



Concepts and Theories of Punishment in Islamic Criminal Law

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Info Articles	Abstract
Article History Received: 2024-09-07 Revised: 2024-09-14 Published: 2024-09-30 Keywords: <i>Criminal Punishment, Islamic Criminal Law, Legal Theory.</i>	From a legal perspective, criminal punishment is part of the law enforcement apparatus that has a normative basis and ethical objectives rooted in the values of Islamic Sharia. This study focuses on an in-depth examination of the concept of criminal punishment, the theories underpinning it, and the forms of punishment in Islamic criminal law, along with their relevance to the development of the modern legal system today. This study employs a qualitative method with a juridical-normative approach through a literature review drawn from Islamic legal texts and various relevant and credible scholarly references. The research findings indicate that the structure of punishment in Islamic criminal law is divided into three main categories: hudud, qisas-diyat, and ta'zir, each of which reflects the principles of legal certainty, justice, and proportional flexibility. Furthermore, the theory of punishment in Islam encompasses retributive, preventive, and corrective approaches that function in an integrated and complementary manner to achieve the overall objectives of the law. Thus, punishment in Islamic criminal law is not merely repressive but also serves preventive and educational functions in fostering social order and the sustainable well-being of society.

I. INTRODUCTION

The concepts and theories of punishment occupy a crucial position in the Islamic legal system because they regulate acts that fall under the category of jarimah (criminal offenses) and their legal consequences based on sharia provisions. Islamic law explains that punishment is understood not only as a means of punishing offenders but also as a mechanism for establishing social order, protecting the rights of society and individuals, and realizing legal objectives based on public welfare. In line with the development of Islamic legal studies, discussions of criminal law have expanded from a normative approach to philosophical and theoretical studies that emphasize the basis, function, and orientation of punishment. This condition demonstrates that punishment holds a strategic position in developing a legal system relevant to the advancement of modern society.

More specifically, the theory of punishment in Islamic criminal law stems from the understanding that the imposition of sanctions is not merely a response to violations of the law but

rather an instrument for delivering justice and maintaining order in social life. The punishment system in Islamic criminal law recognizes the forms of hudud, qisas-diyat, and ta'zir, each designed to suit the characteristics and objectives of the corresponding type of violation. The implementation of criminal sanctions is directed toward fulfilling the functions of prevention, enforcement, education, and correction so that the law not only produces legal certainty but also upholds humanitarian values and social benefits. Therefore, the theory of punishment in Islamic criminal law cannot be narrowed solely to the concept of punishment itself.

However, discussions regarding the concepts and theories of punishment in Islamic criminal law still present a number of challenges, both theoretically and practically. From a conceptual perspective, debate persists regarding the primary orientation of punishment, whether it emphasizes retribution, deterrence, or public welfare as the ultimate objective of law. Meanwhile, from an implementation perspective, challenges arise in integrating the principles of

Islamic criminal punishment with modern legal systems that uphold the principles of legality, legal certainty, and rights protection. Differences in character between Islamic criminal law and positive criminal law have also generated discourse regarding the legitimacy of sanctions and the scope of their application in the contemporary legal context.

Several previous studies have contributed to the development of Islamic criminal law scholarship. Muslich (2025), in the study entitled "The Principle of Legality in Indonesian Criminal Law and Islamic Criminal Law," discusses the scope of Islamic criminal law, the classification of criminal acts, and the philosophical basis for imposing sanctions aimed at achieving the objectives of sharia. Furthermore, Hafizah, Ablisar, and Lubis (2022), in their study "The Principle of Legality in Indonesian Criminal Law and Islamic Criminal Law," compared the principle of legality in both legal systems and found a distinctive legal character in Islamic criminal law while maintaining consideration for substantive justice. However, neither study specifically emphasized the theory of punishment as the primary object of analysis.

Based on several previous studies, it appears that discussions of punishment tend to be incorporated into broader discussions of Islamic criminal law or linked to legality studies, resulting in underdeveloped analytical space for the theoretical framework of punishment. This study offers novelty by making the concepts and theories of punishment the primary focus through an examination of the principles, objectives, and orientation of punishment in Islamic criminal law. Furthermore, this research seeks to explain the relevance of Islamic criminal law theory in responding to modern legal developments that require harmony among legal certainty, justice, and expediency. Therefore, this research is important for strengthening the theoretical foundation of Islamic criminal law to make it more systematic and contextual.

