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**Criminalization in Islamic Penal Code:
A Study of Principles, Criminalization Methods, and Declining Variations**

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CRIMINALIZATION IN ISLAMIC PENAL CODE: A STUDY OF PRINCIPLES, CRIMINALIZATION METHODS, AND DECLINING VARIATIONS

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Abstract

This study explores the principles and methods used by the al-Qur'an in criminalizing. The method used in this research is a library method with primary data obtained from the al-Qur'an and secondary data obtained from the tafsir books, hadith ahkām, jinayat books, and literature on criminal law, criminology, victimology, and relevant previous research findings. The result found that the principles used by the al-Qur'an in criminalizing an act are the principles of benefit, prevention, material legality, and transcendental principles. Two methods of criminalization are used: (1) the texts of the al-Qur'an and the Hadith itself, which state that this action must be punished; (2) determined in one of three ways. (a) al-Qur'an and Hadith stipulate that this act is hazardous for society; (b) based on common sense considerations that the act could disturb public order; and (c) the act constitutes a preliminary offense for a more significant and more dangerous offense. Furthermore, it is found that the variant of the ta'zir offense includes offenses that are related to morality, sexual crimes, crimes against religion, crimes against the body, crimes against property, crimes related to family/descent, disturbing public order, environmental crime, fraud and forgery, and traffic offense.

Keywords: Criminalization; Islamic Penal Code; Variation of Offenses.



A. Introduction

Theoretically, Islamic penalties are an area of Islamic law that has received very little attention from Islamic legal scholars worldwide (Malekian, 2011), including Indonesian Islamic law scholars (Abbas & Murziqin, 2021). Islamic law scholars focus their attention more on studying the law of worship, *munākahāt*, and *mu'āmalāt* (Yusri 2023; Danial 2022). On the other hand, practically, it was found that very few Islamic countries or countries with a majority Muslim population implement Islamic criminal law as positive state law (Tahir Mahmood, 1972).

One of the areas of Islamic criminal law that is very important to be used as an object of study is legal material which is related to criminalization, namely the process that must be carried out in determining an act or act as an offense or a criminal act (Nurrahmi, 2022; Danial et al., 2022). It is said to be important because when an action is declared as an offense, the consequence is that the perpetrator of the act must receive a sanction or punishment (Razak et al., 2021). Islamic criminal law crimes include *hudūd*, *qisās*, and *ta'zīr* offenses ('Audah, 2005). The types of crimes mentioned in the first and second terms have explicit provisions as offenses even to the form, level, and limit of punishment in the *nas* (Bahnasi, 1986). However, the third type of offense (*ta'zīr isijtihadiyah*) (Danial, Mahamatayuding Samah, Munawar Rizki Jailani, 2022) because it needs a deep study so as not to judge the crowd (Ayoub, 2022). Thus, in Islamic criminal law, to determine what actions can be included as offenses, the perpetrators must be punished based on solid and convincing theological-normative bases or sources (Siregar, 2008). If not, it will result in punishing other people for an act which, according to Islamic law, is not worthy of punishment. Such actions risk severe violations of the human rights of others. For this reason, valid sources, principles, methods, and criteria are needed to criminalize an act as an offense.

In secular criminal law (Akande, 2020), an act is considered to be an offense if it contains at least 2 (two) of the following: namely criminogenic (harmful/ damaging) and victim's elements (giving birth to victims)



(Prasetyo, 2017). According to these criteria, any act that does not result in loss/ damage to the victim does not constitute an offense or crime. Following this concept, for example, *Zina* is not seen as an offense/ crime in secular criminal law (Eman Sulaeman, 2008). The reason is that no party is harmed, done on a consensual or voluntary basis. This is very different and even contradictory to Islamic criminal law. Suppose secular criminal law defines an act as an offense with the criteria of criminogenic (loss) and victim (victim) elements. How is criminalization viewed through the lens of Islamic criminal law? This academic concern moves the author to investigate criminalization in Islam, especially criminalization according to the al-Qur'an as the primary source of Islamic law.

The main problems to be answered in this research are: first, what does the Qur'an introduce the principles and methods in the criminalization process? Second, according to the Qur'an, what are the variations of actions that can be identified as offenses?

Variants of actions classified as offenses are limited to those listed in *ta'zir*. Meanwhile, *hūdūd* and *qisās* are not included in the scope of this research (Abbasi, 2020). The reason is that these two offense qualifications have been decided definitively by the *nas* as criminal acts and are threatened with a clear and definitive form, level, and limit of punishment. According to the Qur'an, the principles and methods of criminalization include the principles, criteria, and steps used to determine whether an act is an offense (Malekian, 2011).

