

LOOTING IN THE 1998 DEMONSTRATION TO OVERTHROW PRESIDENT SOEHARTO ACCORDING TO ISLAMIC CRIMINAL LAW

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Abstract: *In 1998, Indonesia experienced a period of mass riots across various regions. These riots were triggered by the multidimensional crisis the country was facing at the time, including an economic crisis, a legal crisis, a social crisis, and a political crisis. The objective of this study is to conduct an in-depth investigation into the May 1998 looting incidents by analyzing accountability and sanctions for the perpetrators. The research method employed is a normative legal approach using case studies, historical analysis, and conceptual analysis. The findings of this study indicate that the 1998 looting incident was not merely a criminal act committed by chance during the monetary crisis, but rather premeditated crimes, evidenced by the fact that the perpetrators were outsiders who arrived at the sites of the looting and by the nearly identical patterns of the incident across all locations where looting occurred. The perpetrators of the looting were a group of men who were carrying sharp weapons, stones, and fuel. Their actions constituted rebellion against the governments, with all the necessary elements fulfilled; the penalty for those who rebel is to be fought against, while the penalty for those who take advantage of the looting situation is criminal punishment for robbery.*

Key words: *Criminal offenses, looting, liability, penalties.*

I. INTRODUCTION

Indonesia has a dark history. In May 1998, riots erupted amid a multidimensional crisis. Economic crisis, political crisis, legal crisis, and social crisis were the main factors in the 1998 riots.¹ Indonesia's poor economic conditions, skyrocketing inflation and rising unemployment cause unrest for the community. In addition, the political conditions at that time, which were under extraordinary pressure, also muddied the atmosphere.² The riots at that time were

¹ Nadia Kusuma Dewi, 'Reformasi 1998: Transition from New Order to the Era of Democracy in Indonesia', *Historia Vitae: History Knowledge and Teaching Series*, 4.2 (2024), pp. 20–37 <<https://jurnal.lp2msasbabel.ac.id/index.php/tar/article/view/3449>>.

² Ludfy Dwi Hartono and others, 'Conflict Mitigation with an Intelligence Approach from a Social Disaster Perspective in the May 1998 Riots', *Journal of Social and Humanities*, 9.9 (2025), pp. 678–86.

accompanied by racialized and widespread acts, such as hate speech, physical violence, destruction of several public facilities, looting, arson, persecution and even widespread harassment of women and murder.³

The 1998 riots began with the weakening of the economy in Asia which had an impact on several surrounding countries, including Indonesia. To deal with these problems, the state asked for assistance from the IMF (*International Monetary Fund*), but even though assistance has been given, the value of the rupiah is weakening and causing Indonesia to experience a widespread monetary crisis. This weak economy spread to various fields, including political resilience caused by the softening of public trust in the government and demanding that President Suharto resign from office after occupying the presidency for a long time. Public anger became more and more after the government was considered to have committed violence and murder against Trisakti students because they were considered to be against the policy by holding demonstrations. This dark and bloody event further shows the corruption of the government at that time which was very detrimental to the people and was considered inhumane.⁴ All forms of actions taken by the government at that time to overcome the problem no longer have meaning in the eyes of the public, therefore any policy issued by the government does not extinguish the anger of the people to stop their actions in demanding change and change of leadership. Other problems such as monopoly, protectionism, collusion and nepotism also drove the chaos that occurred.⁵ The demonstration grew stronger after several individuals heated up the atmosphere by leading opinions to the public to discriminate against ethnic Chinese who were considered the masterminds of the monetary crisis, this can be seen from the economic gap between ethnic Chinese and indigenous people which are very much different, one of which is by looting.