This research aims to examine the concepts and theories of punishment in Islamic criminal law through an analysis of conceptual

foundations, principles of punishment, and the objectives to be achieved from the perspective of Islamic sharia. This research also aims to identify the relevance of Islamic criminal law theory in addressing the challenges of contemporary law enforcement, thereby contributing to the development of more comprehensive, adaptive, and justice-oriented Islamic legal studies.

II. RESEARCH METHODS

This study employs a qualitative approach with a normative juridical approach, focusing on the concept, theory, and norms of punishment in Islamic criminal law. This approach was chosen because it is relevant for examining the conceptual and philosophical aspects of Islamic law, which does not require empirical field data but relies instead on a review of legal literature and expert opinion. Through this approach, the research aims to systematically and comprehensively understand the structure of thought, basic principles, and objectives of punishment in Islamic criminal law.

The data used in this study are secondary data obtained from various relevant literature, such as the Quran, Hadith, fiqh books, Islamic criminal law books, scientific journal articles, and previous research related to the concept and theory of punishment. All these sources are used as a unified study material to construct a comprehensive analysis. In this study, the researcher acts as the primary instrument (human instrument), tasked with collecting, interpreting, and analyzing all data critically and systematically in accordance with the focus of the study.

The data collection technique was conducted through library research by searching, reading, recording, and identifying various literature sources relevant to the research focus. The collected data were then analyzed using content analysis and descriptive-analytical analysis techniques, namely by systematically describing, grouping, and interpreting legal concepts to obtain a comprehensive understanding. To maintain data validity, this study used cross-checking techniques between literature sources and consistent concept tracing so that the analysis

results obtained remain valid, objective, and scientifically accountable.

III. RESULTS AND DISCUSSION

A. Legal Basis for Criminal Punishment

The development of the concept of punishment in Islamic criminal law cannot be separated from the normative foundation that serves as the basis for legitimacy in imposing sanctions for criminal acts. In the Islamic legal system, the primary source of the legal basis for punishment comes from sharia, which includes the Qur'an, hadith, and the results of *ijtihad* (deliberation) of Islamic scholars, which later developed into the discipline of Islamic jurisprudence (*fiqh jinayah*). Maswandi (2025) asserts that Islamic criminal law has a strong normative foundation because every form of punishment is always linked to the objectives of sharia, which are oriented towards public welfare and preventing harm. Thus, the legal basis for punishment serves not only as formal legitimacy but also as a normative instrument that guides the overall objectives of the law.

Structurally, the legal basis for punishment in Islamic criminal law is divided into three main categories: *hudud*, *qisas-diyat*, and *ta'zir*. These three categories differ in terms of legal source, level of certainty, and scope of authority in imposing sanctions. *Hudud* is expressly stipulated in the texts and is therefore permanent and unchangeable, while *qisas-diyat* balances the rights of victims and perpetrators within a measurable framework of retributive justice. *Ta'zir*, on the other hand, allows legal authorities discretion to determine the type and form of sanctions based on considerations of public interest and social conditions. This structure demonstrates that the Islamic criminal justice system is both hierarchical and adaptive to a certain extent.

Beyond the structural aspect, the legal basis for criminal justice also has a substantive dimension related to achieving the objectives of sharia (*maqāṣid al-syarī'ah*), namely the protection of religion, life, intellect, descendants, and property. Every form of sanction is aimed at maintaining social order and preventing wider harm in society. Thus, criminal justice in Islam serves not only as

an instrument of punishment but also has an educational and preventive function in shaping behavior that aligns with sharia values. This demonstrates that the legal basis for criminal justice in Islam has a strong social protection orientation.

In the context of modern legal developments, a paradigm shift has occurred toward a more humane and just penal system. Ismawati & Hertini (2025) state that the reform of the national Criminal Code is aimed at strengthening the principles of justice and humanitarian values within the penal system. This conceptual link is linked to Islamic criminal law, which from the outset has placed justice and public welfare as the primary foundations of penalization, albeit with different sources of legitimacy.

