



The Exemption of Punishment and Criminal Responsibility According to Islamic Criminal Law

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Article History Received: 2024-05-02 Revised: 2024-05-14 Published: 2024-05-30 Keywords: <i>Exemption from punishment, criminal responsibility, Islamic criminal law.</i>	The abolition of punishment and criminal liability in Islamic criminal law is a concept that demonstrates the flexibility of sharia in realizing justice and public welfare. This issue is important because in practice, Islamic criminal law is often perceived as a rigid and repressive system, even though normative mechanisms exist that allow for the abolition of punishment and criminal liability under certain conditions. This study aims to analyze the legal basis for the abolition of punishment, examine the various factors causing the abolition of punishment, and explain the concepts and factors that influence the abolition of criminal liability in Islamic criminal law. This study uses a qualitative method with a normative library research approach by reviewing the literature and various related scientific references. The results show that the abolition of punishment has a normative basis in Islamic law, which includes forgiveness, repentance, lack of evidence, coercion, and other legal conditions recognized by sharia. However, the abolition of punishment does not always mean the loss of criminal liability, because in certain conditions there are still forms of legal consequences such as diyat. Meanwhile, criminal responsibility in Islamic law depends on the fulfillment of the elements of reason, awareness, and freedom of will, so that factors such as mental disorders, not yet reaching puberty, coercion, and unintentional acts can cause criminal responsibility to be dropped or reduced.

I. INTRODUCTION

Islamic criminal law (fiqh jinayah) is part of the Islamic legal system that aims to maintain social order, protect human rights, and realize justice in community life. From an Islamic legal perspective, punishment is not seen solely as a form of retribution against perpetrators of criminal acts, but rather as an instrument to maintain the public interest and realize the objectives of sharia (maqāṣid al-syarī'ah). Therefore, the concepts of punishment and criminal responsibility have a crucial position because they form the basis for determining whether or not someone can be sanctioned for their actions. The application of Islamic criminal law also takes into account the condition of the perpetrator, the consequences, and the values of justice to be realized so that law enforcement is not carried out rigidly, but still pays attention

to the balance between legal certainty and humanitarian values.

As part of this principle, Islamic criminal law recognizes the concept of the abolition of punishment (isqāṭ al-'uqūbah) and the abolition of criminal liability as legal mechanisms that demonstrate the flexibility of sharia in resolving criminal cases. This concept allows for certain conditions that prevent punishment from being imposed or prevent the perpetrator from being held criminally accountable. Some of the conditions recognized in Islamic criminal law include repentance, forgiveness from the victim or guardian, coercion, accident, pre-puberty, and mental impairment. These provisions demonstrate that determining criminal liability is not solely based on the occurrence of an act, but also takes into account the elements of

intent, awareness, and capacity to act of the legal subject.

However, the understanding of the abolition of punishment and criminal liability in Islamic criminal law is still often perceived in a limited way, as a form of reducing or eliminating sanctions against perpetrators of criminal acts. In various studies, Islamic criminal law is still often viewed as an absolute and repressive system of punishment without considering the subjective circumstances of the perpetrator. This perception raises conceptual problems because normatively, Islamic criminal law recognizes the existence of certain reasons that can abolish punishment and criminal liability based on considerations of justice and public interest. This condition indicates a discrepancy between the developing understanding and the actual construction of Islamic criminal law, requiring a more in-depth study of the legal basis, scope, and limits of the application of this concept.

The discussion of the reasons for the expungement of criminal penalties in Islamic law has been a focus of attention in a number of previous studies. Firdaus and Maerani (2020) through a study entitled "Comparative Study of the Reasons for the Expungement of Criminal Penalties According to the Criminal Code (KUHP) and Islamic Criminal Law in the Context of National Criminal Law Reform examined the concept of expungement of criminal penalties through a comparative approach between positive law and Islamic criminal law." The results of the study indicate that Islamic criminal law has a broader scope for consideration because it not only emphasizes the elements of the act, but also considers the circumstances of the perpetrator and the humanitarian dimension in the criminalization process. These findings confirm that the reasons for expungement of criminal penalties in Islamic law function as a means to maintain a balance between legal certainty and justice.

