

Limitations of Sanctions in Islamic Law

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Abstract

This research aims to determine the limits of hudud in Islamic law so that law enforcement can run fairly. Allah's decree regarding hudud issues has been outlined in the Al-Qur'an in order to preserve social life based on Islamic rules. Hudud is a sanction given to violators of behavior that is contrary to Islamic teachings. In various cases, rebellion, robbery, wine, stealing, verbal abuse and adultery, all have provisions for punishment in the Koran. However, the role of Ulama in interpreting verses is very open to outlining the limits of sanctions for law violators. The existence of Islamic law certainly refers to the main teachings, namely the Al-Qur'an and hadith, then developed through Ijma' Ulama which can be implemented in society as a limitation of sanctions.

Keywords: Limitations, sanctions, Islamic, Law.

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A. INTRODUCTION

One of the miracles of the Koran is its coverage of legal aspects. According to Mahmud Syaltut, in essence the content of the Koran includes three aspects, namely; creed aspect, moral aspect and legal aspect. The legal aspects established by Allah in the Al-Qur'an, apart from regulating the relationship between humans and their God, also regulate relationships between fellow humans. The laws that regulate the relationship between humans and their God include the laws of prayer, zakat, fasting, pilgrimage, and everything related to worship. Meanwhile, the laws that regulate relations between human beings include laws relating to *al-akhwal al-syakhsiyat*, *al-mu'amalah*, *al-'uqubat* and *al-ahkam ak-duwaliyat* (Rahmat Hakim, 2000).

Meanwhile, one aspect of law in the Koran is Islamic *jinayat* law. The *jinayat* law prescribed by Allah in the Koran basically aims to realize and protect human benefit, both individually and collectively. In this case, benefit covers all aspects of human interests in this world and in the afterlife. Therefore, Allah establishes rules that provide guarantees and protection for humans in realizing benefits (Mahmud Syaltut, 1975).

Allah's rules regarding *jinayat* contained in the Koran can be seen in two forms, namely in the form of commands or prohibitions. In certain cases, Allah's rules are accompanied by threats if they are violated and are usually referred to as *jinayat* law. Its own characteristics,

especially in viewing a crime. According to Islamic law, crime is in principle a violation of morals or despicable morals. Therefore, Islamic sharia views moral violations as a crime that causes loss or suffering, both to individuals and society, originating from bad morals or the perpetrator of the crime himself (Sayyid Sabiq, 1987).

In relation to this, *jinayat* is defined as a violation made by someone against Allah's rights or His prohibitions, human rights and animal rights, requiring the perpetrator to be given appropriate punishment in this world and in the afterlife. According to Abd. Qadir Audah that *jinayat* are all actions that are prohibited or forbidden by Allah and are threatened with *had* or *ta'zir* punishment (Abdul Kadir Audah, 1952). In this case, *jinayat* is an act that is prohibited by sharia, whether the act concerns life, property, or other than life and property. Thus, *jinayat* law can be interpreted as a law or rule regarding all prohibited acts. Prohibited actions are actions that are prohibited or prevented by the *syar'i* if the action is carried out it has consequences that endanger religion, life, reason, honor and property (M. Bakri, 1986)

The term *jinayat* is equated by the fuqaha with the term *jarimah*, namely sharia prohibitions which are threatened by Allah with the laws of *had* and *ta'zir*. Therefore, *jarimah* is divided into three, namely; *Jarimah Hudud*, *Jarimah Qisas Diyat* and *Jarimah Ta'zir*.

However, the discussion in this paper will focus on the meaning of hudud in the Koran (Ahmad Hanafi, 1986).

B. RESULTS AND DISCUSSION

1. Hudud Terminology

In Arabic the term hudud is the plural form of the word had which means boundary or determining limits and determining limits (Atabik Ali and Ahmad Zuhdi Muhdhor. T. th). In sharia terms, had means limits or conditions of punishment or sanctions given to people who commit crimes or commit criminal offenses. Therefore, hudud can be interpreted as a limitation of punishment for people who do not carry out orders and violate prohibitions. (Ibrahim Anis, T.th)

Abd. Qadir Audah defines had as follows:

الحد هو العقوبة المقررة حقاً الله تعالى

Meaning: *had is a punishment that has been determined by the syara' and is the right of Allah. The word hudud as the plural form of the word had means prevention, suppression or prohibition.*

1. Therefore, hudud is a regulation that limits Allah's Law regarding halal and haram matters. Hudud in this sense is divided into two terms, namely; (Abd. Qadir Audah, T. th)
2. Laws that explain to people what food, drink, marriage, divorce and other things are permitted and prohibited.
3. Punishments that are determined or decided to be imposed on people who do things that are prohibited (Abd. Rahman Doi, 1996).

