



Study of Criminal Hadiths and *Qishash*: Perspectives on Contemporary Islamic Legal Thought

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Abstract: This study explores the significance of Hadith in the formulation and application of Islamic criminal law, focusing particularly on the punishments of *Hudûd* and *Qishas*. This research delves into the historical and contemporary debates surrounding the acceptance and authenticity of the hadith as a legal source. This study analyzes legal provisions for crimes such as adultery, theft, and apostasy and investigates the principles of *Qishas* in cases of murder and physical harm. The findings highlight Hadith's critical role in providing detailed explanations and practical applications of Qur'anic principles, ensuring a comprehensive framework for justice and morality in Islamic societies. Specific punishments for crimes under *Hudûd*, such as stoning for adultery and amputation for theft, were examined as deterrents designed to maintain social order. This study also emphasises the balanced approach of the *Qishas* between justice and mercy, allowing for compensation or forgiveness in certain cases. Moreover, this research explores the adaptability of Islamic criminal law principles within contemporary legal frameworks, emphasising potential harmonisation with modern legal norms and addressing human rights considerations. This study underscores the relevance of the Hadith in contemporary legal and social contexts, offering insights into integrating traditional Islamic jurisprudence with modern legal practices.

Keywords: Hadith; Islamic Criminal Law; *Hudûd*; *Qishas*; Islamic Jurisprudence; Modern Legal Systems.

Abstrak: Studi ini mengeksplorasi pentingnya Hadis dalam perumusan dan penerapan hukum pidana Islam, khususnya yang berfokus pada hukuman *Hudûd* dan *Qishas*. Penelitian ini mendalami debat sejarah dan kontemporer mengenai penerimaan dan keaslian Hadis sebagai sumber hukum. Studi ini menganalisis ketentuan hukum untuk kejahatan seperti zina, pencurian, dan murtad, serta menyelidiki prinsip-prinsip *Qishas* dalam kasus pembunuhan dan kekerasan fisik. Temuan menunjukkan peran penting Hadis dalam memberikan penjelasan rinci dan aplikasi praktis dari prinsip-prinsip Al-Qur'an, memastikan kerangka kerja yang komprehensif untuk keadilan dan moralitas dalam masyarakat Islam. Hukuman khusus untuk kejahatan di bawah *Hudûd*, seperti rajam untuk zina dan amputasi untuk pencurian, dianalisis sebagai pencegah berat yang dirancang untuk menjaga ketertiban sosial. Studi ini juga menekankan pendekatan seimbang dari *Qishas* antara keadilan dan kasih

sayang, memungkinkan kompensasi atau pengampunan dalam kasus-kasus tertentu. Selain itu, penelitian ini mengeksplorasi adaptabilitas prinsip-prinsip hukum pidana Islam dalam kerangka hukum kontemporer, dengan menekankan potensi harmonisasi dengan norma-norma hukum modern dan mempertimbangkan hak asasi manusia. Studi ini menyoroti relevansi Hadis dalam konteks hukum dan sosial kontemporer, serta menawarkan wawasan tentang integrasi yurisprudensi Islam tradisional dengan praktik hukum modern.

Kata kunci: Hadis; Hukum Pidana Islam; *Hudûd*, *Qishas*, Yurisprudensi Islam; Sistem Hukum Modern.

1. Introduction

Islamic criminal law, or *uqûbat*, constitutes an integral component of the Islamic legal system. Its purpose is to ensure the maintenance of order, justice, and morality within society. This legal system comprises a variety of provisions regulated by the Qur'an and Sunnah. These are translated into the concepts of *jarîmat* and *jinâyat*, which serve as a form of classification of crimes and punishments imposed. One of the primary concepts in Islamic criminal law is *hudûd*, which is a punishment explicitly stipulated by sacred texts and encompasses crimes such as adultery, false accusation (*qadaf*), theft, robbery, murder, assault, drunkenness, apostasy (*murtad*), and rebellion against legitimate authority (*bughât*). Furthermore, *ta'zîr* encompasses penalties determined by the judge's discretion, allowing for a degree of flexibility in legal enforcement that is sensitive to the nuances of social and cultural contexts (Zakariyah 2015).

The hadiths related to criminal punishment and *qishash* provide clear guidelines for the implementation of this law. For example, a hadith narrated by Bukhari and Muslim asserts: "The blood of a Muslim who testifies that there is no god but Allah and that I am the messenger of Allah is not lawful except in three cases: one who marries and commits adultery, murder, and one who leaves his religion (apostatizes) to separate himself from the congregation of Muslims' (Bukhari & Muslim). This hadith underscores the paramount importance of safeguarding the life of a Muslim, except in instances where the life of another is forfeited because of adultery committed by a married individual, murder, or apostasy. The stoning penalty for married adulterers is intended to serve as a form of justice and prevent moral decay in society (Kamali, 2012). Nevertheless, the implementation of this punishment necessitates meticulous attention and precision on the part of the judge, with a view to ensuring that justice is served in a proportionate manner in accordance with the principles of Sharia (Bassiouni, 1982).

The application of hadith-based criminal law has been a practice since the time of the Prophet Muhammad (PBUH) and has continued to evolve through the periods of companions (*sahabah*) and successors (*tabi'in*) until the modern era. During the Prophet's era, the application of criminal law was direct and unequivocal, rooted in

divine revelations and the Prophet's judgments. For example, stoning (*rajm*) was applied to adulterers, as recorded in Sahih Bukhari's account of a woman from the Ghamidiyah tribe who confessed her act and was stoned after confirming her pregnancy and giving birth (Bukhari, 1987). During the reign of Caliph Umar bin al-Khattab, *qishas* (retaliation) was applied in cases of murder, where despite the victim's family attempting to forgive the perpetrator, Umar upheld the principle of *qishas*, emphasizing the need to maintain justice and order (Ibn Sa'd, 1997). During the *tabi'in* period, the application of *hudud* and *qishas* continued under the guidance of successors deeply versed in Islamic jurisprudence. Imam Malik's *Al-Muwatta* records various cases where these laws were applied based on authentic traditions and scholarly consensus, such as the amputation of a thief's hand during economic stability, illustrating a strict adherence to *hudud* (Malik, 1997). However, the conditions under which such punishments could be suspended, such as during times of famine, highlight an evolving understanding of justice that considered broader social contexts. Historically, the application of *hudud* and *qishas* has varied across different periods and regions, influenced by social, economic, and political circumstances. For instance, during the Umayyad Caliphate, the application of these laws showed flexibility, with punishments sometimes commuted and the principle of *ta'zir* (discretionary punishment) frequently invoked, allowing tailored judgments. The Abbasid Caliphate saw a more formalized legal system with the codification of these laws, while the Ottoman Empire integrated *hudud* and *qishas* into a legal system that also included *Kanun* (secular laws), reflecting a pragmatic approach to governance. In the modern era, the application of these laws varies significantly, with countries such as Saudi Arabia and Iran applying them strictly based on literal interpretations of the Quran and Hadith, while others such as Pakistan and Malaysia have adapted their application within a framework that coexists with secular law. This historical evolution illustrates the flexibility and adaptability of Islamic criminal law, ensuring its relevance across diverse socio-political contexts while remaining rooted in its core principles (Bassiouni 1982; Kamali 2012; Malik 1997; Vikør 2005).

In the context of the modern world, the application of Islamic criminal laws such as *hudud* and *qishash* can still be found in countries such as Saudi Arabia and Iran, where their judicial systems are based on a literal interpretation of the Qur'an and hadith. For example, in Saudi Arabia, the *qishash* law allows the victim's family to choose between forgiving the perpetrator or demanding a death penalty in murder cases (Vikør, 2005). This illustrates that the tenets of Islamic criminal law remain pertinent and implementable in diverse contemporary contexts, despite the challenges of harmonizing with the principles of international law and human rights.

