

**A STUDY THE CONCEPT OF PUNISHMENT IN ISLAM
AND ENFORCEMENT IN KELANTAN**

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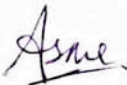
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AUTHOR DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the work in this academic project is my own except for quotations and summaries which have been duly acknowledged.

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“ Islam as away of life, uphold this true words of
Allah at all time for the sake of”

Praise to god the almighty for the bounties . He has given and his willingness, power and his ability. For this session with success and victory . Praise for Him for granting Me the strength, sprint and support throughout my studies and hoping with thankfulness upon You, Allah will grant more ni'mah and hidayah.

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Thank you,

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ABSTRAK

Dalam mendekati konsep sebenar hukuman dalam Islam , penulis dalam pengajiannya meneliti sejauhmana keprihatinan masyarakat kita dalam pengetahuan tentang hukuman yang terdapat dalam Islam dan disini penulis mengupas tentang pelaksanaan sebenar hukuman ini yang berpandukan al quran dan hadis . kajian ini menggunakan pendekatan perpustakaan, setiap hukuman yang terhasil di pengaruhi oleh konteks mana hukuman itu dapat dilaksanakan . kajian ini merupakan kajian perpustakaan yang berjalan selama 5 bulan keatas bahan-bahan bacaan bahasa melayu mahupun bahasa arab dan bahasa inggeris . kajian ini bertujuan untuk memberikan pendedahan dalam pentakrifan sebenar hukuman dalam Islam dikalangan pendapat ulama' dan ahli perundangan serta yang terkandung dalam al Quran dan hadis. Untuk memperolehi maklumat , beberapa teknik kajian telah diguna pakai oleh penulis iaitu kaji selidik , temubual dan meneliti dokumen yang berkaitan . hasil kajian telah menunjukkan bahawa hukuman dalam Islam adalah dipengaruhi oleh dasar yang telah ditetapkan dalam Al Quran dan hadis , tidak menjadi persetujuan dalam pelaksanaannya dengan sebab yang dikemukakan oleh sesetengah pihak yang tidak nampak kelebihannya di mata dunia.

ABSTRACT

Reference to the real concept of punishment in the Islamic Law , the author clarifies about the understanding of the punishment in Islam according to al Quran or sunnah and how far we concern in our society. In this research she used the literal review approach, which every punishment is influence by the implementation of that punishment . This research is literal review research that takes 5 months by using all material reading in bahasa melayu, Arabic and English languages . The objective of this research is to explain the right meaning and understanding about punishment in Islam according to the scholars and members of jurisprudence and all matter that including in Quran and hadith. The author uses several technique in his research such as observation(non-particular), interview and document reference that related to this topic in order to get the information. The result of his research show that the punishment in Islam is base on the basic foundation in the al Quran and Hadith. In this Islamic Law is rejected by certain groups because they do not know the benefit and goodness in the world view.

ملخص البحث

كاتب هذا البحث إلى بيان درسها افحصا , كاتب أيضا افحصا كيف بعيد مجتمعنا يعمل بجذ التغلب على بؤسه عن معرفة العقوبة الإسلام . وهناك , أنا أريد تحليل أن حقيقة نفذ هذا العقوبة التي مصدر من القرآن والسنة . والمنهج المتبع هذا البحث هو عبارة عن دراسة مكتبية التي تقوم على جميع المعلومات من مصادرها الأصلية ز. كل يحصل العقوبة يتأثر من اتصال يعمل هذه العقوبة . هذا الدراسة حسب ظاهر عن دراسة المكتبية التي عمل في خمسة شهر على كل مادة قراءة باللغة الملايوية واللغة العربية واللغة الإنجليزية . يهدف هذا البحث ليعطي وليبيان حقيقة العقوبة الذي في عقوبة الإسلام من رأى العلماء وأهل الحكم و مصدر من القرآن والسنة . ومن حيث طريقتها في جميع وتحليل وترتيب المعلومات بعض صياغة هذا الدرس فإن كاتب ينفعه عن استقضى والحوار وينظر على محصا بوثائق تطبيق. يحصل هذا البحث بدلالة نفوذ عقاب في الإسلام لأساس القرآن والسنة مطلقا , بعض الرأي لم موافق على هذا قاب الإسلام بسبب ولكنهم لم ينظر على حكمته في الدنيا.