This study aimed to find and explain the principles, criteria, and methods of criminalization introduced in the al-Qur'an and variants of actions that could be categorized as offenses. This research has both theoretical and practical significance. Theoretically, this research helps develop theories of principles and methods of criminalization and finds the diversity of *ta'zīr* offenses in Islamic criminal law that can be used in formulating various types of criminal acts that have emerged in the contemporary era. This research is beneficial in developing the criminal act of *ta'zīr*, both in compiling or formulating material law and formal law or procedural law. Besides, it equips experts and law enforcers to identify various types of offenses based on the principles and methods found in this study.



B. Method

All data was obtained through searches of document reviews and e-books/ literature (Ishaq, 2017). Because the criminalization process was limited to offenses other than *hūdūd* and *qisās*, the verses and other data were limited to the scope of the research, namely *ta'zīr*. All data obtained were processed through the following steps: (1) paragraph navigation; identification of paragraphs related to an offense or potential to be made an offense; (2) determine and classify themes/domains (domain analysis); (3) formulating the variant taxonomy of offenses (through taxonomic analysis); and (4) concludes. The approach used in this research is the philosophy of Islamic law.

C. Result and Discussion

1. Result

This section will discuss the research findings of the Qur'anic principles of criminalization. These principles are studied and discovered through navigation and identification of verses in the Al-Qur'an that contain and or have the potential to contain criminal elements (Danial, 2022). Identification is carried out through the domain analysis method, based on the classification of words used in the Al-Qur'an for something that contains or has the potential to prevent offenses. Based on the navigation results of all the verses that have been classified above, studied, and analyzed to find essential principles and methods introduced by the Qur'an in criminalizing an act or action. The offense that is the focus of this research is the *Ta'zīr* offense. *Ta'zīr* is a criminal offense or penalty that is instructive on sin in which the personality has not determined punishment and is not subject to criminal or *kifārāt had* (Abd 'Azīz 'Amīr, 1969; Abū Ḥasan 'Ālī al-Māwardī, 1989; Danial, 2015; Wahbah Zuhailī, 1989).

Based on this definition, the characteristics of the offense *ta'zīr* are: first, the type of offense and punishment to be imposed on the perpetrator has not been determined by the *syarā'*, and second, the determination of the types of offenses and penalties is left to the government or state authorities. Thus, this subsection shall put forward the principles and methods of criminalization of the Qur'an in the category of offense *ta'zīr*.

There are over 215 verses that successfully navigated to identify the principles, methods, and variations of *ta'zīr* offense contained therein (Ali Audah, 2003). Having identified all the verses-based domain analysis methods, 57 verses were eliminated from the study because it is based on searches abortion is deemed not relevant to the focus of the research that has been set, so that the remaining 158 verses. The remaining 158 verses are then identified and analyzed to determine the principles, methods, and variations of the offense contained therein. The results of navigation and identification found 10 (ten) domains. Based on these 158 remaining verses, it is then analyzed to find the principles and methods adopted by the Al-Qur'an in criminalizing, namely efforts to formulate an action into an offense or a criminal act of *ta'zīr*.

Based on the results of navigation identification and analysis conducted, it was found that the process of criminalizing the Qur'an adheres to the principles and specific methods described below.

