

# The Application of Moderation Values in Islamic Criminal Law

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**Abstrak:**

Artikel ini membahas penerapan nilai-nilai moderasi dalam hukum pidana Islam, dengan fokus pada bagaimana nilai-nilai moderasi dapat mengimbangi penegakan hukum yang tegas dengan keadilan dan kemanusiaan. Hukum pidana Islam, yang dikenal juga sebagai fiqh jinayah, mencakup berbagai ketentuan mengenai tindak pidana (*jarimah*) dan hukuman, dan berfungsi tidak hanya sebagai alat pembalasan, tetapi juga untuk pencegahan dan perbaikan. Penerapan nilai-nilai moderasi dimaksudkan untuk mencapai keseimbangan antara tuntutan keadilan dan kondisi sosial modern. Dalam penelitian ini, digunakan pendekatan kualitatif dengan metode studi kepustakaan dan analisis dokumen untuk memahami bagaimana moderasi diterapkan dalam praktik hukum pidana Islam di berbagai konteks. Pendekatan moderasi ini melibatkan pertimbangan kontekstual, fleksibilitas dalam penerapan hukuman, serta pertimbangan kemanusiaan. Penelitian ini menyimpulkan bahwa nilai-nilai moderasi dalam hukum pidana Islam mencerminkan prinsip keadilan dan keseimbangan, dengan tujuan akhir menjaga harmoni dan keamanan masyarakat. Penerapan nilai-nilai moderasi yang tepat memerlukan penerimaan yang luas dari masyarakat, penyesuaian terhadap kondisi kontemporer, dan komitmen untuk melaksanakan keadilan secara konsisten.

**Kata Kunci:** *Hukum Pidana Islam, Jarimah, Nilai-nilai Moderasi*

**Abstract**

This article discusses the application of moderation values in Islamic criminal law, focusing on how these values can balance strict law enforcement with justice and humanity. Islamic criminal law, also known as fiqh al-jinayah, encompasses various provisions regarding crimes (*jarimah*) and punishments, serving not only as a means of retribution but also for prevention and reform. The application of moderation values is intended to achieve a balance between the demands of justice and modern social conditions. In this research, a qualitative approach was used with literature study and document analysis methods to understand how moderation is applied in the

practice of Islamic criminal law in various contexts. This moderation approach involves contextual considerations, flexibility in the application of penalties, and humanitarian considerations. This research concludes that the values of moderation in Islamic criminal law reflect the principles of justice and balance, with the ultimate goal of maintaining harmony and security in society. The proper application of these moderation values requires broad acceptance from the community, adaptation to contemporary conditions, and a commitment to consistently uphold justice.

**Keywords:** *Islamic Criminal Law, Jarimah, Moderation Values.*

## Introduction

Islam is the only religion that can adapt to any conditions without losing the fundamental (substantial) values of its noble teachings. Allah SWT revealed the Quran as a guide and a manual for humanity, containing various commands and prohibitions from Allah regarding criminal matters, accompanied by guarantees for the welfare of life, which include the protection of religion (*Hifzu al-Din*), life (*Hifzu al-Nafs*), intellect (*Hifzu al-Aql*), lineage (*Hifzu al-Annas*), and property. (*Hifzu al-Mal*).

Islamic criminal law encompasses various provisions related to crimes and punishments. In practice, the implementation of Islamic criminal law often faces challenges in balancing strict law enforcement with fair and humane application. The concept of moderation in the application of Islamic criminal law is an approach aimed at adapting the principles of Islamic law to social realities and the needs of contemporary society, maintaining a balance between the demands of justice and humanity.<sup>1</sup>

In the midst of the debate regarding the implementation of Islamic criminal law in various parts of the world, the values of moderation offer a solution to avoid rigid interpretations and support a more prudent application of the law. This moderate approach involves contextual considerations and humanitarian principles in the application of punishment, aiming to minimize negative impacts and achieve substantive justice.

Moderation in the application of Islamic criminal law aims to ensure that the law is not only enforced fairly but also aligns with humanitarian values and the

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<sup>1</sup> Taufiqul Hadi, “Syari’at Islam Dan Semangat Moderasi Beragama Di Aceh,” in *URGENSI PEMBELAJARAN AGAMA DAN TOLERANSI BERAGAMA*, ed. dkk Adi Wijayanto (Tulungagung: Akademia Pustaka, 2024), 17–23.

evolving social context. This approach is expected to help create a legal system that is more balanced and responsive to the needs of the community.

To explore the application of moderation values in Islamic criminal law, this research employs a qualitative approach using literature study and document analysis, including books, articles, or reference sources. This methodology was chosen because it allows for a deep understanding of how moderation values are applied in the context of Islamic criminal law in various countries and societies.

