

Criminology in Islam; between Human-Kind and Injustice

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Abstract

This article aims to highlight controversies regarding the punishment for criminals. Some legal experts consider that punishment in Islamic crimes is contrary to human rights standards. Such differences are reasonable due to differences in standards in viewing human rights. According to Islamic criminal law, human rights are centred on God (theocentric), while according to criminal law, human rights are human-centred (anthropocentric). On that basis, Islamic criminal law views punishing people who commit crimes with any form of punishment does not conflict with human rights because the perpetrators have sacrificed other people. Just Islamic criminal law upholds humanity and justice.

Keywords:

Human-kind; Justice; Criminology; Islamic Law.

Abstrak

Artikel ini bertujuan untuk melihat tentang kontroversi pemidanaan bagi pelaku tindak pidana. Sebagian ahli hukum menilai pemidanaan dalam pidana Islam bertentangan dengan standart hak asasi manusia. Perbedaan seperti itu wajar, disebabkan perbedaan standar dalam melihat tentang hak asasi manusia. Menurut hukum pidana Islam Hak asasi berpusat pada Allah (*theosentrism*), sedangkan menurut ilmu hukum pidana hak asasi manusia itu berpusat pada manusia (*antroposenteris*). Atas dasar itu hukum pidana Islam memandang menghukum orang yang melakukan kejahatan dengan bentuk hukuman apapun tidak bertentangan dengan hak asasi manusia, sebab pelaku telah mengorbankan orang lain. Justru hukum pidana Islam menjunjung tinggi kemanusiaan dan keadilan.

Kata Kunci:

Kemanusiaan; Keadilan; Pemidanaan; Hukum Pidana Islam.

Introduction

Islamic criminal law cannot be segregated from the teachings of Islam itself; when someone believes in Islam, they should obey and submit to Islamic teachings. In Indonesia, the application of Islamic Shari'ah is increasingly required to be transferred out in the public sphere. Mahfud MD describes his rationale with the theory of 'political configuration'.¹

The opposite view questions Islamic criminal law as a law that is not following the times and is always associated with cruel and inhumane laws. Views like this come from western jurists who are already allergic to Islamic criminal law and Muslims themselves, who no longer want corporal punishment because corporal

¹ Siti Mahmudah, 'Politik Penerapan Syari'at Islam Dalam Hukum Positif Di Indonesia (Pemikiran Mahfud Md)', *Al-Adalah*, 2012.

punishment has not been able to provide psychological effects and shock. Therapy for the community.²

Studies on Islamic criminal law have been carried out by many observers of this science, at least at the level of discussion rooms. The tendency of this study is due to the increasingly critical society of various legal phenomena that occur in this country. Law enforcement officials are no longer able to sense security to the community and the increasing crime level.

Islamic criminal law can appear as an alternative law if elements of this nation's society, especially Muslims, unite to fight for Islamic criminal law without arguing on non-substantive matters. Because sharia in the practical meaning ('amaliah) of Islamic teachings, which consists of norms that regulate concrete human behaviour such as litigation in courts, administering the state and others.³

It means that Islamic criminal law can become a legal norm that regulates human behaviour if the authorities represented by the government and the legislative body (DPR) can approve it. Nevertheless, in reality, amid the most significant Muslim majority community globally, let alone legalized Islamic criminal law, the draft of the Criminal Procedure Code has not yet been ratified.

This paper aims to complement the previous writings which see that Islamic criminal law is an inhumane law, contrary to human rights. The issue of human rights becomes an important issue when the discourse on the application of Islamic criminal law in Indonesia, which has the largest Muslim population in the world, is no exception to the Aceh qanun, which is in the sharp spotlight of academics and legal practitioners in Indonesia, such as executions carried out in open places and other forms of other corporal punishment.

Three essential things become questions related to human rights versus Islamic criminal law, namely:

First, the claims of western people about Islamic criminal law as a law that is not in favour of humanity, by leading the opinion of the world community that Islamic criminal law is identical with amputation of hands for thieves, Kisas punishment, stoning, whipping and executions carried out in an open place where all people can access and see it directly, except for minors. In this aspect, parties who do not like Islamic criminal law consider it very primitive, cruel and rude. This assumption

² Khaeron Sirin, 'Hukuman Mati Dalam Wacana Demokrasi (Perdebatan Antara Hukum Islam Dan Ham Di Indonesia)', *Al-Risalah*, 2018 <<https://doi.org/10.30631/al-risalah.v13i01.441>>.