Another study was conducted by Efendi (2023) through a study entitled "Juridical Analysis of the Crime of Murder According to

Positive Criminal Law and Islamic Criminal Law." The study discussed the basis for imposing criminal sanctions and the mechanism of legal accountability for perpetrators of the crime of murder through a comparative legal approach. The results of the study indicate that in Islamic criminal law, aspects of morality, intent, and the condition of the legal subject are factors that influence the applicability of criminal sanctions. Both studies demonstrate that Islamic criminal law has flexibility in determining legal accountability. However, the studies conducted still focused on the aspect of comparison with positive law and did not specifically discuss the relationship between the cessation of punishment and the cessation of criminal accountability as a unified concept in Islamic criminal law.

Based on previous research, there is still room for comprehensive discussion, particularly regarding the legal construction that connects the basis for the abolition of punishment with the factors that lead to the loss of criminal liability in Islamic criminal law. Most previous studies have focused more on a comparative legal approach or discussions of specific crimes, while the conceptual relationship between the abolition of punishment and the elimination of criminal liability has not been fully analyzed. This study presents a different focus by placing both concepts as the primary objects of analysis through a normative approach in Islamic criminal law. Thus, this study not only examines the reasons why punishment is not imposed but also analyzes the basis for criminal liability and the conditions that cause someone to be exempt from legal consequences according to sharia.

This research is important because it can contribute to the development of a more comprehensive study of Islamic criminal law that is relevant to contemporary legal dynamics. A proper understanding of the concept of the abolition of punishment and criminal liability is necessary to demonstrate that Islamic criminal law is not only oriented towards enforcing sanctions, but also upholds the principles of

justice, humanity, and the protection of individual rights. Academically, this research is expected to enrich the study of Islamic jurisprudence (fiqh jinayah) regarding the reasons for the abolition of punishment and legal liability. Practically, this research can serve as a reference in understanding the character of Islamic criminal law, which places a balance between legal certainty and public welfare as its primary foundation. Based on this description, this study aims to analyze the legal basis for the abolition of punishment in Islamic criminal law, examine the factors causing the abolition of punishment, explain the concept of criminal liability, and identify the factors that cause the abolition of criminal liability from an Islamic criminal law perspective.

II. RESEARCH METHOD

This study employs a qualitative approach with library research methods oriented toward normative studies of the concepts of the abolition of punishment and criminal liability in Islamic criminal law. This approach was chosen based on the conceptual-theoretical nature of the problem, thus not requiring field data, but instead relying on a review of the literature and Islamic legal doctrine available in various written sources. With this approach, the research focuses on systematically analyzing how Islamic criminal law constructs the concepts of the abolition of punishment and the abolition of criminal liability, as well as their relationship to the values of justice and welfare in Islamic law. This qualitative approach allows for in-depth interpretation of legal concepts in accordance with the framework of Islamic jurisprudence (fiqh jinayah).

The research data sources consist of two categories: primary and secondary sources. Primary sources include the Qur'an, Hadith, and classical books on Islamic law, particularly Islamic jurisprudence (fiqh jinayah), which directly discuss the concept of criminal liability and the reasons for the abolition of criminal penalties. Secondary sources include literature in the form of Islamic criminal law books,

scientific articles, academic journals, and previous research related to the theme of the abolition of punishment and criminal liability. In this study, the researcher acted as the primary instrument (human instrument) whose role was to collect, group, select, and interpret data systematically and analytically. This position enabled the researcher to interpret the text more flexibly and to connect various legal concepts in depth.

Data collection was conducted through library research, reviewing various literature relevant to the research focus. Furthermore, the data were analyzed using descriptive-analytical techniques, which involved a structured description of Islamic criminal law concepts before further analysis to identify relationships between related legal concepts. Interpretive techniques were also used to understand the meaning of Islamic legal texts, and comparative techniques were used to compare the views contained in the literature used. The results of this analysis were then used to answer the research problem by systematically integrating the concepts of the cessation of punishment and the cessation of criminal responsibility in Islamic criminal law, resulting in a comprehensive and scientific understanding.