Comparatively, there are similarities in orientation between Islamic criminal law and modern criminal law regarding the goals of justice and community protection. However, the main difference lies in the source of legitimacy: Islamic criminal law relies on revelation and *ijtihad*, while modern law relies on state regulations. This difference demonstrates that, despite overlapping values of justice, the epistemological foundations of the two differ. Furthermore, the flexibility of the concept of *ta'zir* demonstrates Islamic criminal law's adaptability to social change without compromising its fundamental principles.

The legal basis for penalization in Islamic criminal law demonstrates that this system functions not merely as a repressive instrument but also as a normative mechanism integrating justice, morality, and social welfare. In the context of modern legal theory, this concept makes a significant contribution to strengthening the paradigm of criminal justice, which is not solely oriented toward punishment but also toward social improvement and crime prevention. Therefore, the legal basis for criminal justice in Islamic criminal law remains relevant for study in order to develop a more comprehensive legal theory that is responsive to the dynamics of contemporary society.

B. Concept of Punishment

The concept of punishment in Islamic criminal law emphasizes that criminal sanctions are not

merely understood as a form of retribution against perpetrators of crimes, but rather as part of a normative system aimed at maintaining social order and realizing the public good. Studies have shown that the orientation of punishment in Islamic criminal law is holistic, encompassing community protection, crime prevention, and the development of perpetrators so they can reintegrate positively into social life. Within this framework, punishment cannot be separated from moral and spiritual values, as it is part of a legal system based on the objectives of sharia. Thus, the concept of punishment functions as a mechanism that comprehensively integrates legal, social, and ethical dimensions.

Punishment in Islamic criminal law is comprehensive and multi-layered, both in terms of its function and purpose. Punishment serves not only as a response to violations of the law but also as an educational tool that raises the perpetrator's awareness of the wrongdoing. In its implementation, this concept encompasses prevention, a deterrent effect, protection of victims' rights, and the enforcement of justice without distinction of social status. Furthermore, punishment must remain within the bounds of humanitarian values, so that, despite its strict nature, it still upholds the principles of justice and proportionality. This demonstrates the balance between repressive and rehabilitative aspects of the Islamic penal system.

From a goal-oriented perspective, research shows that punishment in Islamic criminal law is oriented toward achieving the *maqāṣid al-syarī'ah* (objectives of the law), namely the protection of religion, life, intellect, descendants, and property. Punishment is positioned as an instrument for creating social order, protecting basic human rights, and preventing broader harm in society. Furthermore, punishment is also aimed at correcting the behavior of perpetrators so they can return to normal functioning in social life. Thus, the penal system is not only repressive but also preventive and corrective, achieving a balance between individual and social interests.

In a literature review, Sidiqah (2022) explained that Islamic criminal law is closely linked to efforts to maintain public order as the

basis for creating a harmonious social life. This view aligns with research findings showing that punishment serves as an instrument of social control to maintain societal stability. Meanwhile, Amiruddin (2025) emphasized that punishment in Islamic criminal law is not solely oriented toward retribution, but also toward reshaping the perpetrator's behavior to ensure social acceptance. Both views reinforce the finding that punishment has broader dimensions than mere punishment.

Upon further analysis, there is a congruence between the research findings and previous literature regarding the orientation of punishment, which emphasizes aspects of justice, order, and welfare. However, this study confirms that the integration of moral and spiritual values is a key characteristic that distinguishes the concept of punishment in Islamic criminal law from modern legal systems. Furthermore, there is a stronger emphasis on the simultaneous balance between victim protection, perpetrator development, and community interests. This demonstrates that punishment in Islam is not only normatively oriented but also focused on establishing a sustainable social order.

Theoretically, the concept of punishment in Islamic criminal law has made a significant contribution to the development of legal thought that integrates justice, morality, and welfare within a unified system. Practically, this concept is relevant in supporting the development of a more humanistic, adaptive, and socially rehabilitative legal system. In the context of modern law, this approach offers a balance between legal certainty and humanitarian values. Therefore, punishment in Islamic criminal law serves not only as an instrument of law enforcement but also as a means of establishing an orderly, just, and civilized society.