Table 1. Navigation Verse Ta'zīr Offense

No.	Domain	Chapter and Verse	Total
1.	الفاحشة	2: 169, 268/ 3: 135/ 4: 15, 19, 22, 25/ 7: 28, 80/ 12: 24/ 16: 90/ 24: 19, 21/ 27: 54/ 29: 28, 45/ 33: 30/ 65: 1.	18
2.	الشر	2: 216/ 3: 180/ 5: 60/ 8: 22,55/ 12: 77/ 17: 11,83/ 22: 72/ 24: 11/25: 34/ 38: 55/ 70: 20/ 98: 6/ 99: 8/ 113: 2-5/ 114: 4.	20
3.	السيفه	2:102/ 3: 120, 193,195/ 4: 18,78,79,85/ 5: 12,65/ 7: 95,131,153,168/ 8: 29/ 10: 27/ 11: 10,77,78,114/ 12: 25/ 13: 6/ 16: 45/ 17: 38/ 27: 46,90/ 28: 84/ 30: 36/ 35: 43/ 39: 48,51/ 40: 9, 40,45/ 41: 34/ 42: 25,40,48/ 45: 21,33/ 46: 16/ 47: 2/ 48:5/ 64:9/ 65:5.	45
4.	المنكر	3: 104, 110, 114/ 5: 79/ 7: 157/ 9: 67,71, 112/ 16: 90/ 22: 41, 72/ 24: 21/ 29: 29, 45/ 31: 17.	15
5.	الفساد	2: 12,27,30,60,205,220,251/3: 63/ 5: 32,33,64/ 7: 74,86,103,127,142/ 8: 73/ 10: 40,81,91/ 11: 85, 116/ 13: 25/ 16: 88/ 21: 22/ 23: 71/ 26: 152,183/ 27: 14,48/ 28: 4,77,83/ 29: 30,36/ 30: 41/ 38: 28/ 89: 12.	38
6.	اذي	2: 196, 222, 262, 263, 264/ 3: 111, 186/ 4: 102.	8
7.	رجس	5: 90/ 6: 125, 145/7: 71/ 9: 95, 125/ 10: 100/ 22: 30/ 33: 33/	9
8.	البعي	77:33/16: 90.	2
9.	حرم	2: 173, 275/3: 93/ 4: 160/ 6: 119, 140, 143, 144, 150, 151/ 7: 32, 33/ 9: 29, 37/ 16: 115, 118/ 28:12.	17



No.	Domain	Chapter and Verse	Total
10.	الظلم	2:16,17,19,257/3:108/4:10,30,153,160/5:16,39/6:1, 39,59,63,82,97,122,131/11:117/13:6/14:1,5/16:41,6 1/20:111,112/21:87/22:25,39/24:40/25:4/26:227 27:14,63/31:13/33:43/35:20/39:6/40:17/42:41/57: 9/65:11/	43
Total			215

2. Discussion

This section will discuss the Forms of the Principle of Criminalization, Methods of Criminalization, and Variations of offense *Ta'zīr*.

a. Forms of the Principle of Criminalization.

1) Principle of Benefit

The principle of benefit here includes the use of the general and the benefit of the individual. Therefore, an action is categorized as an offense *ta'zīr* if the action has a disturbing or destructive impact on the use, both for individuals and the public. The scope of benefit to be disturbed can include the help of religion, soul, wealth, intellect, descent, solidarity (brotherhood), environment, and honor. In short, all actions that interfere with or threaten the mission of Islamic law (*maqāsid al-syarī'ah*) can be included as *ta'zīr* offenses, except for *hudūd* and *qisās-diyāt* offenses (Āsyūr, 2001; Al-Ayyūbī, 1998; Al-Jauziyyah, 2008; Al-Silmi, 2008; Jailani & Mohamad, 2019).

Based on the above principles, all the actions or deeds that may damage or disrupt the benefit and delivery of harm can be categorized as a crime/ offense. Even initially permissible actions can be considered offenses if the public interest so wishes. The types of activities that fall into this category cannot be determined (Al-Silmi, 2008) because the act is forbidden/ prohibited not because of the substance but because of its nature (Abd 'Azīz 'Amīr, 1969). Therefore, it can be concluded that the principle is essential in defining an act as *ta'zīr* offense is an element of disturbing/ damaging welfare/ public interest. Thus, negative/ problematic public interest is a keyword to describe an act as an offense *ta'zīr*.



2) Preventive Principles

Islamic law prioritizes the prevention of crime or crime over the desire to punish offenders. In other words, Islamic law prefers evacuation precautions curative and rehabilitative. Therefore, in determining an offense, it prioritizes the avoidance of the potential offender from a more significant crime by prohibiting minor offenses but becomes an introduction for bigger and bigger violations (Maswandi et al., 2022).

On this basis, the principle used in criminalizing an act as an offense is the principle of prevention (Danial, 2022). Therefore, the perpetrator will prevent and punish every little action that leads to or leads a person or legal entity to a greater crime or harm. This is done so that a more significant offense can be avoided from happening. For example, *khalwāt* and *ikhtilāth* are considered offenses because they are *muqaddimah*/ introductions to adultery or rape. To prevent adultery or rape, seclusion and *ikhtilāth* have been prevented from an early age. Likewise, various other offenses lead the offender to greater danger and offense. This preventive principle is referred to here (Al-Andalusi, 2005; Al-Burnu, 1983).