Research on the role and application of hadith in Islamic criminal law has garnered considerable scholarly interest. Various studies have explored the theoretical and practical aspects of *al-Qawaid al-Fiqhiyyah* in Islamic law, such as Zakariyah (2015), who highlights the fundamental principles of "Certainty Cannot Be Overcome by

Doubt" and "No Harm or Recompense for Harm." These principles are crucial for the application of Islamic criminal law. El-Awa (2018) also emphasizes hadith as both a legal source and ethical guide in determining criminal punishments.

Khan (2019) addresses the challenges of implementing Islamic law in modern contexts, particularly amid social changes. Sharia (2020) and Mubarak (2021) discussed how hadith interpretation maintains the relevance of Islamic criminal law today, demonstrating its adaptability to modern legal challenges while adhering to fundamental Sharia principles.

Further contributions, such as by Idrus (2019), emphasise a humanistic approach to legal protection in Islam, focusing on both worldly and spiritual well-being. Yusuf and Basri (2018) highlighted how *qishas-diyat* offers a more restorative approach within Indonesia's criminal justice system. Dermawan and Harisudin (2020) and Juswandi (2022) explored the transformation of Islamic criminal law in Indonesia, emphasising the importance of fiqh principles in bridging classical Islamic law with modern societal dynamics. Aykul (2022) discusses the significance of social context in determining punishment within Islamic criminal law.

Comparative studies, such as those by Oktatianti et al. (2023), analyse the differences between Islamic law and Indonesia's Criminal Code (KUHP) regarding premeditated murder. Zainuddin (2017) emphasizes the importance of restorative justice in Islamic criminal law, contrasting it with the punitive approaches found in modern legal systems. Finally, Alotaibi (2021) and Rohman (n.d.) explored the implementation of Islamic criminal law in Muslim countries, focusing on the relationship between *qishas* and human rights.

Despite these substantial contributions, further research is needed to address the gaps in our understanding. Key areas for future research include the integration of Islamic criminal law in different legal jurisdictions, particularly in countries with hybrid legal systems, and the impact of modern social dynamics on the interpretation and application of *Hudûd* and *Qishas*. A comparative analysis between Islamic and non-Islamic legal systems could offer a deeper understanding of the unique aspects and potential for reform in Islamic jurisprudence. Additionally, examining the evolution of judicial interpretations of *hudûd* and *qishas* in response to changing social norms and legal reforms is crucial for understanding the adaptation of Islamic criminal law in contemporary contexts.

To address the identified research gaps, this study employs a qualitative approach with a descriptive-analytical methodology. This approach permits a comprehensive examination of the role and implementation of hadith in Islamic criminal law, with a particular focus on the areas of *hudûd* and *qishash*. The data will be collected through a primary literature study of sahih traditions in major books, including Sahih Bukhari, Sahih Muslim, and Sunan Abu Dawud. Additionally, secondary literature will be consulted, comprising the works of classical and contemporary scholars, such as Imam Shafi'i and Wahbah al-Zuhaili. The data will be analysed descriptively to provide a

detailed account of the content and context of the traditions, as well as qualitatively to identify the primary themes and patterns of interpretation employed by scholars in applying traditions to Islamic criminal law.

2. Results and Discussion

Criminal Law and Qishash in the Prophetic Hadiths

Criminal Terms in Islamic Law

Islamic criminal law, which is known by the terms *‘uqûbat*, *jarîmat*, and *jinâyat*, constitutes a body of law within the framework of Islamic jurisprudence that addresses crimes and their respective punishments. To gain a comprehensive understanding of Islamic criminal law, it is essential to consider it in the context of conventional criminal law, which has been well established and predates Islamic criminal law in various legal systems around the world. In the general Indonesian dictionary, the term “criminal” is defined as encompassing acts such as murder, robbery, and corruption (Poerwadarminta, 1990). As Moeljanto (1993) noted, criminal law is concerned with regulating actions that are enforceable within a state. It defines acts that are prohibited, and stipulates corresponding threats or sanctions in the form of specific punishments for those who violate these prohibitions.

Furthermore, criminal law delineates the circumstances under which individuals who contravene these prohibitions may be subjected to prescribed punishments. It also establishes procedures through which punishment can be imposed if an individual is suspected of violating the prohibitions. Consequently, criminal law is categorized as public law, which governs the relationship between the state and individuals, and addresses matters of public interest. The prohibited acts that fall under the purview of criminal law, which are also referred to as criminal acts or delicts, encompass offences, such as theft, embezzlement, and assault.

In contrast, Islamic criminal law is characterized by a distinctive set of principles and guidelines that are firmly anchored in Islamic teachings and jurisprudence. Furthermore, it addresses not only the actions themselves and the corresponding punishments, but also the moral and ethical dimensions prescribed by Islamic law. The dual nature of Islamic criminal law ensures that justice is administered in a manner that preserves a society’s moral fabric. Recent studies have highlighted the incorporation of these principles into contemporary legal frameworks to address contemporary sociolegal challenges (Abdullah and Hassan 2020; Ahmed 2021).

To engage in comprehensive academic discourse, it is essential to consult recent journal articles and Scopus-indexed publications that offer profound insights into the evolving dynamics of Islamic criminal law and its application in modern legal systems. These sources guarantee that the discussion remains up-to-date and relevant to ongoing academic debates. For example, Abdullah and Hassan (2020) discuss the modern

application of Islamic criminal law within contemporary legal systems, emphasising the adaptation and integration of traditional principles to meet current legal and societal needs. Ahmed (2021) examined the challenges and prospects of integrating Islamic criminal law with modern legal practices, providing a comprehensive analysis of the intersection between traditional Islamic jurisprudence and contemporary legal frameworks.

In comparison, Islamic criminal law encompasses a distinct set of principles and guidelines rooted in Islamic teachings and jurisprudence. It not only covers acts and punishments but also incorporates the moral and ethical dimensions prescribed by Islamic law. This dual nature of Islamic criminal law ensures that justice is served while maintaining the moral fabric of society. Contemporary studies highlight the integration of these principles with modern legal frameworks to address current sociolegal challenges (Abdullah & Hassan, 2020; Ahmed, 2021). For a thorough academic discourse, recent journal articles and Scopus-indexed publications can provide in-depth insights into the evolving dynamics of Islamic criminal law and its application in modern legal systems. These sources ensure that the discussion is both up-to-date and relevant to the ongoing scholarly debate.

Islamic criminal law is another term known in Islamic law that was then popularized as Islamic criminal law. These terms include:

1. *'uqûbat*, which means punishment or punishment, (Mahmud Yunus, 1989). Meanwhile, according to Islamic legal terminology, *al-'uqûbat* is Islamic criminal law, which includes harmful things and criminal acts (Doi, 1992).

2. *Jarimah*, derived from the root word: *جرم - يجرم - جرم جريمة*, originally meant doing (كسب) and cutting ((قطع). However, later, it was specifically limited to “sinful acts” or “hated acts”. The word *jarîmat* also comes from the word “أجرم-يجرم” which means “to do something contrary to truth, justice and the straight path”, (Muhammad Abu Zahrah, T.th.).

While according to fiqh terminology, the term *jarîmat* as stated by al-Mawardi:

وَالْجَرَائِمُ: مَحْظُورَاتٌ بِالشَّرْعِ، زَجْرَالَهُ تَعَالَى عَنْهَا بِحَدِّ أَوْ تَعْزِيرٍ.

“Jaraim (criminal acts) are all actions that are forbidden by *Shari'a*. Allah Ta'ala prevents crime by imposing *hudûd* or *ta'zir* on the perpetrators’ (Abu Hasan al-Mawardi, 2000).

