



## The Implementation of *Ta'zīr* Punishment as an Educational Reinforcement in Islamic Law

Muhammad Mawardi Djalaluddin

Sekolah Tinggi Agama Islam Negeri Majene  
Bulqia Mas'ud

Sekolah Tinggi Agama Islam Negeri Majene  
Dedy Sumardi

Universitas Islam Negeri Ar-Raniry, Banda Aceh  
Isnawardatul Bararah

Universitas Islam Negeri Ar-Raniry, Banda Aceh  
Kamus Kamus

Sekolah Tinggi Agama Islam Negeri Majene  
Email: mawardi05@gmail.com

**Abstract:** This article aims to examine the application of *ta'zīr* punishment as a reinforcement of education in Islamic law. Humans are mulattoes or social beings who are related to one another, they cannot be separated from interactions with others. In order for this relationship to be in the corridor and frame of justice, Allah sent down rules in the form of orders and prohibitions. This study is a normative legal study using *ushul fiqh* theory and *maslāhah* theory. This study concludes that all commands and prohibitions contained in Islamic law are based on the Qur'an and the commands and prohibitions of the Prophet. which is formulated in *fiqh*, it will be seen that everything has a specific purpose, namely the benefit of mankind. If there is a violation of these rules, a penalty will be imposed, whether the punishment is in the form of *hadd*, *qiṣāṣ* or *ta'zīr* punishment. In addition to *hadd*, *qiṣāṣ*, *kaffārah* punishments, *ta'zīr* punishments are seen as punishments/sanctions that contain educational values because they aim to create a deterrent effect on the perpetrators and become a lesson for others not to commit similar violations. Therefore, this study argues that the imposition of punishment in Islamic law including *ta'zīr* contains beneficial values that educate humans and has a deterrent effect for perpetrators and for others.

**Keywords:** shari'a, *ta'zīr* punishment, educational reinforcement, *maslāhah*, Islamic Law

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**Abstrak:** Artikel ini bertujuan untuk mengkaji implementasi hukuman ta'zir sebagai penguatan pendidikan dalam hukum Islam. Manusia adalah mukallaf atau makhluk sosial yang berhubungan antara satu dengan yang lain, mereka tidak dapat lepas dari interaksi dengan yang lain. Agar hubungan tersebut berada dalam koridor dan bingkai keadilan, Allah menurunkan aturan berupa perintah dan larangan. Kajian ini merupakan studi hukum normatif dengan menggunakan teori ushul fiqh dan teori maslahat. Kajian ini menyimpulkan bahwa semua perintah dan larangan yang ada dalam hukum Islam berdasarkan al-Qur'an serta perintah dan larangan Nabi saw. yang terumuskan dalam fiqh akan terlihat bahwa semuanya mempunyai tujuan tertentu yaitu kemaslahatan umat manusia. Apabila terjadi pelanggaran terhadap aturan-aturan tersebut, maka akan dikenakan hukuman, baik hukuman itu berupa ḥadd, qiṣāṣ maupun hukuman ta'zir. Selain hukuman ḥadd, qiṣāṣ, kaffārah, hukuman ta'zir dipandang sebagai hukuman/sanksi yang mengandung nilai-nilai pendidikan karena bertujuan agar pada diri pelakunya muncul efek jera dan menjadi pelajaran bagi orang lain agar tidak melakukan pelanggaran yang serupa. Karena itu, kajian ini beragumen bahwa pemberian hukuman dalam hukum Islam termasuk ta'zir mengandung nilai-nilai kemaslahatan yang mendidik manusia dan efek jera bagi pelaku maupun bagi orang lain.

**Kata Kunci:** syariat, hukuman ta'zir, penguatan pendidikan, maslahat, hukum Islam

## Introduction

Shari'a sent down by Allah to humans aims for the benefit and goodness of humans which is then known as *maqāṣid sharī'ah*. The sharia serves as a life guide to achieve happiness in the world and the hereafter.<sup>1</sup> *Maqāṣid al-sharī'ah* is the main principle of Islamic law so that its application remains in line with the reality of social change and modernization flexibly.<sup>2</sup> This is where the difference between law that comes from God and man-made law.

<sup>1</sup>Wael B. Hallaq, "Maqasid and the Challenges of Modernity," *Al-Jami'ah: Journal of Islamic Studies* 49, No. 1 (2011). Faishal Agil Al Munawar, 'Abd Al-Majid Al-Najjar's Perspective on Maqāṣid Al-Shari'ah," *Juris (Jurnal Ilmiah Syari'ah)* 20, No. 2 (2021). Zulfikar, "Habib Ahmed's Maqāṣid Sharī'ah Concept on Cooperative Regulations in Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 21, No. 2 (2021).