Apart from that, hudud which comes from the root word ح د also means to limit between two things. It can also be interpreted as something that prevents humans from entering. Therefore, etymologically it can be formulated that hudud is a separation or barrier that cannot be crossed because crossing that barrier is considered a violation, and as a consequence of the violation is punishment.

Meanwhile, in terms of terminology, Abu Bakr Jabir al-Jazariy stated that hudud is Allah's prohibition which is commanded by humans to observe it and not approach it (Abu al-Husayn Ahmad ibn Faris ibn Zakariya, 1980).

Furthermore, Muhammad al-Jurjaniy stated that;

الحدود هي عقوبة مقدرة و جبت حق الله تعالى

Meaning: Al-hudud is a certain level of punishment which must be determined because it is the right of Allah SWT. (Muhammad al-Jurjaniy, T.th)

In Islamic law, the word hudud is limited in meaning to punishment for committing criminal acts mentioned in the Koran and Sunnah. This means that hudud is a punishment or legal sanction for a crime or violation that is prohibited by sharia', whether related to

life, body parts, honor and property, a person's wealth or public peace which causes the perpetrator to receive punishment as a reward for his actions, as determined by the syara' itself (Islamic Encyclopedia, 1986).

2. Limits of Sanctions in Islamic Law

Hudud is a legal terminology that is within the scope of *jinayat* law. Therefore, hudud is a punishment or sanction for actions that are prohibited by sharia' and are punishable by had or *ta'zir*. This means that the prohibition on actions that fall into the category of *jinayat* comes from the provisions of sharia', meaning that human actions can be categorized as *jinayat* if the action is punishable. Thus, hudud means the threat of punishment for acts that are against the law. These acts are also detrimental to society, in the sense that they conflict with or hinder the implementation of social social rules that are considered good and fair. It can also be said that this *jinayat* act is an anti-social act (Ruslan Shaleh, 1981).

Harmful acts that are punishable by hadd punishment are those that fulfill the following elements:

1. There is a text that prohibits certain actions and is accompanied by a threat of punishment for the action, this element is known as the formal element.
2. There is an element of action that forms *jinayat*, whether in the form of committing a prohibited action or abandoning a required action, this element is known as the material element.
3. There are perpetrators of crimes, namely people who can accept the *khitab* or can understand *taklif*, meaning that the perpetrators of the *jinayat* have *mukallaf*, so that they can be prosecuted for the crimes they have committed, this element is known as the moral element (A. Djazuli, 1997).

Thus, an act that is categorized as a criminal act that is punishable by a *had* sentence is if the act has the three elements mentioned above. Islamic Sharia generally prevents the doing of something that is prohibited by warning of the punishment in the afterlife in a form that can arouse enough fear in the soul of a believer to carry out a forbidden act, while at the same time preventing society from the bad consequences that might occur (Haliman, 1971).

Violations subject to hudud vary in form. For example, committing adultery, being accused of adultery, stealing, getting drunk, causing trouble, apostasy and rebellion. Below, the explanation is presented (Muhammad Salim al-Awa, 1983).

a. Rebellion

Rebellion is termed *al-bagyu* or treason or against the legitimate government. The word *al-bagyu* has its roots in *بغى*, which etymologically means actions that deviate from the truth. (Ismail Ibn Kathir, T.th).

According to the Hanafi School of thought, *al-Bagyu* is a resistance against legally appointed state leaders using methods that are not permitted by Islamic law. Thus, ahl *al-bagyu* is a group of Muslims who have power who oppose the official authorities on several issues because there is no agreement with the government's decisions on the issues they demand. This rebellion openly attempted to oppose the legitimate government by force of arms and imposed their own regulations (Abd Azis Dahlan *et al.*, 1996).

b. Apostate

The word apostate is termed *riddah* which etymologically means opposing or rejecting, closing or returning and الرجوع الى الكفر بعدا لا سلام. Meanwhile, according to the term, apostasy is the return of a wise and mature Muslim to disbelief of his own free will without any coercion from other people, whether male or female.

According to Mahmud Syaltut, the verse above shows the futility of the good deeds of apostates whose sanctions in the afterlife are eternal and in this world the death penalty applies. Thus, the fuqaha' are of the opinion that the act of *riddah* is an act that violates the faith and is considered infidel.

