



## The Flexibility of Ta'zir Punishment in the Islamic Penal System

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### Abstract

Islamic criminal law (jinayah jurisprudence) is an important instrument in upholding justice, maintaining order, and protecting the five basic principles of human life (maqasid al-syari'ah), including religion, soul, reason, offspring and property. One of the strategic elements in the Islamic punishment system is the jarimah ta'zir, which has a flexible character because it does not have standard sanctions in the Qur'an or hadith, so determining the form and level of punishment is left to the ruler or judge through the ijtiha mechanism. This research uses the literature study method (library research) by reviewing books, cutting-edge scientific works and journal articles related to the jarimah ta'zir, its legal flexibility and its relevance in dealing with contemporary crime. Descriptive-analytical analysis was carried out to describe the concept, position, flexibility and application of jarimah ta'zir in a modern context, including digital criminal acts, abuse of authority and other social violations. The results of the research show that the flexibility of the ta'zir jarimah allows judges to adjust sanctions proportionally and educatively based on the perpetrator's conditions, social impact, and the principle of substantive justice, so that Islamic criminal law remains responsive to societal dynamics. Nevertheless, the application of flexibility should be limited by the norms of the Shari'a so as not to create subjectivity and legal uncertainty. Thus, the ta'zir jarimah not only functions as a criminal tool, but also a strategic, adaptive and relevant preventive and rehabilitative instrument in the contemporary Islamic legal system, which is able to balance legal certainty, education and the benefit of society.

## I. INTRODUCTION

Islamic criminal law (jinayah jurisprudence) is an integral part of Islamic law which aims to maintain the benefit of the people and protect the five basic principles of human life (maqasid al-syari'ah), namely religion, soul, reason, offspring and property. In the Islamic punishment system, there are three main classifications of jarimah, namely hudud, qisas, and ta'zir. The three types of jarimah have different characteristics and punishment mechanisms according to the level of violation and the impact caused. Jarimah ta'zir occupies a unique position in the Islamic punishment system because it does not have standard and textual punishment provisions in the Koran or hadith. Determining the form and level of sanctions is left to the authorities or judges taking into account the benefits, conditions of the perpetrators, and the social impact of the actions committed. These characteristics make ta'zir flexible and adaptive

to current developments and social dynamics of society.

The flexibility of the ta'zir jarimah becomes very relevant in dealing with various forms of modern crime that are not explicitly mentioned in the text, such as cybercrime, abuse of authority, economic crimes, and various other social violations. The ta'zir system provides ijtiha space for Islamic legal authorities to formulate proportional, educational and preventive sanctions without departing from the basic principles of Islamic law.

Nevertheless, such flexibility has also generated debate among Islamic law academics and practitioners, especially with regard to the limits of the authority of judges, potential subjectivity in sentencing, and guarantees of justice and legal certainty. Therefore, an in-depth study of the flexibility of the ta'zir jarimah in the Islamic punishment system is important to understand the concept, normative basis and its relevance in the context of contemporary Islamic

law enforcement. Based on this description, this article aims to examine the concept of flexibility in jarimah ta'zir, examine the legal basis and principles of its application, and analyze its role in responding to the challenges of punishment in the modern Islamic legal system.

## II. RESEARCH METHODS

This research uses the literature study method (library research), namely research carried out by examining and analyzing various literary sources that are relevant to the object of study of the flexibility of the ta'zir jarimah in the Islamic punishment system. This method was chosen because research focuses on normative and conceptual studies of contemporary Islamic legal thought. (Huda, 2021).

The data sources in this research consist of primary data and secondary data. Primary data in the form of books and cutting-edge scientific works discussing Islamic criminal law as well as the concept of jarimah ta'zir in the modern Islamic punishment system. (Nasution, 2023). Secondary data includes scientific journal articles and academic works that examine the flexibility of ta'zir punishment and its relevance in dealing with modern crime. (Rahman, 2022).