<sup>2</sup> Iffatin Nur, et.al., Maqāṣid al-Shari'ah: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law," *Ahkam: Jurnal Ilmu Syariah* 20, No. 2 (2020). Salman Abdul Muthalib, et.al., "Changes in Congregational Prayer Practices

Shari'a or Islamic law originates from the al-Qur'an, sunnah, *ijmā'* and *qiyās*. This has been determined by the arguments in the al-Qur'an with certainty as He said in the QS. al-Dukhan (44: 38-39) which reads: "And We did not create the heavens and earth and that between them in play. We did not create them except in truth, but most of them do not know."

Allah also sends the Messenger and Prophets by sending down His Shari'a to give rules to humans. The word of God in QS. al-Hadid (57:25) mentions: "Indeed, We sent Our messengers with clear proofs, and with them We sent down the Scripture and the balance of justice so that people may administer justice. And We sent down iron with its great might, benefits for humanity, and means for Allah to prove who is willing to stand up for Him and His messengers without seeing Him. Surely Allah is All-Powerful, Almighty."

Islamic law was revealed to spread benefit to humans. *Maslāhah* is taking advantage and rejecting harm.<sup>3</sup> The benefits here are not limited to material things but also meaningful things, for instance restoring the uprightness of human life, completing his life, and achieving what is absolutely desired by the nature of lust and reason. Hence, the purpose of sharia includes the benefit of the world and the hereafter.

The purpose of the revelation of the Shari'a is to fulfill the prosperous life of humans, both in this world and in the hereafter. This goal is to be achieved through *taklif* whose implementation depends on understanding the main sources of law, the al-Qur'an and hadith. *Taklif* is the imposition of an obligation to someone that requires difficult acts contained in it.<sup>4</sup> *Taklif* means an obligation that must be carried out by God's servants who have reached the age of puberty.

In realizing the prosperous life, there are five main elements that must be maintained and achieved, called religion, soul, mind, lineage, and property. A *mukallaf* will benefit when he can maintain these five main aspects. *Mukallaf* is the term for someone whose actions have been related to

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During The Covid-19 Pandemic in Aceh From Maqashid Al-Sharia Perspective," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 16, No. 2 (2021). Wael B. Hallaq, "The Origins and Evolution of Islamic Law: A Response," *Journal of Islamic Studies* 19, No. 3 (2008).

<sup>3</sup> Muhammad bin Abu Bakr al-Razi, *Mukhtar al-Sihah* (Beirut: Dār al-Fikr, 1973), p. 367.

<sup>4</sup> 'Abdul Wahhab Khallaf, *Ilmu Uṣūl al-Fiqh* (Kairo: Dār al-Qalam, 1942), p. 105.

the Shari'a; or people who can be burdened by law and responsible for their actions.<sup>5</sup>

On the other hand, he will feel the existence of disadvantages (*mafsādah*) when he cannot maintain the five elements properly. What is used as a benchmark to determine the good and bad (benefits and disadvantages) of action and become the main goal of legal development is what is a basic human need. The demands of human needs are tiered which in order ranks are *daruriyyah* (primary), *hajīyyah* (secondary), and *tahsiniyyah* (tertiary).<sup>6</sup>

*Daruriyyat* is maintaining essential basic needs by protecting religion, soul, mind, lineage and property from the threat of their existence. These five existences are called *al-daruriyyat al-khamṣah*. Maintaining these five primary aspects in human life is the foundation for the existence of human life that must exist for their benefit. This means that if these essentials do not exist, their lives will be chaotic, benefit will not be achieved and the happiness of hereafter will not be enjoyed. To maintain or maintain *daruriyyah*, Islam has established a number of laws that guarantee its existence in the form of *uqūbat law*, the sentence handed down by the judge for the criminal violation (sin).<sup>7</sup>

Needs in the *hajīyyah* components do not include essential needs, they only aim to avoid or eliminate difficulties and reject obstacles in human life.<sup>8</sup> *Hajīyyah* is needed by humans to make life easier and eliminate difficulties and adversities. Not maintaining this components does not threaten the existence of the five points above, but will only cause difficulties for the *mukallaf*. This group is closely related to *rukhsah*, laws that lighten or make it easier for the *mukallaf* to carry out the Shari'a in worship according to *fiqh*.<sup>9</sup>

The main principle in matters of *hajīyyah* is to eliminate difficulties, ease the burden of *taklif*, and make it easier for humans to do *mu'āmalah* and

<sup>5</sup>Al-Bahriy, *Musallam al-Tsubūt* (Kairo: Matba'ah al-Husainiyyah), p. 98.

<sup>6</sup>Mukhtar Yahya and Fatchurrahman, *Dasar-Dasar Pembinaan Hukum Fiqh Islami* (Bandung: Al-Ma'arif, 1986), p. 333-337.

