



The Relevance of the Concept of Ta'zir in the Contemporary Islamic Criminal Law System: A Study of Islamic Criminal Law and Its Application

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Abstract

The concept of ta'zir is an important element in Islamic jurisprudence (fiqh jinayah), which serves as an instrument of Islamic criminal law outside the provisions of hudud and qisas. Unlike hudud, which are rigid, ta'zir offers flexibility in determining the type and level of sanctions, which are determined by judges based on considerations of justice and public interest. This study aims to examine the relevance and potential application of ta'zir in addressing the complexity of criminal acts in the contemporary era. The method used is qualitative research through library research, analyzing various classical and modern literary sources. The results show that the development of modern crimes, such as cybercrime, corruption, and human trafficking, requires a responsive legal mechanism. In this context, ta'zir functions as an adaptive instrument that can address these challenges, by providing room for judges to impose sanctions appropriate to the characteristics of the crime and the perpetrator's condition. In several Muslim countries, such as Brunei Darussalam, Malaysia, and Aceh, Indonesia, ta'zir has been integrated into the positive legal system. However, the implementation of ta'zir also requires strict regulations to avoid violating the principles of justice and human rights. Therefore, strengthening regulations and supervision in the implementation of ta'zir is important to ensure its effectiveness and relevance in the contemporary Islamic criminal law system.

I. INTRODUCTION

Islamic Criminal Law is not widely understood by the public, even by Muslims themselves. The general public only perceives and obtains the impression that the sanctions imposed under Islamic Criminal Law are cruel and horrific. They only describe the cruelty of amputation for thieves, stoning for adultery, and general punishments such as flogging and hudud (divinely ordained punishments). They lack a thorough understanding of the Islamic legal system, the Islamic justice system, and the execution of these sanctions.

Islamic criminal law, better known as fiqh jinayah, is a branch of Islamic law that plays a central role in regulating the relationship between individuals and society, as well as society and the state, particularly regarding crimes and their legal sanctions. Since the early days of Islam, the criminal legal framework has been fundamentally divided into three main categories: hudud (punishments that have been determined precisely by the texts of the Qur'an and the Sunnah), qisas-diyat (retaliatory punishment or compensation for crimes against

life or body), and ta'zir (punishment whose type and degree are not explicitly determined in the texts, but are left to the discretion of the judge or ulil amri). The last category, ta'zir, is a very interesting and relevant element in discussions of contemporary Islamic criminal law because of its adaptive nature and responsiveness to ongoing social dynamics. In this modern era, the Islamic criminal legal system is faced with a series of increasingly complex challenges. Globalization, advances in information technology, and shifts in social values have given rise to new types of crimes previously unknown in classical fiqh. Cybercrime, money laundering, terrorism, and various forms of fraud involving high technology are concrete examples of this phenomenon. The limitations of specific texts to regulate these types of crimes require a flexible legal mechanism that remains grounded in sharia principles. This is where the concept of ta'zir finds its urgency, functioning as a safety valve that allows the Islamic legal system to remain relevant and capable of providing a proportionate and just legal response to the ever-expanding spectrum of crimes (Az-Zuhaili, 2011).

The inherent flexibility of the ta'zir concept not only allows for adaptation to new forms of crime but also allows judges to consider various contextual factors in imposing sanctions. Unlike hudud, which are absolute and unchangeable, ta'zir allows for discretion based on the perpetrator's circumstances, the motive for the crime, the resulting impact, and the public good (maslahah mursalah) desired to be achieved. This aligns with the spirit of sharia, which prioritizes substantive justice and the legal objectives of educating, preventing, and reforming (Al-Ghazali, 1993; Ibn Taymiyyah, 2005). Therefore, an in-depth study of ta'zir from the perspective of Islamic jurisprudence and its potential application in the contemporary Islamic criminal law system is crucial to ensuring the relevance and effectiveness of Islamic law amidst the challenges of the times.

Although several studies have addressed the concept of ta'zir in Islamic criminal law, most tend to focus on a comparative review with conventional criminal law in general. These studies are often analytically descriptive of traditional Islamic jurisprudence (fiqh jinayah), without explicitly examining how ta'zir can be an adaptive solution to the complexities of new criminal acts unimaginable in the past. Therefore, this study differs by specifically emphasizing the contemporary relevance of the concept of ta'zir and its application to addressing emerging types of crimes in the modern era.