The weakening of the rupiah currency certainly signals to the community that the price of buying and selling will increase, this condition is troublesome for the indigenous community. The indigenous people think that the price increase is caused by the Ethnic Chinese, thus increasing the anger of the indigenous people towards the Ethnic Chinese. Expressions of anger are manifested by hate speech against ethnic Chinese and looting of shops

³ Muhammad Ijlal Aziz and others, 'The May 1998 Tragedy: The Embers of the Monetary Crisis, the Fire of Racial Sentiment, and the Burning Trail of Reform', *Jimmi: A Multidisciplinary Student Scientific Journal*, 2.3 (2025), pp. 376–97, doi:10.71153/jimmi.v2i3.346.

⁴ Irma Febriana and others, 'State Reconciliation in Resolving Cases of Past Serious Human Rights Violations (Case Study of the Trisakti Tragedy and May 1998 Riots)', *Formosa Journal of Applied Sciences*, 3.3 (2024), pp. 909–24, doi:10.55927/fjas.v3i3.7847.

⁵ Basuki Agus Suparno, *Reform and the Fall of Suharto* (PT Kompas Media Nusantara, 2012).

belonging to ethnic Chinese. Not only shops but also shopping centers in loot which were then burned, sadly the burning process in this shopping center was carried out when there were still many people in it, this certainly resulted in many casualties from the incident, both ethnic Chinese groups and indigenous people of various ages.⁶

The acts of looting carried out against ethnic Chinese during large-scale demonstrations are in fact contrary to the applicable law in Islam, this reflects the incompatibility between empirical facts and legal norms. The large number of looters in 1998 did not make the act valid, if this was left unchecked, there was no legal certainty about the act, and opened the opportunity for the act to be repeated. Islamic Criminal Law states that crimes committed on political grounds are *Jarimah Siyasiyyah* (political crimes) or *Jarimah Bagy* (criminal acts of rebellion), in Islamic law the security and welfare of the ummah are very much maintained and maintained, therefore acts that cause great chaos are strictly prohibited.⁷ The crime of looting causes unrest and also losses in the community, this does not reflect the sharia rules that uphold security and benefits in the community.

There have been many previous researchers who have researched the riots that occurred in May 1998, but the research is general, namely discussing the May 1998 riots extensively, besides that many researchers also only focus on the human rights violations that occurred at that time. Writer Ria Puspita, Ismail, Puguh Aji Setiawan. In his research entitled "*The Concept of Criminal Responsibility in the Crime of Mass Riots to Realize Justice*", he focuses his research on the concept of criminal responsibility during riots to realize justice. This justice will be obtained if the law enforcement process runs according to the procedures in accordance with the applicable law. Prudence in examining the perpetrator is very important whether the elements of the criminal act are fulfilled or not.⁸ In another study written by Eunike Mutiara Himawan, Annie Polhman, and Winnifred Louis. In her research entitled "*Revisiting The May 1998 Riots in Indonesia: Civilians and Their Untold Memories*" This study conducted a flashback of memories of the 1998 events which focused on the 1998 riots, attacks on Ethnic Chinese and sexual violence against women of Ethnic Chinese, The purpose of this study is

⁶ Aziz and others, 'The May 1998 Tragedy: The Embers of the Monetary Crisis, the Fire of Racial Sentiment, and the Burning Trail of Reform'.

⁷ Ahsin Sakho Muhammad, *Encyclopedia of Islamic Criminal Law* (PT Kharisma Ilmu, 2008).

⁸ Ria Puspita, Ismail Ismail, and Puguh Aji Setiawan, 'The Concept of Criminal Responsibility in the Crime of Mass Riots to Realize Justice', *Journal of Business Law*, 13.03 (2024), pp. 1–9, doi:10.47709/jhb.v13i03.3904.

not only to confirm the general knowledge about the 1998 riots but also to uncover new information about it.⁹