<sup>7</sup>Jamaluddīn bin Makram Ibnu Manzur, *Lisan al-Arab* (Beirūt: Dār al- Sadr, 1980), p. 619.

<sup>8</sup>Abū Ishaq Ibrahim al-Syātibī, *al-Muwāfaqāt fī Uṣūl al-Ahkām* (Kairo: Dār al-Ihya' al-Kutub al-Islamiyyah, 1983), p. 21. Yahdi Dinul Haq, et.al., "Bid'ah in Concept of Maslahah Mursalah and Istihsan According to Imam Asy-Syathibi," *Juris (Jurnal Ilmiah Syari'ah)* 20, No. 2 (2021).

<sup>9</sup>Zakiyuddīn Sya'ban, *Uṣūl al-Fiqh al-Islamī* (Mesir: Dār al-Ta'lif, 1977), p. 235.

exchange benefits.<sup>10</sup> *Mu'āmalah* is a human relationship in social interaction according to the Shari'a, because humans are social beings who cannot live independently. For that purpose, Islam has set a number of provisions in *mu'āmalah*, worship, and punishment.

While the *tahsiniyyah* components is an action or trait that is accepted by common sense, held by good customs and required by a strong personality. This group is a need that supports the increase of one's dignity in society and before God in accordance with propriety. If this *tahsiniyyah* cannot be fulfilled, then people's lives will not be as chaotic as *daruriyah* if it is not realized and does not bring difficulties such as the unfulfilled affairs of human *hajīyyah*. However, it is only considered less harmonious by considerations of common sense and the voice of conscience.

If it is related to the priority scale, understanding the order of the ranking of the benefits above is important, when one benefit collides with another benefit. In this case, of course, the first rank of *daruriyah* must take precedence over the second rank, *hajīyyah* and third rank *tahsiniyyah*. This provision shows that it is justified to ignore the things that are included in the second and third ranks, when the benefits that are in the first rank are threatened. For example, a person is required to meet the need for food to maintain his existence. On the other hand, *tahsiniyyah* is considered as the perfect complement of the *hajīyyah*, and *hajīyyah* is the perfection of the *daruriyah*. Whoever ignores *daruriyah*, then he ignores *hajīyyah* and *tahsiniyah*. If he ignores the *hajīyyah* and *tahsiniyah* then he is said to be in a state of almost ignoring the *daruriyah*.

To ensure the realization of basic human needs as mentioned above, *daruriyah*, *hajīyah* and *tahsiniyah*, anyone who violates them will be subject to sanctions, either in the form of *hadd*, *qisāṣ*, or *ta'zir*. *Hadd* is types of criminal acts that have been assigned types, forms and sanctions by God (Allah) in the al-Qur'an and by the prophet in the hadith<sup>11</sup> while *qisāṣ* is imposing an action (legal sanctions) on the perpetrator exactly as the action taken by the perpetrator against the victim.<sup>12</sup>

*Ta'zir* is a form of punishment imposed on a *mukallaf* who violates the law. *Ta'zir* punishment is a punishment that is imposed based on the

<sup>10</sup>Aḥmad bin Muḥammad, *Al-Misbah al-Munir* (Kairo: Dār al-Ma'arif, 1977), p. 432.

<sup>11</sup>Aḥmad bin Muḥammad, *Al-Misbah al-Munir*..., p. 125.

<sup>12</sup>Dedy Sumardi, et.al., "Transition of Civil Law to Public Law: Integration of Modern Punishment Theori in Criminal Apostasy," *Ahkam: Jurnal Ilmu Syariah* 22, No. 1, (2022), p. 248. DOI: 10.15408/ajis.v22i1.26359.

judge's or government's considerations for violations for which the punishment is not explicitly stipulated in the al-Qur'an and Sunnah or for violations whose punishment has been determined, but does not meet the conditions for the sentence to be imposed.<sup>13</sup>

*Ta'zīr* punishment aims to cause a deterrent effect on the perpetrators of criminal acts. This paper tries to reveal the educational attributes in *ta'zīr* punishment drawn from the reinforcement theory of B.F Skinner<sup>14</sup>, which is a punishment reinforcement.

This study is a normative legal study using the theory of ushul fiqh or *maṣlahah* theory.<sup>15</sup> The theory of ushul fiqh or the methodology of Islamic law and the theory of *maṣlahah* are concepts that have long been developed by fiqh scholars as the main objective of Islamic law. This theory is used as an analytical tool in reviewing this discussion.