III. RESULTS AND DISCUSSION

A. Legal Basis for the Exemption of Sentence

The legal basis for the abolition of punishment in Islamic criminal law is part of a criminal system built on the principles of justice, public welfare, and protection of rights. In the construction of Islamic criminal law, criminal sanctions are not applied absolutely to every crime that occurs, but their implementation remains within the corridor of sharia provisions that allow for the abolition or change of the form of punishment if there is a legally justified reason. The normative basis for this can be found in the Qur'an, especially Surah Al-Baqarah verse 178 which regulates qisas and provides the opportunity for the victim or the victim's guardian to offer forgiveness so that the

implementation of qisas can be converted into diyat.

This provision demonstrates that Islamic law recognizes the mechanism for the abolition of punishment as part of a criminal justice system aimed at maintaining a balance between individual rights and societal interests. Saepudin (2021) explains that the abolition of punishment represents a form of flexibility in Islamic criminal law, which prioritizes substantive justice in the application of sanctions.

Normatively, the abolition of punishment can occur due to certain legal conditions that influence the applicability of criminal sanctions. In cases related to individual rights, forgiveness is a reason that can directly halt the implementation of punishment because the authority rests with the injured party. Furthermore, in certain crimes that fall within the scope of God's rights, repentance is seen as a factor that can influence the continuation of punishment if it is carried out before the law enforcement process reaches a certain stage. Furthermore, the lack of sufficient evidence, the presence of an element of duress, and the death of the perpetrator before the punishment is carried out can also be reasons for the abolition of punishment. This demonstrates that Islamic criminal law considers legal conditions and requirements substantially, so that the application of punishment is not carried out solely based on a formal approach.

The concept of the abolition of punishment is related to criminal liability, although the two do not always have the same legal consequences. In Islamic criminal law, the failure to carry out a punishment does not automatically eliminate legal responsibility for the act. Under certain circumstances, the perpetrator remains subject to legal consequences even if the form of sanction imposed changes. In cases of qisas, for example, the victim's forgiveness results in the principal punishment not being carried out, but the obligation to pay diyat (reparation) can still be enforced as a form of legal responsibility. Conversely, in circumstances that result in the

loss of the ability to take responsibility, such as coercion or conditions that eliminate free will, criminal liability can be reduced or even eliminated. These conditions demonstrate that Islamic criminal law distinguishes between the existence of a criminal act and the form of accountability imposed on the perpetrator.

Discussions regarding the legal basis for the abolition of punishment demonstrate differing perspectives on the function of criminal abolition in Islamic law. Saepudin (2021) views the abolition of punishment as an instrument to maintain a balance between law enforcement and the protection of human values through substantive justice. Meanwhile, Hamzani and Aravik (2022) argue that the rationale for abolishing punishment is a mechanism to safeguard the public interest and prevent legal consequences that outweigh the benefits of punishment. Despite their differing focus of argument, both agree that the abolition of punishment is a legitimate part of the Islamic criminal law system and cannot be understood as a weakening of the function of punishment.

When viewed from the perspective of the purpose of criminal punishment in Islam, the legal basis for the abolition of punishment demonstrates that law enforcement is not solely focused on providing a deterrent effect, but also on achieving justice and protecting rights. The provision of forgiveness, recognition of repentance, and the application of the principle of prudence in the presentation of evidence demonstrate that Islamic criminal law strives to avoid disproportionate punishment. In hudud cases, the application of strict standards of proof demonstrates that sharia prioritizes individual protection over the risk of error in sentencing. Thus, legal certainty in Islamic criminal law is not determined by the rigidity of sanctions, but by the law's ability to produce just decisions in accordance with the goals of sharia.

Based on this analysis, it can be understood that the legal basis for the abolition of punishment in Islamic criminal law is a normative mechanism that plays a crucial role

in the criminal accountability system. The abolition of punishment is not intended to eliminate the function of the law, but rather serves as a means for the implementation of sanctions to still take into account the perpetrator's condition, the victim's rights, and the intended social benefits. In practice, the abolition of punishment can alter the form of legal consequences without necessarily eliminating criminal accountability. Therefore, this concept demonstrates that Islamic criminal law constructs a penal system that places a balance between legal certainty, justice, and public welfare as its primary foundation.