Furthermore, the research conducted by Nadia Kusuma Dewi entitled "*Reformasi 1998: Transition from the New Order to the Era of Democracy in Indonesia*". In his research, the author focuses on the discussion of the events that occurred during the transition from the New Order to the reform period. The chaos in the new order which was initially caused by poor economic conditions, corrupt practices, collusion and nepotism (KKN) resulted in many protests against the government from various circles, especially students. This demonstration continued to heat up until finally President Suharto resigned on March 21, 1998.¹⁰ Furthermore, a research conducted by Muhammad Ijlal Aziz, et al. entitled "*The May 1998 Tragedy: The Embers of the Monetary Crisis, the Fire of Racial Sentiment, and the Burning Traces of Reform*". The author brings this research to the May 1998 riots which focused on Jakarta because it is the center of the Indonesian state. How the monetary crisis that spread in Asian countries including Indonesia triggered the unrelenting anger of the public against the New Order government. This anger led to riots that were colored by various other crimes such as looting and violence which of course left deep wounds for the community, especially ethnic Chinese.¹¹

The four previous studies above show that several events in the May 1998 riots have not been studied in depth, some have only conducted general research on these events including demonstrations, the murder of Trisakti students, and the resignation of President Suharto. In addition, several researchers conducted research from the perspective of victims and human rights violations. The novelty of this study lies in the discussion of the May 1998 looting, especially the perpetrators of looting. analyze whether the looting that occurred is an ordinary crime or a political crime from the perspective of Islamic criminal law.

Islamic criminal law does not make looting a special criminal act but is often associated with *jarimah sariqah* or *jarimah hirobah*. In addition, it can also be associated with *jinayah siyasiyyah* if the looting is based on political intentions and the atmosphere when the looting is carried out is in chaos. The three *jarimah* have different sanctions and elements. Therefore, the purpose of this study is to find out in depth about the looting in May 1998, by analyzing the

⁹ Eunike Mutiara Himawan, Annie Pohlman, and Winnifred Louis, 'Revisiting the May 1998 Riots in Indonesia: Civilians and Their Untold Memories', *Journal of Current Southeast Asian Affairs*, 41.2 (2022), pp. 241–257, doi:10.1177/18681034221084320.

¹⁰ Dewi, 'Reformasi 1998: Transition from New Order to the Era of Democracy in Indonesia'.

¹¹ Aziz and others, 'The May 1998 Tragedy: The Embers of the Monetary Crisis, the Fire of Racial Sentiment, and the Burning Trail of Reform'.

1998 looting case to find out how the criminal responsibility for the perpetrators of the 1998 looting and its sanctions are in Islamic Criminal Law. This research was also carried out to realize legal certainty regarding the looting in May 1998, so that it can be a concern for law enforcement and the community at large.

II. RESEARCH METHODS

This research uses *a normative juridical* method, which focuses on applicable norms and rules, with an approach method in the form of *a case approach*, *historical approach* and *conceptual approach*. The *case approach* is used as the basis of this study and also strengthens the author's argument by including examples of empirical facts. The *historical approach* is used to analyze and trace the historical facts that occurred in the May 1998 looting incident. In addition, this approach can also help in understanding the chronology and cause and effect of an event that occurred in the past, in this case related to the May 1998 looting event. The *conceptual approach* is used to provide a theoretical basis for the cases raised in this study, building concepts with scientific arguments. The type of data used is secondary data with legal materials used, namely primary legal materials, secondary legal materials and tertiary legal materials. Primary legal material is legal material sourced from the Qur'an. Secondary legal materials are legal materials sourced from books and journals. Furthermore, tertiary legal materials are legal materials that come from encyclopedias. The data collection technique uses *literature techniques (library research)*, namely collecting various legal materials that are primary, secondary and tertiary. The data analysis technique uses normative qualitative techniques, namely by identifying the events that occurred. Then it is adjusted between the facts as they occur and the applicable regulations to establish legal certainty.

