

Takzir (Islamic Criminal Law): Educate People Not Abusing

Wan Nor Hana W.I.¹, Latipah N.¹, Farah Idayu M.S.¹, M. Akmal Hakim H.¹, Aziani A.H.²,
M. Azri S.³, Siti Fadhilah I.⁴, M. Zul R.⁵

¹Student Development and Campus Lifestyle Section, Universiti Kuala Lumpur, Malaysian Institute of Industrial Technology, Bandar Seri Alam, Johor Bahru, Johor, Malaysia

²Library and Resource Centre, Universiti Kuala Lumpur, Malaysian Institute of Industrial Technology, Bandar Seri Alam, Johor Bahru, Johor, Malaysia

³Academic Services Section, Universiti Kuala Lumpur, Malaysian Institute of Industrial Technology, Bandar Seri Alam, Johor Bahru, Johor, Malaysia

⁴Student Development and Campus Lifestyle Section, Universiti Kuala Lumpur Malaysian Institute of Marine Engineering Technology, Lumut, Perak, Malaysia

⁵School Management Unit, Primary School Management Section, Johor Islamic Religious Department, Education Division, Johor Bahru, Johor, Malaysia

Received: August 3, 2016
Accepted: November 29, 2016

ABSTRACT

This concept paper is to emphasize that Takzir which is revealed to educate people, not vice versa. The authors choose Takzir to be highlighted in this paper to give clear picture to mass about this kind of punishments and to gather the opinion of scholars. Muslim worldwide is ambiguous about the survival of Islam without the sword and the harsh punishment under Islamic Law. Islam is a religion of wisdom which came with comprehensive way of life. In educating people to abide with all rules and regulations in their daily life, we need to have some guidance and reference. Islam already remind people to always stick with Al-Quran and As Sunnah and also obey the officials of the state or judge (*ulil amr*) those are responsible to implement the laws of the state. It has been proved by Quranic verses “*O you who have believed, obey Allah and obey the Messenger and those in authority among you*” (4:59). All punishments by officials of the state (judge) called takzir. Takzir is punishment for crime not measuring up to the strict requirements of hudud punishments, although they are of the same nature or those for which specific punishments have not been fixed by the *Quran*. Punishments range from the death, imprisonment, local banishment and a variety of fines. Determination of punishment is left to the judge who can vary the punishment according to a number of criteria including who has inflicted the crime and upon whom. The court is empowered to award any of such punishments as it deems fit keeping in view the psychological condition and the background of the offender. It is hoped that this paper may provide better picture of takzir or to the best, change the mentality of some who label Islamic criminal law is harsh and strict.

KEYWORDS: Takzir, Islamic Law, Syariah, Crime, Education.

INTRODUCTION

Malaysian law had been divided into federal and state level. Islamic law matters are governed by state through the Syariah Courts. The state may enact laws, rules, punishments and sentences for the offences while the Parliament at the federal level may not in any circumstances enact laws on this matter. However, the laws to be enacted are limited to the subject matters listed out in the State List which covers family matters, Malay customs and offences against the principles of Islamic religion. Furthermore, the jurisdiction relating to those matters shall be exercised only over Muslims. Therefore, Islamic criminal offences under Malaysian law refer to offences which are provided for in the enactments passed by the state authorities either in the syariah criminal enactments or other enactments with provisions relating to offences and punishments of custody, imprisonment, whipping or fine [1].

According to [3], Hudud Bill of Kelantan under Section 47 stated that the accused may be liable to a takzir punishment. The court shall proceed to pass such punishment if there is sufficient evidence for that purpose, whereby the accused cannot be held liable to a hudud punishment because of the following reasons which are the witnesses have withdrawn their testimonies (as provided in section 43) or because the accused has retracted his confession (as provided in section 45) or the evidence available does not fulfil the condition required to prove a hudud offence.