3) Principles of Material Legality

According to the Islamic concept, the unwritten law is a form of implementation of the vision and mission of Islamic law to realize the benefit and prevent damage to the human world and the hereafter through the care or protection of religion, life, property, intellect, lineage, and honors (Abdelnour, 2022). That is, an act can be assessed and determined as a criminal act of *ta'zīr* because it is based on considerations and judgments that the show is indeed dangerous and causes damage (*ḍarār and maḥsadah*) to human life according to the standards determined by Islamic law.

So, whether or not an action is dangerous is not measured according to the reality of society's views as in secular law but is calculated according to Islamic law. This is because people's views are feared to fluctuate due to the influence of various internal and external factors, so the truth is relative and has more potential to be subjective (Danial, 2015). It would be different



if the view regarding the dangers of an act were based on religious teachings, which in doctrine had an absolute level of truth so that the law resulting from a reference like this was relatively more accountable as a guide in the social changes that occurred.

Based on the above framework, the Islamic concept of legality in terms of the above material is expected to be accommodated as contributing material for improving the development efforts of Islamic criminal law in the context of national criminal law reform. Islamic law recognizes legal traditions and living in the community (Al-Silmi, 2008; As-Syātibī, 2004). However, this tradition was adopted and adapted in conformity with Islam's vision, mission, and fundamental values, which were then newly integrated into Islamic law. Islamic law accommodative attitude towards the traditions and laws that live in the community in line with the rules of *fiqh*, which reads.

العادة المحكمة

Meaning: Traditional habits can be established as law ('Abd al-'Aziz Muhammad 'Azzam, 2005; Al-Burnu, 1983).

The scholars define *Adāt* or *traditional habits* as a norm inherent in the liver due to repetition, so it is accepted as a rational reality that deserves the judgment of common sense. Individuals or groups can carry out these norms (Al-Burnu, 1983). Hence, forming a custom is through a continuous process of repeating an activity. Therefore, the essence of *adat* is repetition. Then, what's the difference with *'urf*? *'Urf* is a habit that many people do and arises from human creativity-imaginative in building cultural values ('Abd al-Karim Zaidan, 2001). At this point, *'urf* emphasizes the perpetrator (a habit that many people do).

Based on the explanation above, it can be concluded that *adat* and *'urf* have different meanings. *Adat* places more emphasis on work or repetition, while *'urf* refers to the perpetrator (Al-Firūzabadī, 1995). If seen substantively, there is no fundamental difference between the two. The process of forming *adat* through activities that are repeated continuously. It was when this constant repetition was ingrained in everyone's soul that

was when he entered the stadium *al-muta'arraf* (Wahbah Zuhaili, 2001). At this point, *adat* has changed into '*urf*'. The '*urf*' is referred to as includes '*urfqawli*' and '*fi'li*' at the same time.

At the macro level, four (4) traditional criteria ('*urf*') can be used as legal. First, it does not contradict any of al-Quran or Hadith. Second, apply or be generalized and constant. Third, the tradition was already formed simultaneously with the time of its implementation. Fourth, there are no words or actions that are contrary to the substantial values contained in the tradition (*madmūn al-'ādāt*) ('Abd al-Karim Zaidan, 2001; Abū Ishak as-Syātibī, 2005).

According to Abd Salam Arief, as quoted by Danial, in the context of positive criminal law that applies nationally, it should be formulated in a proposition that customary law or '*urf*' a community can be recognized as long as it is not contrary to the values of Pancasila, human rights and the principle of common law recognized international world (Danial, 2015). Thus, determining an act as a criminal has two dimensions: the *ilāhiyyah* and *insāniyyah* dimensions, the theological-sacred and the profane-anthropological dimensions. This is in the context of a religious Indonesian society. Therefore, the message of the divine will always be understood and relevant to the actual condition of the earth.

4) Transcendental Principles and Morals

In contrast to secular criminal law, which is heavily influenced by the philosophy of legal positivism, Islamic criminal law is based on realism-metaphysics (Hidayat & Darmadi, 2019). What are the consequences of the two philosophical foundations above? First, suppose the law is only based on the philosophy of positivism. A crime or violation is only a genuinely positive and purely legal act. Because the point is pure law. Meanwhile, the philosophy of Islamic criminal law, in addition to adhering to positivism, also does not neglect the basic philosophy of realism-metaphysics.

Therefore, the aim of law in this last philosophy is not merely empirical-anthropocentric but also transcendental-Theo-anthro-cosmosocentric. If the philosophy of positivism builds legal awareness, which has an



extrinsic character (external factor), then the realism-metaphysical philosophy builds legal awareness, which has an intrinsic nature (internal factor). Islamic criminal law aims to uphold morality (noble/ commendable character) in this context. Hence, the purpose of the law is not just for law but to create morals (Anggraeni, 2023).

