



Clarification on Misconception of Hudud: An Analysis of The Implementation During the Time of Prophet Muhammad and Khulafa' Al-Rashidun

Islamic Criminal Law

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Penjelasan Terhadap Salah Tanggapan Mengenai Hudud: Analisis Pelaksanaan Pada Zaman Nabi Muhammad dan Khulafa' Al-Rasyidin

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ABSTRACT

Islam is the religion of truth and peace which concerns more on the Iman, good custom, and - social order. Meanwhile, the hudud in Islam aims to produce a righteous society that is free from any criminal. As any kind of criminal act themselves is a violation of Allah's sovereignty and others' rights and freedom and what is more, strict, and heavy punishment is also prescribed by Him to punish the wrongdoer for the violation they made and prevention for the crime. However, there is misunderstanding lingers in society pertaining to the hudud law which has long been carried out by the prophet Muhammad (PBUH) and His companions and labelled the punishment as an ancient and harsh punishment disregarding human rights. Thus, this study aims to study the execution of hudud law based on the Quran and hadiths implemented by the prophet and to analyse the steps of the companion in following the execution. Analysis descriptive method was used to achieve the objective throughout Quranic verses and hadith texts. This study found that the implementation of punishment by the prophet based on the Quran, there also ijthihad from him and consensus with companion's suggestions. The Khulafa Al-Rashidun implemented hudud punishment based on the prophet's steps including their own ijthihad based on the suitability of situations. Khulafa al-Rashidun is also concerned about the objective of the hudud punishment before implementation.

Keywords: Hudud, Misconception, Implementation, Prophet Muhammad, Khulafa al-Rashidun





ABSTRAK

Islam adalah agama kebenaran dan keamanan yang mementingkan perihal Iman, adat yang baik dan ketertiban sosial. Di sisi lain, hukuman hudud dalam Islam bertujuan melahirkan masyarakat yang soleh dan bebas daripada sebarang jenayah. Oleh kerana perbuatan jenayah itu sendiri adalah melanggar keagungan Allah serta hak dan kebebasan orang lain, hukuman yang ketat dan berat ini telah ditetapkan oleh-Nya bagi menghukum pesalah atas pelanggaran yang mereka lakukan, juga sebagai langkah pencegahan bagi jenayah itu sendiri. Walau bagaimanapun, terdapat salah faham yang berlarutan dalam masyarakat berhubung hukum hudud yang telah lama diaplikasikan oleh Nabi Muhammad (SAW) dan para sahabat ini, dengan menganggap hukuman tersebut sebagai hukuman yang kuno dan keras tanpa mengambil kira hak asasi manusia. Justeru, kajian ini bertujuan untuk mengkaji pelaksanaan hukum hudud berdasarkan al-Quran dan hadis yang telah dilaksanakan oleh Nabi serta menganalisis langkah-langkah para sahabat dalam mengikuti pelaksanaan hukuman tersebut. Kaedah deskriptif analisis digunakan terhadap ayat-ayat al-Quran dan hadis-hadis untuk mencapai objektif kajian. Kajian ini mendapati bahawa pelaksanaan hukuman oleh Nabi adalah berlandaskan al-Quran, selain terdapat juga ijtihad daripada baginda serta berpandukan kepada ijmak dan saranan sahabat terhadap hukuman tersebut. Para Khulafa Al-Rasyidun telah melaksanakan hukuman hudud dengan mengikuti langkah-langkah Nabi selain melaksanakan ijtihad mereka sendiri berdasarkan kesesuaian situasi. Khulafa al-Rashidun juga menitikberatkan tentang objektif hukuman hudud sebelum dilaksanakannya.

Kata Kunci: Hudud, Salah Tanggapan, Perlaksanaan, Nabi Muhammad, Khulafa' al- Rasyidin

INTRODUCTION

The prescribed punishment for - criminal action in Islam can be divided into three categories: Hudud, Qisas, and Takzir. Hudud is the punishment as prescribed by Allah, concerning the right of the public or the right of God that has been violated. Likewise, Qisas in the Quran and Sunnah clearly stated the prescribed punishment for hudud offences (Zuhaily, 1998).