The punitive and corrective approach of Islamic Criminal law is totally different with the modern laws in operation. It does not depend on a definite penalty for every takzir offence because if the court is regulated to pass definite sentences, the punishment awarded would not produce the desired effect and the spirit of justice

Corresponding Author: Wan Nor Hana Wan Ismail, Student Development and Campus Lifestyle Section, Universiti Kuala Lumpur, Malaysian Institute of Industrial Technology, Bandar Seri Alam, Johor Bahru, Johor, Malaysia, E-mail: wnorhana@unikl.edu.my

cannot be secured for the circumstance of the offender and those in which offences are committed are so different from one another. Therefore, Islamic Syariah has laid down a set of numerous punishments ranging from ordinary chastisement to most severe penalties and confers on the court the power to award any of them as it deems fit for the reformation of the offender and protection of the community against the impact of the offence concerned [8].

Takzir is basically an open-ended category that extends to almost all other punishments outside the *hudud* and *qisas* wherein the judge or the head of state may exercise discretion in determining a deterrent punishment for an offence in light of circumstances surrounding the case and condition of the offender or else to grant forgiveness if they deem it to be the best course of action [2]. However, it is common that jurists unanimously agree that judges need to follow certain guidelines when exercising their discretionary powers in the jurisdiction of takzir [4].

LITERATURE REVIEW

The Principles of Syariah (Islamic Law)

The Syariah specifies the law of God and provides guidance for the directive of life in the best interests of man. Its objectives are to show the best way to man and provide him with the ways and means to fulfil his needs in the most prosperous and most beneficial way. There is nothing in it which tends to waste your powers, or to overwhelm your natural needs and desires, or to kill your moral urges and emotions [10].

In Islam, according to [9], there are major and minor sins as there are sins against Allah and sins against human. All sins against Allah are forgivable if the sinner sincerely seeks forgiveness. The Quran has stated that truly Allah does not forgive the sin of *shirk* (polytheism, pantheism, trinity, etc), but He forgives the sins of other than these and pardons whom He wills. However, if the polytheist or atheist comes back or repents to Allah, his sin will be forgiven. Unlike sins against human are forgivable only if the offended pardon the offender or if the proper compensation or punishments are paid to the victims or their heirs.

The Offences of Takzir

Takzir crimes or offences can be classified into three basic category, those are takzir for religious disobedience (*maksiat*), takzir for public interest (*maslahah ammah*) and takzir for delinquencies (*mukhalafat/* crime). Religious disobedience covers all acts that are considered as sins in Islam. It means that the offender commits prohibited acts (*haram*) and omits of obligatory acts (*wajib*). The example of acts against public interest is driving a car without fastening the seat belt and riding a motorbike without wearing the helmet. This type of fining the offenders is the most popular as it is implemented frequently. Then, the delinquency means the commission of disapproved of acts (*makruh*), which we are required to abstain from [4-5].

The first group of jurists holds that there is no punishment for delinquencies [16]. However, the second group of jurist holds that the delinquencies may be punished. They supported the opinion by referring on the tradition that Umar r.a. punished a man who sharpened his knife in front of the goat which he wanted to slaughtered. This act is considered as *makruh* due to inhuman and may be punished [17-19].

According to [11], the types of takzir offences as codified in Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001 (SCOTT) are offences relating to *aqidah* (religious belief), offences concerning sanctity of the religion of Islam and its institution, offences relating to decency, offences relating to public justice and security, offences with regard to abetment and attempt. The discretionary punishments are flexible enough to take into account the needs of individual and society, and also to recognize the maximum general benefit to society and the reformation possibilities and learning enhancement of the criminal [13]. In [8] supported that takzir are not specifically set in relation to offence and the court is authorized to grant any one of such punishments as it deems fit. These punishments carry two limits that are the lowest and the highest and the court may choose any of these degrees.

Types of Takzir Penalties

In [12] divided Takzir penalties into four major categories which are:

- a. Physical takzir penalties including death penalty and whipping.
- b. Takzir penalties that restrict freedom including imprisonment and exiling.
- c. Psychological takzir penalties, penalty of preaching, penalties of rebuking, etc.
- d. Financial takzir penalties such as fine or compound.

According to [13], they summarize takzir punishments into admonition, reprimand, threat, boycott, public disclosure, fines and seizure, imprisonment, banishment, flogging and also death penalty. However, the punishment may range from anywhere between the warning to death. The famous example happened in time of Umar ibn al-Khattab, where he punished a scholar who gave false testimony. He ordered that the scholar should

have his head shaved, his face painted black and be paraded semi-clothed in front of the people while sitting backwards on a donkey [14].

