



Principles of Islamic Criminal Law in the Perspective of Jinayah Fiqh

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Article History Received: 2024-09-05 Revised: 2024-09-11 Published: 2024-09-30 Keywords: <i>Jinayah Fiqh, Islamic Criminal Law, Legal Principles, Justice, Maqashid Syariah.</i>	This study explains that Islamic criminal law or fiqh jinayah is an important part of the Islamic legal system that aims to maintain order, justice, and the welfare of the community. In its application, Islamic criminal law is not only oriented towards imposing sanctions, but also emphasizes the protection of human rights, justice, and the balance between individual and societal interests. This study aims to understand the principles of Islamic criminal law and to identify the various principles that form the basis for the application of fiqh jinayah. The research method used is normative legal research with a library approach, through a study of the Qur'an, Hadith, books, and relevant scientific journals. The results of the study indicate that the principles of Islamic criminal law include the principle of legality, the principle of prohibition of retroactive application, the principle of presumption of innocence, the principle of personal responsibility, the principle of justice and equality before the law, the principle of forgiveness and peace, the principle of protection of human rights, and the principle of humanity in the implementation of punishment. These principles indicate that Islamic criminal law has principles of justice that are in line with modern legal values and aim to create the welfare of the community.

I. INTRODUCTION

Islamic criminal law or fiqh jinayah is an important part of the Islamic legal system which functions to maintain order, security and justice in community life. In Islam, criminal law is not only understood as a means of punishing criminals, but also as a means of safeguarding the benefit of the people and protecting human rights. Jinayah fiqh has a set of basic principles that form the basis for determining an act as a criminal act and for imposing punishment. These principles are known as the principles of Islamic criminal law. The existence of these principles shows that Islamic criminal law is built on the basis of justice, legal certainty and protection of human dignity.

Over time, several principles of Islamic criminal law have emerged, similar to those of modern criminal law, such as the principle of legality, the presumption of innocence, and the principle of retroactive prohibition. This

demonstrates that Islamic law has a rational and structured legal system that regulates social life. Understanding the principles of Islamic criminal law is crucial because they serve as the primary foundation for the just and humane application of Islamic criminal law. Therefore, a more in-depth discussion of the principles of Islamic criminal law is necessary to provide a comprehensive understanding of the purpose and application of Islamic criminal law in social life.

II. RESEARCH METHODS

The research method used in writing this journal is a normative legal research method with a library research approach. The research was conducted through a review of various sources of Islamic law, books, scientific journals, and other literature related to the principles of Islamic criminal law. The approaches used are conceptual and juridical. The conceptual approach is carried

out by analyzing the basic concepts of Islamic criminal law (fiqh jinayah), while the juridical approach is carried out by examining the principles of Islamic criminal law based on Islamic legal sources.

The data used are secondary data consisting of primary legal materials in the form of the Qur'an and Hadith, secondary legal materials in the form of books and scientific journals, and tertiary legal materials such as dictionaries and encyclopedias of Islamic law. Data collection techniques were carried out through documentation studies and library research. Data were analyzed using descriptive-qualitative methods by systematically explaining and interpreting various principles of Islamic criminal law to obtain a clear understanding of the application of these principles in realizing justice and the welfare of the community.

III. RESULTS AND DISCUSSION

In Islamic criminal law (fiqh jinayah), legal principles are the basic principles that form the basis for determining an act as a criminal act and determining the form of punishment that will be imposed on the perpetrator. These principles function as guidelines so that the application of the law is fair, humane and not arbitrary. In general, the principles of Islamic criminal law aim to safeguard human benefit and protect basic human rights as reflected in the concept of *maqashid asy-syari'ah*. Therefore, Islamic criminal law is not only oriented towards providing sanctions, but also emphasizes the protection of religion, soul, mind, lineage and property. The existence of the principles of Islamic criminal law shows that the Islamic legal system has strong principles of justice and is able to provide legal certainty for society. These principles are also proof that Islamic law pays attention to human values and the balance between individual rights and social interests.

A. First, the principle of legality (*Al-Mashru'iyah*) is the principle that an act cannot be considered a crime if there is no legal provision governing it. In modern criminal law, this principle is known as *nullum delictum*

nulla poena sine praevia lege poenali. In Islamic criminal law, a person cannot be punished if there is no text from the Qur'an or hadith that prohibits the act. This principle aims to provide legal certainty and prevent arbitrary actions in law enforcement (Mahrus, 2015). The principle of legality shows that Islam highly upholds justice and legal certainty. With clear rules before a punishment is imposed, society can know the boundaries between permissible and prohibited actions.

