-Damisyqi, 2010).

3.3. Comparison of Extortion with Violence in Positive and Islamic Criminal Law

In positive criminal law, extortion and threats are classified as criminal offenses that contain clearly defined objective and subjective elements. The objective element consists of an act of coercion against another person (through violence or threats) with the intention of forcing the victim to surrender property or perform a certain act that benefits the perpetrator. The subjective element lies in the presence of deliberate intent and the purpose of obtaining an unlawful advantage. The evidentiary process is carried out through formal judicial procedures based on the principle of *nullum crimen sine culpa* (no punishment without fault), meaning that the perpetrator may only be subjected to criminal sanctions if proven legally and convincingly to have committed the act and fulfilled the element of culpability (Hasugian et al., 2025; Susanto et al., 2022; Zulfahmi et al., 2025).

Meanwhile, in Islamic criminal law, extortion accompanied by violence may fall under the category of *hirabah*, referring to an overt criminal act intended to instill fear, disturb public security, or seize property, whether committed individually or collectively. Evidentiary assessment in Islamic law emphasizes the existence of actual violence and the impact of the act on public order. The type of punishment imposed depends on the degree of harm caused and may consist of *hudud*, *qissash-diyat*, or *ta'zir*, taking into account the overarching aim of preserving security and promoting public welfare (Anggraini, 2024; Chun-Leung et al., 2024; Zulfahmi et al., 2025).

Table 1. Comparison of Extortion Involving Threats and Violence

Aspect	Positive Law	Islamic Criminal Law
Legal Basis	Article 368 KUHP (extortion), Article 369 KUHP (intimidation or threats)	QS <i>al-Ma'idah</i> [5]: 33, Hadith, and <i>fuqaha'</i>
Primary Focus	Protection of individual property rights	Protection of public security, social order, and communal safety
Elements of the Act	Coercing another person through violence or threats to surrender property or cancel a debt	Using violence, intimidation, or terror; openly seizing property; disrupting public order and creating fear

Motivation of the Offender	Unlawfully obtaining personal or material gain	Causing social disorder, seizing property, spreading fear, or threatening public safety
Type of Sanction	Imprisonment (up to 9 years in Article 368, and up to 4 years in Article 369 KUHP)	<i>Hudud</i> : crosswise amputation of hands and feet, crucifixion, or death penalty; <i>Ta'zir</i> : discretionary penalties such as imprisonment or flogging
Role of the Judge	Ensures all legal elements are proven before imposing penalties	Determines the punishment proportionate to the severity of the offense (including <i>hudud</i> , <i>qishash-diyat</i> , or <i>ta'zir</i>)

The comparison shows that both positive law and Islamic criminal law regard extortion accompanied by violence as a serious criminal offence, yet they adopt different approaches. The KUHP emphasizes protection of individual property rights through calibrated and standardized sanctions, principally, imprisonment. By contrast, Islamic criminal law conceptualizes such conduct primarily as a threat to public order and security; accordingly, penalties may be severe and derive from sharia (*hudud*) or take the form of *ta'zir*, whose application is left to judicial discretion. This divergence indicates that the KUHP is oriented toward legal-formal regulation, whereas Islamic criminal law is oriented toward preserving public order and the broader public interest (*maslahah*).

3.4. Efforts to Combat Criminal Acts of Extortion with Violence

When related to the overarching objectives of Islamic law (*maqasid al-shari'ah*), namely the protection and preservation of essential human goods, criminalizing and preventing acts of violence committed through coercion or *premanism* becomes a necessary measure for achieving the five primary *maqasid al-shari'ah* (*al-maqasid al-khamsah*): the protection of religion (*hifz al-din*), the protection of life (*hifz an-nafs*), the protection of intellect (*hifz al-'aql*), the protection of lineage (*hifz an-nasl*), and the protection of property (Zulfahmi et al., 2024).

Violent extortion or *premanism* clearly contravenes two of these *maqasid* in particular, *hifz an-nafs* and *hifz al-mal*. In the classical Islamic sources, offences that violate *hifz an-nafs* typically include acts of violence up to and including intentional killing. Accordingly, *premanism* (which involves the violent coercion of an individual's person) constitutes a grave breach of the *maqasid al-shari'ah*. Likewise, forcible appropriation of another's property, especially when accompanied by threats or violence that may culminate in the victim's death, fundamentally undermines *hifz al-mal* and is therefore incompatible with the objectives of Islamic law (Siagian et al., 2025; Zulfahmi et al., 2025).

With respect to the principal responsibilities of government, exercised through the police, to maintain public order and safety, to enforce the law, and to serve, protect, and shelter the community, the problem of violent extortion or *premanism* represents a core enforcement obligation. Addressing this persistent social pathology requires precise and effective measures that respond to a phenomenon long embedded in everyday social life (Kurniawatie, 2025; Yunus et al., 2025). Accordingly, law enforcement agencies adopt a dual strategy (preventive and repressive) in their efforts to control and suppress *premanism* (Siagian et al., 2025).

Preventive measures against *premanism* (organized street criminality) play a pivotal role and yield numerous benefits. Prevention does not necessarily require large organisations or complex bureaucracies; indeed, simple actions by individuals can be effective and do not demand the specialised skills that repressive or rehabilitative interventions entail. Examples include avoiding situations that increase vulnerability to extortion and strengthening social solidarity, communal harmony, and social responsibility. Grounded in religious values, such preventive efforts also contribute to the cultivation of better citizens and communities, help preserve the stability necessary for successful national development, and foster welfare that is pleasing to Allah (SWT).

In addition to preventive measures, the police execute repressive actions to address incidents of extortion or *premanism* that have already occurred, with the aim of producing a deterrent effect. Enforcement activities include structured raids and arrests of perpetrators, whether individuals, groups, or implicated officials, at high-risk locations such as bus terminals, markets, and other public venues, typically in response to community reports. Nevertheless, controlling *premanism* is not solely the responsibility of law enforcement agencies. Given the broad spectrum of such criminality, active public

participation is essential for mitigation efforts to be effective; without community engagement, policing alone cannot address the problem comprehensively.

4. Conclusion

The criminal sanctions for extortion accompanied by violence are explicitly regulated in the KUHP. The basic form of extortion is set out in Article 368 paragraph (1) of the KUHP, which prescribes a maximum imprisonment of nine years, while acts of intimidation are regulated in Article 369 with a maximum penalty of four years' imprisonment. Both offenses share a common characteristic, coercing or intimidating another person through violence or threats, thus they are classified together under Book II, Chapter XXIII of the KUHP, entitled *Extortion and Threats*. Under Islamic criminal law, the imposition of punishment is believed to produce a strong deterrent effect and prevent the recurrence of similar acts by either the offender or others. The application of firm sanctions also provides tangible benefits to society, as it protects individuals from extortion, threats, and violent acts of vigilantism or coercion. Through the implementation of Islamic criminal law in alignment with the objectives and principles of *maqāṣid al-sharī'ah*, acts of extortion accompanied by threats or violence can be effectively prevented and eradicated, thereby fostering public security and social order.

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