



PROOF OF ADULTERY: AN ISLAMIC LEGAL PERSPECTIVE ON THE DILEMMA BETWEEN NORMS AND HUMAN DIGNITY

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Abstract

Allegations of brutality in the Islamic penal code significantly damage the reputation of Islam globally. The imposition of one hundred lashes as a punishment for individuals who engage in adultery can only occur if there is legal evidence to substantiate the act of adultery. The purpose of this article is to demonstrate the extent to which Islamic criminal law upholds human dignity, particularly in some cases involving individuals accused of adultery. This study adopts a normative perspective, employing an Islamic legal framework. The research collected primary and secondary data from various sources, including *fiqh's* books, hadith's books, books on human rights and dignity, journals, and other articles. The *Bayani* method will be employed to analyze all data. Research findings indicate that adultery can be proven through three methods: the testimony of four witnesses, the confession of the perpetrator, and evidence of pregnancy. Nevertheless, in practice, achieving these three forms of evidence can be exceedingly challenging, as the fundamental tenet of Islamic penal code is to refrain from imposing penalties in cases that remain doubtful (*shubhat*). Islam places great significance on human rights, human dignity, and human worth.

Keywords: Human dignity, Islamic penal code, Penalties, Proving adultery

Abstrak

Tuduhan kejam pada hukum pidana Islam secara signifikan merusak reputasi Islam secara global. Penjatuhan hukuman cambuk sebanyak seratus kali bagi pelaku zina hanya dapat terjadi apabila terdapat bukti-bukti sah yang membenarkan perbuatan zina tersebut. Artikel ini ditujukan untuk menunjukkan sejauh mana hukum pidana Islam menjunjung tinggi barkat dan martabat manusia, khususnya dalam kasus-kasus yang melibatkan individu yang dituduh melakukan perzinahan. Penelitian ini berbentuk normatif, dengan menggunakan kerangka hukum Islam. Penelitian ini mengumpulkan data primer dan sekunder dari berbagai sumber antara lain buku-buku fiqh, kitab-kitab hadis, buku hak asasi dan martabat manusia, jurnal, dan artikel. Metode bayani akan digunakan untuk menganalisis seluruh data. Temuan penelitian menunjukkan bahwa perzinahan dapat dibuktikan melalui tiga cara: keterangan empat orang saksi, pengakuan pelaku, dan bukti kehamilan. Namun demikian, dalam praktiknya, mewujudkan ketiga bentuk bukti ini bisa jadi sangat menantang dan sulit, karena prinsip dasar pidana Islam adalah menghindari untuk menjatuhkan hukuman dalam kasus-kasus yang masih diragukan (*shubhat*). Islam sangat mementingkan hak asasi manusia, barkat dan martabat manusia.

Kata Kunci: Martabat Manusia, Hukum Pidana Islam, Hukuman, Pembuktian zina

Background

The depiction of Islamic criminal law in mainstream media or some Orientalist paradigms frequently presents it as brutal, sadistic, and lacking in compassion. The basis of these criminal legal penalties is derived from Islamic law, which primarily employs physical punishments¹ such as the death penalty (*qishash*), amputation of hands,

and stoning to death (*rajm*). All of these legal penalties are considered inhumane because they are linked to a society that is backward and uncivilized.² This viewpoint arises from their commitment to universalism. Human rights are universally considered applicable in all aspects of life within the realm of international

¹ Nairazi AZ, 'Relevansi Jarimah Hudud Dan Ham Internasional Dalam Implementasi Di Era Modern (Sebuah Kajian Fiqh Kontemporer)', *Legalite. Jurnal Perundang Undangan Dan Hukum Pidana Islam*, I.02, 1-20 <<https://journal.iainlangsa.ac.id/index.php/legalite/article/view/261>>.