Second, secular criminal law built on the philosophy of positivism-secularism will experience a tendency to determine that an action can be called an offense if it harms or there is a victim. Therefore, if an act does not have a victim, then the act is not categorized as an offense. What are the consequences? The consequences: (1) Any act for which there is no victim or harm to the victim is not considered a crime, even though the act is prohibited by religion. (2) The perpetrator is free from punishment because it is not categorized as a crime/ offense. On this basis, adultery is not seen as a criminal act/ offense because it is committed based on consensual (at the willingness of both parties), and no one is harmed. Therefore, he cannot be included as an offense punishable by punishment/ punishment.

In contrast to secular criminal law, Islamic criminal law adheres to the principles of transcendentalism and morality. Based on this principle, an action can be called an offense if (1) the act is prohibited by religion through the source of its teachings (al-Qur'an and hadith), even though the act does not have a victim; (2) an action can be called an offense if it can damage or destroy human morals or morals. With these 2 (two) categories, Islamic criminal law formulates an act as an offense *ta'zīr*. Through this perspective, adultery, apostasy, and the like can be included in the criminal act/ offense.

5) Principles of Forgiveness and Repentance

The following principle adhered to by Islamic criminal law is forgiveness and repentance. Forgiveness is horizontal about offenses relating to fellow humans. At the same time, repentance is vertical because it is related to violations of the rights of Allah SWT. The first is an offense containing both the perpetrator and the victim, while the second has only the perpetrator and no victim (Djalaluddin et al., 2023).

The principle of forgiveness and repentance proves that Islamic criminal law prioritizes efforts to build legal awareness and prevent legal violations. In this context, Islamic criminal law is positioned as an *ultimum remedium*, the last alternative in realizing benefits and preventing damage or harm. In short, Islamic criminal law is the final step to avoid crime after taking social, political, and economic measures, and so on.

The principle of forgiveness in Islamic criminal law can be summarized in the following verses (Q. 2:178-179, Q. 2:109, Q. 3: 159, Q. 42: 40, and Q. 24: 22). All of the above verses show that Islam highly upholds the nature of forgiving fellow humans. The first verse above speaks in the context of forgiveness in the case of murder. In this verse, Allah asserts that do not ever forgive, demand a ransom beyond the limit, and not and must pay *diyyat* to procrastinate without reason or reduce payments, referred to as *diyyāt* (al-Tabarī, 1994; Shihab, 2004).

Furthermore, in Q. 2: 109, Allah speaks in the context of forgiving Jews and Christians who reject the truth brought by *Rasulullah* not because they do not know but because the fact is natural for them. In this verse, Allah encourages His servants to do two things: (1) to forgive and (2) to enlarge the chest (to let). Forgiveness means not repaying their crimes and mistakes but erasing the scars on the heart. Expanding (letting) the chest means not remembering mistakes, even opening a new page (Shihab, 2004).

Forgiveness is contained in Q.3:159, Q. 42: 40, and Q.24: 22, are substantially the same as the previous verses. It's just that forgiveness in Q.24: 22 contains a more specific meaning (in a legal sense), namely leaving/ removing sanctions against the guilty (Al-Isfahānī, 2004; Al-Zabīdī, 2001). The absence of an order to apologize in the above verses does not mean the guilty person does not need to apologize. He is obliged to ask for it. However, the more important thing that the above verses emphasize is to guide people to have noble morals. Thus, the victim does not wait or let the guilty one come, bleed his face, and kneel to beg, even though the request is forgiveness. On the other hand, the command to apologize implies a compulsion to ask for it. Meanwhile, apologies should be made with sincerity and awareness of the mistakes made (Shihab, 2004).



Thus, it can be concluded that Islamic criminal law, in criminalizing an act as an offense, still upholds the principle of forgiveness because it prioritizes harmony, awareness, and nobility rather than the desire to punish.

Furthermore, the principle of repentance can be extracted from the words of Allah Almighty in Q. 5:34 and 39 and Q. 24: 4-5.

All of the verses above are some of the verses that talk about repentance. It turns out that Allah not only accepts the repentance of the perpetrators of the offense of *ta'zir* but also accepts the repentance of the perpetrators of the offense of *hudūd*.

