

## Protection of the Defendant's Human Rights from a Fiqh Perspective (Ta'zir Study and Analysis of Adultery Perpetrators)

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<b>Article History</b> Received : 2020-07-06 Revised: 2020-07-14 Published: 2020-07-30  <b>Keywords:</b> <i>Defendant's Human Rights; Jinayah Fiqh; Ta'zir; Adultery.</i>	This paper examines the protection of the defendant's human rights from the perspective of Islamic jurisprudence (fiqh jinayah) by emphasizing the concept of ta'zir and linking it to the analysis of adultery perpetrators. Islamic jurisprudence is not solely oriented towards punishment, but also upholds procedural and substantive justice through the application of the presumption of innocence, strict standards of proof, and the principle of proportionality in imposing sanctions. In adultery cases, Islamic law stipulates very strict evidentiary requirements, such as valid confessions or testimony that meets certain criteria, thus providing protection for the defendant from the possibility of wrongful conviction. This study uses a library research method with a normative-analytical approach to primary and secondary sources, including classical fiqh literature and relevant contemporary scientific works. The results of the study indicate that the concept of ta'zir provides discretionary space for judges to impose sanctions that are educational, preventive, and proportional, especially when the elements of hudud are not met in adultery cases. This discretion allows the judge to consider social conditions, the level of guilt, and the interests of the accused, so that Islamic jurisprudence not only functions as an instrument of law enforcement, but also as a means of protecting human dignity in line with the principles of human rights.

### I. INTRODUCTION

Islamic criminal law (fiqh jinayah) is a branch of Islamic law that regulates criminal acts and their sanctions. In contemporary discourse, Islamic criminal law is often perceived as rigid and lacking in regard to human rights. This perception is not entirely accurate, as Islamic criminal law is built upon the objectives of sharia (maqasid al-shari'ah), which emphasize the protection of religion, life, intellect, descendants, and property. Protection of the accused is an integral part of this objective.

In judicial practice, defendants face potential rights violations if the evidentiary process and the imposition of sanctions are not conducted fairly. Therefore, this study places the protection of the defendant's human rights as a primary focus, examining the flexible and discretionary concept of ta'zir. The discussion is enriched with an analysis of adultery cases, given that adultery has

very strict standards of proof and opens up the possibility of applying ta'zir when the elements of hudud are not met.

### II. RESEARCH METHODS

This study employed a library research method with a normative-analytical approach. Data were collected from Islamic jurisprudence textbooks, Islamic law textbooks, and scientific journal articles, including the work of the lecturer. The analysis was conducted descriptively and analytically to formulate a concept for protecting the defendant's human rights and its implications for the application of ta'zir.

### III. RESULTS AND DISCUSSION

#### A. Research result

The research results show that protecting the defendant's human rights is a fundamental principle in Islamic jurisprudence (fiqh

jinayah) and is inherent in the entire process of enforcing Islamic criminal law. Islamic jurisprudence is not solely focused on punishment, but places justice, humanity, and the protection of human dignity as its primary foundations.

This protection is reflected in the application of very strict standards of proof in hudūd cases. Hudūd punishments can only be imposed if all elements and requirements of proof are fully met. If there is doubt or insufficient evidence, hudūd punishments cannot be imposed, in an effort to prevent wrongful convictions and violations of the defendant's rights.

In addition, ta'zir serves as an instrument to protect the rights of the accused when hudūd cannot be applied. Ta'zir empowers judges to impose flexible and proportionate sanctions, taking into account the accused's condition, the degree of culpability, and the social impact of the act.

This research also confirms that Islamic jurisprudence upholds the principles of prudence and the presumption of innocence. Judges are required to consider legal, moral, and social aspects to ensure that criminal decisions are not arbitrary. All of these mechanisms align with the objectives of Islamic law (maqāṣid al-syarī'ah), particularly in safeguarding human life, reason, and honor.

Thus, criminal jurisprudence has a comprehensive concept of protecting the human rights of the accused and does not conflict with the principles of human rights, but can go hand in hand with the enforcement of just and humane criminal law.

## B. Discussion

Protection of the defendant's human rights in criminal law is achieved through strict and fair evidentiary procedures. A defendant cannot be sentenced unless valid evidence is

presented. This principle serves to prevent wrongful convictions and preserve human dignity. (Muslich, 2005)

Ta'zir gives judges discretion to determine proportionate and humane sanctions. In adultery cases, if the elements of hudud are not met—for example, if the witness requirement is not met—then ta'zir can be applied by considering the level of culpability, psychological condition, and public interest.