According to the majority of jurists, the offences of hudud comprise seven crimes: drinking alcohol, slander, adultery, highway robbery, theft, transgression, and apostasy (Bassiouni, 1997). On the other hand, Qisas crimes involve physically inflicted body injury and killing where the punishment is through retaliation and blood money, known as 'diyyat'. However, the successor of the deceased granted the right to pardon the criminal by waiving the retaliation punishment and opting to demand diyyat (Sudarti, 2021).

Unlike Hudud and Qisas, takzir is regarding offences that are not stated clearly by the Quran and hadith. The offence itself is much more to the offence regulated by the states for instance regulated norms. The punishment may be in the form of



imprisonment, fines, compensation, and damages, where the implementation of the punishment may not be exceeded the punishment of hudud, where it is based on ijtihad and discretionary power by the court. Takzir is determined by the judge (qadhi) and is directly related to human rights, which means even though it is under Syariah or Islamic law, it is governed to protect human rights (Rofiah & Nahe'i, 2016).

Because takzir has not been mentioned in Quran and hadith clearly as hudud and qisas, there are strict requirements on the implementation, such as, the judges must take notice of other elements before asserting the punishment, such as the social background of the prosecuting case, the rehabilitation of the wrongdoer, the satisfaction of the aggrieved party claim, the damages of the victim and the result of the implementation itself to the extend including the repentance from the wrongdoer about his action for violating regulatory norms. Furthermore, Islamic jurist does agree that the offences of takzir can be regulated and codified into regulation for the easy reference of the court and the strict procedure must be adapted to avoid any conflict with Shariah law (Darsi & Husairi, 2018).

Despite the above-mentioned facts, there are misconceptions about Islamic criminal law even among Muslims themselves. The speculation about the concept of Islamic criminal law among Muslims and others is usually because of a lack of real understanding of them. In fact, Islamic criminal law is not solely about hudud only managing criminal acts (jarimah) and criminal law (jinayah), but it is also related to other categories such as takzir and qisas. in Islam. These three categories must be implemented with true understanding and all the requirements must be fulfilled. This study focuses on the hudud to clarify the negative perception among these three categories.

Problem statement

Shariah Criminal Law in whole or hudud by specific is one the popular topic discussed in society. There were negative perceptions regarding this revealed law due to failure in the implementation of hudud made by several Muslim countries. Some states had introduced and applied hudud law, however, the applications were not reflecting the Quranic guidance and the contemporary Muslim realities, which has resulted in impediments to the implementation of Hudud (Kamali, 1998).

In addition, the hudud punishment is always mistakenly considered as an ancient and harsh punishment, disregarding human rights, and recognized as a brutal punishment. For instance, the punishment of riddah which resulted the offender to the death penalty considered inconsistent with universal principles. For some people, this penalty seems contradictory to freedom of religion. This idea had been claimed as injustice by part of society, non-Muslims, and - believers themselves such as liberal, modernist, and ignorant Muslims (Adewumi, 2018).

Thus, it is important to rectify the misunderstanding that lingers in society pertaining to the hudud law which has long been carried out by the prophet Muhammad (PBUH)



and His companions. The rectification of these misunderstandings by educating society to understand the real situations involving the implementation of hudud punishment together with value before and after the implementation of the punishment done by our prophet the Khalifahs.

Objectives

This study aims to highlight the genuine way and execution of hudud law based on the Quran and hadiths, to clarify the misconception and negative stigma about Islamic criminal law specifically Hudud. Besides, this study aims to know how the companions follow the essential method and how to execute the discipline based on the words and activities of the companions in the implementation of hudud punishment.

Research Methodology

The study uses descriptive analysis based on Quranic verses, hadiths texts, and the saying of the companion pertaining to the implementation of hudud punishment within their times. The study considers other factors for instance sociology, economy, politics, and custom, known as 'uruf' of the Arab society. This methodology is used to understand the actual and genuine implementation of hudud as demanded by Allah.