This was also explained by Abd al-Qadir 'Audah, who stated:

فَالْجَرِيمَةُ إِذْنٌ هِيَ إِتْيَانُ فِعْلٍ مُحَرَّمٍ مُعَاقِبٍ عَلَى فِعْلِهِ، أَوْ تَرْكُ فِعْلٍ مُحَرَّمٍ التَّرْكِ مُعَاقِبٍ عَلَى

تَرْكِهِ، أَوْ هِيَ فِعْلٌ أَوْ تَرْكٌ نَصَّتْ الشَّرِيعَةُ عَلَى تَحْرِيمِهِ وَالْعِقَابُ عَلَيْهِ

“Jarimah is the doing of a forbidden action for which punishment is due if one does it, or the omission of an action that is forbidden to be omitted, for which punishment is due if one does not do it, or in other words, the doing or omission of an action for which the *Shari'ah* has determined that it is forbidden and for which punishment is due.”

The word “jinayah” etomologically comes from the word: “جنى-جنایة-يجنى” which means sin.

Abd al-Qadir 'Audah provides the following limitations on this *jinâyat*:

وَالْجِنَايَةُ لُغَةً: اسْمٌ لِمَا يَجْنِيهِ الْمَرْءُ مِنْ شَرٍّ وَمَا اكْتَسَبَهُ، تَسْمِيَةً بِالمَصْدَرِ مَنْ جَنَى عَلَيْهِ شَرًّا
 وَهُوَ عَامٌّ إِلَّا أَنَّهُ حَصُّ بِمَا يُجَمُّ دُونَ غَيْرِهِ
 أَمَّا فِي الإِصْطِلَاحِ الفِئْهِي فَالْجِنَايَةُ: اسْمٌ لِفِعْلٍ مُحَرَّمٍ شَرْعًا، وَقَعُ الفِعْلُ عَلَى نَفْسٍ أَوْ مَالٍ أَوْ
 غَيْرِ ذَلِكَ، لَكِنَّ أَكْثَرَ الفُقَهَاءِ تَعَارَفُوا عَلَى إِطْلَاقِ لَفْظِ الجِنَايَةِ عَلَى الأَفْعَالِ الوَاقِعَةِ عَلَى نَفْسِ
 الإِنْسَانِ أَوْ أَطْرَفِهِ، وَهِيَ القَتْلُ وَالجَرْحُ وَالصَّرْبُ وَالإِجْهَاضُ بَيْنَمَا يُطْلَقُ بَعْضُهُمْ لَفْظَ الجِنَايَةِ عَلَى
 جَائِمِ الحُدُودِ وَالقِصَاصِ .

In the context of language, the term 'jinayah' is used to refer to crimes committed by an individual or, more generally, to any prohibited act. In the view of Fuqaha, the term jinayah is used to denote any act that is forbidden by Sharia, irrespective of whether the crime in question concerns the body, property, or other aspects. Fuqaha typically conceptualises jinayah as a term denoting criminal acts perpetrated against individuals or their limbs. This encompasses a range of actions, including murder, assault, and abortion. Some scholars have proposed an expanded definition of jinayah that encompasses all crimes that warrant punishment and retaliation (Abdul Qadir Audah, 1987).

The more general term *jarîmat* is also employed, which refers to any prohibition threatened by Allah with legal sanctions irrespective of whether these sanctions are explicitly determined (had). This encompasses both active acts of committing a prohibited action and passive acts of failing to perform an ordered action. Therefore, it can be concluded that jinayah and *jarîmat* are operationally identical, implying that any action is prohibited and legally threatened.

The definition provided by Abd al-Qadir 'Audah is consistent with that proposed by other scholars, such as Sayyid Sabiq (1983), who states that *jinâyat* refers to all prohibited acts as warned and forbidden by Shari' (the Qur'an and Sunnah) due to their potential to cause harm to religion, life, intellect, property, and honour. It can be seen, therefore, that the terms '*uqûbat*, *jarîmat*, and *jinâyat* are integral to Islamic law, representing Islamic criminal law. These terms are of central importance in the study of Islamic criminal law, as they highlight the significance of punishment within this legal system.

Consequently, Islamic criminal law encompasses distinct forms of punishment, which can be broadly categorized into two principal types: *hudûd* (fixed punishment) and *tazir* (discretionary punishment). *Hudûd* punishment is defined by the Qur'an and Sunnah, and is considered to be the prerogative of Allah, with the objective of deterrence and moral rectitude. In contrast, *tazir* punishments are at the discretion of the judge and are intended to rectify behaviour and reform the individual. The dual

nature of these punishments demonstrates the comprehensive approach of Islamic criminal law in maintaining social order and justice.

Recent scholarly works have explored the subtleties of these terms and their implementation in contemporary legal systems, emphasising the adaptability and relevance of Islamic criminal law principles in modern contexts (Al-Zuhayli, 2019; Kamali, 2020). These studies, frequently published in Scopus-indexed journals, provide a more profound comprehension of the relationship between traditional Islamic jurisprudence and contemporary legal challenges, offering invaluable insights into the ongoing development of Islamic criminal law.

First, punishment in the form of hudûd law, which is all kinds of criminal acts whose sanctions are determined by the texts of the Qur'an and Sunnah.

Second, punishment in the form of ta'zîr law, which is a criminal offence whose sanction is not determined by the nash but is left to the ijtihad of the judge.

Hudûd is the plural of had, which originally meant a boundary, such as a land boundary. The term hudûd is used to define the crime itself and punishment. In the sense of criminal offence, for example, Allah stated:

تَلْكَ حُدُودَ اللَّهِ فَلَا تَقْرُبُوهَا

“...That is the prohibition of Allah, so do not go near it...” (QS., al-Baqarah: 2:187).

Included in the *hudûd* category are adultery, qadaf, theft, robbery, murder, persecution, drunkenness, *muharabah* (robbery), apostasy, and *bughât* (defiance). Allah and His Messenger determined sanctions for each crime.

The Determination of Criminal Penalties and Qishash in the Hadiths

First Hadith:

عن ابن مسعود رضي الله عنه قال : قال رسول الله صلى الله عليه وسلم : (لا يحل دم امرئ مسلم يشهد أن لا إله إلا الله ، وأني رسول الله ، إلا بإحدى ثلاث : الثيب الزاني ، والنفس بالنفس ، والتارك لدينه المفارق لجماعة) رواه البخاري ومسلم

Abdullah ibn Mas'ud reported that the Messenger of Allah (saw) said: It is not lawful for a believer who testifies that there is no god but Allah and testifies that I am the Messenger of Allah, except for three groups: the one who is married then commits adultery, the one who kills and the one who leaves his religion (apostate) to separate himself from the congregation of Muslims. (HR. Bukhari and Muslims).

Al-Nawawi included this hadith in his collection, *Arba'in*, which was subsequently expanded upon by Sayyid bin Ibrahim al-Huwaiti. In his commentary on this hadith, al-Huwaiti (Islamweb.net) states that it articulates the belief that God Almighty sent His Prophet Muhammad (peace be upon him) the final religion. This religion has the objective of guiding humanity away from the worship of others besides God and from religious injustice, and instead directing them towards the justice inherent in Islam.

Upon entering the fold of this religion and adhering to its tenets, an individual becomes a member of Islamic society. Consequently, they are entitled to the rights and protections enshrined in Islamic law, including the sanctity of their blood, property, and honour.

This hadith serves to illustrate the fundamental tenet of Islamic jurisprudence: the protection of individual rights within the framework of Islamic law. This principle is fundamental to the concept of justice in Islam, which strives to ensure that all members of the community are treated with fairness and respect. The sanctity of life, property, and honor constitute a fundamental tenet of this justice system, reflecting the broader ethical and moral imperatives of Islamic faith.

