



Reconceptualizing the Islamic Penal System: Jarimah, Uqubat, and Ta'zir within the Framework of Maqāṣid al-Sharī'ah and Contemporary Criminal Justice

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Abstract

The penal system in Islamic law is an integral part of the sharia which aims to maintain social order, uphold justice, and protect human dignity. The concept of jarimah as a criminal act in Islamic law is not only understood as a violation of legal norms, but also as a violation of divine provisions derived from the Qur'an and Sunnah. Criminality in Islam is manifested through uqubat which is classified into hudud, qishash-diyat, and ta'zir, each of which has different characteristics, purposes, and legal basis. This research aims to analyze conceptually and normatively the penal system in Islamic law by focusing on the definition of jarimah, forms of uqubat, and the principles of criminal law that underlie it. The research method used is normative legal research with a conceptual, philosophical, and normative-shari'a approach, through the study of the Qur'an, Sunnah, the opinions of the jurists, and Islamic criminal law literature. The results of the discussion show that the penal system in Islamic law is built on the principles of justice, certainty, and benefit, which is reflected in the strict standard of proof of hudud, the proportional nature of qishash-diyat, and the flexibility of ta'zir in responding to social dynamics. The difference in the views of scholars in interpreting the postulates of criminalization confirms that Islamic criminal law has an adaptive character without losing its normative legitimacy. The conclusion of this study emphasizes that the penal system in Islamic law is a comprehensive legal system and oriented towards substantive justice, crime prevention, and protection of maqāṣid al-syarī'ah.

I. INTRODUCTION

Law has a variety of meanings born from different points of view among experts. Frederic Bastiat views law as an organization of legitimate natural rights, especially the right to self-defense, liberty, and property, through a collective force that replaces individual power (Sanjaya, 2023). This conception places the law as an instrument of protection for the fundamental interests of human beings as well as a means of enforcing justice collectively. Such a view shows that law is not just a set of norms, but a mechanism for regulating power and sanctions in order to maintain social order.

In social life, the law is often positioned as the main means of resolving conflicts and controlling deviant behavior. Belief in the law as a neutral instrument and representing universal interests gives birth to the demand for obedience to the law for the creation of order, certainty, and justice. This character is increasingly prominent in criminal law, because in it there is the legitimacy of the state

to inflict suffering in the form of criminalization of norm violators.

In the perspective of Islam, the law is not born from social consensus alone, but comes from the revelation of Allah SWT which is enshrined in the Qur'an and explained through the Sunnah of the Prophet (Ridwan et al., 2021). The fundamental principle of Islamic law enforcement emphasizes that criminalization is not carried out without the submission of a treatise. The words of Allah SWT in Surah Al-Isra' verse 15 state:

وَمَا كُنَّا مُعَذِّبِينَ حَتَّىٰ نَبْعَثَ رَسُولًا

"And We will not inflict punishment until We send a Messenger."

This verse affirms the principle of legality in Islamic law, that sanctions can only be imposed after there are clear legal provisions and conveyed to humans.

Islamic Sharia, according to Mahmud Shaltout, is a set of laws and rules set by Allah to regulate human relations with Allah and with fellow humans. Farouq Abu Zaid emphasized that the sharia is a regulation of

Allah transmitted through His Prophet and is permanent and unchangeable, including aspects of *ushul aqidah* and *furu' sharia*. In the context of Islamic criminal law, the *sharia* presents a distinctive system of punishment through the concept of *jarimah* as a criminal act, *uqubat* as a sanction, and *ta'zir* as a form of discretionary punishment that is handed over to the ruling authority (Darna, 2021).

The penal system in Islamic law is not solely oriented towards retribution, but contains the purpose of protecting religion, soul, intellect, descent, and property. Criminalization in the form of *hudud*, *qishash*, and *ta'zir* reflects the balance between substantive justice, legal certainty, and the benefit of the *ummah* (Ramdlany & Musadad, 2022). This goal is in line with Gustav Radbruch's view of the goal of law, namely justice, certainty, and utility, which in Islamic law is normatively and theologically integrated (Calvin & Azizah, 2024).