### ***Ta'zīr* Punishment**

The word of *ta'zīr* comes from the Arabic language whose root word is عزرا - يعزز - تعزيز. According to Ibn Faris, the word consists of three letters, namely: ع - ز - ر which has two meanings. The first one means التعظيم والنصرة (glorification and help), and the second means: جنس من الضرب (a type of blow).<sup>16</sup> According to Ibrahim Mustafa et al., *ta'zīr* means (prevent from evil and help it), and it also means; و عن الشيء منعه ورده (forbid and restrain him from doing something).<sup>17</sup> Furthermore, in the Indonesian Dictionary, it is stated that *ta'zīr* is a punishment imposed on the basis of the judge's discretion for violations for which there are no sanctions provisions in the Qur'an and hadith.<sup>18</sup> Meanwhile, according to Bahnasi, that in general,

<sup>13</sup> A. Djazuli, *Fiqh Jinayah; Upaya Menanggulangi Kejahatan dalam Islam* (Jakarta: Raja Grafindo, 2000), p. 13. See also Wahbah al-Zuhaylī, *al-Fiqh al-Islamī wa Adillatuh* (Suriah: Dār al-Fikr, 1996), p. 197.

<sup>14</sup> B. F. Skinner, "Reinforcement Today," *American Psychologist* 13, No. 3 (1958), p. 94.

<sup>15</sup> Faisar Ananda Arfa dan Watni Marpaung, *Metodologi Penelitian Hukum Islam* (Jakarta: Prenamedia Group, 2018). Juhaya S. Praja, *Teori Hukum dan Aplikasinya* (Bandung: Pustaka Setia, 2011).

<sup>16</sup> Abū al-Ḥusain Alḥmad, *Mu'jam Maqayis al-Lughah* (Ttp: Ittihad al-Kitab al-'Arabiyy, 2002), p. 253.

<sup>17</sup> Ibrahim Mustafa, et.al., *Al-Mu'jam al-Wasit*, (Kairo: Majma' al-Lughah al-'Arabiyyah, n.d.), p. 102. Ibrahim Madkhur, *al-Mu'jam al-Wajiz* (Kairo: Majma' al-Lughah al-'Arabiyyah, 1995), p. 416.

<sup>18</sup> Tim Penyusun Kamus Pusat Bahasa, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 2005), p. 1126.

*ta'zīr* contains the meaning of teaching whose target is to change the behavior and attitudes of criminals to positive ones (التعزير لغة التأديب مطلقا).<sup>19</sup>

These linguistic meanings can be seen in their use in several verses, for example in QS al-Fath (48:9): "So that you 'believers' may have faith in Allah and His Messenger, support and honour him, and glorify Allah morning and evening."

According to the term, *ta'zīr* is a crime whose sanctions are not determined by the Qur'an or by the hadith, for example not carrying out the mandate, insulting people, insulting religion, being a false witness and bribery.<sup>20</sup>

Wahbah al-Zuhaylī defines *ta'zīr* as follows:

العقوبة المشروعة على معصية أو جنائية لا حد فيها ولا كفارة سواء أكانت الجنائية على حق الله تعالى كالأكل في نهار رمضان بغير عذر و ترك الصلاة والربا ... أم على حق العباد ك مباشرة الأجنبية فيما دون الفرج وسرقة دون النصاب ... وخيانة الأمانة أو القذف بغير الزنى من أنواع السب والضرب والإيذاء بأي وجه مثل أن يقول الرجل لأخر يافاسق يا خبيث، يا سارق يا فاجر...<sup>21</sup>

Meaning: "Syar'i punishments for immoral acts or crimes have no limit and there is no infidelity, both crimes/violations against Allah's rights such as breaking the fast during the day of Ramadan without an excuse that is allowed, leaving prayers, usury, or violations of human rights such as having sex with women. in addition to faraj (vagina), stealing that does not reach the nisab, betraying the mandate, calling other people with accusations of doing evil such as calling with the words "hi thief, hi adulterer, hi criminal" and others."

In line with al-Zuhaylī, Sayyid Sabiq defines *ta'zīr* as follows:

أنه عقوبة تأديبية يفرضها الحاكم على جنائية أو معصية لم يعين الشرع لها عقوبة، أو حد لها عقوبة ولكن لم تتوفر فيها شروط التنفيذ مثل المباشرة في غير الفرج،

<sup>19</sup> Ahmad Fați Bahnasi, *Madkhal al-Fiqh al-Jinā‘ī al-Islamī* (Kairo: Dār al-Syuruq, 1980), p. 182

<sup>20</sup> A. Djazuli, *Fiqh Jinayat; Upaya Menanggulangi Kejahatan dalam Islam* (Jakarta: Raja Grafindo, 2000), p. 163.

<sup>21</sup> Wahbah al-Zuhaylī, *al-Fiqh al-Islamī wa Adillatuh* (Damasqus: Dār al-Fikr, 1989), p. 197.