The death penalty and amputation of limb as takzir penalties is totally forbidden since the takzir is intended to reform the offender. However, most of the jurists allowing exception to this general principle preserve that death penalty as takzir warrantable provided that public interest requires it. Even death penalty has been made lawful as a penal punishment, it will not be widely enforced [8].

Purposes of Punishment under Islamic Law

Islam accords complete judicial autonomy to the various sections of the community in order to protect and preserve their own personal and religious affairs. It allows every community to have its own tribunals to judge its civil as well as criminal cases and leaves it to the discretion of the parties to take the case to their own judicial tribunal or to the Muslim judiciary [7]. Allah had mentioned "If they do come to you, either judge between them, or decline to interfere. If you decline, they cannot hurt you in the least. If you judge, judge in equity between them. For God loves those who judge in equity" (5:45). According to [15], stated that Islam always prefers pardon than causing punishment swearing a better return in the hereafter life. The pardon can be also by blood money.

In [7] also mentioned that in order to administer justice fairly and equitably, Islam not only eliminates long procedural intricacies and makes it simple and expeditious, but it also takes the necessary steps to purify the 'institution of witnesses.' This is the responsibility of every local tribunal which keeps a record of the conduct and habits of the people. The Quran renders all accusers who cannot prove their charges unworthy to testify before the judicial tribunals: "And those whose accuse chaste women but bring not four witnesses (to support their allegation), flog them with eighty stripes; and never accept their testimony" (24:4).

The Islamic law admits no exemptions in favour of anyone, including the Caliph himself (i.e., Head of the State). He is as much subordinate to the Law of the Syariah as any ordinary citizen of the State. Likewise, no exemptions are found in the Islamic Law in favour of foreign diplomats, ambassadors, rulers, etc. All are subject to the law and no one is held to be above the law due to the sovereignty of the law.

According to [5], the enactment of takzir laws is essential to warn people in advance, making them accountable for their actions and avoids any chance of excuse on the ground of ignorance of law. The enactment of takzir law is also necessary to protect the society from the possibility of abusing of power by the judge. Furthermore, it will standardise judgments among the many judges, discourage questions of injustice from arising and even make the judge's work easier and less complicated.

According to [12], the purposes of punishment under Islamic law are for deterrence and restraining, achieving justice and reforming the offender. In addition, [14] discussed about punishment concerned with deterrence, retribution, rehabilitation, incapacitation and restorative justice. It must be noted that the punishments administered by the Islamic state are the last option in the process of curbing and preventing crime. Thus, the Economic System will ensure that all citizens of the state will have their needs adequately fulfilled such that no one will commit or involve in crime to sustain themselves. The Education System will educate the people to have mentality of rejecting any kind of crime, all of which forbidden in Islam, in favor of obedience to Allah. As well, the Social System train within the people the mentality of respect and dignity towards the opposite sex and the segregation between men and women in their daily life which will minimize the possibility of crimes.

Islam also realizes reformation and like the other legal system aims to keep the social order stable and widespread and save the community from the threat of various crimes. The wisdom behind the punishments are either the offender who has been convicted and faced punishment he will most likely not repeat the crime again in future or who watched the execution of punishment or heard about it, he also avoid himself safe from crime. The purpose of punishment is to recompense of crime. It means that the offender is always given highest chance to defend himself which lastly results in awarding him a perfect, fair and actual sentence [15].

DISCUSSION AND CONCLUSION

Islamic law revealed by Allah (the Creator), to ensure the journey of a human life is in accordance with the rules given to them. We are not given *aqal* or intellect to be guided by our own desire or lust, but Allah also gave us the guidance which is the Quran and the Sunnah from the Prophet p.b.u.h. Only the wrong doers will be punished under Islamic criminal law, after considering so many things before the execution of such punishments, showing that Islamic criminal law emphasize on the element of justice and fairness to all humans.

The judicial system and punishment of the Islamic state were implemented throughout every period from the time of the Prophet p.b.u.h. in Madinah, when he established the first Islamic state. It settled the disputed between the people, protected the legitimate rights of the society, and ensured that those in authority gave the residents of the state their dues in accordance with the Syariah of Islam. However, the strength and authority that the judiciary in Islam offers is not built upon harsh punishments or domination of the people [14].