In Q. 5:39, Allah forgives and loves anyone who repents and improves himself after committing the crime of stealing. Stealing is a *hudūd* offense in which the form and level of the law have been determined by Allah definitively in Q. 5:38. Repentance is meant before the perpetrator is caught. Q. 5:34 explains that Allah accepts the repentance of the perpetrators who fight against Allah SWT and His Messenger and do damage to the earth. Those offenses punishable by death, overtaking, amputation, and exile include murder, robbery, terror, intimidation, and the like. Finally, Q. 24: 4-5 describes repentance in the case of *qazaf* offenses. *Qazaf* is accusing someone of unlawful sexual intercourse with the *qubūl* or *dubūr* or denying the lineage of the father's side ('Audah, 2005; Zahrah, 2004).

The three verses above clearly state that Allah is the Most Forgiving, Most Merciful. Thus, Islamic criminal law in criminalizing an act must be based on the principle of repentance introduced in the al-Qur'an. Based on the above, it can be concluded that criminalizing the Qur'an is based on forgiveness and repentance. These two principles are not recognized in the secular criminal law tradition.

b. Methods of Criminalization

Based on the results of the navigation and identification of the verses above, the al-Qur'an adopts 2 (two) methods to determine whether an act is an offense (*Jarimah*). First, the passages of the al-Qur'an and the hadiths themselves state that these actions must be punished. Second, it is established in one of three ways. (1) al-Qur'an and hadith stipulate that this

act is hazardous for society; (2) human beings, based on common sense considerations, conclude that for public order, such acts need to be regulated and violations against them are punishable; and (3) said act constitutes a preliminary act and if it is continued it will become a hudud category offense (Aceh's *Qanūn* No. 14 year 2014, Islamic Criminal Law, 2014) (Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat, 2014; Rancangan Qanun Aceh Nomor 14 Tahun 2014 Tentang Hukum Jinayat, 2014; Nurdin, 2018; Qotadah & Achmad, 2020).

Regarding the text of the Qur'an itself, which states that this action must be punished, it can be seen in Q. 5:33 & 60, Q. 3:135 and 180, and Q. 12:77. These above verses are some of the poems that contain prohibitions from doing something and are accompanied by the threat of punishment from Allah SWT. Although the form and extent of the sentence are not explicitly stated, the existence of the prohibition of the Qur'an and the presence of threats are sufficient to fulfill the elements of criminalization described in point 1 (one) above.

Furthermore, the method of criminalizing an act as *ta'zīr* can also be determined through one of 3 (three) methods. First, the al-Qur'an and hadith stipulate that this act is hazardous for society; second, based on common sense considerations, human beings conclude that such actions need to be regulated for public order, and offenses against them are punishable. Third, the act is a preliminary act, and if it is continued, it will become a hudud category offense.

The method in which the Qur'an determines that the act is harmful to society can be caught from the severity of the threat of punishment against the perpetrator. Meanwhile, actions that can be categorized as offenses based on considerations of human common sense that can disturb public order are determined based on the benefit principle. These acts can cover many things, from traffic violations to riots.

On the other hand, determining an act as an offense *ta'zīr* is carried out considering that the show is a precursor or introduction to committing a more serious offense. On this basis, *khalwat* and *ikhtilath* can be included as



an offense *ta'zīr* because both are precursors to the *hudūd* crime, likewise with various acts of pornography and pornographic acts. This sign can be understood from the word of God Almighty in Q. 17: 32 & 34.

The two verses above contain the prohibition of approaching adultery (Q. 17: 32) and approaching the property of the orphan with evil intentions and means (Q. 17:34). The word *ولا تقربوا* implies that there is a prohibition against taking any action that could lead the perpetrator to a more severe violation.

Based on the explanation above, it can be concluded that 2 (two) methods introduce the Al-Qur'an in determining an act as an offense, especially *ta'zīr* offense. The two methods are direct and indirect. First, the direct method means the verse of the Qur'an itself, which states that the action must be punished. Second, the indirect method means that action as an offense or *ta'zīr* is determined in one of three ways. (1) Al-Qur'an and hadith stipulate that this act is hazardous for society; (2) human beings, based on common sense considerations, conclude that for public order, such acts need to be regulated and violations against them are punishable; and (3) act constitutes a preliminary act and if it is continued, it will become a hudud category offense.

c. Variations offense *Ta'zīr*

Based on the results of research on 158 verses related to *ta'zīr* category offenses, it can be found that 10 (ten) offense domains can be categorized as *ta'zīr* offenses, namely *al-Fahsyā'*, *al-Munkar*, *al-Syarr*, *al-Ḍulm*, *al-Sayyi'āt*, *al-Azā*, *al-Baghy*, *al-Rijsun*, *al-Fasād*, and *harrama*. The ten domains can be grouped into 2 (two) parts: the macro domain and the microdomain. The macro domain groups are *al-harrama*, *al-Ḍulmu*, *al-Fasad*, and *al-Syarr*. At the same time, the microdomains are *al-Fahsyā'*, *al-Munkar*, *al-Sayyi'āt*, *al-Azā*, *al-Baghy*, and *Rijsun* (Baderin, 2021).