وسرقة مala قطع فيه، وجناية لا قصاص فيها، وإتيان المرأة المرأة، والغدف بغير الزنى.<sup>22</sup>

In a succinct and simple way the above expression means: "educational action against sinful behavior without any *hadd* or *kaffārah* sanctions". *Kaffārah* is an Islamic law which means forgiving sins, refers to specific sanctions to compensate for the offense or sin when unintentionally committed.<sup>23</sup>

From the understanding put forward by the experts above, it can be formulated that *ta'zīr* is an educative punishment imposed on someone who commits a crime whose form of punishment has not been determined explicitly in the al-Qur'an and Sunnah, both crimes it is a violation of God's rights as well as a violation of humans as servants of God.

In addition to *ta'zīr* punishments imposed on perpetrators of crimes whose form of punishment is not determined by *syara'* (al-Qur'an and hadith), *ta'zīr* can also be imposed on perpetrators of crimes or violations of laws or regulations made by the state/government. as long as the law does not conflict with the values, principles and objectives of the Shari'a.<sup>24</sup> Among the regulations that are violated and can be sentenced to *ta'zīr* are traffic regulations, environmental protection, undisciplined government officials etc.

*Ta'zīr* punishment is also imposed for crimes whose punishment has been determined in the al-Qur'an or sunnah, either in the form of *hadd*, *qīṣāṣ* or *kaffārah*, but does not meet the requirements to impose the punishment on the perpetrator because of doubt.<sup>25</sup> Actions that should not be punished though it is doubtful (*syubhat*) are in relation to the perpetrator or in relation to the place. This is intended so that a person is not be sentenced solely on the basis of *zan* or allegation because legal sanctions can only be imposed after the judge can really prove a person's guilt convincingly.

*Ta'zīr* punishment is an educative punishment in the form of giving lessons. It is said so because the punishment actually prevents the

<sup>22</sup> Sayyid Sabiq, *Fiqh al-Sunnah* (Beirut: Dār al-Kitab al-Arabi, 1986), p. 598.

<sup>23</sup> Ahmad bin Muhammad, *Al-Misbah al-Munir* (Kairo: Dār al-Ma'arif, n.d.), p. 535.

<sup>24</sup>Dedy Sumardi, et.al., "Legal Pluralism within the Space of Sharia: Interlegality of Criminal Law Traditions in Aceh, Indonesia", *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, No. 1 (2021), p. 426-449.

<sup>25</sup>A. Djazuli, *Fiqh Jinayat...*, p. 163.

perpetrators from repeating similar crimes or in other words makes them a deterrent.

The implementation of the *ta'zīr* punishment is determined by the government or a judge who acts as a representative of the government in the field of law enforcement by considering several things. Among the things that can be taken into consideration by the judge are the size of the violation, the presence of an element of intention or negligence, done first time or many times.

### **Forms of *Ta'zīr* Punishment**

There are a number of forms of *ta'zīr* punishment that are commonly carried out including the following:

#### **Body-Related Punishment**

##### **1. Death Penalty**

The Hanafi school (*mazhab*) allows *ta'zīr* with the death penalty on the condition that the violation is repeated, and will bring benefit to the community. Likewise the Maliki, Hanabilah, and some Shafi'i schools allow the death penalty as the highest *ta'zīr* as in the case of espionage, perpetrators of mischief on earth and homosexuals.<sup>26</sup>

There are scholars who do not allow the death penalty as *ta'zīr*. They only allow the death penalty for *muḥsān* adulterers<sup>27</sup> (a person who has a wife or husband commits adultery and intercourse with other people), murderers, and apostates and leaving the congregation.

والخلاصة: أنه يجوز القتل سياسة لمعتادى الاجرام ومدمنى الخمر ودعابة الفساد  
ومجرمى أمن الدولة ونحوهم...<sup>28</sup>

Looking at the current situation and conditions, those that support the permissibility of the death penalty are stronger, although in practice, the conditions must be tightened and applied to extremely dangerous criminal acts and disturb the general public, such as smugglers and drug dealers.

##### **2. Whipping Punishment (*Jilid*)**

<sup>26</sup> Wahbah al-Zuhaylī, *al-Fiqh al-Islamī*..., p. 200-201.

<sup>27</sup> Muḥammad ‘Ali al-Ṣabūnī, *Tafsīr al-Aḥkam min Al-Qur’ān* (Damascus: Maktabah al-Ghazālī, 1977), p. 20.

<sup>28</sup> A. Djazuli, *Fiqh Jinayat*..., p. 194.