Recent studies have highlighted the continued relevance and applicability of these principles in contemporary legal and social contexts. For example, studies have examined how Islamic jurisprudence can address contemporary human rights concerns and contribute to the global discourse on justice and equity (Ali, 2021; Rahman, 2022). These works frequently draw on traditional sources of Islamic law, such as the Qur'an and hadith, to develop frameworks that are firmly rooted in classical jurisprudence and adaptable to contemporary challenges.

Furthermore, the incorporation of Islamic principles into contemporary legal systems has been a topic of considerable research, particularly in the context of human rights and social justice. Scholars have posited that the ethical tenets of Islamic law offer a robust foundation for addressing issues such as discrimination, inequality, and social injustice (Hassan, 2020; Kamali, 2021). These studies underscore the potential of Islamic jurisprudence to contribute to a more just and equitable global society.

This means that a person who becomes Muslim is guaranteed the right to life and honor. Prophet Muhammad put these rights in place when he performed Farewell Hajj:

(إن دماءكم وأموالكم عليكم حرام ، كحرمة يومكم هذا ، في بلدكم هذا ، في شهركم هذا)

رواه مسلم ،

وقال أيضا : (من صلّى صلاتنا ، واستقبل قبلتنا ، وأكل ذبيحتنا فذلك المسلم الذي له ذمة

الله وذمة رسوله) رواه البخاري

“Your blood and your wealth are sacred to you, as sacred as this day of yours, in this country of yours, in this month of yours.” Narrated by Muslim.

He also said: “Whoever performs Hajj, prays our prayers, faces our Qiblah, and eats our sacrifices, is a Muslim who has the protection of Allah and the protection of His Messenger.” (HR. al-Bukhari).

In Islamic criminal law, death by stoning is the punishment for married Muslims who commit adultery. This ruling is indicated in the hadith of Ubadah bin al-Samit, in which the Prophet Muhammad states, “The married man will receive a hundred lashes and stoning” (Narrated by Muslim). The punishment for stoning is carried out

by targeting the perpetrators' genitals. It is thought that this decree originates from Allah, the Almighty, who is regarded as Wisest for prescribing punishments intended to deter sexual crimes among those who are morally depraved.

There is a strong conviction that Allah's decree regarding the punishment of stoning for married adulterers represents the pinnacle of justice. This form of punishment is regarded as an effective means of addressing the underlying causes of moral corruption. As the Creator, Allah is perceived to possess the ultimate knowledge of what is best and most appropriate for humanity. The rationale behind the divine law is evident in its capacity to markedly diminish the prevalence of analogous crimes among other potential perpetrators. In the absence of the implementation of the stoning law, the adverse effects of such heinous acts would persist, affecting various levels of society. Adultery and rape are regarded not only as legal infractions, but also as infringements upon the rights of others, assaults upon the honor of victims, and crimes against humanity. Such actions have the potential to result in the destruction of offspring, and the intermingling of lineages can result in the birth of children.

It is crucial to emphasize that the stoning penalty is applicable only under specific circumstances. First, the adulterer must either admit to the act voluntarily or be convicted through the testimony of four witnesses. It is unlikely that such a confession will be made unless the offender possesses a strong sense of guilt and a desire to cleanse themselves of sin or is compelled by the presentation of witnesses to uphold justice. In instances where the prescribed punishment is not feasible owing to the challenging nature of obtaining a confession, it is recommended that the individual demonstrate sincere repentance with the expectation that Allah will accept their repentance.

The implementation of stoning punishment is a meticulous process that requires extraordinary awareness on the part of perpetrators. It is imperative that judges exercise utmost caution when adjudicating such cases, ensuring that they distinguish between adultery and lesser acts of intimacy. In accordance with the narration by al-Bukhari, the judge is advised to enquire of the perpetrator in detail as to whether they engaged in any form of physical contact, such as kissing, winking, or looking at private parts. This degree of caution highlights the importance of considering the repentance aspect of the punishment process during trials to ensure the accuracy of judicial decisions. The severe nature of punishment, which may result in the death of the perpetrator, requires meticulous and careful judicial proceedings.

Recent scholarly discussions have explored the application and implications of such punishment within the broader framework of Islamic law and its intersection with contemporary legal systems. These studies emphasize the importance of understanding the ethical and moral foundations of Islamic jurisprudence and how they can be harmonized with modern legal principles (Al-Zuhayli, 2019; Kamali, 2020). Such research often appears in Scopus-indexed journals, which provide a rich source of academic discourse on the subject.

The implementation of the stoning law for adulterers is more clearly revealed in the hadith: Abu Nujaid 'Imran bin Al-Hushain Al-Khuza'i reported that he said:

أَنَّ امْرَأَةً مِنْ جُهَيْنَةَ أَتَتْ نَبِيَّ اللَّهِ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ- وَهِيَ حُبْلَى مِنَ الزَّوْجِ فَقَالَتْ يَا نَبِيَّ اللَّهِ أَصَبْتُ حَدًّا فَأَقِمْهُ عَلَيَّ فَدَعَا نَبِيَّ اللَّهِ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ- وَلَمَّا فَقَالَ “أَحْسِنِ إِلَيْهَا فَإِذَا وَضَعْتَ فَأَنْتِنِي بِهَا”. فَفَعَلَ فَأَمَرَ بِهَا نَبِيُّ اللَّهِ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ-. فَشَكَتْ عَلَيْهَا نِيَابُهَا ثُمَّ أَمَرَ بِهَا فَرَجِمَتْ ثُمَّ صَلَّى عَلَيْهَا فَقَالَ لَهُ عُمَرُ تُصَلِّي عَلَيْهَا يَا نَبِيَّ اللَّهِ وَقَدْ زَنَتْ فَقَالَ “لَقَدْ تَابَتْ تَوْبَةً لَوْ قَسِمَتْ بَيْنَ سَبْعِينَ مِنْ أَهْلِ الْمَدِينَةِ لَوَسِعَتْهُمْ وَهَلْ وَجَدَتْ تَوْبَةً أَفْضَلَ مِنْ أَنْ جَادَتْ بِنَفْسِهَا لِلَّهِ تَعَالَى”.

“A woman from Banu Juhainah came to the Messenger of Allah while she was pregnant due to adultery. She said to him, “O Messenger of Allah, that I had done something that deserved stoning. Please carry out the had punishment on me.” The Prophet then called the woman's guardian and said to him, “Do good to this woman and when she gives birth, then come to me with her.” The woman commanded the prophet (peace be upon him). After that, he asked her to be summoned and her clothes tied tightly (so that she would not be exposed when she was stoned). It was then ordered to carry out punishments for stoning. The woman died, and he performed funeral prayers for her. At that time 'Umar commented to the Prophet, “You prayed for her, O Prophet of Allah, when she had committed adultery?” He said, ‘This woman has repented with a repentance that if her repentance had been divided among 70 people of Madinah, it would have sufficed them. Do you find a better repentance than one who sacrifices his soul for the sake of Allah?’ (Muslim, no. 1696).

This demonstrates that the punishment for stoning is not an end, but rather a means of eradicating and eliminating the crime of adultery. Historical sources from the time of the Prophet Muhammad indicate that the incidence of adultery was exceptionally low, suggesting that this deterrent was effective. Punishment reflects a profound understanding of justice and repentance in Islamic law, emphasizing that the goal is moral rectitude and societal harmony.

Moreover, the Prophet Muhammad referenced another instance in which blood could be avenged with blood, namely, in cases of intentional murder. This principle is grounded in the Quranic verse: “And We decreed for them therein: a life for a life” (Al-Ma'idah: 45). This ruling is applicable to both males and females, indicating that *qishas* (retaliation) are obligatory regardless of the gender of the perpetrator and victim. The Prophet's directive to execute *qishas* against a Jew for murdering a woman illustrates the universality of this principle.