This condition shows the importance of an in-depth study of the penal system in Islamic law, especially related to the concepts of *jarimah*, *uqubat*, and *ta'zir*, including the sources of the law and the principles that underlie it. A comprehensive understanding of this system is needed to affirm the character of Islamic criminal law as a rational, just, and relevant system in answering contemporary law enforcement problems.

Although extensive scholarship has discussed Islamic criminal law, most existing studies remain doctrinal by explaining the classifications of *jarimah*, *hudud*, *qishash-diyat*, and *ta'zir* separately. Such studies generally emphasize textual interpretation without examining how these concepts collectively construct a coherent philosophy of punishment within Islamic law. Furthermore, limited attention has been devoted to positioning the Islamic penal system within contemporary discussions concerning criminal justice theory, proportionality of punishment, restorative justice, legal legitimacy, and the objectives of modern criminal law.

This article addresses that scholarly gap by reconceptualizing the Islamic penal system as an integrated normative framework grounded in *maqāṣid al-sharī'ah*. Rather than merely describing

various categories of punishment, this study examines the philosophical relationship between *jarimah*, *uqubat*, and *ta'zir* as interconnected instruments designed to preserve justice, public order, and human dignity. Accordingly, this article contributes to comparative criminal law scholarship by demonstrating that Islamic criminal law embodies a comprehensive theory of punishment extending beyond conventional retributive paradigms.

II. RESEARCH METHODS

This research uses a normative legal research method that places law as a norm or rule that applies in the Islamic legal system (Suyanto, 2023). This approach was chosen because the object of study focuses on the concept, principles, and construction of punishment in Islamic law, especially regarding *jarimah*, *uqubat*, and *ta'zir*, which are doctrinally sourced from the *Qur'an*, *Sunnah*, *ijma'*, and *qiyas*, as well as the thoughts of *fiqh* scholars and Islamic jurists.

The approaches used include the statute approach in the normative-*shari'a* sense, the conceptual approach, and the philosophical approach. The legal approach is used to study the *nash-nash* of the *Qur'an* and *Sunnah* that govern punishment, the conceptual approach is used to analyze the concepts of *jarimah*, *uqubat*, and *ta'zir* along with the principles of Islamic criminal law, while the philosophical approach is used to examine the purpose and value of punishment in the perspective of *maqāṣid al-syarī'ah*.

The legal materials used consist of primary legal materials in the form of the *Qur'an* and *Sunnah* of the Prophet, secondary legal materials in the form of jurisprudence books, scholars' opinions, as well as scientific works and Islamic law journals, and tertiary legal materials in the form of legal dictionaries and Islamic encyclopedias. The analysis of legal materials is carried out qualitatively with a descriptive-analytical method, which is to describe the norms of Islamic criminal law and then analyze them systematically and critically to obtain coherent and argumentative conclusions about the criminal system in Islamic law.

III. RESULTS AND DISCUSSION

A. The Concept of Jarimah in Islamic Criminal Law

The concept of criminal acts in Islamic law is known as the term *Finger* or *Squirt*, which is etymologically derived from the word *Jana-Yajni-Jinayatan* which means committing an act of sin or transgression (Irawan, 2025). This terminology shows that criminal acts in Islam are not only understood as a violation of the social order, but also as a violation of the provisions of the sharia which have moral, spiritual, and legal dimensions at the same time. The scope of jinayah includes acts that attack the soul, limbs, property, honor, and public interest, whether done intentionally or unintentionally.

In the perspective of fiqh, fuqaha more often uses the term *Squirt* to describe a criminal act, while the term *Finger* used to refer to an act that has been determined to be illegal and accompanied by the threat of sanctions (Kurniawan, 2022). Imam al-Mawardi defines jarimah as an act that is prohibited by the Shari'ah and against it Allah SWT stipulates sanctions in the form of hudud or ta'zir, as formulated:

الجرائم محظورة شريعة جزر الله تعالى عنها بحد أو تعزر

This definition emphasizes that the essence of jarimah lies in the prohibition of sharia and legal consequences in the form of punishment. The element of prohibition becomes the normative foundation, while sanctions become an instrument of law enforcement in order to maintain order and justice.