² Rokhmadi, *Kritik Konstruksi Hukum Pidana Islam (Pemikiran 'Abd Al-Qadir 'Audah)*, ed. Nazar Nurdin, I (Semarang: eLSA Press, 2019): 19-20.



humanitarianism. These rights are universally applicable to all individuals, regardless of caste, religion, race, gender, and ethnicity. These rights are inherent and inviolable, acting as protections against oppression carried out by others. Islamic criminal law is based on the Quran and hadith, which are the primary legal sources. The ulama construed these two texts as being converted into legally binding outcomes. As a result, these conflicting viewpoints will unavoidably cause chaos and disagreement, thus impeding the possibility of achieving harmony.³

Historical research indicates that the diverse corporal punishment did not solely originate from Islam. In ancient times, the Romans and other civilizations utilized capital punishment to punish individuals who engaged in a range of offenses, including murder, treason, and sorcery.⁴ Similarly, the practice of amputating hands and floggings was enforced during the era of the Prophet Moses.⁵ According to the 3211th hadith of *Sahih Muslim*, the punishment of stoning is explicitly mentioned in the Torah.⁶ These facts indicate that the perception of cruelty and inhumanity arises due to an incomplete or partial understanding of Islamic criminal law. Hence, there is a requirement for an impartial and thorough examination of Islamic law.⁷

Considering the Islamic penal code within the broader framework of Islamic law is important. Upon initial examination, it seems that decisions in Islamic criminal law show a disregard for

human dignity, prescribing the death penalty for intentional killing, hand amputation for theft, and caning for adulterers.⁸ Every form of lawful punishment seems to neglect the concept of dignity, which is an inherent and essential entitlement for all individuals.⁹ However, it is crucial to consider the time required for an accusation or allegation to progress to the verdict phase. Furthermore, each judge's decision must undergo a judicial procedure in which all aspects and requirements of the offense are satisfied. The adultery case in Islamic law also has a similar procedure. For a guilty verdict and the application of legal penalties for adultery to occur, the principles (*arkan*) must be satisfied, along with the presence of valid evidence. If the action is performed in response to a threat, then the legal penalties for adultery cannot be enforced.

According to historical records, adulterous behavior, viewed as a social issue, has been present since ancient times and is anticipated to persist in the future. This behavior can result from promiscuity among individuals of both genders and may also involve participation in prostitution. Looking at the terrible condition of the classical era, women were objectified as sexual commodities, serving as a source of entertainment and satisfying men's sexual desires. Similarly, in the present day, incidents of adultery have not diminished and, in fact, are more prevalent. In Jakarta in 2021, a husband reported his wife for adultery. Based on her confession, the wife was

³ Alfitri, 'Can the Requirements of Shariah Law Regarding Criminal Punishments Be Interpreted in a Way That Is Compatible with the ICCPR and CAT?', *Indonesian Journal of International Law*, Vol. 7.No. 1 (2009), 103–39 <<https://scholarhub.ui.ac.id/ijil/vol7/iss1/6/>>.

⁴ Utomo Priyambodo, 'Lima Metode Eksekusi Mati Yang Paling Mengerikan Di Era Romawi', *Nationalgeographic*, 2022 <<https://nationalgeographic.grid.id/read/133259100/lima-metode-eksekusi-mati-yang-paling-mengerikan-di-era-romawi?page=all>>.

⁵ Nairazi AZ.

⁶ Muhammad Asgar Muzakki, "Hadits-Hadits Rajam Dalam Shahihain," *Jurnal Asy-Syukriyyah*, no. Vol. 20 No. 2 (2019): 14–29, <https://jurnal.asy-syukriyyah.ac.id/index.php/Asy-Syukriyyah/article/view/79/84>.

⁷ Taufik Hidayat, "Penerapan Hukum Pidana Islam Pada Sistem Hukum Nasional Perspektif Hak Asasi Manusia," *Lex Administratum*, no. Vol 3, No 4 (2015):, <http://ejournal.unsrat.ac.id/index.php/administratum/article/view/8678/8242>; Topo Santoso, *Membumikan Hukum Pidana Islam: Penegakan Syariat Dalam Wacana Dan Agenda* (Gema Insani, 2003): 17.