III. RESEARCH RESULTS

Criminal Liability of Perpetrators of the Crime of Looting 1998, according to Islamic Criminal Law

According to A. Hanafi, accountability in Islamic shari'a is the burden of a person due to the deeds he does of his own volition, where he knows the purpose and consequences of his actions.¹² In Islamic Criminal Law, criminal responsibility can be carried out if the following three elements are met, namely: 1). The act committed is a prohibited act or an unlawful act,

¹² Zul Anwar Ajim Harahap and others, *Islamic Criminal Law in the Cover of Its Application in Indonesia* (Semesta Aksara, 2024).

2). The act is done of one's own volition without any encouragement from others, 3). The perpetrator knows the consequences of what he has done.¹³ Every criminal act carries the consequences of sanctions for everyone who commits a criminal act, and these sanctions will run if there is law enforcement regarding a criminal act.

There are many types of criminal acts, one of which is political crime (*jarimah siyasiyyah*). The difference between ordinary criminal acts and political crimes is in the intention to commit a criminal act. Political crimes are committed for political purposes, and are carried out when there is chaos, precisely when there is a rebellion.¹⁴ The May 1998 riots were a very chaotic situation, many demonstrations took place in various parts of Indonesia and the center was Jakarta in front of the House of Representatives building. Many people, especially students, held large-scale demonstrations, demanding that the president step down from his position after serving as president for three decades.¹⁵ The atmosphere heated up after four student demonstrators were killed, sparking massive riots in Jakarta and several other cities. The chaos was then accompanied by acts of looting, arson and violence against civil society. The country experienced national instability, the chaos at that time took many lives and enormous economic losses, the event was also a marker that the political system at that time had lost its legitimacy.¹⁶

Islamic criminal law states that there are three elements that must be met to be able to find out whether an act is included in a criminal act or not. The three elements of *jarimah* are:
1) *Rukn Al-Syar'i* (formal element);

This element means that an action can be sanctioned if there is a rule that prohibits the act accompanied by the threat of sanctions for those who do it.¹⁷ Looting of ethnic Chinese means taking property by force and without permission from the owner. One of the prohibitions of plundering is found in Surah An-Nisa verse 29. This verse explains the prohibition of eating the property of fellow human beings through the way that *is forbidden*. There is no consent from the owner of the property to show that looting is a prohibited act. In addition to

¹³ Zakaria Sayafi, 'Criminal Liability in Islamic Criminal Law', *Alqalam*, 31.1 (2014), pp. 97–136, doi:10.32678/alqalam.v31i1.1107.

¹⁴ Muhammad, *Encyclopedia of Islamic Criminal Law*.

¹⁵ Habib Bunajar and Novia Wahyu Wardhani, 'Student Movement in the Form of Demonstrations As', *Ganesha Civic Educational Journal*, 5.1 (2025), pp. 52–56.

¹⁶ Cavan Nizar Chalandra, Nurul Hidayah, and Adisha Khansa Aulia, 'The Wave of the Crisis 1997-1997: The Collapse of the New Order and the Birth of a New Round of the Indonesian Economy', *HISTORIA PEDAGOGIA Research and Innovation of History Education*, 14.24 (2025), pp. 26–39 <<https://journal.unnes.ac.id/journals/hp>>.

¹⁷ Syamsuri and others, *Islamic Criminal Law* (PT Rajawali Buana Pusaka, 2020).

contradicting the above verse, looting is also contrary to the purpose of the formation of Islamic law (*maqasid sharia*), namely *hifdzu mall* (guarding property).

2) *Rukn Al-Maddi* (material elements);

This element requires that there be acts committed and form criminal acts both directly and indirectly.¹⁸ The looting of several shops owned by ethnic Chinese and several shopping malls is a sign that the actions of those who looted at that time were criminal acts. They looted supermarkets, shops, and shopping centers. After the goods were looted, several shops and shopping centers were then burned by those who looted. The allegation regarding the criminal act of looting carried out was their way of maintaining their lives during difficult times when in fact they were broken with looted goods, the perpetrators not only took basic materials such as food and drinks but also included electronic goods such as computers and televisions, clothes and even some household appliances.¹⁹

3) *Rukn Al-Adabi* (moral element).