Discussion

Hudud is the capital offence in Islamic criminal law, the punishment has been prescribed by Allah, and the prescribed punishment has been stated by Allah, where the implementation of the punishment must be with the strict procedure, it cannot not be reduced nor increased what has been prescribed. The punishment must be preserved accordingly because it is considered to fall under the category of violation of Allah's rights (Okon, 2014).

Hudud punishments are the law that related to God's rights, as well as the public right, as mentioned in the Quran "Indeed, the penalty for those who wage war against Allah and His Messenger and spread mischief in the land, is death, crucifixion, cutting off their hands and feet on opposite sides, or exile from the land. This penalty is a disgrace for them in this world, and they will suffer a tremendous punishment in the Hereafter" (Al-Maidah 5:3).

Thus, the purpose of punishment is to prevent catastrophe and bring good benefits to human beings. Hudud is also defined as part of criminal punishment, known as 'uqubah' in Islamic Law, which resulted from a criminal act, known as 'jarimah' and criminal law, known as 'jinayah' (Majlis Agama Islam Selangor, 2015). The evidence and principles pertaining to each category of the crime are varied from each other, where each crime was different in terms of its definition, elements, evidential requirement, applicable defences, procedures, and penalties (Bassiouni, 1997).



As mentioned by Allah in the Quran, “Whoever chooses to be guided, it is only for their own good. And whoever chooses to stray, it is only to their own loss. No soul burdened with sin will bear the burden of another. And We would never punish a people until We have sent a messenger to warn them (Al-Isra 17:15).

This verse shows that Allah explains to the wrongdoer that they must for the first instance give the opportunity to understand the nature of the law together with the offences. Only then the punishment shall be imposed as they persist to violate such law no retrospective effect of the law shall be applicable. This has been justified by the Islamic Legal maxim “la jarimah wa la “uqubah illa bi al-nas” which means ‘Criminal offences and penalties are determined only by the law’ (Makinuddin, 2015).

Thus, it is understandable that hudud is a fixed punishment directly determined by the revealed text, Quran, and hadith. Also, it was implemented exactly as mentioned within these two sources, after the doer already has knowledge about the offences of their wrongdoings. Then the punishment would be a reminder not to repeat it to the offender or others. The implementation of this hudud is clearly shown during the time prophet and his companion, Khulafa ar-Rashidun.

A) The implementation of hudud punishment during the time of the Prophet

Hudud punishment had been implemented during the time of Prophet Muhammad PBUH in stages. The punishments were made accordingly to the revelation from Allah, preserving Muslim needs and customs. This study focuses on the implementation of four offences, as follows:

1) The offence of drinking Alcohol

The prevention of drinking alcohol was not completely prohibited during the emergence of Islam but in three stages. The first stage of prohibition is through the revelation of verse (al-Baqarah 2:129) which stated “They ask you ‘O Prophet’ about intoxicants and gambling. Say, “There is great evil in both, as well as some benefit for people - but the evil outweighs the benefit.” where Allah highlighted the benefit of drinking is the evil effect.

The next stage of prohibition is in the verse of (An-Nisa 4:43) which stated “O believers! Do not approach prayer while intoxicated until you are aware of what you say.” Islam forbid Muslims to drink alcohol whenever they want to perform prayer, as resulted in periodically Muslim loss their temptation toward drinking due to their obligatory to perform perfect and complete prayer to Allah.

The final stage of the prohibition of drinking is in the verse (Al-Ma'idah 5:90-92) which stated “O believers! Intoxicants, gambling, idols, and drawing lots for decisions are all evil of Satan's handiwork. So, shun them so you may be successful.” “Satan's plan is to stir up hostility and hatred between you with intoxicants and gambling and to prevent you from remembering Allah and praying. Will you not then abstain?”, “Obey Allah and obey the Messenger and beware! But if you turn away, then know that Our Messenger's duty is only to deliver ‘the message’ clearly”.