As outlined in Maulidya Mora Matondang's analysis of adultery, the purpose of sanctions in Islamic jurisprudence (fiqh jinayah) is not merely retribution, but also education and prevention. Therefore, ta'zir serves as an instrument that maintains a balance between law enforcement and human rights protection (Matondang, 2025).

Thus, the application of ta'zir demonstrates the adaptive and contextual nature of Islamic jurisprudence. Judges are required to use ethical and legal considerations to ensure that the sanctions imposed do not violate the defendant's human rights and remain in line with the objectives of sharia.

In addition to the evidentiary aspects and judicial discretion, the protection of the defendant's human rights in Islamic jurisprudence is also reflected in the principle of prudence (iḥtiyāt) in imposing sanctions. This principle requires that every punishment be imposed after careful consideration and free from doubtful elements. In the context of adultery cases, the existence of doubtful elements is a strong reason to overturn the application of hudud and replace it with ta'zir. This demonstrates that Islamic jurisprudence prioritizes the protection of the right to life, honor, and human dignity over a purely repressive approach. (Az-Zuhaili, 1985)

The application of ta'zir also reflects the principle of restorative justice in Islamic law. Ta'zir sanctions are not solely oriented toward

the perpetrator but also consider the social impact and efforts to restore community morality. Thus, judges can impose educational sanctions, such as advice, reprimands, or proportionate social punishment, without disregarding the rights of the accused. This approach aligns with the objectives of sharia (maqāsid al-syari'ah), particularly in safeguarding the soul (ḥifz al-nafs) and honor (ḥifz al-'ird). (Abdurrahman, 2005)

Within a modern legal framework, the concept of ta'zir is strongly relevant to universal human rights principles, such as the presumption of innocence and the prohibition of cruel or inhumane punishment. Therefore, Islamic jurisprudence cannot be viewed as a rigid legal system, but rather as a normative system that adapts to social developments and human values. The application of ta'zir demonstrates that Islamic law can synergize with human rights principles without losing its normative identity.

The protection of the defendant's human rights in Islamic jurisprudence is fundamentally based on the Islamic view of humans as beings endowed with honor and dignity. Every individual is viewed as a legal subject who should not be treated arbitrarily. Therefore, Islamic criminal law is not designed solely to punish, but rather to maintain a balance between justice, social order, and the protection of individual rights. This principle is clearly evident in the provisions on sanctions for adultery, which distinguish between hudud and ta'zir.

In cases of adultery, hudud punishment can only be applied if all elements and requirements for proof are fully met. (Audah, 1992) This provision demonstrates that Islamic jurisprudence (fiqh jinayah) does not allow for punishment based on public opinion or suspicion. The accusation of adultery is a very serious one because it directly affects a

person's honor. Therefore, Islam sets a very high standard of proof to prevent violations of the defendant's human rights.

When the elements of hudud are not met, the application of ta'zir becomes a form of legal protection for the accused. (Az-Zuhaili, 1985) Ta'zir functions as a middle ground that allows the law to be enforced without violating basic human rights. In this case, the judge is not bound by a particular form of sanction, but is given the authority to determine the sanction that best suits the circumstances of the case. This authority is not intended to provide unlimited freedom, but to ensure that the punishment imposed remains fair and proportional.

The application of ta'zir also demonstrates that Islamic jurisprudence (fiqh jinayah) places a strong emphasis on procedural justice. The accused's right to fair treatment from the outset of the legal process is a primary concern. In Islam, no one should be considered guilty until proven guilty. This principle aligns with the presumption of innocence recognized in modern law. Thus, Islamic jurisprudence has long placed the protection of the accused's rights as a fundamental principle of law enforcement.

Furthermore, ta'zir allows judges to consider the underlying factors that led to the act of adultery. Environmental factors, social pressures, economic conditions, and the defendant's level of religious understanding can all be taken into consideration when imposing sanctions. This approach demonstrates that Islamic jurisprudence (fiqh jinayah) does not view the perpetrator in a black-and-white manner, but rather examines the act within a broader social context. This is an essential part of protecting the defendant's human rights.

In a humanitarian context, ta'zir sanctions emphasize development rather than

retribution. The primary goal of these sanctions is to ensure the perpetrator realizes their mistake and prevents them from repeating their actions in the future. Therefore, ta'zir sanctions can take the form of advice, reprimands, moral guidance, or educational social sanctions. This approach aligns with the goal of Islamic law, which prioritizes public welfare.