## **Result and Discussion**

### **Islamic Criminal Law and Its Implementation Objectives**

In Arabic, "criminal" is referred to as "*jarimah*," which etymologically means sin, mistake, or crime.<sup>2</sup> Meanwhile, the terminological definition of "*jarimah*" is:

محظورات شرعية زجر الله تعالى عنها بحد أو تعزير.<sup>3</sup>

*"Prohibitions in Islamic law that are threatened by Allah SWT with the punishment of had or ta'zir."*

Legal prohibitions can take the form of committing prohibited acts and can also manifest as failing to perform mandated actions.<sup>4</sup> Thus, a person who commits a prohibited act and a person who neglects to carry out a required act will be subject to punishment in accordance with what they have done and what they have failed to do.

Islamic Criminal Law is also often referred to as Fiqh Jinayah. The definition of Fiqh Jinayah is in line with the definition of criminal law according to positive law. As stated by Musthafa Abdullah, criminal law is the law concerning offenses that are threatened with criminal penalties, or, in other words, punishment is a series of regulations that govern issues of criminal acts and their penalties.<sup>5</sup>

In the context of the discussion of fiqh, as defined by al-Jurjany, jinayah is:

الجناية كل فعل محظور يتضمن ضررا على النفس أو غيرها<sup>6</sup>

"Jinayah is any act that is prohibited by Islamic law because it poses a danger to life and others."

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<sup>2</sup> Muhdlor, *Kamus Kontemporer Arab-Indonesia* . (Yogyakarta: Yayasan Ali Maksum Pondok Pesantren Krupyak, 1997).

<sup>3</sup> Al-Mawardi, *Al-Ahkam Al-Sultaniyah* (Beirut: Dar al-Fikr, 1992).

<sup>4</sup> 'Awdah, *Al-Tashri' Al-Jina'I Al-Islami Muqaranan Bi Al-Qanun Al-Wad'i*, Juz 1 (Beirut: Mu'assasat al-Risalah, 1992).

<sup>5</sup> Abdullah, *Intisari Hukum Pidana* (Jakarta: Ghalia Indonesia, 1983).

<sup>6</sup> Muhammad Al-Jurjaniy, *Al-Ta'rifat* (Jeddah: al-Haramain, n.d.).

So, what is meant by the term "jinayah" refers to actions that are prohibited by religious law, whether those actions harm the soul, property, or other matters.<sup>7</sup>

In general, there are two types of objectives for the application of uqubah in Islamic criminal law, namely:

1. The relatively oriented goal (*al-ghard al-qarib*), which is to punish (impose just pain) on the perpetrator of a crime, aims to make the perpetrator repent and feel remorse so that they do not repeat the crime they have committed or to prevent others from committing similar offenses. The prevention will create a society that is aware of the law and respectful of one another.
2. The absolute goal (*al-ghard al-ba'id*), is to protect human welfare by safeguarding various basic needs (at least in terms of religion, life, intellect, lineage, honor, and property) so that happiness in this world and the hereafter can be realized. With the realization of the primary objective of criminal law, the long-term and absolute goals will also be achieved.<sup>8</sup>

Thus, Islamic criminal law essentially encompasses more than all the objectives commonly recognized in the realm of criminal law, namely retribution, deterrence, and reformation.<sup>9</sup>

## **Principles of the Application of Islamic Criminal Law**

The foundations of the application of Islamic criminal law are the basic principles that underlie the implementation of criminal law within the Islamic legal system. So, what are the requirements and preparations for the implementation of Islamic criminal law? To ensure the smooth implementation of Islamic criminal law, there are several principles that are agreed upon. Here are some key principles in the application of Islamic criminal law, along with their explanations:

### **1. Principle of Legality**

In Latin, the principle of legality is referred to as "Nullum delictum nulla poena sine praevia lege," which means "no crime, no punishment without a prior law." This adage actually originates from the German criminal law scholar Von Feuerbach, who lived from 1775 to 1833. In his book titled "Lechrbuch des peinlichen Recht" (1801), he is the one who formulated the Latin proverb. The principle of legality states that no act shall be considered a crime and no punishment shall be imposed except in accordance with laws that have been

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<sup>7</sup> Hanafi A, *Asas-Asas Hukum Pidana Islam* (Jakarta: PT Bulan Bintang, 1993).

<sup>8</sup> Hosen, *Jenis-Jenis Hukuman Dalam Hukum Pidana Islam Dan Perbedaan Ijtihad Ulama Dalam Penerapannya* (Jakarta: Al-Hikmah, 1999).

