

THE EXECUTION OF HUDUD PUNISHMENTS
(WITH SPECIAL REFERENCE TO ZINA AND SARIQA)

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THE EXECUTION OF HUDUD PUNISHMENTS
(WITH SPECIAL REFERENCE TO ZINA AND SARIQA)

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By;

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ABSTRACT

This study is carried out with the purpose of identifying the actual execution of *ḥadd zina* and *sariqa* punishments according to the Islamic law.

This study is based on Library research where data are accumulated from relevant written sources.

Zina and *sariqa* are considered as *ḥudud* crimes as their consequences are very unhealthy to the public. The term '*zina*' applies both to adultery and fornication but the punishments prescribed for these two crimes are different, i.e. stoning for the former and flogging and banishment for the latter. Whilst the punishment for *sariqa* is amputation:

Islam tries to restrict the execution of *ḥudud* punishment by wiping out all the circumstances that would lead to a crime. A strict nature of proof required also make it difficult to execute the

punishment. The execution of *ḥadd zina* and *sariqa* must comply with the rules and conditions which are laid down in the Quran, Sunnah and also the practice of the Companions.

The implementation of *ḥudud* Laws has proven to be successful in the past, as well as in modern time.

TABLE OF CONTENTS

	Page
<u>CHAPTER 1</u>	
INTRODUCTION	
1.1 Background of problem.....	1
1.2 Statement of the problem.....	2
1.3 Purpose of Study.....	3
1.4 Theoretical Framework.....	4
1.5 Research Questions.....	4
1.6 Importance of Study.....	5
1.7 Scope of Study.....	6
1.8 Research Methods.....	6
 <u>CHAPTER 2</u>	
CONCEPT, PUNISHMENT AND ITS JUSTIFICATION	
2.1 Introduction.....	9
2.2 The Crime of <i>Zina</i>	10
2.3 The Punishment for <i>Zina</i>	11
2.4 Justification for <i>Hadd Zina</i>	16
2.5 The Crime of <i>Sariqa</i>	20
2.6 The Punishment for <i>Sariqa</i>	22

2.7	Justification For <i>Hadd Sariqa</i>	26
2.8	Conclusion.....	27

CHAPTER 3

THE EXECUTION OF PUNISHMENT

3.1	Introduction.....	32
3.2	Preliminary Steps Towards the Execution of Punishment.....	34
3.3	The Execution of <i>Hadd Zina</i> And <i>Sariqa</i>	40
3.4	Conclusion.....	66

CHAPTER 4

THE EFFECTIVENESS OF HUDUD PUNISHMENT

4.1	Introduction.....	74
4.2	<i>Hudud</i> Punishment Are God's Mercy.....	77
4.3	The Effectiveness of <i>Hudud</i> Punishments.....	80
4.4	Conclusion.....	89

CHAPTER 5

CONCLUSION

5.1	Summary.....	93
5.2	Recommendations.....	99

BIBLIOGRAPHY		103
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TRANSLITERATION

a	-	ا	t	-	ط
b	-	ب	z	-	ظ
t	-	ت	c	-	ع
th	-	ث	gh	-	غ
j	-	ج	f	-	ف
h	-	ح	q	-	ق
kh	-	خ	k	-	ك
d	-	د	l	-	ل
dh	-	ذ	m	-	م
r	-	ر	n	-	ن
z	-	ز	w	-	و
s	-	س	h	-	هـ
sy	-	سـ	y	-	يـ
s	-	ص	,	-	ء
d	-	ظ			

CHAPTER 1

CHAPTER 1

INTRODUCTION

1.1 BACKGROUND OF PROBLEM

No doubt that *Hudud* is part of the Law of God which must be obeyed and enforced. However, the question arises as to whether the punishment of *hudud* must be applied to present-day Muslim societies in their present circumstances?

Recently, Kelantan Government declared its decision to implement *Hudud* laws. As a result, it has brought about tension in Malaysia. This controversy arises within the society including Muslims who feel that *Hudud* punishments are incompatible with the demands of modern world.

It is not surprising, that such phenomena do occur since they have not studied the reality of the Islamic concept of crime and punishment comprehensively.

Thus, one thing that should be considered first is to clarify such confusions by explaining the philosophy, concept and nature of *Hudud* crimes.

It must be noted that also before enforcing *Hudud* punishment, the procedures that are to be followed, should be made clear and detail. Otherwise, the justice of Islamic law and its virtues are arguable.

1.2 STATEMENT OF THE PROBLEM

This study focuses on the actual execution of *hudud* punishments with special reference to the crime of *Zina* and *Sariqa*. It involves the way they are carried out according to the Islamic Criminal law and Islamic Criminal procedure and evidence Law. It also includes the procedures to be followed in the execution of punishment including the method of evidence required to establish both crimes.