Furthermore, the application of ta'zir in adultery cases also functions to prevent wider negative impacts. Implementing hudud without adequate proof can lead to injustice and social unrest. With ta'zir, Islamic law tries to maintain social order without sacrificing individual rights. This shows that jinayah fiqh has an internal mechanism to avoid misuse of the law.

The protection of the defendant's human rights through ta'zir can also be seen in the prohibition on excessively humiliating the perpetrator. Islam strongly protects human dignity, even for those who commit crimes. Therefore, ta'zir sanctions should not be imposed with the aim of degrading the defendant's dignity. Judges must ensure that the sanctions imposed respect human values and do not exceed the bounds of justice.

Within the framework of the maqāsid al-syarī'ah (obligatory principles of Islamic law), the application of ta'zir is closely related to efforts to maintain honor and lineage. Adultery is viewed as an act that can damage the social and moral order of society. However, such acts must be addressed in a just and humane manner. Therefore, ta'zir serves as a means to uphold moral values without neglecting the basic human rights of the accused.

From a modern criminal law perspective, the concept of ta'zir is similar to the principle of individualization of punishment. Each punishment must be tailored to the circumstances of the offender and the degree

of culpability. This principle aims to prevent uniform and unfair punishments. Thus, Islamic jurisprudence, through the concept of ta'zir, has adopted principles of justice relevant to contemporary legal developments.

The role of judges in implementing ta'zir is crucial. Judges act not only as law enforcers but also as guardians of justice and humanitarian values. In imposing ta'zir sanctions, judges are required to be objective, wise, and responsible. Judges' decisions must be based on legal, ethical, and public interest considerations, not on social pressure or vested interests. (Muslich, 2005)

The application of ta'zir also shows that jinayah fiqh is not static. Islamic law is able to adapt to societal developments and social changes. This flexibility allows jinayah fiqh to remain relevant in answering modern legal problems, including the issue of protecting human rights. Thus, Islamic law cannot be viewed as a closed legal system, but rather as a living and dynamic system.

In adultery cases, ta'zir serves as a form of protection against potential errors in law enforcement. Mistakes in imposing hudud punishments are fatal and irreparable. Therefore, Islamic jurisprudence prefers a safe and cautious approach through ta'zir. This approach reflects Islam's commitment to justice and the protection of the defendant's human rights.

Based on this extensive description, it is clear that ta'zir holds a strategic position in Islamic jurisprudence (fiqh jinayah), particularly in adultery cases. Ta'zir is not merely an alternative punishment, but rather a legal instrument that serves to protect the defendant's human rights, uphold human dignity, and ensure that the law is enforced fairly. Thus, the application of ta'zir demonstrates that Islamic jurisprudence is

oriented toward substantive justice and the welfare of the community.

#### IV. CONCLUSION AND SUGGESTIONS

##### A. Conclusion

Protection of the defendant's human rights is a fundamental principle in jinayah fiqh. The concept of ta'zir provides flexibility for judges to uphold humane justice, especially in adultery cases when the hudud elements are not fulfilled. Jinayah fiqh is thus in line with human rights principles and is oriented towards the benefit.

The application of ta'zir in criminal law (jurisprudence) is a concrete manifestation of the protection of the defendant's human rights. Ta'zir serves as a legal mechanism that bridges the gap between strict law enforcement and respect for human dignity. In adultery cases, when the elements of hudud (legally punishable) are not met, ta'zir provides a just, proportional, and welfare-oriented legal solution.

Thus, Islamic jurisprudence (fiqh jinayah) focuses not only on imposing sanctions but also prioritizes humanitarian values. The protection of the defendant's human rights through ta'zir demonstrates that Islamic law is flexible, contextual, and relevant to modern principles of justice. This strengthens Islamic jurisprudence's position as a legal system that upholds substantive justice and the objectives of sharia.

##### B. Suggestion

Based on these results, Sharia judges should use ta'zir more often and wisely. Consider the circumstances of the adulterer, such as their social background, so that the punishment can be educational, for example through guidance or advice, not just flogging or imprisonment. For governments in regions like Aceh, create clear but flexible ta'zir regulations. Involve fiqh experts and psychologists so that the law is not arbitrary and the defendant's rights are maintained in accordance with human rights. Further research can compare ta'zir with modern, restorative criminal law. Or examine real cases of adultery in Indonesia, see how effective it is in protecting the perpetrator's human rights.

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