<sup>9</sup> Santoso, *Membumikan Hukum Pidana Islam, Penegakan Syariat Dalam Wacana Dan Agenda* (Jakarta: Gema Insani Press, 2003).

established beforehand. In Islamic criminal law, this means that a person can only be punished if their actions have been defined as sins or violations in the texts of the Qur'an and Hadith. This principle is based on several verses of the Qur'an as follows: "Indeed, We have sent down the Book to you (Muhammad) in truth, so that you may judge between people according to what Allah has revealed. And do not be an advocate for those who betray."(Q.S Al-Nisa/4:105)

## **2. Principles of Justice (*Asas Al-Adl*)**

The essence of justice means that every individual has the same degree as a citizen, regardless of origin, race, religion, language, and social status. Everyone has the same thing when it comes to demanding and being sued, claiming rights, and being asked to fulfill obligations. Equality in Islamic governance is constitutional equality (*Qanuniyah*), not factual equality (*Fa'liyyah*).<sup>10</sup> The principles of justice emphasize that Islamic criminal law must be applied fairly, without bias, and in accordance with the principles of justice. Every individual should receive their rights, and punishments should be imposed based on valid evidence and fair procedures. This principle is based on the verse of the Quran: "*O believers! Stand firm for Allah and bear true testimony. Do not let the hatred of a people lead you to injustice. Be just! That is closer to righteousness. Also, be mindful of Allah. Surely Allah is aware of what you do*". (Q.S Al-Ma'idah/5:8)

## **3. Principles of Testimony (*Asas Al-Shahadah*)**

The basis of testimony requires that in order to impose a sentence in Islamic criminal law, strong evidence and valid testimony are necessary. Testimony must come from reliable sources and meet certain criteria. This principle is based on Surah An-Nisa, verse 135, which states: "*O you who have believed, be persistently standing firm in justice, witnesses in justice for Allah...*" (Q.S An-Nisa/4:135)

## **4. Principles of Rights Protection (*Asas Al-Hifz*)**

The principles of rights protection emphasize that Islamic criminal law must safeguard individual rights, including the right to life, dignity, and property. Every punitive action must take into account the protection of these rights. This principle is based on the Quran, Surah Al-Isra, verse 33: "*And do not kill the soul which Allah has forbidden, except by right....*" (Q.S Al-Isra/17:33).

## **Moderation in the Perspective of Islamic Criminal Law**

### **a. The Meaning of Moderation**

Allah SWT says:

وَكَذَلِكَ جَعَلْنَاكُمْ أَمَّةً وَسَطَا لِتَكُونُوا شُهَدَاءَ عَلَى النَّاسِ وَيَكُونَ الرَّسُولُ عَلَيْكُمْ شَهِيدًا

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<sup>10</sup> "View of Asas Legalitas, Persamaan Dan Pembuktian Dalam Hukum Pidana Islam."

*And thus We have made you (the Muslims) a just and chosen nation so that you may be witnesses over (the deeds of) mankind and so that the Messenger (Muhammad) may be a witness over (your deeds).... (Q.S Al-Baqarah/2:143)*

At-Thabari explains that the meaning of "wasathan" can refer to "the best and highest position." At-Thabari quotes Ibn Abbas, Mujahid, and Atha' when interpreting verse 143, stating: "*Ummatan Washathan*" means 'justice,' so the meaning of this verse is Allah has made the Muslim community the most just community.<sup>11</sup> Al-Qurthubi stated that *wasathan* is justice, because the best thing is that which is most just."<sup>12</sup> The justice referred to here means that the Muslim community is one that places things appropriately, responding to matters according to their due proportions and circumstances. Moderation is honesty and a commitment that is not dual and inconsistent in attitude, so Allah complements Surah Al-Baqarah: 143 above, after mentioning "*wasathan*" with "so that you may be witnesses for mankind". In Islam, a witness must be just and truthful.