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Dato' Hj Mohd Syukri Mohammad

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TRANSKRIPSI DAN TERJEMAHAN

TRANSLITERATION

1. Bait al-mal	-	بيت المال
2. Had	-	حد
3. Hirabah	-	حرابه
4. Hikmayah al-fadilah	-	حكيمه الفضيله
5. Hududullah	-	حدود الله
6. Hukum Syarak	-	حكم شرع
7. Hud al-shurb	-	حد الشرب
8. Iqab	-	عقاب
9. Muhram	-	محرم
10. Qisas	-	قصاص
11. Sharriyyat al-uqubah	-	شريعات العقوبه
12. Shakhsiyyat al uqubah	-	شخصية العقوبه
13. Ta'zir	-	تعزير
14. Uqubah	-	عقوبه
15. Zakat	-	زكاة
16. Zina ghairu al mohsan	-	زينا غير المحسن

ABBREVIATION

1. j.h - Journal Hukum
2. n.d - no date
3. n.pb - no published
4. n.pl - no place
5. p - page
6. r.a - Radiaallahuanhu
7. S.A.W - Sallallahualaihiwasalam
8. S.W.T - Subhanahuwata'lla

CHAPTER 1

1.1 INTRODUCTION

Basically, regarding to Islamic Law, all duties and responsibilities distributed into two categories. First, a demand to Allah's right and second, a demand to human right. The word 'Hadd' means the punishment that gazetted by Allah as stated in Qur'an and Sunnah. The implementation of regulation only belongs to Allah.

Generally, there are six offences which its limitation was drawn out by Allah; they are drinking alcohol, stealing, arm robbery, adultery, allegation for adultery and apostasy. In Shariah law system, retaliation (Qisas) and Ta'zir based on the discretions of judges or Kadhis. However, the original jurisdiction of both laws based in Qur'an and Sunnah.

Thus, all the parties in a society shall not be conscious by the enforcement of the regulations in reason that, it shall provide a peaceful environment. In addition, the implementation the punishment of stoning to death, whipping, cutting off the hand and sentence to death is to prevent people from committing crime.

The enforcement of punishment in Islam is a part of assertion Shariah and also a part of Ibadah as well as Muslim's great effort. Even though, it is an obligation of Shariah, the conditions must be followed and be eligible to penalize. It is the basic in Islamic law to justify the whole thing fairly and, the acts should be based to law.

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The responsibility of the implementation of law is under the duty of government. Consequently, the understanding of Islamic law must be subject to the ruler for accessibility in order to implement the law in the country. The explanation should be verified by the Qur'an and Sunnah that viewed by scholars. The subject matter related to the topic discussed in this article is about to be explain by writer on order to complete the thesis.

1.2 THE CONCEPT OF PUNISHMENT IN ISLAM

Punishment has always played an integral part in the concept of justice . We all know or at least expect that if you do something wrong you are subject to punishment in some way or another. This is only fair, Humankind is charged with the responsibility for the choices they make .This is because they are created with the freedom of choice and granted the moral sense of right and wrong. Accordingly , one is not to be punished for the actions of others or for acts done under duress or because of insanity .All people are equal and innocent until proven guilty only then punishment is considered.

Justice is ruling spirit of Islamic Law which is known as the Shariah .One of the main reasons for which the prophets peace be upon them all were sent were to guide mankind to justice.

In this connection, Allah, Most High, says “ we sent our messengers with clear signs and sent down with them the Book and the Balance so that men may conduct themselves with justice”

“ O you who believe be upholders of justice, witnessing for Allah alone”¹

Charges in world as well as the changing definition of concepts such as “civilized”, “equality”, “freedom” and “justice” have caused a critical light to shine upon Islamic Laws. Such critics charge that the shariah in view of the changing world is an outdated system of laws in need of amendment replacement or abolishment .views of this sort express rejection of divine guidance and even worse rejection of wisdom of our Lord who has put us on this earth with a purpose in life and a set of rules to live by and achieve that purpose. These rules are the ultimate criterion of justice and mercy and cannot nor need not be changed or measured against the charges and desires of society. To imply such is to imply imperfection in Allah as Lord and Master of the Universe.