B. Second, the principle of retroactive prohibition (non-retroactivity) means that a legal rule cannot be applied to acts committed before the rule was established. This principle is also known in modern legal systems as the principle of non-retroactivity. In Islamic criminal law, a person cannot be punished for an act committed before the existence of a legal provision prohibiting it. This is based on the principle of justice that a person can only be held accountable after a clear legal explanation (Ruba'i, 2020). The application of this principle demonstrates that Islamic criminal law prioritizes the protection of individual rights and does not impose arbitrary punishment.

C. Third, the principle of the presumption of innocence (*Al-Bara'ah al-Ashliyyah*) is the principle that a person is considered innocent until there is valid and convincing evidence that he or she has actually committed a crime. In Islamic criminal law, proof is a very important part of the judicial process. If there is doubt in the evidence, then the sentence must be annulled. This principle is known as the principle of *Idra'u al-hududa bi al-syubuhah*, which means avoiding hudud punishment when there is still doubt. This principle shows that Islam is very careful in imposing punishment and prioritizes the protection of human rights over the risk of punishing innocent people (Syarifuddin, 2017).

D. Fourth, in Islamic criminal law, criminal responsibility is individual. Each person is responsible for their own actions and cannot be blamed on others. This principle is

emphasized in the Quran, which states that no one will bear the sins of others. Therefore, punishment can only be imposed on perpetrators who actually committed the crime. The principle of personal responsibility aims to prevent group or family revenge and ensure justice in law enforcement (Hamzah, 2019).

- E. Fifth, the principle of justice and equality before the law (Al-Musawah). This principle affirms that all humans have equal standing before the law, regardless of social status, position, wealth, or descent. Throughout Islamic history, the Prophet Muhammad (peace be upon him) emphasized that the law must be enforced equally for everyone. This principle demonstrates that Islam rejects discrimination in law enforcement. Implementing the principle of equality before the law is crucial for building public trust in the judicial system and achieving social justice (Yasin, 2021).
- F. Sixth, the principle of forgiveness and reconciliation. Islamic criminal law is not solely oriented toward retribution but also allows for forgiveness and reconciliation. In certain cases, such as qisas and diyat (retribution), the victim's family can forgive the perpetrator. If the victim or the victim's family forgives, certain punishments can be replaced with diyat or even released. This principle aims to create peace and restore social relations in society (Fauzi, 2018). The principle of forgiveness and reconciliation demonstrates that Islamic criminal law has a restorative approach that focuses not only on punishment but also on restoring social relations.
- G. Seventh, the principle of human rights protection. In Islamic criminal law, every rule and punishment aims to protect the five basic elements of human life: religion, life, reason, lineage, and property. This principle is known as *maqasid ash-syari'ah*. Therefore, punishment in Islam is not intended to torture, but to protect society and prevent harm. The principle of human rights protection

demonstrates that Islamic criminal law has a very strong humanitarian and social purpose (Zaid, 2022).

- H. Eighth, the principle of humanity in the implementation of punishment. Although Islamic criminal law provides several forms of strict punishment, its implementation must still adhere to humanitarian values. Islam prohibits torture, excessive force, and degrading treatment in the implementation of punishment. The primary purpose of punishment in Islam is to provide a deterrent effect and maintain social order, not to commit sadistic violence. This principle demonstrates that Islam upholds humanitarian values in every law enforcement process (Anwar, 2019).

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

The principles of Islamic criminal law are the fundamental principles that form the basis for determining whether an act is a crime and for imposing just punishment. These principles demonstrate that Islamic criminal law functions not only as a means of punishment but also as a means of protecting human rights and safeguarding the welfare of the community.

Some important principles in Islamic criminal law include the principle of legality, the principle of prohibition of retroactive application, the principle of presumption of innocence, the principle of personal responsibility, the principle of equality before the law, the principle of forgiveness and peace, the principle of protection of human rights, and the principle of humanity in the implementation of punishment.

Through these principles, Islamic criminal law shows a balance between legal certainty, justice and protection of human rights. Therefore, understanding the principles of Islamic criminal law is very important to understand the main objective of *fiqh jinayah* in creating order and justice in people's lives.

B. Suggestions

Based on the research results, the author suggests that studies on the principles of Islamic

criminal law continue to be developed, both theoretically and practically, so that they can provide a more comprehensive understanding of the relevance of jinayah fiqh in modern life. Apart from that, the values of justice, equality before the law, protection of human rights, and the principle of forgiveness contained in Islamic criminal law need to continue to be socialized and taken into consideration in developing a legal system that is oriented towards the benefit of society.

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