This study broadly highlights the contemporary dimensions and applicative potential of ta'zir, not merely revisiting the classical concept, but also exploring its capacity as a progressive and dynamic legal instrument in facing the challenges of the times. Based on this understanding, this study aims to comprehensively analyze the relevance of the concept of ta'zir in the contemporary Islamic criminal law system, by highlighting its normative foundations in sharia, the scope of its application, and its potential application in addressing modern crimes. This analysis will also explore how the principles of ta'zir can be effectively integrated into the positive legal framework prevailing in various Muslim countries, thereby creating a harmonious and comprehensive legal system.

II. RESEARCH METHODS

This study uses a descriptive analysis approach as the primary method for collecting

relevant library research data. The data analyzed are secondary and were obtained through searching various sources, such as scientific articles, books, research reports, and other references related to the study topic. Data collection techniques were carried out through literature studies, a research method that involves accessing, reading, recording, and processing information from various literature sources. The data analysis process was conducted deductively, starting with existing theories or knowledge and then using them to understand the data obtained. In this process, expert opinions and facts related to the issues discussed were analyzed to identify similarities and differences related to the research object. (Riyadus Solikhin, 2023).

III. RESULTS AND DISCUSSION

A. The Concept and Basis of Ta'zir in Islamic Jurisprudence

Terminologically, ta'zir comes from the form mashdar 'azzaro-yu'azziru-ta'ziiran which has the meaning of preventing, rejecting, strengthening, respecting, and educating which lexically contains the meaning of preventing and obstructing criminal acts or criminal acts, and has the connotation of strengthening, respecting, and supporting (Irfan, 2002). In the context of Islamic criminal law, ta'zir refers to a type of sanction that is educational and corrective, which aims to provide a deterrent effect on the perpetrator so that he does not repeat his actions in the future.

Islamic jurists define ta'zir as a type of punishment not explicitly stated in the Qur'an or Hadith, imposed for violations related to the rights of God or human rights. The primary purpose of imposing this sanction is to educate the perpetrator and prevent the recurrence of similar crimes. In practice, ta'zir is often equated with other forms of punishment imposed for violations that do not involve hadd or expiation.

Ta'zir is also understood as a criminal act that is threatened with ta'zir sanctions, regardless of whether the prohibition is explicitly stated in the text or not, and regardless of whether the violation relates to the rights of God or individual rights. Determining the type and level of ta'zir punishment is entirely left to the authority of the ruler or judge, considering that sharia

does not provide limits regarding the form or severity of such sanctions. Therefore, in the Islamic criminal justice system, judges have full authority to determine proportionate sanctions according to the level of culpability and the condition of the perpetrator (Husairi, 2018).

In the perspective of jinayah fiqh, ta'zir is understood as an educational and corrective form of punishment for immoral acts that are not strictly regulated in the form of punishment by sharia. Al-Mawardi explains that ta'zir is "an educational punishment for sins whose type of punishment has not been determined by the sharia". This opinion is also reinforced by the views of Ahmad Hasan Hanafi and Ahmad Syarbaini, who emphasize that ta'zir is a sanction for violations that are not included in the hudud or kifarati categories.

In line with Al-Mawardi, Wahbah al-Zuhaili stated that ta'zir in a sharia perspective is a punishment given for violations or criminal acts (jinayah) which are not subject to hudud or kifarati sanctions.

Of the various existing definitions, the most relevant meanings related to ta'zir include man'u wa radda (prevention and rejection) and ta'dib (education). This is as stated by Abdul Qadir Audah and Wahbah al-Zuhaili, who interpret ta'zir as a preventive measure so that the perpetrator does not repeat his actions. On the other hand, ta'zir also contains educational values, which aim to form the perpetrator's awareness that his actions are wrong in accordance with religious teachings and encourage improved behavior in the future.

Essentially, ta'zir crimes encompass all acts that violate religious norms and disrupt public order. In this case, the judge has full authority to determine the type and extent of sanctions, as sharia does not provide specific provisions for such violations. In Islamic criminal law, ta'zir refers to the type of punishment determined by the ruler or judge for offenses not explicitly regulated in the Qur'an or Hadith (Dermawan, 2021). The following are several types of ta'zir in Islamic criminal law:

1) Ta'zir in the form of physical punishment: whipping, imprisonment, or other punishments that do not fall into the Hudud category.

- 2) Ta'zir in the form of fines and compensation: paying fines or compensation to the victim or the state.
- 3) Ta'zir in the form of supervision and restrictions or prohibitions on carrying out certain activities.
- 4) Ta'zir in the form of a warning, warning, or order not to repeat unlawful acts.