The word Uqubah in Arabic language means punishment or remedy, hence another word that used by fuqaha is 'iqab', both words means similarly and derived from the same verb 'Aqaba'. There are some scholars stated the word 'Uqubah' means only remedy in the earth that justified to the offenders and 'iqab' means remedy in hereafter after the death. The word 'Uqubah' in the larger scope signify each figure of regret whether committing unlawful acts or not performing the obligations.

¹ Surah al Nisa' 4: 135

Thus, in certain views of fuqaha, they clarify the 'Aqaba' and 'Iqab' as the same meaning but many of fuqaha' agree that the meaning 'Uqubah is the remedy in the earth and 'Iqab' is the remedy in hereafter. By that, it can be said that 'Uqubah ' is the punishment decided by the judiciary body against the offenders.

The word 'Hududullah' means the acts that prohibited and forbidden by Allah. The definition 'Hududullah' also means "penalties or punishments, which was established by Allah". In other words, Hudud Law that applied by Hanafi scholars is the punishments, which gazetted by Allah and, is an obligation under Allah's right.

The definition of Hudud which is classified under Allah's right in reason that to secure moral integrity, descendant, property, mentality, and life.

There are some characteristics as to the identity of punishment in Islamic Criminal Law, which discussed by some writers of Islamic Criminal Law books. They are as below ;

a) Penalty as a primary punishment (Syar'iyat al-Uqubah)

The meaning primary is certainty of ratio and kinds of punishment as stated by Shariah. By that, the judges and Kadhis have no unlimited power to impose the punishment.

There is determination of ratio and kinds directly made by Syara' such as, Hudud and Qisas. But Ta'zir is under the consideration of judges after the statement by Islamic Law. By the way, Syara' ascertains the penalty of whipping, jailing, banishment and dishonor. The responsibility of the judges is to consider the suitable punishment to be imposed, not regarding to their needs, which bound with the regulations, such as ;

- a) To control the general significance of the society.

The ratio of punishments should be qualified to the criminal or offender without ignoring the position of offences.

It should be convinced that no problems or damages happened to the society.

It is also should have no elements of humiliations upon the honor ship of human being.²

- b) Penalty as limited punishment (syahsiyyah uqubah). The qualified judges against the criminals should only impose the penalty without interference to the innocents. As stated in Qur'an:

Most scholars said that, the characteristics are merely general, in order that the criminals must pay diyah for the unintentional murder.

² prof madya Dr Mat Saad, Undang-undang jenayah Islam , p : 80

- c) By the way, the penalty is the whole punishment, whereas, it is the imposing of punishment to the criminals without differentiate the social position, example the poor with the rich, and Muslim with Dhimmi.

Also with the adjustment of the punishments which depend to the status of the offenders, whether they not reach the age of poverty or pregnant or insane. It also was customized regarding to the equipment's of punishments such as whipping the drunk, whether with cloth, sandal or palm's frond. The miscellaneous of equipment's was considered regarding to the ammunition of the offender's body, and also based on the circumstances, such as, Umar al-Khattab decided to hang the hand of thief during draught season.

1.3 THE CHARASTERISTIC OF PUNISHMENT IN ISLAM

1.3.1 In accordance to Allah's regulation without the result of human thought.

The penalty that attributes to religion verbal (sighah diniyyah) must be based on Qur'an and Sunnah. The discretion of Kadhis in Ta'zir cases is bind to Qur'an and Sunnah, in order to ensure the effectiveness and completeness of punishments.

1.3.2 The Penalty in Shariah as a blessing (rahmah) to human being.

A blessing means the human is survived from disaster of the cruel man. Regarding to Ibn Taimiyyah, the punishment should be imposed to the society in order to keep the consistency of society as stated in the objective of the punishment in Shariah.