According to Islam, an apostate person has a negative effect on himself in several ways, including: a) his marital relationship is broken, because if one of the two partners (husband and wife) apostates, then the marriage is annulled, b) he loses his authority to be a guardian of a Muslim person or the property of Muslims, c) cannot inherit from each other with their Muslim relatives.

c. Robbery

Robbery is termed *hirabah*, which has its roots in the word حرب, محاربه, which etymologically means war, seizing property, causing damage, destroying accidents and spreading hostility. It can be said that *hirabah* is war because people who fight cannot be separated from one of the acts of killing, confiscating property, destroying, injuring people, or inciting hostility.

According to Islamic law, *hirabah* etymologically means taking property by force, or cutting off roads. It is so named because it prevents people from passing through for fear of robbers (Imam Taqiyuddin, Tth).

From the terminology aspect, *hirabah* is an armed action by a group of people to cause chaos, bloodshed, damage property and defy laws and regulations.

Forms of robbery include: a) a robber goes with the intention of taking property demonstratively accompanied by intimidation, but fails to take it and does not kill the owner, b) a robber goes with the intention of taking or looting openly, then succeeds but he did not

kill, c) a robber set out with the intention of robbing, then he killed because he was met with resistance, but did not take the victim's property, d) a robber set out to rob, then he succeeded in taking the property and killing the owner.

d. Wine

The word *khamar* comes from the letters kha, min and ra which mean to cover and submerge. So, wine is something that covers and drowns the mind of the person who drinks it. The definition of wine from the terminology aspect is a liquid produced from fermenting grains or fruit and changing its properties and containing alcohol using enzymes which have the ability to separate certain elements that change through the fermentation process.

Thus, it can be understood that every drink, any type and brand, if intoxicating is *khamr*. Because it is forbidden because it contains bad things, both specific and general, and also makes people neglect to remember Allah SWT, as well as giving rise to hostility and hatred between fellow humans (H.M. K. Bakri, 1986).

e. Steal

Stealing is termed *al-sirqa* which means taking other people's property secretly and clandestinely. (Bahar al-Din Abd Rahman, 1995) Abu al-Jazariy stated that stealing is taking property that is guarded or guarded secretly and secretly, such as someone who enters a house, then takes the owner's goods or money secretly. silent (Abu Bakr al-Jazary, 1976).

In connection with the criminal act of stealing which has a negative impact, Islam protects human property, as the legal property of individuals, so that Islam strictly prohibits taking other people's property rights for any reason and in any way, such as through theft, fraud, pickpocketing, corruption, reducing the scale. or measurements and so on.

The basis for the act of theft, as well as the sanctions, are contained in QS. Maidah (5): 38 as follows:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

Translation: *Men and women who steal must have their hands cut off as retribution for what they have done and punishment from Allah and Allah is the Mighty, the Wise.*

The provisions in this paragraph state that a person who commits theft is threatened with hudud punishment, in the form of having both hands cut off, whether male or female.

f. Qazaf

The word *qasaf* comes from the words قذف, قذف which means to insult, throw something material or intangible, speak without thinking, slander verbally or in writing or accuse of adultery without evidence. Meanwhile, in terms of terminology, *qasaf* is accusing

another person of adultery, which is punished with *ta'zir* and is a major sin.

Islamic law has stated that the punishment for a person who accuses another person of adultery is that he or she is unable to produce four witnesses with the threat of being whipped eighty times, and the accuser's testimony will no longer be accepted. Because he had made false accusations, because he had told lies that lost other people's trust in him. Unless the accuser repents to Allah and improves himself, he will not commit false accusations again.

This criminal act of *qasaf* is only aimed at defamation of an individual. However, if we pay attention that the act of adultery is a criminal act that threatens the moral safety of society and is included in the jinayat hudud, then the act of accusing us of adultery is also included in the jinayat hudud as determined by the Al-Qur'an.

g. Adultery

The word "adultery" has become a vocabulary word in Indonesian and in Arabic it is rooted in the words زنا, زنى, بزق, زناء which means committing adultery or illegal and restrictive sexual relations. Meanwhile, in terms of terminology, zina is sexual relations between a man and a woman without a marriage contract which is determined according to the sharia'. Thus, it can be said that the act of adultery is when there are elements of sexual intercourse between two people of different genders and there is no mistake or ambiguity or hesitation in sexual intercourse (Ibrahim Anis, 1974).

C. CONCLUSION

Sanctions in Islamic law are punishments that have a certain level and must be determined because they are Allah's right. In the Koran, the term hudud has several meanings, namely, provisions, prohibitions and laws. Hudud punishments include the crimes of rebellion, apostasy, robbery, theft, *qasaf* and adultery. This case falls into the category of a criminal offense under Islamic law, the legal provisions of which are regulated in the Al-Quran regarding the limits and amount of punishment.

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