A. Reasons for the Exemption of Sentences

The abolition of punishment in Islamic criminal law is based on a normative construction that emphasizes that the implementation of sanctions is not absolute, but rather depends on the fulfillment of legal requirements and the existence of reasons recognized by the Shari'a. Within this framework, the abolition of punishment is understood as a corrective mechanism that ensures that criminal law enforcement remains within the corridors of substantive justice and public welfare. The Qur'an and the principles of Islamic law provide legitimacy for the possibility of abolishing punishment under certain conditions, both related to the rights of God and human rights. Therefore, the application of sanctions is not only based on the existence of a criminal act, but also considers the surrounding legal situation. Ishaq et al. (2025) emphasize that the abolition of punishment is a form of balance between legal certainty and the goal of public welfare, where Shari'a provides flexibility so that the law remains adaptive to factual conditions without abandoning the principle of justice.

In the context of the relationship between the perpetrator and the victim, one of the main reasons for the abolition of punishment lies in the mechanism of forgiveness and relinquishment of rights by the injured party. In the crime of qisas, the victim or the victim's guardian has the authority to forgive the

perpetrator, so that the principal punishment is not carried out and can be replaced with diyat or other forms of settlement in accordance with sharia provisions. This shows that Islamic criminal law not only positions the victim as a party who suffers the consequences, but also as a legal subject who has a role in determining the direction of the case resolution. Fadli (2025) explains that forgiveness in Islamic criminal law is a more humane form of resolution because it integrates legal aspects with moral considerations and social welfare. Thus, the abolition of punishment through forgiveness does not mean eliminating the perpetrator's responsibility, but rather shifts the form of resolution towards a direction more oriented towards reconciliation and restoration of social relations.

In addition to factors originating from the perpetrator or victim, the abolition of punishment can also occur due to certain legal circumstances that affect the applicability of criminal sanctions. According to some Islamic scholars, the statute of limitations is understood to be one reason for the non-execution of punishment for certain crimes not directly related to the rights of God, although its application remains debated. Furthermore, the lack of sufficient evidence, the presence of doubtful elements, and conditions of duress can also be factors that prevent the imposition of punishment. This principle is closely related to the prudence in the Islamic criminal law system of proof, which places certainty of facts as a fundamental requirement before imposing sanctions. If there is doubt about the elements of the crime or the perpetrator's ability to take responsibility, the punishment can be postponed or even overturned to avoid errors in the enforcement of the sentence.

Thus, the various reasons for the abolition of punishment in Islamic criminal law demonstrate that the sentencing mechanism is not rigid, but rather dynamic, adapting to the surrounding legal conditions. Factors originating from the perpetrator, the victim, and the specific legal circumstances interact to

determine the appropriateness of a punishment. In practice, the abolition of punishment does not always equate to the complete elimination of responsibility, as in some circumstances other legal consequences remain in effect. This pattern demonstrates that Islamic criminal law establishes a balanced system between enforcing sanctions, protecting rights, and achieving public welfare, so that criminal accountability remains within a framework of proportional justice in accordance with the objectives of sharia.

B. Criminal Responsibility in Islamic Criminal Law

In Islamic criminal law, criminal responsibility is based on the principle that sanctions can only be imposed on individuals who possess the moral and legal capacity to account for their actions. This principle emphasizes that Islamic law does not stop at objectively assessing actions, but also takes into account the perpetrator's awareness, psychological state, and eligibility to accept legal consequences. Normatively, sharia stipulates that every mukallaf will be held accountable according to their level of awareness and ability. Therefore, criminal responsibility serves as a means to achieve substantive justice, where punishment can only be imposed if there is a complete link between the act, the intention, and the perpetrator's ability to understand the legal consequences of their actions.