Data collection techniques are carried out through literature searches, recording and grouping sources relevant to the research theme. The data that has been collected is then analyzed using descriptive-analytical methods, namely by systematically describing the concept of jarimah ta'zir and analyzing the flexibility of its application based on the principles of justice, benefit and proportionality in contemporary Islamic law. (Judge, 2024; Putra, 2024).

## III. RESULTS AND DISCUSSION

### A. Concept and Position of Jarimah Ta'zir in the Islamic Penal System

Jarimah ta'zir is a form of criminal act in Islamic law that is not explicitly determined by the type of action or the form and level of sanctions in the Qur'an and hadith. The absence of definite sanctions provisions shows that handling jarimah ta'zir is handed over to the authorities or judges through the *ijtihad* mechanism (Tarigan, 2025). This authority is given so that Islamic law is still able to maintain public order and benefit in the face of various forms of violations that are not explicitly regulated in the text.

Conceptually, jarimah ta'zir includes every action that is contrary to the values of the Shari'a and social norms, but is not included in the categories of jarimah hudud or qisas. An act can be classified as a jarimah ta'zir if it contains elements of violations of the public interest and has the potential to cause social damage (Misran, 2025). Therefore, the concept of ta'zir is open and develops along with changes in societal conditions. In the Islamic punishment system, the ta'zir jarimah occupies an important position as a complement to the Islamic criminal law system as a whole. Its existence serves to fill the legal vacuum against various forms of crimes and violations for which no legal provisions are found in the main sources of Islamic law (Novalia et al., 2024). With the existence of the ta'zir jarimah, the Islamic punishment system is not static, but is able to adapt to social dynamics and current developments.

The position of the ta'zir jarimah also shows that Islamic criminal law is not solely oriented towards legal certainty, but also emphasizes substantive justice. The judge is given space to consider the perpetrator's condition, level of error, and the impact of the act on society before imposing sanctions. This approach reflects that punishment in Islam is not only aimed at punishing, but also educating and preventing the recurrence of criminal acts (Djalaluddin et al., 2023).

Thus, the ta'zir jarimah can be understood as a strategic legal instrument in the Islamic punishment system. Its concept and position confirm that Islamic law has internal flexibility that allows law enforcement to remain relevant to the development of society. Through the jarimah ta'zir, Islamic criminal law is able to create a balance between legal certainty, justice and social benefit (Hidayatullah et al., 2025).

### B. Jarimah Ta'zir Flexibility in Determining Forms of Criminal Sanctions

One of the main characteristics of the ta'zir jarimah is its flexibility in determining the form and level of criminal sanctions. In contrast to the jarimah hudud which has a fixed law, ta'zir provides space for judges to adapt sentences to the concrete conditions of the perpetrator and the social situation of society (Hidayatullah et al., 2025). This allows

Islamic criminal law to remain relevant in the face of social problems that change over time.

The form of ta'zir sanctions can be in the form of reprimands, social guidance, fines, or other administrative sanctions that are adjusted to the perpetrator's level of error. This approach emphasizes that punishment is not solely aimed at punishing, but also educating and preventing further violations (Aulia et al., 2023). The educational determination of sanctions shows that Islamic law emphasizes moral and social improvement, in line with the aim of the Shari'a to maintain public benefit.

This flexibility demonstrates the ability of Islamic law to accommodate law enforcement needs responsive to societal dynamics. Nevertheless, the discretionary freedom of judges must still be limited by the principles of justice, proportionality and benefit so as not to create legal uncertainty. Thus, the flexibility of the ta'zir jarimah does not mean without limits, but is a tool to balance legal certainty with social justice.

### **C. The Relevance of Jarimah Ta'zir to Contemporary Crime**

The development of digital technology and networks has given rise to modern forms of crime that are unknown in classical jurisprudence literature, such as threats via electronic media, the spread of hate speech online, and digital acts of harm. These crimes often have complex psychological, social and economic impacts on society at large. In this context, the ta'zir jarimah becomes relevant due to its nature of not being bound by permanent sanctions; judges can interpret and adjust the form of punishment based on the characteristics of the offense and the socio-cultural context of the perpetrator, so that Islamic law remains responsive to contemporary criminal challenges (Dzulfikriddin, 2024).