1.3 PURPOSE OF STUDY

This study has the following objectives:

- 1.3.1 To explain the concept of *hudud* punishment and its justification with special reference to *hadd zina* and *sariqa*.
- 1.3.2 To identify the correct procedure to be followed in the execution of punishment for the crime of *zina* and *sariqa* according to the Islamic criminal law.
- 1.3.3 To show the positive effects of the implementation of *hudud* law in reducing crime problems and protecting a society from criminal disturbances.
- 1.3.4 To prove that Islamic penal system, especially *hudud* is the best system to be implemented and it is compatible with the demands of modern age.

1.3.5 To clarify any confusion that arises in the society regarding *hudud* punishments and simultaneously to counter criticisms of the opponents of Islam who reproach that the punishments for the crime of *zina* and *sariqa*, are very severe, inhumane and barbarous.

1.4 THEORETICAL FRAMEWORK

This research discusses the execution of *hadd zina* and *sariqa* according to the Islamic criminal law and Islamic criminal procedure and evidence law. Thus, the basis for the formulation of this research problem and approach is the Islamic Law, that is Divine Law which is stated originally in the Holy Book and the Tradition of the Prophet.

1.5 RESEARCH QUESTIONS

1.5.1 What does it mean by *Hudud* punishment?

- 1.5.2 What are the punishments prescribed by the Lawgiver for the crime of *zina* and *sariqa*?
- 1.5.3 Why is it considered justifiable to inflict such punishments on those who commit *zina* and *sariqa*?
- 1.5.4 How to execute *hadd* punishments on the culprits?
- 1.5.5 What are the modes of evidence required to establish the crime of *zina* and *sariqa*?
- 1.5.6 To what extent do *hadd* *zina* and *sariqa* play their roles to prevent the commission of crimes and thus harmonizing the country?

1.6 IMPORTANCE OF STUDY

This study would expose the virtue of Islamic law and its justice. It would also provide our government with a guideline as to the mean to implement *hudud*

punishment as an earlier step towards implementing the whole Islamic system of justice. Besides, it would clarify any confusion about hudud that arises in the society.

1.7 SCOPE OF STUDY

The study specifically concentrates on the procedures that are to be followed in the execution of punishment for the crime of *zina* and *sariqa*. It also touches briefly the nature of punishment for both crimes, their concepts and justifications. Such matters are discussed according to the Islamic criminal law and Islamic criminal procedure and evidence to law.

1.8 RESEARCH METHODS

1.8.1 Research Design

This research is designed to be a qualitative

type. In this design, the execution of punishment for the crime of *zina* and *sariqa* is studied through document analysis.

1.8.2 Data Collection

As this study is based on library research, data are obtained through the collection and compilation of written sources. The main sources are the Holy Quran and the *Ahadith* of the Prophet S.A.W. The other sources are the writings and the compendiums of famous Muslim jurists including that of the four Sunni Scholars and their eminent disciples. Data are also taken from the writings of the contemporary authors.

1.8.3 Data Analysis

Data are analysed by contemplating the views of Muslim scholars. This is done by studying their

writings and the way they interpret the laws from the original sources i.e. al-Quran and al-Ḥadith. Some verses of the Quran and the sayings of the Prophet which are related to this study (i.e. The execution of Ḥadd zina and sariqa) are chosen to support certain facts.

CHAPTER 2

CHAPTER 2

CONCEPT, PUNISHMENT AND ITS JUSTIFICATION

2.1 INTRODUCTION

Hudud is plural of *ḥadd* which literally means restraint or limit.¹ Hence *ḥadd* means a restrictive ordinance respecting lawful and unlawful matters. In Islamic criminal law, *ḥadd* signifies an unamendable punishment prescribed by Divine law which is considered as the right of Allah.² In the penal context, prescribed punishment means that both the quantity and the quality thereof is determined and that it does not admit of degree. And what is meant by its being prescribed as the right of Allah is that it is prescribed for the public interest (*maslaḥa*) and individuals as well as community cannot annul it,³ as Allah declares:

تلك حدود الله فلا تعتدوها

"These are the limits ordained by God, so do not transgress them."⁴

The term *ḥudud* applies both to offences and punishments. Crimes involving *ḥudud* are clearly stated in the Quran and Sunnah which are seven in all, namely; (1) *Sariqa* (theft), (2) *Hirāba* (armed robbery), (3) *Zina* (illicit sexual intercourse), (4) *Syurb al-Khamr* (Drinking intoxicant), (5) *Qadhf* (false accusation of *Zina*, (6) *Baghy* (rebellion), and (7) *Riddah* (apostasy).⁵

The following discussion will only be dealing two of these *hudud* offences i.e. *Zina* and *Sariqa*.