In terms of elements, criminal liability in Islamic law encompasses three main interrelated components: the existence of jarimah (a crime) as a criminal act, the existence of the perpetrator as a legal subject, and the fulfillment of the elements of awareness and capacity for responsibility (ahliyyah). The element of action requires an action that violates sharia provisions, either in the form of active action or negligence that gives rise to legal consequences. The element of the perpetrator emphasizes that only individuals with valid legal capacity can be held

accountable. Meanwhile, the elements of awareness and capacity for responsibility are the main determining elements, because without an understanding of the prohibitions and consequences of actions, criminal liability cannot be fully implemented. Sayaf'i (2024) states that the main requirements for criminal liability are the status of mukallaf, which includes being mature, sane, and having adequate legal awareness.

In practice, criminal liability can be waived or reduced if conditions eliminate or weaken the elements of free will and legal awareness. Conditions such as mental disorders, not yet reaching puberty, and coercion are factors that prevent the requirements for accountability from being fully met. Children and individuals with mental disorders cannot be held legally responsible because they do not meet the qualifications as competent legal subjects. Similarly, actions taken under duress do not fully reflect the perpetrator's free will, so the legal consequences may be different or even eliminated. Hidayat and Lubis (2023) emphasize that criminal liability can only be established if the elements of reason, awareness, and freedom of action are present as the primary foundations of legal imposition.

From the perspective of Islamic legal literature, there is general agreement that the capacity to take responsibility is the primary foundation in determining criminal liability. The majority of Islamic scholars consider ahliyyah an essential requirement that cannot be ignored, although there are variations in its implementation in specific cases. Some views place greater weight on the elements of intention and deliberateness, while others emphasize the factual circumstances of the perpetrator at the time of the act. These differences demonstrate that the concept of criminal liability in Islamic law is flexible and adaptive to human conditions, while remaining grounded in the principle of justice as its primary foundation.

In relation to the concept of the abolition of punishment, criminal liability is interrelated but

not always identical. The abolition of punishment does not automatically eliminate criminal liability, as in some circumstances there are still legal and moral consequences that remain for the perpetrator. Conversely, if the element of responsibility is not met, the imposition of punishment is legally unjustifiable. This relationship demonstrates that Islamic criminal law establishes a balance between the act, the condition of the perpetrator, and the purpose of punishment. Thus, justice is measured not only by the implementation of sanctions but also by the accuracy in determining legal responsibility, making criminal liability a crucial element in maintaining the balance between justice, public welfare, and the protection of human rights.

C. Factors that Cause Criminal Responsibility to Disappear

The absence of criminal responsibility in Islamic criminal law essentially stems from the failure to fulfill the fundamental elements of the imposition of taklif, namely reason, consciousness, and free will. These three elements are the primary benchmarks for determining whether an individual is worthy of being held accountable for a crime. If any one of these elements is not met, the basis for the imposition of legal responsibility becomes imperfect or even lost. Within the framework of Islamic law, this condition is not merely seen as an exception, but rather as a manifestation of the principle of justice that ensures the law is not applied disproportionately to individuals who do not meet the qualifications of being legally responsible.

One of the dominant factors that causes the lapse of criminal responsibility comes from the internal condition of the perpetrator, such as mental disorders, not reaching the age of puberty, or loss of legal awareness. Mental disorders result in a person being unable to understand the consequences of their actions, thus not meeting the requirements for mukalaf. Similarly, children who have not reached puberty are considered to not have sufficient

intellectual maturity and moral responsibility to be subject to the full burden of criminal law. In this case, reason occupies a position as an essential requirement in the imposition of law, so that its absence automatically eliminates criminal responsibility. Juima (2025) emphasizes that the ability to think and legal awareness are the main foundations in determining criminal responsibility, so that without these two elements a person cannot be treated as a perfect legal subject.

In addition to internal factors, the cessation of criminal liability is also influenced by external circumstances that eliminate free will, such as vows or coercion. In this situation, the perpetrator no longer has the independence to make choices because the actions taken are under pressure or threats. The loss of this element of freedom results in the failure to fulfill the element of intent, which in Islamic criminal law is a crucial element in imposing responsibility. Arifin (2025) explains that criminal liability is highly dependent on the existence of free will, so if this element is lost or significantly weakened, the basis for imposing a criminal penalty becomes weak or even void.