The rationale behind *qishas* is elucidated in the verse: The verse “And there is for you in legal retribution [saving of] life, O you of understanding” (Al-Baqarah: 179) elucidates that the objective of *qishas* is not personal revenge or to satisfy vengeful feelings, but rather to ensure the protection and stability of society. The knowledge

that their lives could be taken in retribution acts as a powerful deterrent for potential murderers, thereby promoting safety and tranquillity within the community.

The third category of capital punishment in Islamic law pertains to apostasy, specifically that which is considered provocative. In the hadith as narrated by Ibn Abbas, it is stated that: In the hadith narrated by Ibn Abbas, it is stated that “Whoever changes his religion, kill him” (Al-Bukhari). Provocative apostasy is defined as the act of renouncing one's Islamic faith and actively engaging in actions contrary to the interests and beliefs of the Islamic community. Such actions are perceived as posing a significant threat to the integrity and stability of Islamic communities. A distinction is made between ordinary apostasy, which encompasses a lack of public affirmation of the existence of God, rejection of religious tenets, practice of idol worship, and other forms of apostasy. According to Sayyid bin Ibrahim al-Huwaiti, such apostates are encouraged to repent, rather than being subjected to immediate capital punishment. This distinction highlights the seriousness of provocative apostasy and its potential threat to the Islamic state.

Second Hadith:

Punishment for killing, in addition to the three crimes mentioned above, should also be imposed on sodomy perpetrators. In the hadeeth from Ibn Abbas (may Allah be pleased with him), the Prophet (may Allah's peace and blessings be upon him) said,

مَنْ وَجَدْتُمُوهُ يَعْمَلُ عَمَلًا لُوطِيًّا، فَاقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ

“Whoever you find doing the deeds of the Lut, then kill both the subject and the object.”

The narration of Ahmad in his Musnad and Abu Dawud and al-Tirmidhi also mentions the order to kill witch doctors, kill anyone who wants to destroy Muslims, and anyone who wants to spread corruption on Earth.

Ibn Taymiyyah in his online: <https://www.islamweb.net/ar/fatwa/429283//رتبة-حديث-من-> revealed his statement:

واحتج به أيضا ابن تيمية ونقل اتفاق الصحابة على قتل من عمل عمل قوم لوط، فقد قال رحمه الله: وَالرَّجْمُ شَرَعَهُ اللَّهُ لِأَهْلِ التَّوْرَةِ وَالْقُرْآنِ، وَفِي السُّنَنِ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ -{مَنْ وَجَدْتُمُوهُ يَعْمَلُ عَمَلًا لُوطِيًّا، فَاقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ}-. وَلِهَذَا اتَّفَقَ الصَّحَابَةُ عَلَى قَتْلِهِمَا جَمِيعًا؛ لَكِنْ تَنَوَّعُوا فِي صِفَةِ الْقَتْلِ: فَبَعْضُهُمْ قَالَ: يُرْجَمُ، وَبَعْضُهُمْ قَالَ: يُرْمَى مِنْ أَعْلَى جِدَارٍ فِي الْقَرْيَةِ، وَيَتْبَعُ بِالْحِجَارَةِ، وَعَضُّهُمُ قَالَ: يُحَرَّقُ بِالنَّارِ. اهـ

Ibn Taymiyyah cited this hadith as evidence for the prohibition of sodomy and the perpetrators must be killed for the actions of the people of Luth. And the obligation to kill the perpetrators of sodomy is the ijma of the Prophet's companions where the law of stoning to death is established / prescribed by Allah since the Torah and the Qur'an. The Prophet followed it up with his saying: “Whoever I find doing the work of the Lut, then kill the subject and the object.” The Companions agreed to carry out the punishment of killing the perpetrators, but they differed in the

way they did it: some said stoned, some said thrown from above covered with stones, and others said that they should be burned with fire.

Third Hadith:

عن أنس بن مالك - رضي الله عنه - أن جارية وُجِدَ رأسها مرضوضًا بين حجرتين، فقيل: من فعل هذا بك فلان فلان؟ حتى ذكر يهودي، فأومأت برأسها، فأخذ اليهودي فاعترف، فأمر النبي - صلى الله عليه وسلم - أن يرض رأسه بين حجرتين.
ولمسلم والنسائي عن أنس أن يهوديًا قتل جارية على أوضاع، فأقاده رسول الله - صلى الله عليه وسلم.

“Anas ibn Malik (may Allah be pleased with him) reported that a slave girl had her head broken between two stones, and someone asked her who did this to you, so-and-so, so-and-so? The questioner mentioned the name of a Jew member. The girl nodded. The Jews were immediately arrested. He confessed what he had done previously. So, the Prophet ordered that the Jew's head be smashed between two stones.”

Imam Muslim and Nasa'i relate the hadith narrated by Anas that a Jew killed a slave girl to take away her earrings. Thus, the Prophet punished him with death.

The text of this hadith clarifies how the qishash was carried out on the Jew, a slave woman's killer.

In the book *Muhammad for All*, the author (Maulana Wahiduddin Khan (2016), states that Ibn Hisham, a leading expert on the history of the Prophet stated that during the liberation of Mecca (Futuh Makkah), the Apostle ordered the Companions to carry out the death penalty for some rebels. Of the 17 people sentenced to death, some asked for forgiveness and were pardoned, five did not ask for forgiveness and were sentenced to death, and one escaped and died in old age.

The accounts of the 17 individuals who participated in the liberation of Mecca offer compelling insight into the application of justice and mercy in early Islamic history. Each case demonstrates a sophisticated comprehension of Islamic jurisprudence and Prophet Muhammad's methodology regarding legal enforcement, retribution, and pardon.

Abdullah bin Sa'ad, initially a Muslim tasked with recording the revelations, subsequently defected and joined the rebels. Following the liberation of Mecca, he sought refuge with his brother Uthman bin Affan, who interceded him on his behalf, resulting in his pardon by Prophet Muhammad. Abdullah ibn Khatal, a former Muslim who defected after killing his slave out of anger and joined the rebels, composed insulting poetry directed at the Prophet. During the liberation of Mecca, he sought sanctuary in the Kaaba but was executed by Abu Burzah and Sa'id bin Harith on the orders of the Prophet. Fartana, a slave of Abdullah ibn Khatal who had insulted the Prophet through her poetry and obscene dances, was executed alongside her master.

Conversely, Quraibah, another slave of Abdullah ibn Khatal, sought asylum and was granted a pardon by the Prophet, later converting to Islam.

Huwairits bin Nafidz bin Wahab, a poet notorious for his antipathy towards Islam, launched an assault on the Prophet's family and was subsequently executed by Ali. Subsequently, Miqyas bin Subabah accepted compensation for his brother's death and proceeded to kill Ansar before fleeing the scene. He was sentenced to death and executed by Abdullah Laitsi. Sarah, a slave of Ikrimah bin Abu Jahal who had insulted the Prophet, was pardoned after seeking his protection, converted to Islam, and lived until the Caliphate of Umar. Harith bin Hisham and Zubayr bin Abi Umayyah, both of whom had been sentenced to death, sought refuge in the house of Umm Hani bint Abi Talib. The Prophet subsequently exercised his prerogative of pardoning them following an intercession by Umm Hani. Following the liberation of Mecca, Ikrimah bin Abu Jahal, who initially engaged in rebellious activities, sought refuge in Yemen. His wife, Umm Hakim, facilitated his pardon and subsequently converted to Islam, ultimately succumbing to his wounds in the Battle of Ajnadain.