2.2 THE CRIME OF ZINA

In Islamic criminal law, the definition of *zina* varies depending upon different schools of law. The most comprehensive definition is given by the *Ḥanafis* as they define it as sexual intercourse between a man and a woman without legal right (*al-milk*) or without the semblance of legal right (*syubhat-al-milk*).⁶

In spite of their difference in defining the

crime of *zina*, all jurists unanimously agree that the main element in this offence is 'sexual intercourse' (*Al-wati*). Thus any sexual relationship which does not involve sexual intercourse may not be considered as *zina* and is not liable to *hadd zina*. Yet, it is still treated as crime (*ma^cṣiat*) and may be punished by *ta^czir* (discretionary punishment).⁷

The term *zina* includes both adultery and fornication but there are differences in the punishment for these two offences. Adultery is a sexual intercourse between a married person and another who is not his or her spouse (*zina muḥṣan*). While fornication is a sexual intercourse between a man and a woman who are not married to each other (*zani ghair muḥṣan*).⁸

2.3 THE PUNISHMENT FOR ZINA

The form of punishment for the crime of *zina* varies according to the material status of the culprit that is whether they are married (*muḥṣan*) or not

married (*ghair muḥṣan*). The punishments for the unmarried culprits who commit *zina* are prescribed by both al-Quran and al-Hadith such as follows:

الزانية والزانية فتلجأ كل واحد منهما مائة جلدة

"The woman and the man guilty of fornication, flog each of them with a hundred stripes."⁹

عن عبد الله بن عمرو بن العاص قال قال رسول الله
صلى الله عليه وسلم قال قال رسول الله صلى الله عليه وسلم
قال رسول الله صلى الله عليه وسلم قال رسول الله صلى الله عليه وسلم
قال رسول الله صلى الله عليه وسلم قال رسول الله صلى الله عليه وسلم

"Ubāda b. al-Samit reported that the Prophet s.a.w. said: Take from me, take from me. Allah has ordained a way for them. When an unmarried male commits fornication with a unmarried female (they should receive) one hundred lashes and banishment for one year."¹⁰

The above Āyah and Ḥadith clearly mention that in the case of unmarried persons there are two punishments, i.e., flogging with a hundred stripes and banishment for a period of one year.

While the punishments, prescribed for the married persons who commit *zina* are flogging and stoning to death (*rajm*). According to the majority of fuqaha' such punishments are prescribed by the Hadith of the Prophet s.a.w. as follows:

النسائي عن عبد الله بن عمر بن الخطاب قال قال رسول الله صلى الله عليه وآله وسلم

"When a married male commits adultery with a married female, they should receive one hundred lashes and be stoned to death."¹¹

It is ^{also} reported that a Quranic verse ^{which} was abrogated prescribed the punishment of stoning as follows :

المشيم والشيخة إذا زنيا فارجموهما البتة
كلام من الله والله عزيز حكيم

"When a married man and a married woman commit adultery, stone them both, an exemplary punishment from Allah, and Allah is powerful, wise."

Again, according to the majority, the text of this verse was abrogated but its verdict continued to be

applied. Anyway, due to this abrogation, few jurists deny the punishment of stoning in the case of married persons. The rest of the jurists who form an overwhelming majority are of the opinion that the order for stoning to death still exists. The question was raised before the Prophet when it was referred to him. He as the best interpreter of the Quran said that according to the Book, a married adulterer and a married adulteress shall be put to death. Who can be a greater authority in interpreting the Quran than the Prophet himself? This punishment was also enforced by Saidina Abu Bakr, ^cUmar and other Caliphs who come after them. Had the capital punishment in the case of married culprits been abrogated, these caliphs would not have followed the command of the Prophet.¹²

There is conflict amongst jurists as to the precise nature of punishment prescribed for zina. They, however, agree that the punishment prescribed for unmarried persons is flogging and for married persons is stoning to death. The differences is whether it is essential to combine flogging with banishment for

unmarried culprits which are recorded in the Ḥadith and flogging with stoning for married culprits.¹³

Regarding the banishment for unmarried culprits, Imam Abu Ḥanifa and his eminent disciples hold that it is not necessary. The Qaḍi, however, can impose the punishment of banishment of his own discretion, on the ground of public interest. Hence, this punishment according to them is not treated as *ḥadd* but as a *ta^czir*. The Zaidis hold the same view with that of Abu Ḥanifa concerning this matter.¹⁴

Imam al-Syafi^ci, Imam Aḥmad, Dawūd al-Zāhiri, Sufyan al-Thauri, and Ibn Laila, on the other hand, are of the opinion that the punishment of banishment is essential for this crime (fornication). They support their views by citing the Ḥadith of the Prophet which is reported by ^cUbadah b. al-Ṣamit as mentioned earlier. According to Imam Malik and Imam Auza^ci, the male should get one hundred stripes and banishment for a period of one year, while for the female only one hundred stripes are enough and there is no need of banishment.¹⁵