### **b. The Application of Moderation Values in Islamic Criminal Law**

In the excerpt of Surah Al-Baqarah verse 143, it shows that Muslims are made a middle nation, that is, a moderate community in all aspects of life, including in the implementation of criminal penalties. Here are some examples of implementing the values of moderation in the enforcement of criminal penalties against offenders, including:

#### ***First, the implementation of Punishment for Perpetrators of Homicide.***

Moderation in the application of punishment for murderers in Islamic criminal law is a principle that emphasizes balance and humanitarian considerations in the judicial process. There are several concepts in the implementation of punishment for perpetrators of murder, including:

##### **1. *Qisas and Diyat***

In Islamic legal terminology, *qisas* means a punishment imposed as retaliation for acts such as murder, injury, or bodily harm, based on provisions set by Islamic law.<sup>13</sup> Thus, *qisas* is the principle of retribution that is equivalent to the crime committed. For murder, this means that the perpetrator can be sentenced to death if it is in accordance with applicable regulations and the court's decision. However, *qisas* is not always applied automatically; it requires a fair and transparent legal process. In terms of terminology, *Diyat* refers to a sum of wealth that is imposed on the perpetrator due to the occurrence of a criminal act (murder or assault) and is given to the victim or their guardian.<sup>14</sup> *Diyat*, as an alternative to

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<sup>11</sup> At-Thabari, *Tafsir At-Thabari*, Vol 2 (Cairo: Maktabah al-Taufiqiyah, 2004).

<sup>12</sup> Al-Qurthubi, *Al-Jami' Li Ahkam Al-Quran* (Cairo: Maktabah Al-Iman, n.d.).

<sup>13</sup> Abdul Mujib, *Kamus Istilah Fiqih* (Jakarta: Pustaka Firdaus, 1994).

<sup>14</sup> Sayid Sabiq, *Fiqh As-Sunnah*, Juz II, II (Beirut: Dar Al-Fikr, 1980).

*qisas*, is a form of compensation paid by the perpetrator to the victim's family. This is a form of moderation that allows the perpetrator to pay a fine as a substitute for the death penalty, with the aim of providing the perpetrator an opportunity to repent and improve themselves. This is regulated in the Quran, Surah Al-Baqarah, verse 178.

## 2. Rights of the Victim's Family

In the application of punishment, the victim's family has the right to choose between *qisas* or *diyat*. This gives them the opportunity to opt for a more moderate path and avoid the death penalty if they decide to accept compensation. This principle demonstrates that there is flexibility in the application of punishment, depending on the family's decision.

## 3. Humanitarian considerations and forgiveness

Islam encourages forgiveness and repentance as part of the implementation of punishment. This shows that the Islamic legal system not only focuses on punishment but also on humanitarian considerations, remorse, and the opportunity for self-improvement.<sup>15</sup>

In cases of murder or assault, Islamic Criminal Law offers the option between the application of *qisas* and *diyat*. A moderate approach would prefer resolution through *diyat* as an alternative to *qisas*, especially in the context of modern society where peaceful solutions and financial compensation are considered more appropriate than harsh retaliation.

### *Second, the implementation of stoning punishment against non-Muslims.*

حدثنا مالك عن نافع، عن عبد الله بن عمر أنه قال: جاءت اليهود إلى رسول الله صلى الله عليه وسلم فذكروا له أن رجالاً منهم وامرأة زنياً. فقال لهم رسول الله صلى الله عليه وسلم: (( ما تجدون في التوراة في شأن الرجم؟ )) فقالوا: نقضهم ويجلدون. فقال عبد الله بن سلام: كذبتم، إن فيها الرجم، فأتوا بالتوراة فنشروها. فوضع أحدهم يده على آية الرجم ثم قرأ ما قبلها وما بعدها. فقال له عبد الله بن سلام: ارفع يدك فرفع يده، فإذا فيها آية الرجم. فقالوا: صدق يا مُحَمَّد، فيها آية الرجم. فأمر بهما رسول الله ﷺ فرجما<sup>16</sup>

*Malik has narrated to us what he received from Nafi', and Nafi' received it from Abdullah bin Umar, who said that a group of Jews came to the Messenger of Allah (peace be upon him) and recounted (the issue they were facing) that a man and a woman among them had committed adultery. Then the Messenger of Allah asked them, "What do you find in the Torah regarding the punishment of stoning?" They replied, "We humiliate and punish them. Then Abdullah bin Salam said: "You are all lying, for in the Torah there is the law of stoning." "Take that book of the Torah!" And they spread out the Torah to be read. But one of them placed his palm right over the*

<sup>15</sup> Taufiqul Hadi et al., "Al-Khurūj 'alā Al-Ḥākim Fī Al-Fiqh Al-Siyāsī Al-Islāmī: Dirāsah 'Alā Ma'nā Al-Thawrah," *Al-Ahkam* 33, no. 1 (2023): 113–32, <https://doi.org/10.21580/ahkam.2023.33.1.14948>.

<sup>16</sup> Al-Syafī'iy, *Tanwirul Hawalik Syarh Muwaththa' Malik* (Beirut: Dar el-Fikr, 1994).