Keep the advantage or kindness (hikmah al-fadilah) that existed in the individuals of the society and prevent the society from harmful. This suits the higher rank of human being to Allah.³

Originate the situation and preparation for the society through interest and forgiveness as been said by Sheikh Abu Zahrah 'maslahat haqiqi'.

³ surah Al Nisa' 4:70

1.3.3. Penalty in accordance to maintain five basic aspects of life:

Based to Imam Ghazali: -

Objective of human life is to find out the benefits or advantages and prevent the disadvantages. The interest of human being could be access through the achievement of an aim of human life, but the interest means to maintain Shariah claims. The claims are; religion (Islam), life (including body), mind, descendant, and property. Anything including in maintaining these claims is said interest (maslahah).⁴

1.3.4. The Principle of Combining the Present Life and Hereafter

In order to prevent crime, Shariah also lies on world law, especially on hereafter law, in the concept of strict warning. The concept of punishment in Islam is, in order to test the faithful and piety of human being to Allah. In the history of companions, the offender forwarded himself to the court because he knows that he shall be punished soon.

⁴ Ali Hamad al-Ghazali, Al-Mustasfa, matbaah al-Amiriyyah, Mesir, 1322H, p : 286-288

1.3.5. Shariah and Justice

The punishment in Shariah to ensure justice, this can be approved as below:-

- ✓ The punishment should be regarded to the provisions in Shariah law.
- ✓ Shariah concerned the concept of individualism, so that only the offender is held to be liable for his act. Shariah also emphasized the similarity in the society.
- ✓ The Prophet also was reported to be said, if his daughter, Fatimah steals, he himself would cut her hand off.

So, in order to ensure the justice, Shariah acquires the strict condition of proceeding in accordance to the evidences, witnesses etc. Thus the Kadith and witnesses must be fair and trusty to ensure the justice. Some advantages of punishment in Islam are:

- ❖ The Penalty should be sufficient and enough in order to give awareness to the offenders.
- ❖ The penalty should prevent people from committing the crimes.
- ❖ There is an appropriate between the penalty and the crime, the unsuitable punishment should be avoided, example: the condition of punishment should be examined in detail.
- ❖ The penalty should be applied in the whole, in order to ensure the criminals are not able to escape from the punishment.

1.4 The OBJECTIVE OF PUNISHMENT IN ISLAM

- To control the advantages of individual, which relate with religion, life, mind, descendant and property, and also the advantages of the society in the aspects of security, peaceful and stability. Therefore, the justice shall appear in the society life.
- To prevent offender from committing the crime and to educate them from wrongdoing that such act twice.
- To rise up the fear ness of human being to Allah.
- To abolish offender's sin and free them from suffering and hard punishment by Allah on hereafter.
- To avoid the others from doing like the offender. As stated by scholar "Suffering is come to be prohibited from committing the crime, and chastises come after it, thus, by knowing the punishment, it is avoid the offender from wrongdoing and prevent him to be repeated".
- To cultivate positive attributes among the offenders as for reason to overcome and restore themselves from repeated the crime.
- To secure society from interfere of criminal and to assure the peacefully life of people without crime.
- To avoid the increasing of criminal cases.
- To apply the justice.⁵

⁵ Ahmad Ibrahim, hukuman Islam dimalaysia, bahagian hal ehwal Islam jabatan perdana menteri, 1992.

CHAPTER 2

2.1 THE TYPES OF PUNISHMENT IN ISLAM

This chapter will discuss about the regulations as provided in Islamic Criminal code, and they are; Hudud, Qisas, Qazaf, and Ta'zir. These are a part from Shariah Allah, which must be implemented, and maintained by the Muslims. Hudud is the regulation gazetted by Allah, while Ta'zir is implemented by the judges or government regarding to Shara'.

There are basically three categories of punishments in Shari'ah. The first is Hadd, which includes divinely prescribed forms of exact, fixed punishment based upon the Quran and Sunnah. These are punishments in the public interest; they cannot be lightened nor made heavier, nor can the offender be pardoned. They instill a deep feeling of abhorrence in the society towards the crime for which the offender has been punished. Such crimes include drinking alcohol, armed robbery, theft, illicit sexual relations/ apostasy and slanderous accusations of promiscuity.