³ Huzaemah Tahido Yanggo, 'Moderasi Islam Dalam Syariah', *Al-Mizan: Jurnal Hukum Dan Ekonomi Islam*, 2018 <<https://doi.org/10.33511/ALMIZAN.V2I2.41>>.

occurs because western people assess human rights as human-centered (anthropocentric),

Second, Islamic criminal law in realizing the security and goodness of humanity, not only in the world but also in the hereafter, is not carried out in a meaningless vacuum, but in tandem with the events experienced by humankind, so that the punishment of cutting hands, stoning and kisas is the solution.

Third, is to provide a sense of security and safety assurance and a deterrent effect for the community. Therefore, human rights in Islamic criminal law are centred on God (*teosentris*).

Result and Discussion

Human Rights

Human Rights are various basic facilities given by God to humanity, which among these fellow human beings have the same facilities. Human rights are not limited by ethnicity, race and ethnicity. Human Rights are fundamental rights or basic rights brought by humans from birth that are inherently inherent in every human being and cannot be contested because they are a gift from God Almighty.⁴

The definition of human rights is also expressed by the same editor, namely Human Rights are a gift given by God Almighty to every human being or fundamental rights that humans naturally own are universal and eternal, so they must be protected, respected and defended.⁵

Guarantees to get these rights are not only for ordinary people but also for people who are not expected, such as people with disabilities and other abnormal people.⁶ Likewise, Islamic criminal law sees that human rights exist in *maqasyid al-Shari'ah*, namely maintaining religion, preserving the soul, preserving reason, maintaining offspring and maintaining the property in other terms called *al-daruriyyah al-khams*.⁷

⁴ Bobi Aswandi and Kholis Roisah, 'Negara Hukum Dan Demokrasi Pancasila Dalam Kaitannya Dengan Hak Asasi Manusia (Ham)', *Jurnal Pembangunan Hukum Indonesia*, 2019 <<https://doi.org/10.14710/jphi.v1i1.128-145>>.

⁵ Umi Muslikhah, 'Perlindungan Hak Asasi Manusia Atas Hak Politik Kaum Disabilitas Dalam Pemilihan Umum', *UIR LAW REVIEW*, 2017 <<https://doi.org/10.25299/ulr.2017.1.01.159>>.

⁶ EY Lestari, 'Pemenuhan Hak Bagi Penyandang Disabilitas Di Kabupaten Semarang Melalui Implementasi Convention on the Rights of Person with Disabilities (CPRD) Dalam Bidang Pendidikan', *Integralistik*, 2017.

⁷ Hamzah Hasan, 'Kewajiban Asasi Manusia Perspektif Hukum Pidana Islam', *Al-Ulum*, 2019 <<https://doi.org/10.30603/au.v19i1.619>>.

Human Rights as a set of rights inherent in human beings as creatures of God that are universal must be respected, upheld and protected by the state, law, government, and everyone for the sake of honour and protection of human dignity.⁸

Thus, human rights viewed from the perspective of Islamic criminal law are not freedoms without limits and control, but legal norms and legislation limit freedoms limited by the rights of others. A particular aspect of the concept of human rights in Islamic criminal law is that there is no other person who can forgive a violation of rights if the customer happens to someone whose rights must be fulfilled.

Even though God Himself has bestowed these rights, and their origin is permanent to Him. Furthermore, in front of Him, all humans must be held accountable. Allah will not exercise His power to forgive violations of rights in the hereafter.⁹

Universally, in essence the mission of the Prophet Muhammad. itself is to uphold human rights. The Messenger of Allah as rahmat lil 'dalamalamin, in every opportunity always prioritizes human rights as well as KAM (Human Obligations). Even according to Islamic criminal law, justice as a feature of human rights can only be enforced if the basic human obligations are fulfilled first. Human rights obligations in Islamic criminal law are the main aspects that must be fulfilled before being able to claim rights.¹⁰

The Qur'an also emphasizes how important human obligations are to be fulfilled before demanding rights. The obligation to do justice as the main condition for upholding human rights must be upheld first, which can be seen in QS al-Nisa/4: 58;

إِنَّ اللَّهَ يُأْمُرُكُمْ أَنْ تُؤْدُوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۚ
إِنَّ اللَّهَ نِعِمَّا يَعْظُلُكُمْ بِهِ ۖ إِنَّ اللَّهَ كَانَ سَوِيعًا بِبَصِيرَةٍ

Meaning:

*"Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing."*¹¹

Islamic criminal law by some legal experts and legal practitioners is seen as a law that is not favouring humanity or a clash between Islamic criminal law and civil

⁸ Maisaroh Maisaroh, 'Islam Dan Hak Asasi Manusia', *Islamuna: Jurnal Studi Islam*, 2015 <<https://doi.org/10.19105/islamuna.v2i2.665>>.