This element is related to the perpetrator of a criminal act that is required by a *mukallaf* (someone who is legally competent). This means that the person is able to account for his actions, both male and female.²⁰ The act of looting that occurred at that time was considered an organized crime, because the pattern of looting in each area was almost similar and the perpetrator was not a local resident where the looting was committed. They were brought in from an unknown place, and their identities were unknown to the locals.²¹ This almost identical pattern of looting certainly did not happen by chance, as if it had been organized. Organized crime is born from someone who is already trained. Based on these facts, it is likely that the perpetrators are *mukallaf*.

All of the above elements must be fulfilled in a criminal act, if one of them is not fulfilled or is not believed, then the act cannot be said to be a criminal crime and the perpetrator is exempt from criminal sanctions. In addition to the main elements above, there are also special elements in each criminal act. The criminal act of looting that occurred during the May 1998 chaos can be said to be a political crime. In the term of Islamic criminal law, political crimes are called *bagy*, while the perpetrators are called *bugat*. To be declared a perpetrator of a

¹⁸ Syamsuri and others, *Islamic Criminal Law*.

¹⁹ Ester Indahyani Jusuf and others, *May 1998 riots: facts, data and analysis reveal the May 1998 riots as crimes against humanity* (Solidaritas Nusa Bangsa (SNB) and the Indonesian Legal and Human Rights Advisory Association (APHI), 2005).

²⁰ Syamsuri and others, *Islamic Criminal Law*.

²¹ Marzuki Darusman and others, 'Findings of the Joint Fact-Finding Team of Riot Events. Pdf' (Komnas Perempuan Publication, 2002), p. 17.

political crime, the perpetrator of the crime must meet the main elements of the criminal act in the form of *rukn Al-Syar'i*, *rukn Al-Maddi*, and *rukn Al-Adabi* must meet the special elements of political crime, namely:

1) Have a Specific Purpose

A person is considered a perpetrator of a political crime if the action carried out has a political purpose, such as deporting the head of state, deporting the executive institution in the government, or refusing to obey the government. If the goal is not justified in Islam, it cannot be considered a political crime.²² The looting that occurred in May 1998 was a form of public anger against the government for its policies that did not solve the problems that occurred in the Indonesian state. The looting then led to burning and destruction so that it caused many casualties as a sign of destruction of economic power and denial of the government. The riots that occurred in May 1998, including looting, were seen as games designed by a number of political elites. They used the issue of SARA, social inequality, injustice, KKN (corruption, collusion and nepotism) as a bait for riots in the overthrow of Suharto's leadership at that time. Therefore, the government often states that behind the mass riots that occur, there are a number of groups that incite the community with anti-government propaganda.²³

2) Having a Reason (Takwil)

Perpetrators of political crimes must disclose the reasons for their actions. If there is no reason given or the reason given is not justified in Islamic law, then the act is included in ordinary criminal acts, not politics. When a justified reason is not given, they are considered robbers who seek to do damage on this earth.²⁴ The May 1998 looting began with riots during public anger demonstrations against the government, a monetary crisis that has been going on since 1997 and peaked in 1998. These demonstrations were accompanied by looting in shops, supermarkets, and shopping malls. The assumption that the act of looting was carried out on the basis of how to survive during the monetary crisis and the difficulty of getting a job is actually unjustified. Those who loot not only take basic materials but also other items, such as electronics, household appliances and even clothes, then this looting is accompanied by other crimes including burning cars, motorcycles and shopping centers.²⁵ Another explanation for the looting is that it is caused by the game of political elite groups in denying the existence of

²² Muhammad, *Encyclopedia of Islamic Criminal Law*.

²³ Suparno, *Reform and the Fall of Suharto*.

²⁴ Muhammad, *Encyclopedia of Islamic Criminal Law*.