Abdul Qadir Audah expands the conception of jarimah by emphasizing the aspects of deeds and negligence. Jarimah is understood as committing an act that is prohibited or abandoning an obligation that has been established by the Shari'a, against which the threat of punishment is determined (Audah, 1989). This formulation shows that Islamic criminal law is not only repressive against active acts, but also accommodates criminal responsibility for passive attitudes that are contrary to the provisions of the sharia. This approach shows the comprehensive character of Islamic criminal law in regulating mukallaf behavior.

The equivalence of the concepts of jinayah and jarimah is also affirmed by Wahbah az-Zuhaili and Abdullah al-Bustani, who interpret jarimah as sin and jinayah. This equality of

meaning indicates that criminal acts in Islam always contain the dimension of violation of the law and violation of religious ethics at the same time. This aspect distinguishes Islamic criminal law from positive criminal law which focuses more on violations of juridical norms alone (Al-Zuhaily, 1984).

The basic principle of determining jarimah in Islamic law is rooted in the values of monotheism, justice, and humanity. Mustofa Hasan emphasized that all provisions of Islamic law are based on the will of Allah which is addressed to mukallaf in the form of commands, prohibitions, and choices. The principle of justice in Islamic criminal law is reflected in the application of the law without discrimination of social status, as affirmed by the Prophet PBUH in a hadith narrated by al-Bukhari about the enforcement of hudud against anyone, even if the perpetrator is Fatimah bint Muhammad. This hadith affirms the principle of equality before the law as the main foundation of the Islamic penal system (Irfan, 2013).

Legal equality also applies to non-Muslims living under the protection of an Islamic state (*dzimmi* or *mu'ahad*). The protection of their civil rights is guaranteed as long as they comply with state treaties and provisions. The Prophet PBUH emphasized the prohibition of doing wrongful acts against them in his words:

من ظلم معاهدا أو انتقصه حقه فأنا خصمه يوم القيامة

This hadith shows that Islamic criminal law is not built on religious discrimination, but on the protection of universal rights and justice.

The normative basis of the determination of jarimah is also closely related to the principle of the sovereignty of Allah's law. The Qur'an expressly states that the determination of the law is the prerogative of Allah SWT, as stated in QS. Al-An'am verse 57:

إِنَّ الْحُكْمَ إِلَّا لِلَّهِ

The verses in QS. Al-Ma'idah verses 44, 45, and 47 affirm the moral and legal consequences for those who do not obey what Allah has revealed. The interpretation of these verses gave birth to differences of opinion among scholars. Abdul Qadir Audah tends to understand the verse in a strict normative framework, while Quraish Shihab and a number of contemporary mufasir interpret it as a strong condemnation of the attitude of disobeying and despising the law of Allah, rather than automatically expelling the

perpetrator from Islam (Audah, 1992). Ibn Abbas RA's view strengthens this approach by distinguishing between grand disbelief and disbelief in the sense of denial of favor or serious transgression.

These differences in interpretation show that the concept of jarimah cannot be separated from the interpretation methodology and the context of the application of the law. Islamic criminal law does not stand rigidly, but is built through a balance between text, sharia goals, and social reality. This understanding is an important basis for studying the Islamic penal system academically, especially in placing jarimah as a conceptual foundation for the determination of uqubat and ta'zir within the framework of substantive justice and the benefit of the ummah.

B. Typology of Jarimah and Its Sanction System in Islamic Criminal Law

The classification of criminal acts in Islamic criminal law is the main foundation in understanding the Islamic penal system as a whole. The division of jarimah is not purely technical, but reflects the philosophy of Islamic law that combines theological, moral, social, and humanitarian dimensions. The scholars agree that jarimah in Islamic law is classified into three major categories, namely jarimah hudud, jarimah qishash and diyat, and jarimah ta'zir. This division shows the difference in the source of sanctions, the types of rights protected, and the discretion of the ruler and judge in imposing punishments (Kurniawan, 2022).