⁹ Ma'u, Dahlia Halia, 'Hak Asasi Manusia (Ham) Dalam Islam', *Jurnal Ilmiah Al-Syir'ah*, 2016 <<https://doi.org/10.30984/as.v1i1.181>>

¹⁰ Hasan.

¹¹ Kementerian Agama RI. *al-Qur'an dan terjemahnya* (Bandung: PT. Syaamil Qur'an, 2012), pp. 87

rights.¹² Among the practices of Islamic criminal law that are not in favour of humanity and violate civil rights and are in the spotlight are the amputation of hands for the perpetrators of the crime (*jārimah*) of theft, the caning of the perpetrators of adultery who ghairu Muhsan and the perpetrators of the crime. Illegal drinking alcohol (alcohol) and stoning for adultery muhsan. Even the most prominent Islamic organizations, such as Nahdatul Ulama and Muhammadiyah, commented that human rights norms could not justify the laws of cutting hands, stoning, and flogging.¹³

In addition to the aspects of punishment that are of concern to legal experts and legal practitioners, they also highlight the aspects of the implementation or execution of punishments in Islamic criminal law which are always carried out in public places such as in the field or the courtyard of the mosque, and the state must announce it to the public.

The execution of the punishment is seen and witnessed by adults and witnessed by children who are still underage (minors). It is considered very contrary to human rights. The skewed view that is addressed to Islamic criminal law occurs because legal experts and legal practitioners see it from the point of view of the interests of the perpetrators of criminal acts,¹⁴ which is the scope of the study of criminology.

According to criminology, humans do not commit crimes independently, but there are other factors. These factors include; First, it comes from the victim himself who behaves recklessly, loses control or supervisory power to fortify himself so that it is easy for other parties to commit their crimes.,¹⁵ such as like to carry valuables or valuables, want to have great looks. These things can trigger the birth of violent acts from the perpetrators of crimes. Second, from the existence of opportunities and opportunities, Third, the influence of the environment (social environment).¹⁶

¹² MH1 Soeharno, SH, 'Benturan Antara Hukum Pidana Islam Dengan Hak-Hak Sipil Dalam Perspektif Hak Asasi Manusia Oleh', *Lex Crimen*, 2012.

¹³ M. Syafi'ie, 'Pemikiran Organisasi Islam Tentang Penerapan Hukum Pidana Islam: Tinjauan Hukum Hak Asasi Manusia', *Undang: Jurnal Hukum*, 2020 <<https://doi.org/10.22437/ujh.2.2.225-264>>.

¹⁴ Ni Putu Rai Yuliartini, 'Kedudukan Korban Kejahatan Dalam Sistem Peradilan Pidana Di Indonesia Berdasarkan Kitab Undang-Undang Hukum Acara Pidana (KUHAP)', *Jurnal Komunikasi Hukum (JKH)*, 2015 <<https://doi.org/10.23887/jkh.v1i1.5006>>.

¹⁵ Andika Legesan, 'Korban Kejahatan Sebagai Salah Satu Faktor Terjadinya Tindak Pidana Pemerkosaan', *Lex Crimen*, 2012.

¹⁶ ELA ZAIN ZAKIYAH, SAHADI HUMAEDI, and MEILANNY BUDIARTI SANTOSO, 'FAKTOR YANG MEMPENGARUHI REMAJA DALAM MELAKUKAN BULLYING', *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat*, 2017 <<https://doi.org/10.24198/jppm.v4i2.14352>>.

Privileges for perpetrators of crimes are the principle that they should not be considered wrong until there is a court decision that has permanent legal force or puts forward the principle of presumption of innocence, in the judicial process also perpetrators of criminal acts must be accompanied by legal counsel or defenders, meaning that the perpetrators of crimes may not be allowed to follow the legal process without any legal adviser accompanying him.