²⁵ Jusuf and others, *May 1998 riots: facts, data and analysis reveal the May 1998 riots as crimes against humanity*.

the government.²⁶ This fact is enough to conclude that the motive of this looting was not solely a way for the people to maintain their lives, but part of the community's protest against the government for its inability to implement policies to improve the problems experienced by Indonesia at that time.

3) Possess Armaments

A person who is said to be a rebel must have the weapons and strength to put up a resistance. If the perpetrator does not have weapons, his actions cannot be said to be political crimes even though he has a strong reason to disagree with the authorities.²⁷ It was stated in the report of the Findings of the Joint Fact-Finding Team on the May 1998 Riots that looting was not an ordinary occurrence but an organized event as if it had been planned, most of the perpetrators were not from the surrounding residents where the place was looted, they arrived using trucks and the like, among them there were leaders who called for looting or arson. It was also stated that some of the looters carried weapons in the form of pistols and HT to communicate.²⁸ In other facts, it was also stated that some of the perpetrators carried stones and fuel.²⁹

4) The Atmosphere of Rebellion and War

Political crimes must occur in an atmosphere of rebellion carried out for political purposes. If the criminal act is not committed in a chaotic situation, it cannot be considered a political crime, but as an ordinary criminal act and the perpetrator is sanctioned as an ordinary criminal act.³⁰ In May 1998, there was extraordinary chaos in Indonesia which was initially caused by the monetary crisis that had been going on since 1997, where the value of the rupiah declined drastically, selling prices soared and the poverty rate increased rapidly. This condition causes unrest in the community and requires the government to make policies to deal with it. The community's demands were conveyed through demonstrations that occurred in several regions in Indonesia and were attended by various groups ranging from farmers, workers and dominated by students.

The demands of the people are getting stronger and the government responds with repressive measures, community demonstrations are met with violence and arrests of activists. This socio-political condition became even more tense after the shooting of four student demonstrators, this incident triggered public anger so that it carried out huge riots in Jakarta

²⁶ Suparno, *Reform and the Fall of Suharto*.

²⁷ Muhammad, *Encyclopedia of Islamic Criminal Law*.

²⁸ Darusman and others, 'Findings of the Joint Fact-Finding Team of the Riot Incident. Pdf.

²⁹ Darusman and others, 'Findings of the Joint Fact-Finding Team of the Riot Incident. Pdf.

³⁰ Muhammad, *Encyclopedia of Islamic Criminal Law*.

and other cities. These riots were also accompanied by several acts of crime against ethnic Chinese such as looting, arson, destruction of public facilities and sexual harassment of women. The unrest that occurred indicates that the government has failed to create a safe and peaceful country, and the political situation is getting out of control.³¹

Criminal liability in Islamic criminal law is often referred to as *Al-Mas'uliyah Al-Jinayyah*. Violations or crimes against the provisions of the law can be in the form of doing or not doing, the perpetrator of jarimah can be given legal sanctions if his actions can be blamed and meet the elements of jarimah. Meanwhile, criminal liability according to Islamic shari'a is based on two things, namely the power of thought and choice (*iradah* and *endeavor*). Therefore, perpetrators who have a sound mind, maturity, and commit acts of their own volition can be subject to criminal liability. On the other hand, small children, crazy people, and people who commit acts not against their will lose criminal liability for them.³²

Sanctions for Perpetrators of the Crime of Looting 1998 according to Islamic Criminal Law

The looting that occurred in May 1998 cannot be considered an ordinary event that occurred on the basis of the sentiment of the indigenous people towards the Chinese Ethnicity. This incident was colored by several irregularities, the Discovery of the Joint Fact-Finding Team of the Riot Incident mentioned several irregularities including the first perpetrator who committed looting was not a local resident where the place was looted, almost from every place where there was looting, the first perpetrator was carried out by a group of people who came from a place whose identity was unknown to local residents. This pattern of looting is almost the same in every looting place, and it is quite difficult if it is only said to be a regular event.³³ The fact that this pattern of looting is like an organized event and is almost the same everywhere makes it very likely that this looting has been planned by one or a group of people behind it.