One of the problems affecting the administration of Syariah courts in Malaysia related to Islamic law is the fact that judgments made by Syariah courts in one state cannot be enforced in other states. Thus a defendant may escape enforcement of judgment by moving to another state. To overcome this problem, a Syariah judge who delivers a judgment has to request to another Syariah judge sitting in another state wherein the defendant lives to endorse the former's judgment. By this way, judgment can be enforced in the latter's state. However, this method depends on the latter's willingness to give his cooperation. The federal government has taken some measures in addressing some of the problems that are affecting the administration of Syariah courts. Among other things, the federal government has established Jabatan Kehakiman Syariah Malaysia (JKSM) in 1998 [6].

REFERENCES

1. Abdul, H.E.M., 1997. Enakmen kesalahan jenayah syariah di Malaysia: Satu tinjauan dari sudut pelaksanaan. In: Undang-Undang Malaysia: 50 Tahun Merentasi Zaman. Selangor (ed A.C. Ngah). Universiti Kebangsaan Malaysia, Selangor.
2. Kamali, M.H., 2015. Amnesty and Pardon in Islamic Law with Special Reference to Post Conflict Justice. *Islam and Civilisational Renewal*, 6 (4): 442-467.
3. Mohammad H. Kamali, 2000. Punishment in Islamic law: An enquiry into the hudud bill of Kelantan. *Ilmiah Publisher*, pp: 152.
4. Adil, M.A.M. and N.M.Ahmad, 2014. Islamic Law and Human Rights in Malaysia. *Islam and Civilisational Renewal*, 5(1): 43-67.
5. Hussin, N., 2004. The Discretionary Power of the Judge in the Determination of Takzir Punishment. *Jurnal Undang-Undang dan Masyarakat*, 8: 128-135.
6. Farid S. Shuaib, Tajul A.A. Bustami and Mohd H.M. Kamal, 2001. Administration of Islamic law in Malaysia. *LexisNexis Malaysia Sdn Bhd*, pp: 208.
7. A. Rahman, 1995. Islam: Ideology and the way of life. *Pustaka Hayathi*, pp: 355-356.
8. A.Q. Oudah Shaheed, 2010. Criminal law of Islam. *Adam Publishers and Distributors*, pp: 83-85.
9. H. Abdalati, 1998. Islam in focus. *American Trust Publications*, pp: 37.
10. Abul A. Mawdudi, 1992. Towards understanding Islam. *The Islamic Foundation*, pp: 100.
11. Hamid N.A., A.M.T.Mohamed, N.A. Pauzai and S.N.A.S. Nong, 2015. Takzir offences and youth offenders: A critical appraisal of the syariah criminal offences (takzir) (Terengganu) Enactment 2001. *Pertanika Journal Social Sciences and Humanities*, 23(S): 31.
12. Al-Lozi, A.A., 2013. Special Deterrence in the Takzir Crimes (Misdemeanors and Infractions), and Its Impact on the Offender Rehabilitation Between Shariah and Law in Egypt, Jordan and Bahrain. *Journal of Law, Policy and Globalization*, 15 (1): 29-32.
13. Ramzan, S., N. Akhter and A. Rubab, 2015. Punishment from Islamic Perspective. *Journal of Social Sciences*, 9 (1): 53-56.
14. Haqqi, A.R.A., 2015. Criminal Punishment and Pursuit Justice in Islamic Law. *International Journal of Technical Research and Applications*, Special Issue 15: 1-10.
15. Maruf, A.M., 2012. Crime and Punishment under Islamic Jurisprudence: An Introspection. *The Northern University Journal of Law*, 3: 20-22.
16. Ibn Hazm. *Al-Ihkam fi Usul al-Ahkam*, 1: 43.
17. Al-Ghazzali. *Al-Mustasfa*, 1: 85.
18. Al-Amidi. *Al-Ihkam fi Usul al- Ahkam*, 1: 160.
19. Ibn Farhun, 1995. *Tabsirat al-Hukkam*, 2: 259.