1. Jarimah Hudud: Evil with Divine Sanction

Jarimah hudud is a criminal act whose sanctions have been expressly determined by the sharia and qualified as the right of Allah. Abdul Qadir Audah defines a limit as a punishment whose measure has been set by syara' and cannot be increased or decreased. The main character of jarimah hudud lies in the certainty of the law and the closeness of the ijthad space in determining its sanctions. The determination of hudud is intended to maintain the five main objectives of sharia (maqāṣid al-syarī'ah), namely the protection of religion, soul, intellect, descendants, and property (Abdi, 2014).

Jarimah zina is qualified as a serious violation of human honor and posterity. The

Qur'an prescribes the punishment of one hundred lashes for adulterers of ghairu muhsan as Allah says in QS. An-Nur verse 2, while the mutawatir hadith stipulates stoning for the adulterer of muhsan. The establishment of a very strict standard of proof, namely four witnesses who witnessed the act of adultery, shows that hudud is not intended to be easily applied, but as an instrument of moral prevention and protection of human dignity (Irfan, 2013).

Jarimah qazaf occupies an important position in safeguarding the honor of individuals from baseless accusations of adultery. The Qur'an expressly stipulates the punishment of eighty lashes and refusal of testimony for the perpetrators of qazaf as stated in the Qur'an. An-Nur verse 4. This provision shows that Islam provides strong legal protection against a person's reputation and honor.

Jarimah syurb al-khamr is qualified as a violation of reason, one of the main elements protected by the sharia. The prohibition of khamr is emphasized gradually in the Qur'an until it is finally absolutely forbidden in QS. Al-Ma'idah verse 90. The difference in the number of lashes among the companions and the fuqaha shows that the aspect of the had is mixed with ta'zir in its implementation, with the main purpose of maintaining human consciousness and rationality (Supriani & Saputra, 2021).

Jarimah theft is a violation of property, with the sanction of cutting off the hand as affirmed in the Qur'an. Al-Ma'idah verse 38. However, the application of theft limits requires the fulfillment of very strict criteria, such as the minimum value of property, a safe place to store it, and the absence of syubhat. This principle of prudence reflects the balance between justice and humanity in Islamic law.

Jarimah hirobah reflects crimes that threaten public safety and social stability. The Qur'an provides a variety of sanctions in QS. Al-Ma'idah verse 33, starting from the death penalty, crucifixion, cross-cutting of hands and feet, to exile. This variation shows the flexibility of the sharia in adjusting the punishment to the level of the crime committed (Putra primary, 2024).

Jarimah riddah and baghyu occupy sensitive positions in the discourse of Islamic criminal law. The Qur'anic and hadith suggest that there

are strict sanctions for this act, but the differences in interpretation of classical and contemporary scholars show that its application is greatly influenced by the political, security, and benefit contexts of the ummah (Zubaedah & Anwar, 2020).

2. Jarimah Qishash and Diyat: Retributive and Reconcilitive Justice

Jarimah qishash and diyat are directly related to the protection of human souls and limbs. In contrast to hudud, this jarimah is qualified as a human right, thus opening up room for forgiveness from the victim or the victim's guardian. The Qur'an affirms the obligation of qishash in QS. Al-Baqarah verses 178–179, as well as opening up opportunities for forgiveness and diyat as a form of leniency and mercy (Dermawan & Harisudin, 2020).

Qishash reflects the principle of proportional justice, which is a recompense commensurate with deeds. Diyat serves as material compensation aimed at reducing social conflicts and preventing prolonged grudges. This provision shows that Islamic criminal law is not solely repressive, but also restorative and conciliatory (Limbong et al., 2025).

The division of murder into deliberate, semi-intentional, and unintentional killings shows the sensitivity of Islamic law to the element of guilt (*mens rea*). QS. An-Nisa verse 92 is the normative basis for the application of diyat and kafarat in unintentional killing, which affirms that criminal responsibility in Islam always considers the intention and consequences (Kusuma & Diani, 2022).