Through this revelation, the prohibition of alcohol drinking had been completed and the punishment for the offence was justified in the hadith of the prophet, "The Messenger of Allah PBUH said: "Whoever drinks Khamr, whip him; then if he drinks (again), whip him; then if he drinks (again), whip him; then if he drinks (again), kill him." (Nasa'i, 2001)

The Quranic verses of drinking alcohol offences and the hadith regarding its punishment show that punishments in Islam are implemented in line with the capacity of human beings, protecting their needs and capabilities to obey the guidelines and leave their criminal action. This holy law was made by the only Creator who knows about his servant well. This implementation of punishment by stages illustrates the uniqueness of Islamic criminal law, which is not meant just to punish, but to direct Muslims to the right path through the punishment.

2) The offence of adultery

The prohibition and punishment for adultery had ordered in the Quran in verse (Al-Isra 17:32) where Allah mentioned "Do not go near adultery. It is truly a shameful deed and an evil way." And the punishment in the verse (An-Nur 24:2) which stated "As for female and male fornicators, give each of them one hundred lashes, and do not let pity for them make you lenient in 'enforcing' the law of Allah if you truly believe in Allah and the Last Day. And let a number of believers witness their punishment."

These offences within the verse involve sexual intercourse by the man and woman whether both are married or not. As for the unmarried, the punishment prescribed is a hundred lashes, and for the married adulterer, the prescribed punishment is stone to death. The hundred lashed punishments for the unmarried person are based on the hadith by the prophet which stated if a married man did sexual intercourse with a married woman who was not his legal wife, the punishment is 100 lashes and stone to death. If involving unmarried men and unmarried women, the punishment must be 100 lashes and exile for one year (Bukhari, 2002).

From the hadith, it is understandable that there are two different punishments for these two different categories, married and unmarried. This hadith shows another punishment must be added to the married adulterer and adulteress. Thus, the fixed punishment for both married and unmarried persons is a hundred lashes, for men and women. The hadith also mentioned about additional punishment which is exile for one year. On the other side, stoning to death is the punishment for a married person in addition to a hundred lashes.

Stoning to death punishment clearly stated in the hadith which stated that the prophet punished the married man and women who commit adultery punish with the punishment of stone to death, due to the reason that He was afraid people will forget about the punishment of adultery for the married adulterer and adulteress, instead of following the 100 lashed punishment as stated in Quran, by saying that they did not find any punishment except 100 lashed, in fact, the stoning to death also prescribed



punishment by Allah and executed by the prophet (Bukhari, 2002). Additionally, the punishment of stoning during the time of the Prophet must be implemented after the proof is established, or if there is pregnancy, or a confession.

The hadith stated that stoning to death was required in Islam and implemented within the Prophet Muhammad's era. The hadith also stated about conditions to undergo the stoning to death punishment, there must be established proof of pregnancy or confession. The prophet reminded Muslims not to leave this punishment for married adulterers and adulteresses just because it is not mentioned in the Quran. It shows that this punishment was implemented (Bukhari, 2002).

There was an example showing the implementation of hudud related to the confession made by an adulterer. When the man met the prophet, he asked him whether he was a married man or not. When he said yes, the prophet ordered him to be stoned. One of the narrators from the Prophet's companions said that he was one of the people who participate in stone adulterer, whereas the punishment was implemented at the place of prayer either that of 'Id or a funeral. He also mentioned in the hadith, that during the execution of the punishment the adulterer ran away. But the companion caught him in the "Harra" and stoned him to death (Bukhari, 2002).

Based on this hadith, the punishment of stone to death was held in a place of prayer, witnessed by the public. When the adulterer tried to abscond from being punished, the companion will make sure the punishment shall be held according to the prescribed procedure by the prophet. This clearly shows that the degree of implementation of the punishment outweighs the sympathy of the executioner or judges toward the adulterer.

Thus, the practice of the companions portrayed the objective of verses in the Quran stated, "and do not let pity for them make you lenient in 'enforcing' the law of Allah, if you 'truly' believe in Allah and the Last Day" (An-Nur 24:2).