First, *الفاحشة* are actions that are considered very bad by common sense, religion, culture, and human instincts. Including being miserly, you were mentioning the kindness given, theft, robbery, murder, corruption,

stealing, lesbian, homosexual, visiting immoral places, marrying the wife of the father/ grandfather/ husband/ mother/ grandmother, not dressed during the pilgrimage, promoting abominations, defaming names well, polytheism, all words, and wrong actions. Al-Qurtubi says these words relate to sexual crimes, except in Q. 2: 268.

Second, الشر is everything that humans think is bad. (1) stingy [Q. 3: 180], (2) tarnishing other religions [Q. 5:60], (3) not conveying information, (4) deafening oneself, (5) not using reason [Q. 8:22], (6) *zalim* [Q. 8:55], (7) slander/ lies [Q. 12:77], (8) distress [Q. 17:83], (9) attacking the readers of the al-Quran/ hindering goodness [Q. 22:72], (10) accusing others without evidence [Q. 24:11], (11) insulting the Koran, (12) insulting *Rasulullah SAW*, (13) denying the treatise [Q. 25:34], (14) rebelliousness [Q. 38:55], (15) prioritizing oneself (egoism) [Q. 70:20], (16) infidels and polytheists [Q. 98: 6], (17) the slightest crime [Q. 99: 8], (18) evil at night, (19) everything that has a/ potentially harmful effect, (20) bringing false news to give birth to enmity, (21) magic, (22) jealousy [Q. 113: 2-5], sickness (disease, fire, drowning), (23) which leads to sickness (*kufur* and disobedience) [Q. 114: 4].

Third, السينة are (1) Magic (Q. 2: 102); (2) disaster/ ugliness (Q. 3: 120/ 4: 78-79, 85/7: 168/11: 10, 114/28: 84/30: 36/42: 25 / 45:33); (3) error-2 (Q. 3: 193/8: 29/46: 16/48: 5/64: 9/65: 5); (4) commits evil continually (Q. 4:18); (5) tribulation (Q. 7: 95, 131/11: 77 / 42:48); (6) crime (Q. 7: 153/35: 43/40: 40/41: 34/42: 40/45: 21); (7) doing vices over and over (Q. 10:27); (8) homosexual (Q. 11:78), (9) sexual immorality (Q. 12:25); (10) ask for immediate torture (13: 6/27: 46); (11) hinder/ hinder the spread of God's teachings (Q. 16:45); (12) walking the earth with pride (Q. 17:38); (13) shirk (Q. 27:90); (14) things that have a bad effect (Q. 39: 48,51); (15) heart-shaking events (Q. 40: 9); (16) the horror of deceit/ the result of deceit (Q. 40: 45); (17) ridicule (Q. 45:33); (18) sin-2 (Q. 47: 2).

Fourth, المنكر is everything that is considered insufficient by society and is prohibited by religion and customs. (1) Who are considered harmful and denied by common sense (Q. 3: 104, 110,114); (2) contrary to public reason.



Fifth, الفساد are all actions or actions that cause damage or threaten to destroy (Q. 2: 205, 220/8: 73/21: 22/38: 28). The threat of devastating impact can affect religion, life, property, descent, honor, and reason. Thus, the actions of this category can have the dimensions of intellectual, spiritual, social, political, economic, health, and so on.

Sixth, الرجس are All actions that are bad and disgusting, such as drinking wine, gambling, raffling fate, and offering to idols (Q. 5: 90/6: 145).

Seventh, الاذي are everything reprehensible, in the form of words, deeds, and mental attitudes (2: 262-264/3: 186/4: 102). This word refers more to things with a psychological dimension.

Eighth, البغي are all actions that oppose or create resistance to the truth—usually used for political cases, such as rebellions, subversive movements, and the like.

Ninth, حرم is any action or deed that everyone must shun because of the harmful effects it causes in the short, medium, and long term. The transgression of it makes the offender a sinner, and away from him is rewarded.