C. Theories of Punishment

The theory of punishment in Islamic criminal law cannot be separated from an understanding of the essence of the purpose of imposing sanctions in the Islamic legal system, which is based on the principles of justice and welfare. Within this framework, punishment is not only interpreted as

a response to violations of the law, but also as an instrument to maintain social stability, prevent harm, and foster human behavior in accordance with sharia values. Thus, the theory of punishment serves as a foundation for thinking that explains the rationality and direction of punishment. Therefore, the theory of punishment in Islamic criminal law has developed as a diverse and complementary conceptual system.

The theory of punishment in Islamic criminal law can be classified into several approaches: retaliation theory, deterrence theory, remedial theory, and combination theory. The remedial theory is based on the principle that punishment is an appropriate consequence for a criminal act, as reflected in the concept of qisas. The deterrence theory positions punishment as a tool to create a deterrent effect on both the perpetrator and the wider community to reduce the likelihood of crime. The remedial theory emphasizes the function of punishment as a means of moral education aimed at improving the behavior of the perpetrator. Meanwhile, the combination theory unites all these approaches into a coherent system, ensuring that punishment is not a single concept but rather accommodates various legal objectives in a balanced manner.

Upon closer analysis, each of these theories has a distinct yet interconnected orientation, forming a comprehensive Islamic penal system. The retribution theory emphasizes retributive justice, which ensures equality between offenses and sanctions. The prevention theory focuses on social protection through a deterrent effect on potential criminals. The improvement theory focuses more on rehabilitation by providing opportunities for perpetrators to change their behavior. The combination theory, meanwhile, functions as an integration of all these approaches, proportionally considering the interests of victims, perpetrators, and society within a harmonious penal system.

In their research, Amalia et al. (2025) argue that a modern penal system ideally integrates legal certainty, justice, and humanitarian values in a balanced manner. This aligns with the theory of punishment in Islamic criminal law, which has, from its inception, placed justice and welfare as its primary orientations. Furthermore, Fardha

(2023) explains the transformation in criminal law theory from a predominantly retributive approach to a more preventative and rehabilitative one. This development aligns with the concept of prevention and reparation in Islamic criminal law, which emphasizes educational aspects and social protection.

Ishak (2023) argues that in Islamic law, the aspect of retribution remains crucial, particularly in the application of qisas, which emphasizes the principle of balance between criminal acts and sanctions. However, this aspect does not exist independently; rather, it is combined with the preventive and reparative functions, giving the Islamic penal system a more comprehensive character. When compared with positive criminal law, it is clear that Islamic law emphasizes not only social utility but also incorporates moral and spiritual values as the basis for the legitimacy of punishment, a key distinction.

Thus, theories of punishment in Islamic criminal law have significant implications both conceptually and practically. Theoretically, this theory enriches legal discourse by offering a model of punishment that simultaneously integrates justice, prevention, and rehabilitation. Practically, this approach is relevant in the development of a modern legal system that demands a balance between legal certainty, social protection, and the rehabilitation of perpetrators.

D. Types of Punishments in Criminal Proceedings

Regulation of punishments within the Islamic legal framework is essentially formed as a normative response to various forms of violations that have varying degrees of impact on individuals and society. Punishment is not merely understood as a means of retribution, but also as an instrument of social control that functions to maintain order, protect fundamental rights, and realize the public good. In its implementation, punishment works simultaneously by providing a deterrent effect, preventing crime, and fostering moral awareness in social life. Thus, there is an integration of normative, ethical, and social dimensions that mutually reinforce each other in the construction of punishment.

The classification of punishments consists of three main categories: hudud, qisas and diyat, and ta'zir. Hudud are sanctions expressly established in the Quran and Hadith and are therefore permanent and cannot be changed by judges. Qisas and diyat emphasize the balance between the act and its consequences, particularly in crimes against the soul and body, while still allowing for forgiveness and compensation from the victim. Ta'zir is a form of punishment not specifically specified in the texts, leaving its determination to legal authorities based on considerations of public interest and evolving social conditions.