Another factor is unintentional acts (*khatha'*), which arise from negligence, forgetfulness, or error without malice. In Islamic criminal law, the distinction between intentional and unintentional acts has significant legal implications, as intent is the primary determinant of a person's level of responsibility. An unintentional act is not considered the same as a conscious and planned act. Therefore, the form of accountability for *khatha'* tends to vary, either in the form of a reduction or elimination of certain sanctions, depending on the level of the accompanying fault.

Therefore, these factors indicate that criminal liability in Islamic criminal law is not absolute, but rather depends heavily on the subjective condition of the perpetrator at the time of the act. Reason, awareness, and free will are the primary indicators in determining the applicability of legal burdens. In this context, the

cessation of criminal liability serves as a corrective mechanism that keeps the law within the corridor of substantive justice. Its relationship with the cessation of punishment demonstrates a close link, as the cessation of responsibility often implies the inability to impose full criminal sanctions. Thus, the Islamic criminal law system establishes a balance between individual protection, legal certainty, and the welfare-oriented objectives of punishment.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

The absence of punishment and criminal liability in Islamic criminal law demonstrates that the Islamic penal system is not based on the rigidity of sanctions, but rather is built on the principle of balance between legal certainty, justice, and public welfare. In its implementation, not every crime automatically results in the imposition of punishment, as sharia recognizes certain conditions that can influence, eliminate, or even nullify criminal sanctions and the perpetrator's liability. This emphasizes that Islamic criminal law focuses not only on the normative dimension of actions but also takes into account the reality of humans as legal subjects with limitations.

The results of the study indicate that the normative basis for the abolition of punishment in Islamic criminal law is derived from the Qur'an, Hadith, and sharia principles that accommodate mechanisms for forgiveness, repentance, compulsion, accident, death of the perpetrator, and other legally recognized conditions. These various mechanisms demonstrate that punishment is not absolute, but can be changed in form, postponed, or even abolished if there is a valid reason according to sharia provisions. However, in certain situations, the failure to carry out the punishment does not necessarily eliminate all legal responsibility, as it can be converted into other forms such as diyat or legal consequences that remain attached to the perpetrator.

Meanwhile, criminal liability under Islamic criminal law can only be imposed on individuals who fulfill the elements of reason, awareness, and free will as the primary basis for taklif. Conditions such as mental impairment, not yet reaching puberty, coercion, and unintentional acts are factors that can eliminate or reduce criminal liability due to the failure to fulfill the elements of legal perfection. This demonstrates a clear distinction between criminal acts and the perpetrator's capacity to bear legal responsibility, so that sanctions are not imposed uniformly but rather take into account individual circumstances.

Thus, the relationship between the imposition of punishment and criminal liability in Islamic criminal law forms a proportional sentencing system oriented toward substantive justice. Both concepts serve not only as instruments of law enforcement but also as a means of safeguarding the public interest, protecting human rights, and ensuring that the application of sanctions and legal liability aligns with the objectives of sharia. This approach emphasizes that Islamic criminal law places a balance between legal certainty, individual protection, and moral values as the primary foundation of every law enforcement process.

B. Suggestion

It is hoped that further research will develop a more comprehensive study of the concept of the lapse of punishment and criminal liability in Islamic criminal law through various approaches, such as normative, comparative, and empirical. The normative approach can be expanded by examining in more depth the differing views of Islamic scholars regarding the limits of the lapse of punishment and criminal liability. Meanwhile, a comparative approach can be directed at comparing it with modern positive legal systems to identify similarities and differences in a more structured manner. Furthermore, further research is also important to examine the implementation of these concepts in contemporary legal systems, thereby providing a more applicable picture of

the relevance of Islamic criminal law in current law enforcement practices.

From the perspective of developing legal knowledge and practice, understanding of the lapse of punishment and criminal liability needs to be continuously strengthened among academics, legal practitioners, and the wider public. This aims to avoid misunderstandings regarding the flexible nature of Islamic criminal law, which is fundamentally oriented toward justice, public welfare, and the protection of human rights.

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