Habbar bin al-Aswad, who was responsible for attacking the Prophet's daughter Zainab, sought and received the Prophet's forgiveness after Mecca's liberation. Wahshi bin Harb, who was notorious for killing the Prophet's uncle Hamzah, sought forgiveness, converted to Islam, and subsequently killed the false prophet Musaylima. Following the liberation of Mecca, Ka'ab ibn Zuhair, a poet who frequently criticised the Prophet, sought forgiveness. The Prophet forgave him and rewarded him with a piece of cloth. Harith bin Talatil, another poet who was hostile to Islam, was executed by Ali. Abdullah bin Zib'ari, who fled to Najran following the liberation of Mecca, subsequently sought and received the Prophet's forgiveness. Hubairah bin Abi Wahab Makhzumi, a poet who fled to Najran, remained a rebel until his death. Hindun bint Utbah, the wife of Abu Sufyan who mutilated Hamzah's body at the Battle of Uhud, was sentenced to death but was pardoned by the Prophet and converted to Islam.

These narratives illustrate the fundamental principles of justice, accountability, and mercy that are central to Islamic legal thought. The Prophet's decisions demonstrate a balance between the enforcement of the law and the dispensation of forgiveness in the specific circumstances of each case and the actions of the individual in question. Recent scholarly analyses have further explored these themes and elucidated the intricacies of the implementation of Islamic criminal law in contemporary contexts. Studies have underscored the malleability of these tenets within the context of contemporary legal systems, thereby ensuring that justice and mercy remain pivotal elements of Islamic legal thought (Al-Zuhayli 2019; Kamali 2020).

The fourth hadith states that the families of murder victims can demand Qishash or ransom. This is explained by the Hadith narrated by al-Tirmidhi in his Sunan Kitab *Diyat*, with hadith no. 1326:

حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ حَدَّثَنَا ابْنُ أَبِي ذَنْبٍ حَدَّثَنِي سَعِيدُ بْنُ أَبِي سَعِيدٍ الْمُقْبِرِيِّ عَنْ أَبِي شُرَيْحٍ الْكَعْبِيِّ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ إِنَّ اللَّهَ حَرَّمَ مَكَّةَ وَلَمْ يُحَرِّمْهَا النَّاسُ مَنْ كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ فَلَا يَسْفِكَنَّ فِيهَا دَمًا وَلَا يَعْضِدَنَّ فِيهَا شَجَرًا فَإِنْ تَرَخَصَ مُتَرَخِّصٌ فَقَالَ أُجِلَّتْ لِرَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَإِنَّ اللَّهَ أَحَلَّهَا لِي وَلَمْ يُحِلَّهَا لِلنَّاسِ وَإِنَّمَا أُجِلَّتْ لِي سَاعَةً مِنْ نَهَارٍ ثُمَّ هِيَ حَرَامٌ إِلَى يَوْمِ الْقِيَامَةِ ثُمَّ إِنَّكُمْ مَعَشَرَ خُرَاعَةَ قَتَلْتُمْ هَذَا الرَّجُلَ مِنْ هَذَا الْيَوْمِ وَأَيُّ عَاقِلُهُ فَمَنْ قَتَلَ لَهُ قَتِيلٌ بَعْدَ الْيَوْمِ فَأَهْلُهُ بَيْنَ خَيْرَتَيْنِ إِمَّا أَنْ يَقْتُلُوا أَوْ يَأْخُذُوا الْعَقْلَ قَالَ أَبُو عِيْسَى هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ وَحَدِيثُ أَبِي هُرَيْرَةَ حَدِيثٌ حَسَنٌ صَحِيحٌ وَرَوَاهُ شَيْبَانٌ أَيْضًا عَنْ يَحْيَى بْنِ أَبِي كَثِيرٍ مِثْلَ هَذَا وَرَوَى عَنْ أَبِي شُرَيْحٍ الْخُرَاعِيِّ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ قَتَلَ لَهُ قَتِيلٌ فَلَهُ أَنْ يَقْتُلَ أَوْ يَعْفُو أَوْ يَأْخُذَ الدِّيَةَ وَذَهَبَ إِلَى هَذَا بَعْضُ أَهْلِ الْعِلْمِ وَهُوَ قَوْلُ أَحْمَدَ وَإِسْحَاقَ.

Narrated [Muhammad ibn Basysyar], narrated [Yahya ibn Sa'id], narrated [Ibn Abu Dzi`b], narrated [Sa'id ibn Abu Sa'id Al Maqburi] from [Abu Shuraih Al Ka'bi] that the Messenger of Allah (blessings and peace of Allah be upon him) said: "Verily, Allah purifies Makkah but people do not purify it. Whoever believes in Allah and the Last Day should not shed blood in it nor cut down its trees." It has been made lawful for the Messenger of Allah (peace be upon him); indeed, Allah has made it lawful for me, but not for the people. Indeed, it has been made lawful for me for a moment during the day, then it will become unlawful until the Day of Resurrection, after which you will be gathered in a state of mutual reproach, and you will kill this man from Hudzail, while I will pay his blood money. Whoever is killed after this day, then the killer will have two choices: they will kill him or take his blood money." Abu 'Isa said: This hadeeth is hasan saheeh and the hadeeth of Abu Hurayrah is hasan saheeh. Shaiban also narrated it from Yahya ibn Abu Katsir like this and it has been narrated from Abu Shuraih Al Khuza'i from the Prophet (peace and blessings of Allah be upon him), who said: "Whoever is killed, the killer has the right to choose between killing, forgiving, or taking *diyath*." This is the view of scholars, and that of Ahmad and Ishaq. (HR: al-Tirmidzi).

As previously stated, the victims' families were permitted to seek reconciliation or forgiveness. The most crucial element is the act of forgiveness and the subsequent process of reconciliation, as referenced in Surah al-Baqarah, Verse 178. Ibn al-Qayim posits that murder is linked to three rights: the rights of Allah, the rights of the person killed, and the rights of the family. If the perpetrator of the crime voluntarily surrendered to the victim's guardian, expressing regret and remorse for their actions, and a sincere repentance before Allah, the rights of Allah are deemed to be waived because of this act of contrition. The rights of the family were waived due to *qishash*, peace, or forgiveness. The final right to be considered is that of the individual who was killed. If the perpetrator of the crime repents and is forgiven, Allah provides

compensation to the repentant servant and facilitates the restoration of the relationship between the two parties.

The law of *qishash* is inextricably linked to all the rules associated with it. One prerequisite for pursuing a *qishash* is the consensus of the victim's guardians to seek retribution. If one of these guardians forgives the Act, the option of *qishash* is nullified. The family of the victim has the option of either retaliation or one of the two other courses of action. The Prophet revealed two such options in the hadith above: forgive or take *diyat*, which is a ransom (Paisol Burlian, 2015).

Experts' Views on Punishment and the Law of Qishash

In Islamic criminal law, crimes and their corresponding punishments that are explicitly mentioned in the Qur'an and the Prophet's words are referred to as *hudûd*. Any crimes or punishments not explicitly mentioned in the primary sources of Islamic teachings are classified under the umbrella of *Ta'zir* law, whereby punishment is determined by the judge presiding over the case. Both *hudûd* and *ta'zir* laws are regarded as integral components of Islamic jurisprudence.

The hadiths and the Qur'anic verse (Al-Maidah: 33) reveal that criminal sanctions for armed robbery include the death penalty or, at the very least, the punishment of cross-amputation, which involves severing the left leg and the right hand, or vice versa. This severe punishment was designed to act as a deterrent against such violent crimes.

Regarding criminal sanctions for adulterers, Hasbi Ash-Shiddieqy (1997) observes that, according to the hadiths, there is a distinction in the form of punishment depending on the marital status of the offender. In the case of an adulterer who is *muhsan* (i.e. already married), the punishment is stoning to death. For those who have never been married, the punishment is 100 lashes on their back. Punishment for drunkards has evolved over time. During the Prophet's era, it was 40 lashes, increased to 60 lashes during Abu Bakr's time, and further to 80 lashes under Umar bin Khattab.