3. Jarimah Ta'zir: The Flexibility and Dynamics of Islamic Law

Jarimah ta'zir is an elastic space in Islamic criminal law that allows the law to adapt to social developments. Ta'zir includes all immoral acts whose sanctions are not explicitly determined by the Qur'an and Sunnah. Imam Al-Mawardi and Wahbah Zuhaili emphasized that the main purpose of ta'zir is education, prevention, and improvement of perpetrators (Syarbaini, 2023).

The authority of judges and rulers in determining the type and severity of ta'zir sanctions is based on the principle of benefit. Rules of fiqh *al-ta'zir yadūru ma'a al-maṣlaḥah* shows that Islamic law provides a wide space of discretion in order to maintain social order and justice. Ta'zir includes violations of honor,

individual rights, and the public interest, including economic crimes, abuse of power, and administrative violations of the state (Adam, 2019).

The wide range of ta'zir sanctions, from counsel to the death penalty, reflects the responsive and contextual character of Islamic law. Consideration of the perpetrator, victim, social situation, and the impact of crime are decisive factors in the sentencing of the law, so that the law does not lose its humanitarian dimension.

C. Reconceptualizing the Islamic Penal System through Maqāsid al-Sharī'ah

The classical classification of jarimah into hudud, qishash-diyat, and ta'zir should not be understood merely as a technical categorization of criminal offences. Rather, these classifications collectively represent an integrated philosophy of punishment grounded in the objectives of Islamic law (*maqāsid al-sharī'ah*). Each category of punishment performs a distinct yet complementary function in maintaining justice, preserving public order, and protecting fundamental human interests.

Hudud primarily functions to preserve essential moral and social values through predetermined sanctions that symbolize the inviolability of fundamental legal norms. However, the exceptionally strict evidentiary standards governing hudud demonstrate that Islamic criminal law prioritizes the prevention of wrongful punishment over the frequency of conviction. This procedural rigor reflects a profound commitment to substantive justice rather than punitive severity.

Qishash and diyat embody a different dimension of criminal justice by integrating proportional accountability with opportunities for forgiveness and reconciliation. The availability of diyat and the victim's authority to forgive illustrate that justice within Islamic law is not confined to retaliation but incorporates restorative principles capable of restoring social harmony. Consequently, Islamic criminal law recognizes both individual rights and communal interests within a balanced legal framework.

Ta'zir represents the dynamic component of the Islamic penal system. Unlike hudud, ta'zir grants discretionary authority to judges and political authorities to formulate appropriate

sanctions according to changing social circumstances. This flexibility demonstrates that Islamic criminal law possesses an inherent adaptive capacity, enabling it to respond to contemporary forms of criminality while remaining consistent with the normative objectives of the Shari'ah.

Viewed collectively, jarimah, hudud, qishash-diyat, and ta'zir constitute an integrated criminal justice model in which certainty, flexibility, proportionality, and public welfare coexist. Rather than representing isolated categories of punishment, they form a coherent legal architecture aimed at achieving substantive justice through the preservation of maqāṣid al-sharī'ah.

D. Islamic Criminal Law and Contemporary Criminal Justice

Contemporary criminal justice increasingly emphasizes proportionality, restorative justice, rehabilitation, and human dignity as fundamental objectives of punishment. Interestingly, many of these principles have long existed within Islamic criminal law, although they are frequently overlooked because scholarly discussions tend to focus exclusively on hudud sanctions.

The doctrine of qishash demonstrates that Islamic criminal law recognizes restorative values by permitting forgiveness and negotiated compensation through diyat. Likewise, ta'zir provides judges with discretionary authority to prioritize education, deterrence, and social rehabilitation according to the specific circumstances of each offence. Even hudud, often perceived as rigid, incorporates procedural safeguards that significantly restrict its application, thereby emphasizing fairness rather than punitive excess.

Accordingly, the Islamic penal system should not be characterized solely as a retributive model. Instead, it represents a multidimensional theory of punishment integrating retribution, deterrence, rehabilitation, restoration, and social protection within a unified normative framework. This integrated approach distinguishes Islamic criminal law from many contemporary penal systems that often separate these objectives into competing theories of punishment.