However, the most important fact in implementing hudud punishment is prioritizing building a positive environment and safe surroundings for men and women. For instance, zina punishment is not to punish adulterers only but to ensure the community observes Islamic rules within their life. Among the guidelines provide in Islam include seeking the owner's permission before entering their place, wearing a proper dress, avoid wearing excessively attractive accessories. The discussed guidelines will prevent the commencement of zina. Furthermore, the zina punishment required solid evidence, where the offence itself requires four male witnesses who witness such offences (Rofiah & Nahe'i, 2016), neither intentionally to instigate it nor to provoke the offences to happen.

This requirement is logically hard to be achieved except with the confession from the adulterer themselves. Among the hadith which stated about an adulterer named Ma'iz b. Malik, when the prophet asked about what he had committed according to the news spread among the companions. He admitted to the offence of zina committed by another's slave girl, He later testified four times before the prophet made the



pronouncement about him and later execute the punishment stone to death upon him (Bukhari, 2002).

Other than this hadith that shows the confession as the way to undergo the punishment, there are also several other hadiths brought the same objectives. Majority of the hadith narrated in this matter illustrates the punishment for zina had been implemented by the evidence of the confession by the adulterer themselves instead of the fulfilment of the four men witnesses. This discussion shows that the hudud is not easily implemented but there are heavy requirements that must be fulfilled, in many situations seems to be impossible to be implemented as discussed before. It illustrates that Hudud is not solely revealed to punish human beings but to protect them from any harm and crime made by themselves or others.

3) The offence of Qazaf

The offence of Qazaf also known as the offence of slander, where it is involving the action of a false accusation of a married Muslim woman committing adultery. Where the person who made such a false accusation failed to bring forward four competent male witnesses, who witnessed the adulterous action of the married Muslim women (Bassiouni, 1997).

As stated by Allah in the Quran in verse (An-Nur 24:4-9) which stated, "Those who accuse chaste women 'of adultery' and fail to produce four witnesses, give them eighty lashes 'each'. And do not ever accept any testimony from them -for they are indeed rebellious-"

The verse shows that the punishment for Qazaf or slander is eighty stripes. It shows that whoever made slander, false accusation of adultery, or defamation upon Muslim women must be flogged with eighty stripes. It is only applicable if the offender failed to produce four male witnesses to that crime, must be mentally stable, and did not suffer from any physical weaknesses (Bassiouni, 1997).

This offence of qazaf with eighty stripes is as heavy as the offence of adultery, to protect the dignity of human beings specifically a woman. It shows the balance of these offences which is not to be played with.

4) The offence of theft

The punishment for thieves, or 'Sariqah' mentioned in the Quran for males and females with hand cutting. Allah said: "As to the thief, male or female, cut off their hands as a reward of their own deeds, and as an exemplary punishment from God. For God is Mighty and Wise. But whoever repents and mends his ways after committing this crime shall be pardoned by Allah. Allah is forgiving and merciful." (Al-Maaidah 5:38-39)

It is significant to mention that this theft punishment was the last verse revealed among the other hudud punishments. The objective or reason behind this lateness is because at the time it was revealed, the community of Muslims reached the peak of stability at economic, political and social (Rofiah & Nahe'i, 2016).



At the time of Prophet Muhammad, the Muslim government struggled in building prosperity for all people before undergoing punishment for theft. Prophet and his companion are good models in providing a prosperous community to prevent them from criminal acts (Rofiah & Nahe'i, 2016).

The hudud for theft is directly connected to the obligation of zakat. Moreover, zakat had been mentioned 57 times which means much more than punishment for theft itself, which is stated just once in Quran. This hudud is also related to the obligation of charity, feeding the indigent and not being greedy, and taking others' rights unlawfully.