Perpetrators of criminal acts with all the privileges provided by national law may not receive the threat of punishment in any form of physical violence. Even the death penalty by the world community is not following the concept of human rights. Although in Indonesia itself, it still applies, especially to very dangerous crimes, such as corruption and drugs, when Islamic criminal law imposes caning and the like, it is seen as contrary to human rights.

National criminal law often ignores the rights of victims of crime, despite witness and victim protection laws. This law is not sufficient to guarantee the fulfilment of victims' rights of criminal acts in following every judicial process that occurs and at various levels.

Even though the police, prosecutors and judges have represented the victim, the victim sometimes only acts as a victim-witness if his testimony is necessary for a court hearing.

Relation between Human Rights and Criminology

Punishment means torment or retribution for evil (sin). In Arabic punishment is also called uqūbapp. Punishment in Islamic criminal law aims to maintain and create human benefit and protect from things that are mafasadapp. In addition, punishments are set to improve individual and social order.¹⁷

The purpose of punishment is also in Islamic law to free from sin. It underlies the perpetrator to report his evil deeds to the security forces, as happened to Maiz. This last goal is not found in other laws. It is one reason for criminals in Islamic law to report their evil deeds to the security forces, as happened to Maiz even though the world has to face the death penalty.

Whatever form of punishment applied by the state, Islamic criminal penalties can provide tolerance, the most important of which is that the punishment imposed

¹⁷ Eva Achjani Zulfa, 'Menakar Kembali Keberadaan Pidana Mati (Suatu Pergeseran Paradigma Pemidanaan Di Indonesia)', *Lex Jurnalica (Ilmu Hukum)*, 2007.

on perpetrators of criminal acts can have a deterrent effect. The public interest in security and safety can be fulfilled.

The rights of the people that the state must maintain include; religion, soul and limbs, mind, lineage and property. Among the punishments recognized by Islamic criminal law is the death penalty. Although the majority of the world community opposes punishment in this form (death). As written by (Arief: 2019), the death penalty itself is by the United Nations charter and adopted by the Indonesian people, abolishing the death penalty..., even though the criminal law still recognizes the death penalty. Even if only for certain crimes, because the Criminal Code does not explicitly state in its formulation the purpose of imposing a criminal sanction.¹⁸

Islamic criminal law is a law revealed by Allah through verses of the Qur'an and which is based on the hadith of the Prophet Muhammad. The provisions contained in it are solely for the creation of benefit and justice for humankind, must be far from the influence of the passions and interests of certain people.¹⁹

The contents in it are suitable for the interests of the perpetrators of the crime and the victims' interests. Herein lies the difference between Islamic criminal law and national criminal law, namely. In Islamic criminal law, the victim has the privilege of being able to free the perpetrator of a crime from criminal threats.

Islamic criminal law has a victim orientation (victim). The law and law enforcement tools are more focused on criminals, while victims (victims) in criminal cases do not get a more significant portion.²⁰ Thus the science of victimology was born.²¹

In Islamic criminal law, punishing criminals who have harmed others and disturbing society's peace is not against human rights. Islamic criminal law views that humans must be viewed from two sides, namely;

First, humans are the noblest and perfect creatures of Allah, defeating even angels, meaning that Islamic criminal law does not position humans in humiliation,

¹⁸ Zulfa.Zulfa. 'Menakar Kembali Keberadaan Pidana Mati (Suatu Pergeseran Paradigma Pemidanaan Di Indonesia)', *Lex Jurnalica (Ilmu Hukum)*, 2007.

¹⁹ Wahyuddin Naro and others, 'Shariah Assessment Toward the Prosecution of Cybercrime in Indonesia', *International Journal of Criminology and Sociology*, 9 (2020), 572–86 <<https://doi.org/10.6000/1929-4409.2020.09.5>>.

²⁰ Dewi Ayu Pranesti and Ridwan Arifin, 'Perlindungan Korban Dalam Kasus Penyebaran Berita Hoax Di Media Sosial Di Indonesia', *Jurnal Hukum Media Bhakti*, 2019 <<https://doi.org/10.32501/jhmb.v3i1.35>>.