The whip in *ta'zīr* punishment is based on the al-Qur'an, sunnah and *ijmā'*, for example, in QS al-Nisa' (4:34) Allah says: "...And if you sense ill-conduct from your women, advise them first, if they persist, do not share their beds, but if they still persist, then discipline them gently. But if they change their ways, do not be unjust to them. Surely Allah is Most High, All-Great."

The verse states that wives who are disobedient and disobey their rights and obligations may be beaten, only that in this case the husband is the one who hit. Among the examples of immorality that was sentenced to *ta'zīr* (whip) are forgery of *baitul māl* stamps at the time of Umar bin Khattab, attempted adultery, thieves who do not reach the *nisab* (stolen goods do not reach the one *nisab*), moral damage, people who facilitate robbery, sentencing threatened with a whip as *hadd* because there is a doubt in it.<sup>29</sup>

Hanafiyah scholars divide the human level in relation to *ta'zīr* into four parts, namely *asyaraf al-asyraf* (the noblest person), *al-ashraf* (noble person), *al-awsat* (middle), and *al-suflah* (the unskilled workers). According to them, people belonging to the fourth group are more effectively punished with flogging than fines.

The maximum and minimum limits of whipping punishment in *ta'zīr* are debated by the *fuqaha*.<sup>30</sup> However, in general some views claim that the minimum number of whipping punishment must be able to have a preventive impact on the community and the number should not exceed the minimum number of whipping in the *hadd* punishment.

The application of caning law in the context of a modern nation-state in the Islamic world is in Aceh, Indonesia, which applies Islamic law formally, except for stoning for adultery and cutting off the hands of thieves (these punishments are not implemented). Caning is based on Qanun Aceh Number 4 of 2014 concerning Jināyat Law. This qanun is a refinement of the three previous qanuns in 2003, namely qanuns on *khamar* (intoxicants), *maysīr* (gambling), and *khalwat* (closeproximity).<sup>31</sup>

<sup>29</sup> Ibn Taymiyah, *Al-Siyāsah al-Syar'iyyah fi Islah al-Ra'i wa al-Ra'iyyah* (Ttp.: Dar al-Kutub al-Rabiyyah, n.d.), p. 98. Lihat juga Mansur al-Buhutiyy, *Kasyf al-Qina'* (Kairo: Matba'ah al-Hukūmah, 1974), p. 121.

<sup>30</sup> A. Djazuli, *Fiqh Jinayat....*, p. 197-200.

<sup>31</sup> Mutiara Fahmi, et.al., "Punishment for Zina Muhsān Offenders in Aceh Qanun No. 6 of 2014 in the Perspective of Fiqh al-Siyāsah", *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, No. 1 (2021). Hudzaifah Achmad Qotadah, et.al., "Problems with the Implementation of Qanun Aceh Number 6 of 2014 Concerning Jinayat Law," *Analisis: Jurnal Studi Keislaman* 22, No. 1 (2022).

The caning law that has been in force since 2003 in Aceh has in reality provided educational value and a deterrent effect to the community. Because since then the act of gambling and drinking khamr has decreased drastically, so has khawat also decreased the level of offences, even though it's a little bit.

### ***Ta'zīr* Punishment Relating to One's Independence**

#### **1. *Al-habs* (Temporary Detention)**

*Al-Habs* is detaining someone in a place so as not to commit legal actions, whether the prisoner is at home, in the mosque, or elsewhere.<sup>32</sup> In subsequent developments, the place of prisoners was set in a place that is now called a prison.

The maximum time limit for detention is not agreed upon by the scholars. Some scholars such as al-Mawardi leave it to the judge. Some of the Shafi'i scholars are argued that the maximum term of the sentence is one year by relying on the punishment of exile. Meanwhile, some scholars say the minimum limit is one day.<sup>33</sup>

Criminal acts for which the perpetrators were sentenced to prison include homosexuals, kidnappers, hostage-takers, witches, third thefts, thieves who do not fulfill one nisab (stolen goods).

#### **2. Punishment of Exile**

Sanctions for throwing away are actually threatened for perpetrators of *hudūd* crimes, but the Islamic scholars also apply to those who commit *ta'zīr* crimes. The punishment for exile is usually imposed on criminals who are feared to have an effect on others.

This type of punishment seems to be no longer effective given the rapid progress of information and transportation technology. This causes the deterrent effect will not be realized, unless the disposal site is a place that does not have access to information and transportation.

#### **3. *Ta'zīr* Punishment In The Form of Property**

What is meant by *ta'zīr* punishment in the form of property is to withhold, destroy, change, and confiscate the property of the perpetrator of a

<sup>32</sup> Maḥmud Syaltut, *Al-Islām Aqidah wa Syariah* (Kairo: Dār al-Syuruq, 1980), p. 292.