In addition, the relevance of the jarimah ta'zir to modern crime also lies in its ability to balance the function of punishment with preventive and rehabilitative objectives. When digital criminal acts have an impact on social harmony and public order, the ta'zir approach allows sanctions to be imposed that are not only repressive, but also have an educational and corrective effect on the perpetrator. Thus, ta'zir is not only a legal tool

for punishment, but also an instrument of punishment that supports moral and social recovery, maintaining the relevance of Islamic criminal law in the current digital era. Then, the relevance of the jarimah ta'zir to the jarimah of adultery, the broad impact of adultery on social life, Islamic punishment mechanisms such as ta'zir allow judges to adjust sanctions proportionally based on the impact of the act, as explained that adultery is not only a violation of the Shari'a but also social norms and law (Matondang et al., 2025).

### **D. Analysis of Jarimah Ta'zir's Flexibility in the Islamic Penal System**

According to the author, the flexibility of the ta'zir jarimah is a major force in the Islamic punishment system because it allows Islamic law to remain relevant and applicable in facing ever-evolving social dynamics. The absence of standard sanctions provisions in ta'zir provides room for judges to consider aspects of substantive justice, not just formal justice. (Nasution, 2023).

The author considers that the flexibility of ta'zir is very in line with the goals of Islamic law (maqāsid al-syarī'ah), especially in maintaining social order and preventing damage (mafsadah). In this context, judges not only function as law enforcers, but also as guardians of the benefit of society. Therefore, contextual and proportional punishment of ta'zir has the potential to produce a more just and humanist decision. (Huda, 2021).

However, the author is of the view that the flexibility of the ta'zir jarimah still requires clear normative limitations so as not to cause legal subjectivity and uncertainty. Without firm guidelines, differences in judges' interpretations can lead to inequality of justice. Therefore, ta'zir flexibility must be understood as responsible freedom and remaining within the corridors of Islamic sharia values. (Son, 2024).

Thus, the flexibility of the ta'zir jarimah is not a weakness in the Islamic punishment system, but rather a strategic instrument that must be managed proportionally and fairly. As long as it is implemented based on the principles of benefit, proportionality and the purpose of Islamic punishment, ta'zir can be an effective legal solution in responding to

contemporary criminal law challenges. (Judge, 2024).

#### IV. CONCLUSION AND SUGGESTIONS

##### A. Conclusion

Based on a study of the flexibility of the ta'zir jarimah in the Islamic punishment system, it can be concluded that ta'zir has a strategic role as a complement to the hudud and qisas jarimah. The flexible character inherent in it allows judges to adjust the form and level of sanctions based on the offender's conditions, social impact, and the context of the crime, including modern crimes such as digital criminal acts and contemporary social offences. This flexibility keeps Islamic criminal law adaptive to societal developments and social dynamics, while maintaining the principles of substantive justice, proportionality and benefit (maqasid al-syari'ah). With the existence of the ta'zir jarimah, the Islamic punishment system is not rigid, but is able to balance legal certainty, education, prevention and protection of society.

However, the application of flexibility must remain limited by sharia norms so as not to cause subjectivity or legal uncertainty. Judges are given discretionary space, but must consider aspects of justice, proportionality, and the purpose of Islamic punishment. With proper management, the jarimah ta'zir not only functions as a law enforcement tool, but also as an educational and preventive instrument that supports the moral and social recovery of society. These overall findings show that the flexibility of jarimah ta'zir is a major force in Islamic criminal law, allowing the legal system to remain relevant and applicable in facing contemporary legal challenges.

##### B. Suggestion

Based on the findings of this research, it is recommended for subsequent researchers to expand their studies regarding the application of jarimah ta'zir in the context of other contemporary crimes, such as cyber, economic and social crimes, in order to enrich understanding of the flexibility of Islamic criminal law. Further research can also explore aspects of limiting judge discretion, the effectiveness of ta'zir sanctions in educating perpetrators, and their impact on

the benefit of society. With that approach, it is hoped that the next study will be able to make a more comprehensive contribution to the development of the theory and practice of modern Islamic criminal law.

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