²¹ Abdul Syatar and Achmad Abubakar, *Filosofi 'Uqubah Islamiyah Versi Ramadhan Al-Buti; Relevansi Dengan Pemidanaan Dalam Sistem Hukum Indonesia* (Gowa: Alauddin University Press, 2020).

humility, like animals and inanimate objects, the word of God in QS al-Isra/17: 70 dan QS al-Hajj/22: 65. The position of humans like this must be respected, meaning that legally they cannot be punished with any sanctions, including amputation of hands, stoning and caning. If people like this are punished, the law has done wrong and violated human rights.

Second, Islamic criminal law also positions humans as the most despicable and lowly creatures above animals and other inanimate objects, such as humans who do not respect the rights of others, do trouble amid people's lives and interfere with the rights of others, such as stealing, raping, robbing, killing and other types of crimes. Punishing humans in this category does not conflict with human rights, including amputation of hands, caning and stoning and other forms of punishment.

QS al-A'raf/7: 179 illustrates that Allah made the contents of hell mostly humans and jinn because they have hearts but are not used to understand Allah's verses, they have eyes but are not used to see signs of Allah's power, they have ears but are not used to hear the signs of Allah, they are like cattle, even more astray than cattle.

The upholding of human existence is to give a punishment commensurate with the actions carried out following God's purpose in enforcing Islamic criminal law itself because the more important purpose of punishing Islamic criminal law is to create justice, peace and public welfare. Following the objectives of sharia to protect religion, life and honour, common sense, lineage and wealth. All violations still refer to *barā'at al-zimmah* atau *barā'at al-syakhs min al-uqūba*.²²

Islamic criminal sanctions protect human rights and obligations from possible interference from a person or group of people. However, the purpose of such a noble punishment is seen by western people as a punishment that is contrary to human rights. to strengthen their views. They contrast the types of punishment in Islamic criminal law such as cutting off hands, stoning and kisas with modern human rights principles.²³

Ruud Peters from the University of Amsterdam, as quoted by Sabri Samin, "although Islamic criminal law protects some fundamental rights interests such as the right to life and personal integrity as well as to property, the current sharia criminal law adheres to values that are contrary to human rights standards., that is:

²² Hamka Haq, *Islam Rahmah untuk Bangsa*, (Jakarta: RM Books, 2009), pp. 186

²³ Sabri Samin, *Pidana Islam Dalam Politik Hukum Indonesia, Elektisisme dan Pandangan Non Muslim*, (Tangerang: Kholam Publish, 2008), pp. 175

First, the prohibition of being cruel, insulting or exceeding the limits of humanity in determining criminal sanctions. *Second*, the principle of nullum delictum Noela poena lege poenale, that is, the principle can only be convicted of a violation that has been determined by law as well as the criminal sanction. *Third*, the principle that all people are equal before the law and regulations. *Fourth*, freedom of religion and expression. *Fifth*, the fundamental rights of children are not to be sentenced to death, life imprisonment, and to be cruel, humiliating or exceeding human nature in determining criminal sanctions.²⁴

This view which is used as a benchmark that Islamic criminal law is inhuman or cruel, is undoubtedly not enough reason that Islamic criminal law violates human rights. In Islamic criminal law, many arguments prove the alignment of Islamic criminal law to humanity. Among these arguments QS al-Anbiyā' /21: 107 that the presence of the Prophet Muhammad. to bring mercy to the universe.

Based on the concept of the verse, it shows that Islamic criminal law is a law that teaches love, not only affection for fellow humans but also for other creatures, including plants. Therefore, the assumption that Islamic criminal law is cruel, inhumane, contrary to human rights and not following the times is entirely untrue and refuted.

Even in many narrations, it is emphasized that it is not called a person's faith in Allah and the Last Day before he loves others the same as he loves himself. Likewise, the Prophet's affirmation in respecting and honouring guests is a prerequisite for someone to be called faith in Allah and the Last Day.

Islamic criminal law is a set of legal rules that prohibit certain types of actions accompanied by threats of punishment based on the Qur'an and hadith.

The provisions in Islamic criminal law are intended to protect and maintain the community's security from interference from others, both physical and psychological or other rights. The provisions of Islamic criminal law (*Fiqh Jinayah*) are made in the context of realizing al-daruriyah al-khamzah, namely maintaining religion, preserving the soul, preserving reason, maintaining offspring and maintaining the property.