The second form is called Qisas, which is the punishment for homicide and assault. Whenever a person cause physical harm or death to another, the injured or family of the deceased has the right to relation. A unique aspect of Qisas is that the victim's family has the option to insist upon the punishment accept monetary recompense or forgive the offender, which could even avert capital punishment. This leaves the open to compassion and forgiveness. Settlements are therefore encouraged outside of court, as a judge must exact the punishment. All other crimes fall into the third category Ta'zir, which is a discretionary punishment decided by the court.

Punishment in Islam is indeed harsh; but its achievement speaks for itself. Even more strict are the procedures laid down before a person can be convicted and punished and indeed capital punishment, which is quick decisive and reforming is more successful in preventing recurrent crime than the imprisonment, which has proven to be a door to homosexuality and a school for harboring criminal; behavior. ⁶

As explained, punishment in Islam an incapacitating and retributive nature, the main objectives being particular and general deterrence, equitable restitution and moral education. These practical benefits of punishment are combined because punishments for these particular crimes should not only be for the victim's relief but for the common good of the society.

Incapacitation of the convicted offender includes full elimination by death penalty or partial incapacitation by amputation. Incapacitation may also take the form of physically separating the convict from the public though exile or imprisonment. This is most clear in the punishments for hirabah, sariqah, riddah, zina and baghi. The other punishment, which is not incapacitating but retributive, deterrent and moral educating is flogging.

⁶ By mufti- Islam Online Fatwa Committee, the concept of punishment in Islam, 26 Mei 2001,

2.1.1 THE WHIPPING

The obligation of Islamic government is to ensure the implementation of penalties as followed to Shariah. Adultery, allegations to adultery, drinking liquor are the offences that shall be imposed by whipping.

In fact, adultery is an unlawful action and immoral behaviour. That should implement this crime implemented by the strictest punishment, because it was considered as violating human right. However, the punishment can be delayed such as in case the pregnant offender until she gives the birth.

Adultery means, "an offence which consists of sexual intercourse between a man and a woman who are not married to each other and, such intercourse does not come within the meaning of intercourse by mistake or in doubtful circumstances.⁷ The discussion about penalty that imposed to the offenders is based on their status (married or unmarried), whether whipping or stoning to death. As stated in Qur'an:

الزانية والزاني فاجلدوا كل واحد منهما مائة جلدة.

“the woman and the man guilty of adultery or fornication , flog each of them with a hundred stripes”⁸

⁷ Abu Hssan aliy bin muhammad bin habib al-basry al-baghdadiy al-mawardiyy al-ahkam al-sultaniyyah wa al-wilayahal-diniyyah, institut pengajian tradisional Islam, mei 1993, p 360

⁸ surah Al Nur , 2:24.

This verse mentioned the one hundred times whipping to the unmarried persons who committed adultery. There is differences opinion between scholars in considering the parts on the body of unmarried offenders, which should be whipped. Obviously, some scholars said, head or any sensitive areas in the body (which can caused the death), or any sensitive limbs of the offender, cannot be whipped. In addition, the offender should not be naked or tying his or her hand. However, the whipping can be repeated interminable, so the offender shall screams, and that should be a lesson to witnesses around. Some scholars disagreed on the implementation of banishment to the unmarried offenders and at the same time, imposing 100 strokes of whipping.

They said so because the banishment is under the regulation of Hudud Law, similar with whipping.

By looking at the implementation of whipping, the position of the offenders is based to their gender. Whereas, when the whipping is imposing, a man should stand, while a woman is in sitting position (in order to cover her aurah).

In accordance to scholar's reports and the practice of Muslim society, the whip or string shall be used as the equipment of whipping for all offences. This statement was approved by Dr. Wahbah al-Zuhaili, who said that there is no khilaf (argument) between the scholars in using the whip. But, there are some conditions that need to be acquired before it can be used.