The fact that the first looters were not locals does not mean that they did not participate in the looting, they just did not play the role of the first person to make the looting movement. At first, local residents only watched the looting carried out by a group of people who came.³⁴ The perpetrators of the 1998 riots, including the act of looting, were grouped into three, namely

³¹ Moch. Rizky Abadhi, 'Human Rights Violations in the 1998 Tragedy and the Birth of the Reform Era', *Maliki Interdisciplinary Journal (MIJ)*, 3 (2025), pp. 424–32 <<https://urj.rin-malang.ac.id/index.>>.

³² Fitri Wahyuni, *Islamic Criminal Law Actualizes Islamic Criminal Law Values in Indonesian Criminal Law Reform* (PT Nusantara Persada Utama, 2018).

³³ Darusman and others, 'Findings of the Joint Fact-Finding Team of the Riot Incident. Pdf'.

³⁴ Darusman and others, 'Findings of the Joint Fact-Finding Team of the Riot Incident. Pdf'.

- a. Provocateur groups, which are groups that move the masses and make noise. Those who commit destruction, looting and chaos the first time. This group is like highly trained people, and they are also the ones who prepare the equipment to carry out riots such as stones, fuel, crowbars, Molotov cocktails and others.
- b. The active masses, that is, the period of immigrants who were initially passive masses but have been provoked so that their actions became aggressive, this group that carried out widespread and organized destruction including acts of arson and looting.
- c. Passive masses, this group is local residents who at first only watched with curiosity about the riots that occurred, after the riot occurred, some of them participated in looting and some of them just watched, but the most tragic thing is that some of this group became victims of fire.³⁵

Based on the grouping of perpetrators above, the perpetrators are grouped back into two, namely perpetrators who commit looting on a deliberate basis, they carry out looting in a planned and organized manner, they are provocateurs and aktif groups. Next are the looters because they take advantage of the looting situation that has occurred, they just follow along and are not the main perpetrators, they are a passive group. The motives of the two looting groups are clearly different, therefore the liability and criminal sanctions are also different.

The perpetrators of looting on a deliberate basis where they loot shops, markets, shopping malls belonging to ethnic Chinese, after looting they damage some privately owned facilities and public facilities they can be said to be rebel groups. With regard to rebellion, in Islamic criminal law there are three kinds of elements, namely:

- a. There is resistance to the leader;
- b. Resistance is accompanied by strength; and
- c. There is an intention to violate the law.³⁶

The act of looting was one of the criminal acts that occurred as a form of public resistance to the government over all the problems experienced by Indonesia at that time. Not only looting, some of them brought weapons in the form of guns, incendiaries, stones and others as their strength in damaging public facilities and burning them. Then the fact that the looting was carried out as if it was planned and organized proves that there was already an intention before committing this looting.

³⁵ Darusman and others, 'Findings of the Joint Fact-Finding Team of the Riot Incident. Pdf.

³⁶ Muhammad, *Encyclopedia of Islamic Criminal Law*.

It should be noted that between the government and the rebels it is required to make peace efforts, and the government is allowed to take repressive measures if the peace fails to be achieved, if the rebels continue to carry out actions that disturb public security then the government is allowed to fight it. And the imposition of these sanctions is not for the purpose of retaliation for their actions but to maintain public order.³⁷ In the Qur'an, Surah Al-Hujurat verse 9 states that if there are two groups of believers who are at war with each other, then make peace, and if one of the groups violates the agreement, it must be fought until they return to obedience. Based on this verse, the punishment for the rebels is in peace, if peace still does not apply to one of them, then fight until they return to the truth.³⁸

For those who commit looting because they take advantage of looting situations, in the sense that they are not the main perpetrators who in the group of perpetrators are called passive perpetrators. They have no other intention than to take advantage of the looting situation that has been carried out by others. So in the case of looting that is carried out when there is chaos but the perpetrators do not see a political purpose, they are included in ordinary criminal acts (*jarimah 'adiyah*).³⁹ And the sanctions given are like ordinary criminal acts, namely *the Jarimah Hirobah* sanction.