<sup>33</sup> A. Djazuli, *Fiqh Jinayat...*, p. 206-207.

crime. For example, destroying places for immoral actions, changing idols by cutting off their heads so that they look like flower holders, multiplying stolen fruits as fines etc.

This form of *ta'zīr* punishment is not approved by all scholars, but the majority of scholars agree on certain forms by taking examples from the time of the Prophet Muhammad and the companions.

In addition to the three forms of *ta'zīr* above, there are other forms of *ta'zīr* punishment that are lighter, such as being censured, excommunicated, being advised, being dismissed from office, announcing a person's guilt etc. All forms of *ta'zīr* were imposed by the judge by considering several things and taking into account the deterrent effect that was expected to arise from the imposition of the *ta'zīr* punishment.

### **Punishment as an Educational Reinforcement**

Education is not only about learning subjects. Education is used to form child's character and personality. Education addresses the change in character, some of which by giving examples, commands, prohibition and applying reward and punishments. One of theories that best explain this is the reinforcement theory by B.F. Skinner. Reinforcement highlights the state of mind which involved the change in emotion and behavior of a person after undergoes some actions<sup>34</sup>. This theory explicates some approaches which aid a person to alter his/her own action and behavior namely positive reinforcement, negative reinforcement, extinction, and punishment reinforcement.<sup>35</sup>

Forms of punishment are sometimes forced to be used. In this regard, there are other theories about punishment adopted by some educational experts. Some of them are natural consequences and logical consequences by Rudolf Dreikurs.<sup>36</sup> Natural consequences explains a child's altercation with the laws of nature without human interference.<sup>37</sup> This can be a response to children's undesired behaviors without involvement of parents but punished by nature. For example; playing a knife, he was injured; climbing, he fell and

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<sup>34</sup> Marzieh Gordan and Isai Amutan Krishanan, "A Review of BF Skinner's 'Reinforcement Theory of Motivation,'" *International Journal of Research in Education Methodology* 5, No. 3 (2014), p. 682.

<sup>35</sup> Marzieh Gordan and Isai Amutan Krishanan, *A Review of BF Skinner's...*, p. 682.

<sup>36</sup>Tasos Kazepides, "On Learning from the Consequences of One's Actions." *Oxford Review of Education* 4, no.1 (1978), p. 77.

<sup>37</sup> Tasos Kazepides, *On Learning from the Consequences...*, p. 78.

probably broke his arm. This natural consequences if left unchecked will be dangerous for children. Furthermore, there is also a social consequence that is created and applied by parents and teachers as punishments for undesired behaviors of children called logical consequences.<sup>38</sup> This will be a response for unlawful actions of children and punished by society according to the level of their misbehaviors. For instance, the children will not allow to join the class if they are late.

One of approaches in the reinforcement theory in education called punishment reinforcement, which administer the concept of *ta'zīr* punishment. According to Marzieh and Isan, punishment reinforcement is a form of punishment designed to remove dangerous and unvalued behavior on the belief that a person that has been punished is less expected to behave in the same manners and action again.<sup>39</sup> For example, if he is late for school, he is not allowed to attend the class and follow the lesson. When children are punished, they will not likely repeat their actions. The punishment will diminish the possibility of undesired behaviors.

In education, punishments have a broad meaning, ranging from light punishments to severe punishments, from scolding to painful blows. There are many kinds of punishments, but the main purpose in each punishment is the presence of painful feeling and action, both psychologically and physically. Along with this understanding, M. Ngamil Purwanto argues that punishment is suffering given or inflicted by someone (parents, teachers and society) after a violation, mistake or crime has occurred.<sup>40</sup>

As an educational reinforcement, the provision of punishment is intended as guidance and improvement, not as a rebuke or revenge for what they did. Therefore, educators should first study the character and nature of students before being punished, and even invited the child himself to participate in correcting the mistakes he made. In addition, a punishment should always be an answer to an offense which is unpleasant and executed for his own good.

In essence, there are no educational experts who want the use of punishment in education unless it is forced. Reward or praise is more important than punishment. However, if the situation requires punishment, it must be used with extreme caution. In this regard, Ibn Sina argues, as

<sup>38</sup> Tasos Kazepides, *On Learning from the Consequences...*, p. 78.

<sup>39</sup> Marzieh Gordan and Isai Amutan Krishanan, *A Review of BF Skinner's...*, p. 683.