- 1- It is not a dried string.
- 2- It is not produced from young or still green trees, in order to prevent injury.
- 3- The bottom of the whip should not be knotted.
- 4- It must be only one whip, because if it had split to two parts, one stroke shall be considered to two strokes.⁹

Ibn Taimiyyah in his book "As-Siyasah As-Shar'iyah"¹⁰, said;

"In accordance to Shara', the right of whipping is beating at the middle ratio, which is not too lighten or burden".

In addition, regarding to Ali r.a;

"Beat at the middle of two extreme strokes; the stroke should not too lighten or burden; by using a whip, which it is not too soft or hard".

Further, the whipping should not impose to drunken offender, which it can cause a crime. The limitation of whipping against the drinker is 40 strokes, and it can be amounted to 80 strokes, if Ta'zir is overruled by Hadd, as reported by Anas bin Malik; "The Prophet whipping the drinker 40 strokes".

⁹ Dr. Mat Saad Abd Rahman , 1993 , Undang-Undang Jenayah Islam – Jenayah Hudud, p 50-53

¹⁰ Abd . Rahman aljaziriii, Kitab al-fiqh ala al-mazahib al-Arba'ah, jilid 5 (kitab hudud), Darul Fikr Beirut (t.t), p: 36.

The evidence that allowing to add more 40 strokes for Ta'zir offences out of Hadd, is reported by Muslim; "Othman ordered Al-Walid bin Uqbah bin Abi Mulith to whip Abdullah bin Jaafar, so beat him".¹¹

In a report by As-Said bin Yazid; "Usually, we beat the drinker with hand, shoes, and clothes during the time of Prophet, Abu Bakar and first period of Umar administration. Whereas, Umar whipped the drinker 40 strokes, and if the offender behaving badly, he beats him 80 strokes".¹²

When, Hadd to the drinker is fixed, there are two elements imposed to him;

- The statement of 2 just Muslims.
- The confession; the offender confess that he drinks liquor. No doubt, that the confession is the first evidence after the declaration.

This was not fixed of Hadd with vomit, and only the smell of mouth does not included in the drink, it caused makruh. As a result, syahadah abort the Hudud.

However, there are some ways of whipping the criminals, in reason that to give awareness to the offender and as effectiveness warning. They are;

¹¹ Muslim, Ibn al Hujjaj B. Muslim al Naysaburi. Sahih Muslim ,Cairo: Dar al Hadith ,1991

¹² al-Bukhari Abu Abd Allah Muhammad b. Ismail ,sahih al-bukhari , Beirut : Dar alFikr, 1981

- 1.The executor of whipping should not straighten his arm during the execution.
- 2.He also must raise the whip up immediately after completing each stroke.
- 3.He should not raise his arm too higher in order to prevent high pressure stroke.

Some scholars said that the punishment against the drinker can be imposed by hand, shoes and bottom of clothes. While, the whipping should not only focused to one area of body only, but it should avoid from beating at head, face or secret part.¹³

The provision of imposing 100 strokes of whipping to unmarried offender as stated in Holy Qur'an;

In Hadith, it is reported;

Zaid bin Khalid said that he heard the punishments, which the prophet imposed to unmarried offender are, 100 strokes of whipping and one year banishment.¹⁴

Whipping is a Hadd penalty against unmarried person who committed adultery and person who alleges another committing adultery. For that second offence, it was provided with 80 strokes of whipping regarding to the specific provisions and Ijma'. And, the amount of the stroke should not more or less.

¹³ Mengenal hudud , p: 59

¹⁴ Al-Bukhari, Abu Abd Allah Muhammad b. Ismail, Sahih Al-Bukhari, Beirut: Dar Al-Fikr, 1981.

By the way, Qazaf is a penalty that to be imposed against the person who alleges another committing adultery. This punishment is implemented in order to deny the blemish assertion of innocent person as Allah said in surah an-Nur: 4;

The offence of Qazaf was established by 80 strokes of whipping and with another moral punishment.