These three categories have distinct characteristics but complement each other in building a comprehensive criminal justice framework. Hudud is strict and binding, primarily focused on maintaining public order and preventing serious violations. Qisas and diyat emphasize retributive justice, balanced with peace mechanisms through forgiveness and compensation. Meanwhile, ta'zir is flexible and adaptive, allowing for adjustments to punishment based on the severity of the offense, social circumstances, and the goal of rehabilitating the perpetrator so they can reintegrate into society.

In a contemporary study, Nasution, Ali, & Lubis (2024) emphasized that the reform of the national Criminal Code is aimed at creating a punishment model that is more responsive to the dynamics of modern society. This aligns with the concept of ta'zir, which provides judges with discretion in determining the most appropriate sanctions for specific circumstances. On the other hand, Nirwanawati (2026) stated that the regulation of criminal acts such as adultery still prioritizes the protection of moral values and social stability, which conceptually aligns with the objectives of hudud. Both views demonstrate a shared orientation toward maintaining justice and social order.

Upon further examination, there are points of convergence with the development of modern criminal law, particularly regarding the objectives of punishment, which encompass justice, community protection, and crime prevention. However, the fundamental differences lie in the

source of legitimacy and the degree of flexibility. Hudud and qisas derive from fixed sharia provisions, while modern law relies on dynamic legislative mechanisms. Nevertheless, the existence of ta'zir demonstrates the need for adaptation to social change without abandoning its basic normative principles.

Thus, this classification of punishments demonstrates a balance between legal certainty, substantive justice, and flexibility of application. The division into hudud, qisas-diyat, and ta'zir provides not only a clear structure but also room for responsiveness to social dynamics. In the context of modern legal developments, this concept is relevant as an approach that emphasizes not only the punitive aspect but also victim protection, perpetrator development, and the broader public good. Therefore, this model contributes to building a more proportional, humanistic, and social justice-oriented sentencing paradigm.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

The concept and theory of punishment in Islamic criminal law reflect the essential need to understand punishment comprehensively, not merely as a form of legal sanction. Punishment is also understood as a normative mechanism that functions to maintain social order, protect individual rights, and realize the goals of public welfare. In the development of Islamic legal science, punishment holds a strategic position because it is closely related to efforts to uphold justice and protect society within the framework of sharia objectives.

The study revealed that the conceptual basis of punishment in Islamic criminal law stems from the Quran, Hadith, and the *ijtihad* of scholars, which are then embodied in the systems of hudud, qisas-diyat, and ta'zir. The theory of punishment in Islam is not a single entity, but rather a combination of retributive, preventive, rehabilitative, and combined theories that complement each other. Although these three forms of punishment have distinct characteristics, all are aimed at achieving a balance between justice, victim protection, perpetrator

development, and the interests of the wider community. Thus, the criminal justice system in Islamic criminal law can be understood as comprehensive, adaptive, and oriented toward the public good.

Overall, the concepts and theories of criminal justice in Islamic criminal law make significant contributions, both theoretically and practically, to the development of a legal system that is more humane, just, and responsive to the dynamics of modern society. Criminal justice is positioned not merely as a repressive tool, but also as an educational and preventive instrument that balances legal certainty, humanitarian values, and social goals. Therefore, further research is needed to integrate the principles of criminal justice in Islamic criminal law with the constantly evolving contemporary legal system.

B. Suggestion

In further studies, discussions on the concept and theory of punishment in Islamic criminal law need to be directed beyond a normative approach and developed through comparative studies with contemporary criminal law systems. This approach is crucial for generating a more comprehensive understanding of similarities and differences, particularly regarding the objectives of punishment, which encompass justice, legal certainty, and expediency. Furthermore, future research is recommended to explore the application of punishment theory in a more focused social context, so that the contribution of Islamic punishment concepts can be understood more operationally in addressing the challenges of modern law.

This strengthening of studies is expected to strengthen the structure of Islamic criminal law thought, making it more dynamic and responsive to social change and the development of modern legal systems. The findings of this research can also be utilized by academics and practitioners as a basis for formulating a more proportional punishment model, particularly in integrating repressive, preventive, and rehabilitative dimensions in a balanced manner. Thus, the concept and theory of punishment in Islamic criminal law are not merely conceptual and theoretical but can also be developed into a

relevant foundation for law enforcement in the contemporary era.

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