Tenth, الظلم are All attitudes, actions, and actions that are done out of place. (1) Darkness (Q. 2: 16/5: 16); (2) persecuted (Q. 3: 108/4: 30,153); (3) eating the property of the orphaned wrongly (Q. 4:10); (4) stealing (Q. 5:39); (5) knowing the truth but reluctant to explain (Q. 6:39); (7) conditions that lead to the unclear correct direction (Q. 6:63).

Based on the explanation above, the *ta'zīr* offense includes false witnesses, lying in court, hurting animals, violating the privacy rights of others, disturbing state security, bribery/ corruption, transgressions by state officials, neglect of responsibility by state/ government officials, insulting state officials, hiding fugitives, releasing and assisting in releasing prisoners, falsifying state documents, damaging the environment, falsifying signatures, stamps, economic crimes, and so on (Abd 'Azīz 'Amīr, 1969).

If further derivated, each type of action above can give birth to more detailed or detailed offenses. Political crimes or crimes against the state (*al-Baghy*), for example, can include armed rebellion, insulting state officials, can be derived from insulting offenses against the president and vice president, Head of the House of Representatives, Chairman of the People's

Consultative Assembly, Chair of the Constitutional Court, Chair of the Judicial Commission, Chair of the Corruption Eradication Commission, Chair of the Supreme Court, Chair of the Attorney General's Office, Chief Indonesian National Police, Commander of the Indonesian National Army, and so on. The offense that damages the environment can be derived into a variety of crimes, which include illegal logging, forest burning, waste disposal, and various other actions that have a destructive impact on the environment.

Based on the explanation above, the macro *ta'zīr* variants can be categorized as follows: (1) offenses relating to morality, (2) offenses relating to sexual crimes, (3) offenses relating to crimes against religion, (4) offenses relating to crimes against the body, (5) offenses relating to crimes against property, (6) offenses related to family/ descent, (7) offenses related to public order, (8) offenses relating to environmental crimes, (9) fraud and forgery charges, and (10) offenses for violations traffic. Each variant of this offense can be derived into hundreds of offenses.

D. Conclusion

According to the research findings, the principles used by the al-Qur'an in criminalizing acts as an offense are (1) the principle of benefit, (2) the principle of preventive, (3) the principle of material legality, and (4) the principle of transcendental and morality. At the same time, the methods used are the text of the Al-Qur'an and the hadith itself, which states that this action must be punished. Second, it is established in one of three ways. (1) al-Qur'an and hadith stipulate that this act is hazardous for society; (2) human beings, based on common sense considerations, conclude that for public order, such acts need to be regulated and violations against them are punishable; and (3) said act constitutes a preliminary act and if it is continued, it will become a hudud category offense.

Second, based on the principles and methods adopted by the Al-Qur'an in determining an act as an offense, various variants of *ta'zīr* offense are found in Islamic criminal law, namely (1) offenses relating to morality (2) offenses relating to sexual crimes, (3) offenses relating to crimes against



religion, (4) offenses relating to crimes against the body, (5) offenses relating to crimes against property, (6) offenses related to family/ descent, (7) offenses related to public order, (8) offenses relating to environmental crimes, (9) fraud and forgery charges, and (10) offenses for violations traffic. Each variant of this offense can be derived into hundreds of offenses.

From the research findings above, several things become recommendations namely, *First*, this study has limitations in terms of the research model and focus of the study. Therefore, it is recommended that further researchers conduct prescriptive research on Islamic criminal law, particularly regarding the issue of criminalization. Further research will be beneficial for theoretical as well as practical development if it is carried out from a hadith perspective because the hadith describes in more detail the various types of offenses that are very contributive in formulating various forms of *ta'zīr* violations in Islamic criminal law in the future and the context of contemporary crimes. If this research makes the principles and methods of criminalization the essence of the study, then further research will emphasize the development of variations of offenses in the contemporary context.

Second, because this research is a prescriptive Islamic law research that explains how criminalization, according to the al-Qur'an (how it should be), is normative, further researchers are recommended to conduct descriptive Islamic criminal law research. This latest research model examines the reality of the practice of Islamic criminal law in Muslim countries, especially the issue of criminalization. Besides, Islamic criminal law researchers are strongly advised to conduct formal Islamic criminal law research (*ahkām al-Murāfa'ah*). The balance between material and traditional legal analysis also determines the legal growth of Islamic law in general and Islamic criminal law in particular.

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