So, Islamic criminal law is a law that protects the interests of the community from the interference of others. In the aspect of protecting human interests, Islamic criminal law may not be incompatible with human interests.

²⁴ Sabri Samin, *Pidana Islam Dalam Politik Hukum Indonesia, Elektisisme dan Pandangan Non Muslim*, pp. 176

Although in its application, the law is constantly changing due to changes in the situation and conditions in which the law exists and is practised. Because it is always related to two theories of possibility that contradict each other, namely; First, the immortality theory which believes that Islamic law cannot possibly change and be changed so that it cannot adapt to the times because it is a revelation of Allah that must be accepted ta'abbudi. Second, the adaptability theory believes that Islamic law, as a law created by God for the benefit of humans, can adapt to the times so that it can be changed to realize the benefit of humanity.²⁵

The category of crime (*jarimah*) in Islamic criminal law seen from the severity of the punishment consists of: *first*, *jarimah hudud*, namely the type of crime whose prohibitions and threats have been explained by the texts, both the Koran and the prophet's hadith which include seven types of criminal acts. (*jarimah*), namely: *jarimah adultery*, *jarimah qadzf* (accusing adultery), *jarimah drinking liquor*, *jarimah al-shirkatu* (theft), *jarimah al-khirabah*, *finger blasphemy against religion* (apostasy) and *jarimah al-bagy*.²⁶ *Second*, the *kisas* finger, namely the type of crime and the threat of punishment, has been regulated by the texts, both the texts of the Qur'an or the texts of the hadith, which include; murder and torture. *Third*, *jarimah takzir*, namely the type of crime whose prohibition and the threat of punishment are in the text, but there are not enough conditions to be punished with had or *kisas*, for example, attempted theft, attempted murder. There are also types of prohibited crimes in the text but are not followed by criminal threats, such as corruption, usury, fraud and others. In addition, there are types of violations that are not explained by the *nas*, both prohibitions and criminal threats, such as violating traffic signs and other public order.

The types of criminal threats in the spotlight and are seen as contrary to human rights are threats to the types of *hudud* and *kisas* crimes. In the type of *hudud* crime, there are types of criminal acts whose punishment is amputation of the hand for the crime of theft, caning for those who drink alcohol, adultery who is still a girl/youth and accused of adultery, stoning for adulterers who have been married and *kisas*—threatened with *kisas* punishment.

²⁵ Bazro Jamhar, 'Konsep Maslahat Dan Aplikasinya Dalam Penetapan Hukum Islam', *Konsep Maslahat Dan Aplikasinya Dalam Penetapan Hukum Islam*, 2012.

²⁶ Reni Surya, 'Klasifikasi Tindak Pidana Hudud Dan Sanksinya Dalam Perspektif Hukum Islam', *SAMARAH: Jurnal Hukum Keluarga Dan Hukum Islam*, 2019 <<https://doi.org/10.22373/sjhk.v2i2.4751>>.

These punishments are considered to go beyond the limits and violate human rights because western people see human rights as human-centred, known as anthropocentric, while in Islamic criminal law, human rights are centred on God (*teosentris*).²⁷ Even takzir punishments, such as those implemented in Aceh qanuns, are still highlighted as punishments that violate human rights. as stated by Usammah "the provision of punishment (whip) which is considered a violation of human rights".²⁸ The pros and cons of punishment in Islamic criminal law that are so prominent are still understandable because the reference to Islamic criminal law is still minimal, thus giving birth to different thoughts among legal experts.

Some Muslim countries have practised the punishment system in Islamic criminal law, a legal system that does not descend in a vacuum, but a legal system full of contexts of events that occur when the Islamic criminal law system is practised. For example, the punishment for stoning for adulterers, muhsan, that the Apostle's command to punish adulterers, must be considered the historical background: the law of stoning was first applied to the Jews, the legal basis is their book, namely the Torapp. Second, the implementation of the law of stoning at the Prophet's time was when the letter al-Nūr/24:2 had not been revealed. Meanwhile, the law that applies after the revelation of the letter al-Nūr/24: 2 is a punishment of 100 lashes.²⁹ *Third, the Messenger of Allah punished stoning at that time not as a hadd punishment but as a ta'zir punishment. The law of stoning or lashing a hundred times for adulterers is not absolute.*

As stated by Muhammad Syahrūr with his theory *al-had al-a'la*,³⁰ (The maximum limit, but what is certain is that stoning is based on texts or religious teachings, the provisions of Allah's law), that the law of stoning (dera) can be understood as the highest law and that efforts to *ijtihad*, in this case, can be justified.