In Islam, apostasy is a criminal offence that carries the death penalty, particularly when the apostate challenges the authority of the Muslim ruler. This is evidenced in the Qur'an, Surah Al-Baqarah: 256. While it is recommended that apostasy due to weak faith be addressed through sincere repentance, apostasy that poses a threat to the stability and security of the Islamic state is met with capital punishment.

Rebellion against a duly elected head of state is punishable by death. Nevertheless, those who engage in rebellious activities and are apprehended should be encouraged to demonstrate remorse and seek repentance. If they persist in their rebellious actions, the death penalty should be considered a potential consequence. Ibn Hisham provides an account of an incident that occurred during the liberation of Mecca, in which the Prophet ordered his companions to carry out the death penalty for five out of seventeen rebels.

In Islamic *Shari'a*, punishment for murder is classified into three categories: *qishas* (retaliation by killing the murderer), payment for *diyat* (blood money or compensation), and forgiveness by the victim's family. The foundation for *qishas* is derived from the Qur'an, particularly in Al-Baqarah: 178-179, which establishes the principle of equal retribution for murder. Nevertheless, the victim's family was permitted to pursue compensation or forgive the perpetrator, underscoring the significance of mercy and forgiveness.

In the present era, scholars have investigated the implementation and consequences of these penalties within contemporary legal systems. Research has examined how traditional Islamic tenets can be harmonized with current legal norms to address contemporary sociolegal issues. For example, Al-Zuhayli (2019) discussed the contemporary application of Islamic criminal law and its integration with contemporary legal frameworks, while Kamali (2020) explored the relevance of Islamic jurisprudence in modern legal contexts.

In his 1987 work, Abd al-Qadir 'Audah provides a detailed account of the objectives of punishment in Islamic law, emphasizing the importance of achieving societal benefits and maintaining moral integrity. The primary objectives of punishment and the concept of *jarîmat* (crimes) are delineated to underscore their roles in advancing societal benefits. Although punishment inherently entails causing harm (*mafsadat*), it is justified by the substantial benefits it offers to the community, including the preservation of social order and prevention of harm. In contrast, the prohibition of *jarîmat* is not based on the intrinsic negative nature of the act itself, but rather on the potential for catastrophe it could bring to societal life.

Audah explains that Islamic *Shari'a* envisions a society built on a noble character and high ethical standards, viewing these morals as essential for a strong society. To protect these values, *Shari'a* imposes strict penalties on those who violate the moral codes. In contrast, man-made laws often overlook moral issues unless they pose a direct threat to public security. For instance, secular laws typically punish adultery only in cases of rape or without mutual consent, whereas Islamic *Shari'a* punishes all forms of adultery due to its moral implications. Similarly, while secular laws may only punish public drunkenness, Islamic *Shari'a* penalizes the act of consuming alcohol, acknowledging its potential to harm health, wealth, and morals.

The emphasis on moral preservation in Islamic *Shari'a* is firmly embedded in the core tenets of the religion. Religion plays an instrumental role in promoting positive social conduct, encouraging virtuous behavior, and fostering a constructive societal environment. As a matter of consistency and unchangeability, *Shari'a* consistently prioritized moral integrity. Audah posits that the maintenance of legal rules to uphold morality is of paramount importance for sustaining community life. Immoral acts such as *jarîmat*, *hudûd* (fixed punishment), *qishâs* (retaliation), and *diyat* (compensation) have the potential to erode the foundations of security, order, and ethical values.

In response to these offenses, Islamic *Shari'a* establishes rigorous penalties with the objective of deterring individuals from committing *jarimat*. This approach is consistent with human nature, which tends to avoid actions that result in personal harm, such as severe punishment. Consequently, it can be argued that the more severe the punishment, the more effective it is in preventing *jarimat*. In accordance with Islamic Criminal Law, the death penalty is prescribed for *qishas'* crimes, severe penalties are imposed for rebellion and adultery (for *muhsan* offenders), and hand amputation is mandated for theft. These rigorous penalties are intended to address offences that directly threaten societal well-being.

While judges are granted the authority to decide on punishment, this authority must be exercised within the boundaries set by *Shari'a*. According to Abdul Qadir Audah, the purpose of punishment in Islamic law is to serve the needs of society by ensuring security, eradicating crime, guaranteeing the fulfilment of personal rights, promoting social justice, and creating calm, peace, and tranquillity among individuals and members of the community. Audah asserts that crimes (*jarimat*) and their punishments are intended to maintain the benefits, order, strength, and nobility of public morals. He states:

جَرَائِمُ وَعَاقِبَتٌ عَلَيَّهَا لِحْفَظِ مَصَالِحِ الْجَمَاعَةِ وَالصِّيَانَةِ النَّظَامِ تَقْوَمُ عَلَيْهِ الْجَمَاعَةُ وَالضَّمَانُ بَقَاءُ الْجَمَاعَةِ قَوِيَّةٌ مُتَّظِمِنَةٌ مُخْتَلِفَةٌ بِالْأَخْلَاقِ الْفَاضِلَةِ، وَاللَّهُ الَّذِي شَرَعَ هَذَا الْأَحْكَامَ وَأَمَرَ بِهَا لَا تَضُرُّهُ مَعْصِيَةٌ عَاصٍ وَلَوْ عَصَاهُ أَهْلُ الْأَرْضِ جَمِيعًا، وَلَا تَنْفَعُهُ طَاعَةٌ مُطِيعٍ وَلَوْ أَطَاعَهُ أَهْلُ الْأَرْضِ جَمِيعًا، وَلَكِنَّهُ كَتَبَ عَلَى نَفْسِهِ الرَّحْمَةَ لِعِبَادِهِ، وَلَمْ يُرْسِلِ الرَّسُولَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ. لِاسْتِقَادِهِمْ مِنَ الْجَهَالَةِ وَإِشَادِهِمْ مِنَ الضَّلَالَةِ وَلِكْفِهِمْ مِنَ الْمَعَاصِي وَبِعَثْمِهِمْ عَلَى الطَّاعَةِ.

From this perspective, the purpose of Islamic criminal law is a combination of theories of retaliation (absolute theory) and prevention (relative theory). This approach aims to prevent crime from occurring and suppress it early. If these legal principles are incorporated into Indonesian criminal law, it is plausible that the volume and quality of the crimes will decrease. For example, sadistic armed robbery (*begal*) crimes, which have caused significant public concern, could be mitigated by applying the principles of both absolute and preventive punishment. Currently, the Indonesian Criminal Code (KUHP) appears to lack the values embodied in these two principles, leading to crimes that exceed human limits.

The theory of retaliation in Islamic criminal law is based on the principle of *qishas*, which mandates equal retribution for intentional harm, as emphasised in the Qur'an (Al-Baqarah: 178-179). This principle ensures that justice is served by making the punishment fit the crime, thereby deterring potential offenders. On the other hand, the preventive aspect of Islamic criminal law aims to protect society by discouraging criminal behavior through the threat of severe penalties, as seen in the *hudud* punishments for theft, adultery, and apostasy.

Audah's analysis highlights that the implementation of these principles is designed to maintain societal order and uphold moral values. Islamic *Shari'a* places great importance on high morals as the foundation of a strong society, and rigorously protects these morals. Unlike man-made laws, which often neglect moral issues unless they disrupt the public order, Islamic *Shari'a* strictly enforces moral conduct to prevent societal decay.

In modern contexts, scholars have explored how these principles can be adapted to contemporary legal systems to address current sociolegal challenges. Al-Zuhayli (2019) and Kamali (2020) provide insights into how Islamic criminal law can be integrated into modern legal frameworks, ensuring that justice and mercy remain central to jurisprudence. By incorporating these principles into national legal systems such as Indonesia's, it is possible to enhance the effectiveness of criminal justice and promote a more moral and just society.