It shows that the amputation punishment for theft is not the aim but to create a prosperous community through love, caring, sharing, and respecting one another. For instance, the Prophet recommended stealer to apologize as well as the victim forgive and reconcile. The Prophet said: Forgive the infliction of prescribed penalties among yourselves, for any prescribed penalty of which I hear, must be carried out (Abu Daud, 2009 & An-Nasa'i, 2001)

For illustration, the punishment for theft in the time of the Prophet was established from an economically stable society, with lesser poverty percentage which contribute to the thief committing the offence. The harmonization of the society itself is taken into consideration whereby the wealthier help the poor through zakat, sadaqah or any monetary contribution to reducing the society's burden financially. If these elements had been established, yet the offender still commits the theft aiming to gain more than necessity without any effort, thus the court will take this offender to trial accordingly to the procedure of theft.

The implementation of hudud punishment made by the Prophet also shows that social relations must be prescribed first before undergoing punishment to the wrongdoer. By repentance, and apologizing to the victims, it must be the return of stolen wealth. If the victim refused to forgive, the theft must provide more expensive than the stolen and there must be an intervention of the community to reconcile or 'islah' for both (Rofiah & Nahe'i, 2016).

For a clear explanation, if the requirement for the theft is fulfilled, our prophet exercises the method of apology by the thief to the victim and returns the stolen goods back to the rightful owner without any defect. If the victim is dissatisfied with the returned goods, the prophet advised the thief to add additional value to the returned goods until the victim is satisfied. If none of these actions satisfied the victim, society must take its role to reconcile both.

These strategies had been exercised by the prophet, if possible, to solve the dispute out of court, whereas if the offences entered the court, there is no way to withdraw the case, where both parties are bound by the procedure evidential requirement of the court to try the cases. It shows that the prophet tried to protect the sovereignty of the shariah court from being underestimated.



B) The implementation of hudud punishment during the time of Khulafa' al-Rashidun

The implementation of hudud punishment by the Khulafa' al-Rashidun is based on the implementation of the prophet. In case the exact numbers or specific punishments are not mentioned by the prophet or text from Quran, they will use ijthihad or personal preference based on the real understanding of the punishment itself. A suitable example shows the role of ijthihad by the companion in the implementation of hudud punishment as follows:

1) Punishment varied based on the ijthihad of Khalifah

There are several implementations of hudud during Khulafa Al-Rashidun, but this study focuses on an example from the offence of drinking alcohol. As stated in Quran, the prohibition of alcohol had been stated clearly: "O believers! Intoxicants, gambling, idols, and drawing lots for decisions are all evil of Satan's handiwork. So, shun them so you may be successful" (Al-Ma'idah 5:90). However, the verses did not state the exact punishment for the drunker.

Thus, the implementation of hudud punishment is based on the practices of our Prophet and hadith narrated pertaining to the punishment. Based on this reason, the implementation of the punishment by the Khalifah had been done differently based on the preferred understanding of the implemented punishment made by the prophet before.

For instance, the prophet made people beat the offender publicly with their own palms and shoes but the first Khalifah Abu Bakr preferred forty lashes. Unlike both, the second Khalifah Umar chose eighty lashes for the offenders.

The hadith mentioned the execution of hudud punishment conducted by beating using palm branches and shoes, implemented by the prophet. Unlikely the first Khalifah Abu Bakar implemented forty lashes for the offence of drinking alcohol. Later, after Umar became the second Khalifah, he implemented the punishment of eighty lashes for the same offence after consulting his people regarding the difference in the implementation before and they found the mildest punishment for the offence during that time is eighty stripes (Bukhari, 2002).

The hadith shows the various implementation method in dealing with offences of drinking alcohol. It is important to say that these different implementations by the Khulafa are because of no prescribed exact punishment stated by the Quran and Hadith.

2) Punishment varied based on the suitability of society

There is another hadith explaining this situation, narrated by Abu Daud and al-Nasa'ie: During the time of Umar, the people were more reluctant to abide by shariah law and take shariah law for granted, among them al-Muhajirin and Al-Ansar. Thus, Khalifah Umar consulted people to identify suitable punishment for that situation. The people agreed to punish the drunker with eighty lashes (Asqalani, 2013). The hadith also shows the suitability of the punishment according to society's mental state.