Such a perspective demonstrates that Islamic criminal law possesses continuing relevance within contemporary debates concerning criminal justice reform, particularly regarding proportionality, procedural fairness, victim participation, and the ethical legitimacy of criminal sanctions.

Dimensi on	Hudud	Qishash-Diyat	Ta'zir
Legal Source	Qur'an and Sunnah	Qur'an and Sunnah	Ijtihad
Protected Interest	Public morality and divine rights	Human life and bodily integrity	Public welfare
Judicial Discretion	Very limited	Moderate	Broad
Evidentiary Standard	Very strict	Standard	Flexible
Main Objective	Deterrence and preservation	Justice and reconciliation	Prevention and rehabilitation
Relation to Maqāṣid	Protection of religion, lineage, morality	Protection of life	Protection of public interest

From a comparative criminal law perspective, the Islamic penal system demonstrates a unique balance between legal certainty and judicial flexibility. While hudud reflects the principle of legality through predetermined sanctions, qishash and ta'zir introduce proportionality, restorative justice, and discretionary sentencing. This balanced structure differs significantly from many modern criminal law systems, where certainty and discretion often operate in tension rather than complementing one another. Consequently, Islamic criminal law offers an alternative theoretical model capable of enriching contemporary debates concerning the philosophy of punishment and criminal justice reform.

CONCLUSION AND SUGGESTIONS

A. Conclusion

The penal system in Islamic law is built on a comprehensive normative structure through the concepts of jarimah, uqubat, and ta'zir, which reflect the integration between the dimensions of divinity, justice, and humanity. Jarimah as a criminal act is not only understood as a violation of legal norms, but also as a violation of the moral and social order set by the sharia. The classification of jarimah into hudud, qishash-diyat, and ta'zir shows a differentiation in the protection of Allah's rights and human rights, while also demonstrating the flexibility of Islamic law in responding to the level of error and the impact of the act.

Uqubat in Islamic law is not solely repressive, but is oriented towards prevention, education, and the restoration of social balance. The application of hudud with a strict standard of proof confirms that the main purpose of punishment is not punishment itself, but the protection of maqāsid al-syarī'ah. Qishash and diyat reflect the principle of proportional justice that allows room for forgiveness and reconciliation, while ta'zir shows the dynamic character of Islamic law that allows adjustment to social changes without losing its normative legitimacy.

The difference in the views of scholars in interpreting the postulates of punishment shows that Islamic criminal law has an open and contextual intellectual tradition. Thus, the Islamic penal system cannot be reduced as a rigid system, but as a legal system oriented towards substantive justice, welfare, and the protection of human dignity.

Beyond explaining the doctrinal structure of Islamic criminal law, this study argues that jarimah, uqubat, and ta'zir collectively constitute an integrated philosophy of criminal justice grounded in maqāsid al-sharī'ah. Their interaction demonstrates that Islamic punishment is neither exclusively retributive nor purely deterrent but simultaneously pursues legal certainty, proportionality, rehabilitation, reconciliation, and public welfare. Accordingly, the Islamic penal system should be understood as a comprehensive legal theory capable of contributing to contemporary discussions on comparative criminal law, restorative justice, and global penal reform.

B. Suggestions

The study of Islamic criminal law in the future needs to be directed at strengthening the maqāsid al-syarī'ah approach so that the application of the concepts of jarimah and uqubat remains relevant to modern social challenges. The development of a comparative study between ta'zir and contemporary criminalization is important in order to find normative and practical common ground in the context of the state of law. Further research also needs to examine the implementation of the principles of restorative justice in qishash and ta'zir as the contribution of Islamic law to the reform of the national penal system.

Future research should move beyond doctrinal analyses by examining the practical implementation of maqāsid-based punishment in contemporary Muslim jurisdictions. Comparative studies involving Islamic criminal law and modern criminal justice theories, including restorative justice, proportional sentencing, and constitutional criminal law, would substantially enrich the global discourse on Islamic legal philosophy. Additionally, empirical investigations into judicial reasoning in the application of ta'zir could provide valuable insights into the adaptability of Islamic criminal law within modern legal systems.

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