Ta'zir punishment in Islam can be categorized based on several aspects. Based on the rights violated:

- 1) Ta'zir against Allah's Rights: Violation of Allah's commands or prohibitions which are not included in the category of hudud or qisas.
- 2) Ta'zir of Human Rights: Violation of the rights of individuals or communities.
- 3) Based on the nature of the violation: 1. Sinful acts, violations of religious norms. 2. Acts that endanger the public interest, actions that harm society at large. 3. Violations of the law, violations of applicable regulations.

In addition, if viewed from the perspective of the legal basis for determining ta'zir, the scholars divide ta'zir into three main categories, namely:

- 1) Ta'zir crimes stem from hudud or qisas crimes, but the requirements for imposing hudud or qisas punishments are not met, or there are elements of doubt. Examples include theft that does not reach the nisab threshold or theft committed by a family member.
- 2) Ta'zir crimes are crimes whose type of crime has been explicitly mentioned in the Islamic texts, but the form or level of punishment has not been determined. For example, crimes such as usury, bribery, or reducing weights and measures.
- 3) Ta'zir crimes, neither the type of act nor the sanctions for which are directly determined by Islamic law. These crimes are entirely left to the authority of the ulil amri (government), such as disciplinary violations within the scope of state administration or violations of professional ethics.

Meanwhile, according to Abdul Aziz Amir (in the book Islamic Criminal Law by Ahmad Wardi Muslich), the classification of ta'zir crimes can be divided in more detail into several categories, namely:

1. Ta'zir crimes related to the crime of murder.
2. Ta'zir crimes related to criminal acts of assault or physical harm.
3. Ta'zir crimes related to violations of honor and moral damage.
4. Ta'zir crimes related to criminal acts against property.
5. Ta'zir crimes related to individual welfare.
6. Ta'zir crimes related to public security and order.

In the application of law in a Sharia-based state, the primary source remains the provisions of Allah SWT and His Messenger. For violations not explicitly regulated in the Quran or Hadith, the authority to determine punishment is delegated to the waliyul amri (authorized authority) or the government. In this case, the government is tasked with implementing Sharia according to contextual principles according to the needs of society. Ta'zir punishments cover various violations for which there are no clear legal provisions in the Sharia texts, so their form and severity are determined based on the judgment of the judge or qadi. This discretion allows the judge to adjust the sanction to the severity of the violation, justice, and public interest. Because there are no binding standard provisions, legal decisions in ta'zir are flexible, aimed at providing a deterrent effect and maintaining order in the surrounding community.

B. The Relevance of Ta'zir in the Contemporary Islamic Criminal Law System

The concept of ta'zir makes it highly relevant in addressing the challenges of criminal law in the contemporary era. In modern times, the criminal legal system often encounters new forms of crime that cannot be predicted by classical legal texts, such as cybercrime, money laundering, terrorism, or digital technology-based fraud. In this context, ta'zir offers a dynamic legal adaptation mechanism that aligns with the principles of justice.

First, ta'zir serves as a means of adapting to new crimes. Due to its flexibility and lack of constraints on specific provisions in the Qur'an and Hadith, ta'zir allows legal drafters and judges to establish sanctions for contemporary crimes unknown during the

time of revelation. For example, in the case of cybercrimes such as hacking banking systems or stealing personal data, which were clearly unknown in the classical era, ta'zir sanctions can be formulated according to the level of danger to society (Rofiq, 2021). This underscores ta'zir's ability to fill the legal gap in addressing the realities of modern crime.

Second, the application of ta'zir allows for the application of the principle of individualized sentencing, namely the ability of judges to adjust the severity of sanctions to the characteristics of the perpetrator and the level of culpability (Agustin, 2024). This aligns with trends in modern criminal law that prioritize restorative and rehabilitative approaches. For example, a first-time digital fraud perpetrator, young and from a difficult social background, may be subject to educational sanctions such as skills training or community service. Conversely, a repeat offender in a similar case may be given a harsher sentence, reflecting an understanding of the goals of rehabilitation and prevention.

Third, ta'zir plays a crucial role in prevention and effective law enforcement. Because it allows judges to determine the most effective type of punishment, ta'zir can be designed to provide optimal deterrence. In some cases, non-imprisonment sanctions such as community service, progressive fines, or restrictions on certain access may be more effective than conventional imprisonment, particularly for perpetrators of economic or technological crimes, where a better deterrent effect is achieved by inhibiting the perpetrator's potential to repeat the crime (Zoliya, 2023). Fourth, ta'zir also serves to bridge legal gaps, particularly in situations where hudud cannot be applied due to the failure to meet very strict legal requirements. For example, in cases of adultery where there are not four valid witnesses, or in cases of theft that do not meet the nisab (minimum threshold) for hudud, ta'zir can be imposed to ensure that the perpetrator receives a fair sanction, prevent impunity, and maintain the authority of the law (Ibn Rushd, 2007). However, the implementation of ta'zir in the modern era also faces challenges. One of these is ensuring that existing flexibility does not lead to arbitrariness. Therefore, it is crucial to establish clear legal boundaries, transparent procedures, and oversight and appeal

mechanisms to ensure that judicial discretion remains used proportionally, responsibly, and in accordance with sharia principles and substantive justice.