There is another hadith shows that the first Khalifah Abu Bakr followed the prophet as it was but Umar had been added to the punishment. As narrated by Anas b. Malik that a person who had drunk of wine was brought to Allah's Apostle PBUH. He gave him forty stripes with two lashes. Abu Bakr also did that, but when Umar (assumed the responsibilities) of the Caliphate, he consulted the people and Abd al-Rahman said: The mildest punishment (for drinking) is eighty (stripes) and 'Umar prescribed this punishment (Asqalani, 2013).

Unlike the first implementation of the prophet for drunker by beating them with palm branches and shoes, the second situation shows forty stripes and two lashes implemented by the prophet and Abu Bakr. In contrast, Umar chose to implement eighty lashes based on the consultation with his people due to their situation at that period. In addition, the third and fourth Khalifa, Uthman and Ali had implemented forty stripes to drunker.

As stated in hadith: Hudain b. al-Mundhir Abu Sasan reported: I saw that Walid was brought to Uthman b. 'Affan as he had prayed two rak'ahs of the dawn prayer, and then he said: I make an increase for you. And two men bore witness against him. One of them was Humran who said that he had drunk wine. The second one gave witness that he had seen him vomiting. Uthman said: He would not have vomited (wine) unless he had drunk it. He said: 'Ali, stand up and lash him. 'Ali said: Hasan, stand up and lash him. Thereupon Hasan said: Let him suffer the heat (of Caliphate) who has enjoyed its coolness. ('Ali felt annoyed at this remark) and he said: 'Abdullah b. Ja'far, stand up and flog him, and he began to flog him and 'Ali counted the stripes until these were forty. He (Hadrat 'Ali) said: Stop now, and then said: Allah's Apostle (may peace be upon him) gave forty stripes, and Abu Bakr also gave forty stripes, and Umar gave eighty stripes, and all these falls under the category of the Sunnah, but this one (forty stripes) is dearer to me (Bukhari, 2002).

This hadith portrays different punishments implemented by the Khalifah for drunker from the implementation made by the previous Khalifah. The hadith mentioned all the implementations made before whether made by the prophet himself or the first and second Khalifah also considered as sunnah. However, the third and fourth Khalifah preferred to punish the offender with forty stripes.

The above discussions illustrate that hudud is not as rigid as it seems, and not as harsh as it has been portrayed by certain parties. Meanwhile, hudud aims to preserve society from any harm and chaos, because the way to protect communities from crimes is to provide them with a methodology for managing the crime before it happens, during, and after it had occurred. However, these varieties of implementations during the time of Khulafa Al-Rashidun did not contrary to the hudud punishments mentioned in Quran and Hadith, but its varied with solid reasons and fundamentals. The Khulafa al-Rashidun



C) Comprehensive Clarifications on Hudud as Punishment in Islamic criminal law

As referred to, in the above-mentioned discussion, the punishment in Islamic criminal law is to prevent the commission of the crime from happening neither from the offender nor the future offender. Correction and rehabilitation are among the objective of punishment in Shariah law (Hussin, 2018).

Unlike other laws, Islamic criminal law applies the principle of exhaustive mercy before punishment. There were several situations had been illustrated regarding the usage of this principle. For instance, in a situation involving incidental manslaughter (al-Qatl bi ghair 'amad) and mistakenly damaging other's property committed by children, the punishment is for the guardian of the children where the children are not fulfilling the requirement of punishment compared to the same offences conducted by adult Muslim intentionally and fully aware about the Hudud offences (Brown, 2017). Even though the damage suffered by the victims in both situations is the same, the implementation of punishment varied from each other.

1) Islamic law as prevention and deterrence measures

Based on the discussions about the implementation of hudud during the Prophet's time and Khulafa al-Rashidun, maximizing mercy was an important consideration before conducting the punishment. Based on this, there are several requirements and conditions that must be fulfilled, and some of them are considered impossible such as four men witnesses in punishment of adultery (Brown, 2017). Rationally, it shows that the real objective of the hudud or Islamic criminal is not rigid to punish the offenders but to prevent society from recommitting the same offences.