The Qur'an surah Al-Maidah verse 33 explains that the punishment for those who fight against Allah and His Messenger and cause damage on earth is to be killed or crucified, to have his hands or feet cut off, or to be exiled. This verse contains several kinds of punishments, which means that the punishment for the perpetrator *of jarimah hirobah* is not necessarily to cut off the hand but is based on the action taken.

- a. If a person leaves the house with the intention of taking property forcibly, but the perpetrator does not take property and does not kill, then the punishment is exile;
- b. If a person leaves the house with the intention of taking property forcibly without killing, then the punishment is to cut off the hand or foot;
- c. If a person leaves the house with the intention of taking property but what he does is kill, then the punishment is to be killed; and
- d. If a person leaves the house with the intention of taking property forcibly, then when taking property accompanied by killing, the punishment is crucifixion.⁴⁰

³⁷ Lahmudinur and others, 'Bughat as Political Jarimah in Islamic Law: A Conceptual Study and the Relevance of the Concept of Bughat in the Modern State', *Ahsan: Scientific Journal of Islam and Society*, 2.2 (2025), pp. 321–30.

³⁸ Rokhmadi, *Islamic Criminal Law* (CV. Karya Abadi Jaya, 2015).

³⁹ Muhammad, *Encyclopedia of Islamic Criminal Law*.

⁴⁰ Rokhmadi, *Islamic Criminal Law*.

The perpetrators of the 1998 looting, because they took advantage of the situation, only took property without killing. If referring to the sanctions above, the punishment was to have their hands or feet cut off. Imam Abu Hanifah and Imam Shafi'i required that in order to be sanctioned, hudud, then the property taken by each person must reach nishab; there is no hudud for him. In the opinion of Imam Ahmad bin Hanbal, the perpetrator is subject to the hudud sanction if the goods taken reach the nishab even though they are taken by several people. Meanwhile, Imam Malik did not order the nishab to be subject to hudud.⁴¹

IV. CONCLUSION

In Islamic criminal law, an act can be classified as a criminal offense if it meets three elements: there are rules governing the act (*Rukn Al-Syar'i*), the act is an unlawful (*Rukn Al-Maddi*), and the perpetrator is *a mukallaf* (*Rukn Al-Adabi*). These three elements must be fulfilled, an act cannot be said to be a criminal act. The prohibition of plundering is contained in Q.S An-Nisa verse 29, which is about the prohibition of eating the property of others in an unlawful way. In addition to the general elements above, to be classified as a political crime (*jarimah siyasiyyah*) an act must meet the following elements, namely it has a specific purpose, has a reason, has weapons, and occurs in an atmosphere of rebellion. The 1998 looting was a manifestation of public anger against the government which was considered unable to present policies for the problems faced by Indonesia at that time, the people demanded that President Suharto resign from his position who had been in office for a very long time. The perpetrators of looting at that time were recorded as carrying weapons in the form of stones, pistols and fuel. The riots due to mass demonstrations at that time became more heated with looting accompanied by arson.

The looters are divided into three groups, namely the provocateur group, the active group and the passive group. Of the three groups, they are divided into two, namely the perpetrators of looting on the basis of intentionality and the perpetrators of looting because they take advantage of the looting situation. Those who plunder on a deliberate basis are said to be rebels. In Islamic criminal law, the punishment for rebels is to be fought until they submit again. As for the perpetrators who commit looting because they take advantage of the atmosphere of looting, they are included in the perpetrators *Jarimah Hirobah* and the sanctions given accordingly *Jarimah Hirobah*.

⁴¹ Muhammad, *Encyclopedia of Islamic Criminal Law*.

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