C. Application and Integration in Contemporary Ta'zir Concept

The rapid development of crime in the digital era has given rise to complex violations, such as deep-rooted corruption, transnational cyberattacks, and technology-based sexual exploitation. These cases are often difficult to address within the rigid framework of classical Islamic criminal law, as the system is fixated on the already strictly measured hudud and qisas punishments. In this context, ta'zir is a more relevant Islamic legal tool and is able to adapt to other critical challenges. As part of Islamic jurisprudence (fiqh jinayah), ta'zir sanctions are discretionary, giving judges the freedom to choose the form, type, and severity of punishment proportionally. In making their decisions, judges consider not only the severity of the act but also the perpetrator's motives, the resulting social impact, and the goals of rehabilitation. This discretionary space is essential to ensure legal responses remain abreast of the rapid changes in modern crime methods.

Corruption and money laundering that result in significant national losses are considered ta'zir crimes. Sanctions can include long-term imprisonment, fines commensurate with the amount of losses, asset confiscation, removal from public office, and a ban on holding strategic positions in the future (Aziz, 2016).

With the advent of the digital world, new problems have emerged, such as personal data hacking, the spread of false information (hoaxes), online fraud, and the misuse of social media to incite conflict. Ta'zir allows judges to create new sanctions, such as progressive fines, prison sentences with durations tailored to the severity of cyber harm, restrictions on internet or social media access, and mandatory participation in digital ethics rehabilitation programs (Ramadani, 2025).

Serious crimes such as human trafficking, sexual exploitation, forced labor, or domestic violence are not covered by hudud. Judges can only impose heavy penalties, fines, revocation of rights, or rehabilitation of perpetrators

through ta'zir. Furthermore, this method allows for broader rights restoration and victim protection (Najib, 2024).

Due to the dominance of colonial legal systems in many Muslim countries, the implementation of ta'zir currently faces many challenges. For example, in criminal law enforcement in Indonesia, the Criminal Code (KUHP), which has been in effect since the Dutch era (Wetboek van Strafrecht), is used as the basis, replacing sharia principles such as qisas or stoning for adultery (Yuspin, 2022). However, some scholars believe that with an adjusted codification process, ta'zir can still be incorporated into the national legal system. This would make it easier for law enforcement officials to implement and understand it. Ta'zir has already been integrated in several Muslim countries. Since 2013, ta'zir has been implemented in Brunei Darussalam's Sharia Criminal Offenses Act, which covers a wide range of moral and social offenses. In Malaysia, the Sharia Criminal Offenses Act also provides a formal framework for judges to impose discretionary sanctions in accordance with ta'zir principles. In Indonesia, the Aceh Qanun Jinayah grants judges the authority to apply ta'zir sanctions beyond the provisions of hudud and qisas. However, this integration must be carried out carefully to ensure that ta'zir flexibility does not violate contemporary legal principles and human rights.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Based on the research results, it can be concluded that the concept of ta'zir in Islamic jurisprudence (fiqh jinayah) is highly flexible and highly relevant to addressing the challenges of the Islamic criminal law system in the contemporary era. The adaptive nature of ta'zir allows judges to respond to various forms of modern crime not regulated by hudud or qisas, such as cybercrime, corruption, and human trafficking. In addition to serving as a preventive and educational instrument, the application of ta'zir also encourages harmonious integration between sharia principles and national positive law in various Muslim countries. However, the application of ta'zir still requires caution, clear regulations, and oversight to ensure that the existing flexibility does not become arbitrary.

B. Suggestion

Based on the research results, it can be concluded that the concept of ta'zir in Islamic jurisprudence (fiqh jinayah) is highly flexible and highly relevant to addressing the challenges of the Islamic criminal law system in the contemporary era. The adaptive nature of ta'zir allows judges to respond to various forms of modern crime not regulated by hudud or qisas, such as cybercrime, corruption, and human trafficking. In addition to serving as a preventive and educational instrument, the application of ta'zir also encourages harmonious integration between sharia principles and national positive law in various Muslim countries. However, the application of ta'zir still requires caution, clear regulations, and oversight to ensure that the existing flexibility does not become arbitrary.

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