For offenders, naturally, when the punishment had been executed, they may not commit another offence. For the public who witnessed the implementation, the fear of the punishment had been installed in their mind. Thus, it will lead to the prevention to commit future offences (Hussin, 2018).

The most important point to be highlighted is the hudud punishment directly related to disobedience to the revealed law by Allah, not just a violation of other's rights. It means that the effect of the punishment will leave a great impact on the offender and others. Thus, the positive effect of the punishment itself prevents Muslims to commit offences because of the awareness about the hudud offences and punishment, which resulted in the obedience of Allah.

2) Educating both society and the offenders

The implementation of hudud punishment done by the prophet and Khulafa al-Rashidun clearly portrayed the concept of *amar ma'ruf and nahi munkar* which means the promotion of virtue and the prevention of vice. It means the law itself is not confined to war against crime but promotes good deeds among people. This concept clearly helps in reducing crime rates in society.



Before implementation of hudud punishment, Islam urges to provide society a good environment, promote good action, normalize people with religious duty, and avoid sins and disobedience in religion (Yusof, 2018).

Through obedience, Islam explains in detail the composition of *amar ma'ruf and nahi munkar* such as prayer, fasting, zakat, the obligation to cover the aurah, the concept of marriage, the halal and haram guidelines, self-protecting, care about others (Yusof, 2018), which lead to the introduction of educating society with hudud offences. Thus, education about the hudud will lead to self-awareness to avoid the commission of the offences naturally.

3) Repentance

As mentioned before in this study, the offences of hudud are the violation of law prescribed by Allah including two aspects, God and human rights. Because of the violation related to the violation of Allah's rights, the punishment also must be prescribed by Allah Himself. It means whoever violated Allah's law, must be punished with Allah's punishment. If the punishment had been implemented, the offender must repent because of his willingness to violate his God's guidelines.

Throughout the implementation of hudud punishment by the prophet and Khulafa al-Rashidun, it can be derived that the objective of Islamic criminal law is to promote self-awareness to obey Allah and the religious guidelines, not to solely punish the offenders. The implementation of hudud is to prevent prohibited acts and to establish public order. Based on these reasons, the stages of implementation specifically in these modern times must provide an opportunity for the wrongdoer to repent and reform, to prevent misconception of Islamic criminal law, in specific, hudud (Rajanthiran, 2015).

Based on this reason, the prophet preferred and recommended the offender to repent before the commencement of the proceeding. This step was also followed by the Khulafa Al-Rashidun before the punishment. It shows the significance of repentance, which reform or rehabilitate the offender from disobedience because of their inner self and faith in Allah (Rofiah & Nahe'i, 2016).

4) Implementation of Hudud to protect the Maqasid Shariah

The protection of the five-fundamental basis in human life, for instance, the protection of religion, lineage, life, intellect, and property is one of the missions for the implementation of the hudud punishment. These five essentials are categorized as the five necessities in maqasid shariah, which protects the five essentials of human life. This maqasid has been recognized by all Islamic jurists where Muslims are bound to protect the maqasid shariah to avoid any offence to disturb the maqasid.

Nasimah Hussin in her paper agreed with al-Ghazali pertaining to any measure to protect the maqasid is call as *maslahah* and any measure to deny the protection is called *mafsadah*. Thus, the implementation of punishment in Islamic criminal law can call as a method to prevent the *mafsadah* and protect the *maslahah*. As the concept



of punishment in Islamic criminal law is to enjoin good and prevent evil it is for the protection of Maqasid syariah (Hussin, 2018).

CONCLUSION

Based on the discussion above about the implementation of the hudud punishment executed by the prophet and Khulafa' al Rashidun, it can be concluded that the objective behind the punishment is to protect society from any kind of related criminal offences. Thus, the long misunderstanding of global society about hudud punishment can be corrected. So that in order to implement the true hudud punishment together with true objectives, Muslims must follow the procedure and method used by the prophet and Khulafa' al Rashidun. If this were not exercised the implementation cannot be done as the intention of the syariah but will make the global society underestimate this true religion.

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