<sup>40</sup> M. Ngamil Purwanto, *Ilmu Pendidikan Teoritis dan Praktis* (Bandung: Remaja Rosdakarya, 1994), p. 174.

stated by al-Abrasyi, that the punishment is carried out when circumstances force it, and blows are not used except after being given warnings, threats, and advice with the aim of stimulating the effects that are expected to arise in the souls of the children. This view is based on the hadith of the Prophet, which reads:

مرروا أولادكم بالصلابة وهم أبناء سبع سنين واضربوهم عليها وهم أبناء عشر سنين  
وفرقوا بينهم في المضاجع (رواه مسلم وأحمد عن أبي هريرة)

Meaning: "Order your children to pray when they are seven years old and beat them (if they do not pray) when they are ten years old, and separate them in bed." (Narrated by Muslim and Ahmad).<sup>41</sup>

Related to this, Ibn Sina said, when hit, let the first blow cause pain to the student so that the expected effect occurs and he does not take the next punishment lightly.<sup>42</sup>

Ibn Khaldun disagreed with Ibn Sina who allowed punishing children with hard beatings to be afraid to repeat their actions. Ibn Khaldun asserts that harsh punishments in teaching are dangerous for students, especially for children since it can lead to bad habits. Rudeness and violence in teaching can overwhelm the soul and can prevent the child's grow competently. Violence can trigger laziness, deception and cunning. In this way, they probably taught cunning and cheating.

The tendency above is likely to become a habit and character that is rooted in the soul. In turn, it will damage the human nature that should be nurtured through social relations in association, and can also damage the spirit of leaders, such as the attitude of defending themselves and their families. Such people will become a burden to others since they become lazy and are reluctant to cultivate virtues and noble character. They feel hopeless and do not want to try to be perfect humans, then fall into despicable humans.<sup>43</sup>

<sup>41</sup> Jalāl al-Dīn Abd al-Rahmān bin Abī Bakr al-Suyuti, *Al-Jami' al-Saghīr fī Ahādīs al-Basyir al-Nadzir* (Kairo: Dār al-Katib al-'Arabiyy, 1967), p. 291.

<sup>42</sup> Muhammad Aṭiyah al-Abrasyi, *Al-Tarbiyah al-Islamiyyah wa Falsafatuha* (Misr: Isa al-Babiy al-Halabiy wa Syurakahu, 1975), p. 151.

<sup>43</sup> Abd al-Rahman ibn Khaldun, *Muqaddimah* (Beirut: Dār al-Kutub al-Ilmiyyah, 1978), p. 540.

From the description above, Ibn Khaldun describes at length the bad effects caused by violence and rudeness in education. This can be seen especially when he says that anyone who is treated cruelly will become a burden to others, because that person will be weak and unable to defend the honor of himself and his family because he does not have the spirit and will.

Although Ibn Khaldun forbade punishment in the form of beatings, he still allowed it if he had no choice. The children can only be hit three strokes and it was not allowed to imprint on the child's body because the purpose of the punishment was to correct and awaken him from the mistakes he had made.<sup>44</sup>

The description above shows that the punishment or sanction given to students is one of the educational reinforcement. Giving punishment to students is intended to make students aware of their negligence and mistakes so that they have a deterrent effect and do not want to repeat the negligence they have made. This is in line with the purpose of *ta'zir* punishment in Islamic law. Both impose penalties by considering the condition of the perpetrator and the possibility of a deterrent effect on the perpetrator after the sentence is handed down to him.

Thus the educational reinforcement and deterrent effect on perpetrators of crime as well as warning to others are highly emphasized in the imposition of *ta'zir* punishment in Islamic law. This is the value of benefit in Islamic law and at the same time as the superiority of Islamic law which contains *maqāṣid al-sharī'ah*. namely that someone who is punished is not to hurt and repay the actions committed but as part of education and provide a deterrent effect on the perpetrators as well as on other people.

## Conclusion

All the commands and prohibitions of Allah SWT. and His Messenger has a specific purpose and nothing is in vain. The goal is to realize the prosperous life of humans in the form of achieving benefits and rejecting harm or danger. To realize the benefits, there are three things that must be maintained, *daruriyyah*, *hajīyyah* and *taḥsiniyyah*. If he is negligent in maintaining these three things, he will be punished, either *hadd*, *qīṣāṣ*, *kaffārah*, or *ta'zir* punishments. The *ta'zir* punishment is a punishment imposed on perpetrators of crimes whose punishment is not explicitly stated in the Qur'an and Sunnah as educational reinforcement with the aim of

<sup>44</sup> Hasan Langgulung, *Manusia dan Pendidikan* (Jakarta: Pustaka al-Husna, 1989), p. 44.

causing a deterrent effect for perpetrators of crimes hence they do not repeat their actions and serve as a warning to others not to commit crimes and imitate the action. This form of punishment reinforcement is left to the government or judges by considering several things, such as the severity of the violation, whether it has been repeated or done for the first time, intentionally or negligently. *Ta'zīr* punishment can be in the form of death penalty, whipping, imprisonment, fines, giving advice, and excommunication.

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