*stirring verse and only read the verse before and after it. Then Abdullah bin Salam said again, "Raise your hand." So the man raised his hand, and at that moment, the shining verse became visible. Next, they said, "Indeed, Muhammad, that in the Torah there is a verse about stoning." Then the Prophet Muhammad ordered the implementation of the stoning punishment.*

This hadith shows that the Prophet Muhammad, peace be upon him, carried out the punishment of stoning for the Jews based on their Torah. According to az-Zarqani, this event took place in the month of Zulhijjah in the 4th year of Hijri.<sup>17</sup> Historical facts show that during the time of the Prophet Muhammad (peace be upon him), Muslims coexisted with Jews, who had their holy scriptures and also adhered to Islam. As a result, it is quite logical that the Prophet Muhammad imposed the penalty of stoning on Jews when they committed adultery, which is a violation of the law. This is done in accordance with the teachings contained in the Torah. Some scholars believe that this is the first stoning event in the history of Islam.<sup>18</sup>

***Third, the attitude of Umar bin Khattab who did not cut off the hand of the thief.***

Regarding the punishment for thieves, Allah SWT has said:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطُلُوْا أَيْدِيهِمَا جَزَاءً بِمَا كَسَبُوا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

*The man who steals and the woman who steals cut off their hands as a punishment for what they have done and as a torment from Allah. Indeed, Allah is the Almighty and the all-wise. (Q.S Al-Maidah/5:38)*

Allah SWT has decreed and commanded that the hands of thieves, both male and female, should be cut off. At the level of Sunnah, the Prophet Muhammad (peace be upon him) also practiced this punishment, which is to cut off the hand of a thief. The same goes for the first caliph, Abu Bakr. Subsequently, Umar also practiced this punishment by cutting off Samurah's hand when he was caught stealing.<sup>19</sup>

This punishment has been established by religious texts, both the Qur'an, the Sunnah of the Prophet, and the decisions of Abu Bakr and Umar. However, there is another narration from Umar as follows: Umar did not carry out the practice of cutting off hands during a year of famine. At that time, Umar refused to implement the hand-cutting punishment for thieves, saying, "This year I will not cut off the

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<sup>17</sup> Al-Maliki, *Syarah Az-Zarqani 'ala Muwatta* (Beirut: Dar al-Kutub Ilmiyah, 1990).

<sup>18</sup> Hamdiah A. Latif, "HUKUMAN RAJAM DALAM AL-QUR'AN DAN SUNNAH: SUATU IKHTIAR PEMBACAAN ULANG," *Jurnal Ilmiah Al-Mu'ashirah: Media Kajian Al-Qur'an Dan Al-Hadits Multi Perspektif* 16, no. 1 (January 2019): 1–11, <https://doi.org/10.22373/JIM.V16I1.5736>.

<sup>19</sup> Al-Qurthubi, *Al-Jami' Li Ahkam Al-Quran*.

hands (of thieves)." <sup>20</sup> Thus, the sanction is not imposed during times of crisis or famine.

Umar also did not punish the camel thief who slaughtered it for food out of hunger. Umar only ordered that they pay compensation to the owner of the camel, double the price of the camel. Umar revoked the punishment of amputation for them, as the theft occurred during a time of famine.<sup>21</sup>

In the effort to enforce criminal law, Umar did not immediately cut off the hands of the perpetrators of theft due to his moderate approach in assessing the situation and conditions of society at that time. In the discussion of ethics, those choices are viewed as more moral compared to the other options that were present at that time. Thus, the decision is more influenced by considerations outside the substance of the act.

## Conclusion

Islamic Criminal Law, or fiqh jinayah, is a legal system that regulates offenses and punishments based on Islamic teachings. This system contains a variety of goals, both relatively and absolutely. The relative goals include punishing offenders with the hope that they will be deterred and will not repeat their crimes, as well as preventing others from committing similar acts. Meanwhile, the absolute purpose aims to protect human welfare by safeguarding basic needs such as religion, life, intellect, lineage, honor, and property. Thus, Islamic criminal law serves not only as a tool for retribution but also as a means for prevention and reform.

Overall, Islamic criminal law offers a holistic and balanced approach to addressing criminal offenses. This approach reflects values of moderation that encompass justice, balance, and humanity, with the ultimate goal of maintaining order and security in society. The proper implementation of these values requires broad acceptance from the community, adaptation to contemporary conditions, and a commitment to consistently uphold justice.

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<sup>20</sup> Qayyim, *A'lam Al-Muwaqqi'in* (Beirut: Dar al-Kutub al-Ilmiyyah, n.d.).

<sup>21</sup> Ash-Shallabi, *Biografi Umar Bin Al-Khathab* (Jakarta: Pustaka Al-Kautsar, 2008).

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