The conditions for the prosecutor are;

1. He or she must reach age of puberty.
2. Sound mind person.
3. He or she is not a father, mother, sister, or grandmother of the accused.¹⁵

The conditions for accused are;

1. Muslim.
2. Reach age of puberty.
3. Sound mind.
4. Free person.
5. Good behaviour.¹⁶

¹⁵ Hussein Bahreis J, pedoman Fiqih Islam(kitab hukum Islam dan tafsirnya, Surabaya Indonesia: Al-Ikhlash,1981

¹⁶ Abu Hssan aliy bin muhammad bin habib al-basry al-baghdadiy al-mawardiyy al-ahkam al-sultaniyyah wa al-wilayahal-diniyyah, institut pengajian tradisional Islam,mei 1993.

In order to approve the true accusation, the prosecutor must bring on four witnesses. If he not able to do so, he shall be punished with Ta'zir penalty. In other words, he is lack of witnesses as Allah said in surah Al-Nur: 4

ثمنين جلدة والذين يرمون المحصنت ثم لم يأتوا بأربعة شهداء فاجلدوهم
ولا تقبلوا لهم شهادة أبدا وأولئك هم الفسقون

“ and those who launch a charge against chaste women and produce and not four witnesses, flog them with eight stripes; and reject their evidence ever after : for such men are wicked transgressors”¹⁷

2.1.2 THE STONING TO DEATH

The implementation of stoning to death as a part of penalty in Hudud Law is to emerge fear ness and to punish the offender. But, there is an exception if the offender is pregnant, whereas she shall be punished after giving a birth. This was approved from the practice of the Prophet, which he delayed the punishment against a pregnant offender from the tribe of Ghamidi, when she said: "O God, I am pregnant", then the Prophet said: "So, go back home until you give a birth".¹⁸

¹⁷ Surah Al Nur 4:24

¹⁸ dipetik dari “ mengenal hukum hudud” , Dr Wahbah Az-Zuhaily, urusetia penerangan negeri Kelanta,1992

Stoning to death is imposed to the married fornicator, and the meaning of married person is who had a sexual intercourse with his wife by valid marriage.¹⁹ The punishment to that person is by stoning to death with stone or things similar to it. This penalty as provided in a verse of Holy Qur'an, which has been abolished its reading and word, as reported by Ibn Majah;

"The adults, either man and woman, when they committed adultery, so you must punish them by stoning to death, as a warning from Allah".²⁰

Stoning to death is not imposed with whipping, however, according to Imam Daud; the offender must be whipped 100 strokes and then, stoned to death. But, the whipping is abolished to the married offender.

By the way, if the offender is a man, he should be standing, tied less, and hold less when the penalty imposed to him. But, if a woman, a hole should be provided to her, on reason to cover her aurah.

¹⁹ Al-ahkam al-sultaniyyah wa al-wilayah, p :36

²⁰ Ibn Majah, Abu 'Abd Allah Muhammad b. Yazid al Gazwini. Sunan Ibn Majah. Makkah: Al-Maktabah al Faisaliyyah, n.d .

This was supported by the statement of four Imams, who agreed that no hole is provided to her until there is a statement by four witnesses or by her own statement. And this statement was approved by the practice of Prophet, whereby he clarified the punishment against Maiz, whereby Maiz ran away when the punishment is about to be imposed. This penalty is a duty to the ruler or executor as to be implemented. As Abu Hanifah said:

The translation: ' O Unais bring this woman tomorrow. If she admits so, stone her to death.'²¹

However, if the offender is punishable to death by the statement, so she should be provided with a hole, and put her in that hole on waist level, in order to avoid her from running away. If she runaway, so stone her to death.²²

Affirmatively, certain equipment, such as hard earth or moderate stone, should use the penalty. But, it should be amounts handful and not a little one, so the offender is not painful in long time. In addition, big stone is not allowed because it can cause death immediately. In a story of Maiz, he was hit with the bones, earth and potsherd. In this punishment, the amount of stone is unlimited.

²¹ Abu Hassan aliy bin muhammad bin habib al-basry al-baghdadiy al-mawardiy al-ahkam al-sultaniyyah wa al-wilayahal-diniyyah, institut pengajian tradisional Islam, mei 1993.

²² ibid

The conditions for the married fornicator are;

1. Reach age of puberty.
2. Muslim.
3. Free person.
4. Having a sexual intercourse with his or her spouse before committing adultery.