Likewise, the perpetrator who is unknown to others, Islam provides an opportunity for him to repent as the Prophet made a dialogue in the case of Ma'iz bin Malik, who admitted to adultery and asked the Prophet to be purified. The Prophet turned and repeatedly asked to revoke his confession and immediately perform istigfar. This indication is reinforced by Rokhmadi's statement explaining that the

²⁷ Akhmad Muzakki, 'Pandangan Islam Tentang Kedudukan Ham Bagi Non Muslim: Pendekatan Fiqh Politik', *El-Harakah (Terakreditasi)*, 2018 <<https://doi.org/10.18860/el.v2i1.4727>>.

²⁸ Usammah Usammah, 'Takzir Sebagai Hukuman Dalam Hukum Pidana Islam', *Kanun : Jurnal Ilmu Hukum*, 2019 <<https://doi.org/10.24815/kanun.v2i2.12442>>.

²⁹ Hasbi As-Shiddieqy, *Tafsir al-Qur'an al-Majid al-Nūr*, pp. 88

³⁰ Muhyar Fanani, *Fiqh Madani Konstruksi Hukum Islam di Dunia Modern*, (Jakarta: LKiS, 2006), pp. 260

punishment for stoning in Islamic criminal law does not come from the Islamic Shari'ah itself previously, namely the texts in the Tora.

It can be traced from the normative basis, namely the traditions of the Prophet, which refer to the application of stoning for adultery muhshan. At least the Messenger of Allah has carried out four times or at least notified the implementation of the punishment of stoning for adultery *muhsan*³¹. However, stoning in Islamic criminal law can also be acknowledged using legal arguments practised by earlier people, such as the Jews known in "*al-maṣādirul aḥkām*" with the term "syar'u manqabla". What is more, there is a hadith used as the basis for the punishment of stoning. It is a hadith narrated by seven great friends. It is included in the category of mutawatir hadith.

Apart from the pros and cons of stoning, which western people see as a punishment that exceeds the limit and is contrary to human rights, the tendency of crimes against decency is an increasing trend from time to time, to reduce and provide a deterrent effect, then stoning is as a form of maximum punishment that can be justified, as the Prophet's signal when the executor reported that the perpetrator wanted to escape "why not just let him go".

Islamic criminal law also views it as not contradicting human rights because those who are punished commit acts that harm others. this kind of person has indirectly positioned himself as an animal even lower than that QS al-A'raf/7: 179. Conditions and situations like this will allow the imposition of stoning to save humankind from the behaviour of immoral people by considering their benefit., *al-masyaqkah tajlibu al-taysiir*. Al-Syātibī is well aware that the ultimate goal of legal institutionalization in Islam is to realize the human benefit, both in the short and long term. Moreover, it is supported by arguments, not supported by arguments even when the benefit is enforced. It is better to put the benefit first even though it is contrary to the textual argument.

Conclusion

Between Islamic criminal law and human rights are two issues that contradict each other when viewed from the punishment imposed on a person who commits a crime because human rights view that the implementation of punishments in Islamic criminal law such as amputation of hands for perpetrators of theft, caning, stoning for

³¹ Rokhmadi Rokhmadi, 'Hukuman Rajam Bagi Pelaku Zina Muhshan Dalam Hukum Pidana Islam', *At-Taqaddum*, 2017 <<https://doi.org/10.21580/at.v7i2.1209>>.

adultery who have been married, and kisas punishments are forms that are not in favour of humanity. Because human rights, according to the western concept, are human-centred (anthropocentric), so that even though the perpetrators of crimes who have made their victims lose their lives are disabled for life, lost limbs, victims of property and honour are deprived. When punished with these types of punishments, it is still considered a violation of human rights. What is essential is the rights of the perpetrators (criminology-oriented). Meanwhile, Islamic criminal law views that punishing criminals with any form of punishment is not seen as an act that violates human rights because the punishment results from an evil act committed by the perpetrator on another person (the victim). Perpetrators are punished for their evil deeds. On that basis, human rights in Islamic criminal law are centred on God (theocentric). Therefore, the rights of victims are fundamental in Islamic criminal law.

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