Hadith, the sayings, actions, and approvals of the Prophet Muhammad, holds a significant position as the second source of Islamic teachings after the Qur'an. They are crucial for formulating legal, moral, and social contexts within Islamic jurisprudence. Hadith complement the Qur'an by providing detailed explanations and practical applications of its general principles. For example, while the Qur'an prescribes general guidelines on punishment for theft, it is through the Hadith that specifics about the implementation of this punishment are derived. The Hadith serves to clarify and contextualize the broader directives found in the Qur'an, thus playing a vital role in developing *Shari'ah* (Islamic law). This comprehensive approach ensures that the legal system is not only based on divine revelation but also grounded in the lived experiences and practices of the Prophet Muhammad, providing a holistic framework for justice and morality in Islamic societies (Brown, 2014; Shafi'i, 1987).

The acceptance of the Hadith as a source of law has been a subject of debate among Muslims historically and continues to be so in contemporary times. Classical scholars, such as Imam Shafi'i, emphasized the importance of Hadith in interpreting the Qur'an and deriving Islamic law (Shafi'i, 1987). Modern discussions often revolve around the authenticity and applicability of the Hadith in today's context, with some advocating for a more critical approach to their use. This debate examines the methodologies used to authenticate Hadith, known as *isnad* (chain of transmission) and *matn* (content) criticism, and considers the historical and cultural contexts in which they were recorded (Brown, 2014). These discussions are crucial for ensuring that Islamic law remains relevant and adaptable while remaining true to its foundational texts.

Hudûd refers to fixed punishments prescribed by the Qur'an and Hadith for specific crimes such as theft, adultery, and apostasy. These punishments are considered rights of God and are not subject to alteration or waiver by human authorities. *Hudûd* punishments serve as a divine mandate intended to protect the community's moral and social fabric. *Qishas*, on the other hand, deals with retributive justice, particularly in cases of murder and physical injury, ensuring that punishment mirrors crime. *Qishas*

is based on the principle of “an eye for an eye”, providing a structured and equitable system for addressing severe offences (Peters, 2005).

Qishas embodies the principle of retaliation, where punishment corresponds directly to crime. For instance, the family of a murder victim has the right to demand a death penalty for the murderer, but they can also choose to accept *diyât* (compensation) or forgive the offender, which is highly encouraged in Islamic teachings to promote mercy and reconciliation (Al-Maidah: 45). This flexibility within *Qishas* reflects the balance between justice and compassion, allowing societal harmony and individual forgiveness to coexist within the legal framework (Kamali, 2020).

Unlike *Hudûd* and *Qishas*, *Ta'zir* punishments are not fixed by the Qur'an or Hadith but are left to the discretion of the judge. The judge exercises *ijtihād* (independent reasoning) to determine the appropriate penalties based on the nature of the crime and its surrounding circumstances. This allows for a flexible and context-sensitive application of justice. Judges consider various factors, including the severity of the crime, the intent of the perpetrator, and the impact on the victim and society, to tailor punishment accordingly (Hallaq, 2009).

The concept of *Ta'zir* demonstrates the adaptability of Islamic criminal law to various contexts and evolving norms. It ensures that justice is administered in a manner that reflects the severity of the crime while considering the social and individual circumstances involved. This adaptability is crucial for addressing contemporary challenges and ensuring that Islamic law remains relevant and effective in modern societies (Kamali 2008).

Islamic criminal law places significant emphasis on maintaining high moral standards and ethical behavior. As highlighted by Abdul Qadir Audah, *Shari'ah's* stringent punishments for moral transgressions such as adultery and alcohol consumption are designed to safeguard societal values and ensure moral integrity. These laws are viewed as preventive measures that protect the community from moral corruption and social decay (Audah 1987). The strict enforcement of moral codes aims to cultivate a society in which ethical conduct is paramount, thus fostering social cohesion and stability.

Secular legal systems often focus on the protection of public order and individual rights and sometimes neglect moral considerations unless they directly impact public safety. In contrast, Islamic law integrates moral and ethical dimensions into its legal framework, addressing both individual conduct and societal well-being. This holistic approach ensures that laws are not only punitive but also restorative, promoting moral rectitude and social harmony (Kamali, 2008). The integration of ethical considerations into the legal system underscores the unique nature of Islamic jurisprudence, which aims to create a just morally upright society.

Historical instances such as the stoning of adulterers and the handling of rebels during the liberation of Mecca provide practical insights into the application of Islamic criminal law. These cases illustrate how the principles of justice and mercy were

balanced by Prophet Muhammad in enforcing the law. For example, the Prophet's decision to pardon certain individuals during the Mecca conquest demonstrates the application of mercy and forgiveness alongside strict justice (Ibn Hisham 1998).

Recent scholarly works have explored the adaptation of Islamic criminal law in modern legal systems, addressing contemporary challenges and integrating traditional principles with modern legal norms. Studies by scholars such as Al-Zuhayli (2019) and Kamali (2020) provide valuable perspectives on this integration. These works highlight the potential for Islamic principles to contribute to contemporary legal discourse by promoting justice and equity in diverse social contexts.

The integration of Islamic criminal law principles with modern legal frameworks presents several challenges, including differing foundational philosophies and considerations of human rights. However, scholars argue that with thoughtful adaptation, Islamic principles can complement contemporary legal systems to promote justice and equity. This requires a nuanced understanding of both Islamic jurisprudence and modern legal principles, aiming to harmonize the two in a way that respects both traditions (An-Na'im, 2002).

Addressing human rights concerns is crucial for the modern application of Islamic criminal law. Efforts to reconcile traditional Islamic jurisprudence with international human rights standards are ongoing to ensure that justice is administered without compromising fundamental human rights. Scholars such as Baderin (2003) emphasise the importance of engaging with human rights discourses to ensure that Islamic law evolves in a manner that respects human dignity and equality.

Islamic criminal law incorporates both retributive and preventive objectives. While retributive justice (*qishas*) ensures that offenders receive punishment commensurate with their crimes, preventive measures (*hudûd* and *ta'zir*) aim to deter potential criminals by setting severe penalties. This dual approach seeks to balance justice with social protection, deterring crime while ensuring that punishments are proportionate (Peters, 2005).

The effectiveness of harsh punishments, such as stoning and amputation, in reducing crime is debated. Historical and contemporary data suggest that while such punishments may serve as strong deterrents, their implementation must be balanced with considerations of justice and mercy. The application of these punishments must be carefully managed to avoid injustices and ensure that they contribute to societal stability and moral conduct (Al-Zuhayli 2019).

3. Conclusion

The hadith plays a crucial role in providing more detailed guidance and a more practical application of Islamic criminal law compared to the Qur'an alone. As a secondary source of law, Hadith complements the Qur'an by offering concrete examples and specific explanations on how legal principles are applied in various situations. This

ensures that Islamic criminal law can be applied consistently and effectively, thereby creating a comprehensive framework for justice and morality in Islamic societies. The implementation of *hudûd* punishments, such as stoning for adultery and hand amputation for theft, aims to prevent crime and to maintain social order. *Hudûd* are divinely ordained punishments designed to protect moral and social values within the community. However, the principle of *qishas* emphasises a balance between justice and mercy, allowing for compensation or forgiveness in certain cases, thus maintaining a balance between strict justice and deep compassion. Although Islamic criminal law has strict provisions, this article highlights its flexibility in adapting to contemporary legal contexts. This flexibility demonstrates that Islamic criminal law is not only relevant in the past but is also capable of adapting to different social and political contexts in the modern era, ensuring that the principles of justice are upheld in various situations and conditions.

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