If one of these conditions is not fulfilled, he or she shall be punished with 100 strokes of whipping. The whipping also imposed to an adult husband, who is married to a child.

The scholars argued about imposing the whipping together with stoning to death, whereas some scholars, like Imam Ishak and Imam Ahmad said the whipping can be imposed together with stoning to death as practiced by Ali R.A. Whereby, he whipped Syarrahah al-Hamdaniyyah before stoning her to death.

Meanwhile, there is a Hadith as reported about imposing 100 strokes of whipping and stone to death against married offender, but some scholars argued that the fornicator should be imposed with stoning to death only, regardless the whipping.

However, according to majority of scholars, an offender shall be managed as a common Muslim after his or her death, by cleaning, shrouding, praying and burying his or her body.

2.1.3 DEATH OF PENALTY

The problem of punishment and legal penalties in Islam were divided into two categories:

- i. Penalties provided by the verse
- ii. Discretionary, penalties, inflicted by the judge himself, either for an offence whose punishment is not determined or for prejudice deliberately done to one's neighbour.

To impose the latter penalties it is not necessary that a verse had explicitly mentioned the offences as in the penal legislation of non-Muslim countries. There indeed many an offender regardless of the harm he has done to society, escapes punishment because allegedly no provision has been made by the law for the particular crime which he has committed. By contrast Moslem legislation does not let that kind of criminals escape and it is left to the judge's discretions to inflict the chastisements deserved by their deeds, when these have done harm to society and thus aroused public indignation

Legal penalties specified by Islamic verse bear on five sorts of crimes:

- 1) Murder
- 2) Theft
- 3) Adultery
- 4) Calumnious accusation of adultery offence against public security.

The death penalty is a well-recognized punishment in the Islamic penal system and no body can waste time arguing against its validity as it is certainly ordained in the Quran and the Sunnah. In this respect, the Islamic criminal system is gracefully, saved from the perplexity of wavering between the two extremes of recognition and repudiation. Beheading, crucifixion or stoning can execute the death penalty.

2.1.4 BEHEADING

This is execution by decapitation and is applied in hudud to person convicted of *Riddah* and the kind of hirabah in which the accused kill but take no property .It is also applied in other non-hudd crimes such as murder or a deserving ta'zir crimes. The rule that all beheadings should be by the sword. They rely on the following reported:

No qawad (*qisas*) except by the sword

No qawad except by a *hadidah* (sharpened iron blade)

No qawad except by a weapon

The contained in the above a hadith is further supported by a hadith reported by Ahmad b. Hanbal in which the prophet says:

There will be (social) eruptions followed by eruptions. So whoever cause disunity of the Ummah when it is united, hit him with the sword whoever he is.

The another view also accepted other tools in the taking of life, provided they are effectively lethal, such as a spear , a parang, a knife or other sharpened instruments.

That the killer should be killed with a weapon, which is similar to the weapon, he used in his crime and in the same mode of his execution of it. But if his crime, resulting in death is committed by immoral means which cannot be reproduced such as illicit sexual penetration or drawing in khamar, he will be executed by the sword.

The Syafiiyah are the strictest adherents to this principle relying on the ayat:..Whoever transgress against you, inflict on him a similar injury (in the same mode)as he has inflicted on you. If you finish, inflict the same as has been inflicted on you...

The strongest proof they have in this regard is from the Sunnah. It is a hadith reported on the authority of Anas b. Malik that the woman wearing some jewelry was killed by a Jew who smashed her head with a stone. While she was still alive but could not talk several names were mentioned to her until the name of the murderer was said and she in identification. He confessed to this crime and his head on the commandment of the prophet was smashed in the same manner he had committed his crimes.

2.1.5 CRUCIFIXION

This is to put in death by nailing or binding the offender's hands and feet to a cross. It is in one crime only that crucifixion is mentioned as an option that is hirabah.

The recompense of those who wage war against God and His apostle and strive to make mischief in the land are to be killed or crucified or their hands and feet cut off from opposite sides or be exiled from the land. This is a disgrace for them in this world and