⁸ Asih Puspo Sari, "Pemberian Grasi Dan Maaf Dalam Bingkai Kajian Teoritik Tindak Pidana Pembunuhan (Studi Komparatif Hukum Positif Dan Hukum Islam)," *Al-Abkam Jurnal Ilmu Syariah* TM *ab Dan Hukum*, no. Vol 5, No 1 (2020): 73–90, <http://ejournal.iainsurakarta.ac.id/index.php/al-ahkam/article/view/2474/961>.

⁹ Hamid Andishan, 'Honour or Dignity? An Oversimplification in Islamic Human Rights', *Human Rights Review*, 20.4 (2019), 461–75.



charged under Article 284 of the Criminal Code (KUHP).¹⁰ In the same year, a civil servant (ASN) was sentenced to two months in prison after being legally proven to have committed adultery with someone other than her spouse.¹¹ This incident recalls the adultery case that occurred in East Aceh in 2018, where a woman received a punishment of one hundred lashes after confessing to committing adultery.¹² Furthermore, the high number of child marriages and requests for dispensation from marriage for minors in Indonesia between 2016 and 2021 can be attributed to various factors. One of these reasons is the girl being pregnant or having engaged in sexual activity.¹³

The previously mentioned phenomena provide a limited glimpse into the true nature of reality. The issue of adultery can be described as an iceberg phenomenon. Officially obtained data significantly diverges from the actual state of affairs in society. This phenomenon can be attributed to various factors, such as the unwillingness to acknowledge or disclose the occurrence of adultery due to its shameful nature, leading to its concealment, particularly in cases involving pregnancy.¹⁴ An additional crucial aspect is the arduousness of substantiating adultery in a legal context, owing to the challenge of presenting concrete evidence.¹⁵ In Indonesia, the process of proving adultery is challenging, similar to the provisions of positive law. As per the *Kitab Undang-*

undang Hukum Acara Pidana (KUHP) no. 8 of 1981 Article 184 paragraph 1, five types of evidence are considered valid: witness statements, expert statements, letters, instructions, and defendant statements. Adultery cases can be substantiated by two types of evidence: witness testimonies and directives. Witness testimony must be grounded in firsthand observation, and it should involve multiple individuals rather than relying on a single person (as per Article 185). Consequently, a minimum of two witnesses is required to provide testimony.¹⁶ Meanwhile, indicative evidence relies on the judge's evaluation of the evidential strength. The judge's discernment and precision, grounded in moral conscience, are crucial in evaluating the evidence of guidance (Article 188). Therefore, a judge can impose new criminal legal penalties if at least two valid and credible pieces of evidence are satisfied.

Aside from that, Muslim nations have been heavily impacted by the promiscuous nature of Western culture. The indulgent way of life that captivates adolescents results in extramarital sexual relations (adultery). According to a survey conducted by *Polis Diraja Malaysia* (PDRM), it was discovered that 90% of teenagers below the age of 16 acknowledged their addiction to engaging in sexual relations (adultery). Despite their awareness of the moral and sinful nature of their actions, they willingly engage in the act of selling themselves to

¹⁰ Okto Rizki Alpino, 'Kasus Perzinaan Di Condet, Istri Pelapor Ditetapkan Tersangka', *Metro.Sindonews.Com*, 2021 <<https://metro.sindonews.com/read/608103/170/kasus-perzinaan-di-condet-istri-pelapor-ditetapkan-tersangka-1637676716>>.

¹¹ R Ratna Purnama, 'Berzina Dengan Pria Selingkuhan, ASN Depok Divonis 2 Bulan Penjara', *Metro.Sindonews.Com*, 2022 <<https://metro.sindonews.com/read/661731/170/berzina-dengan-pria-selingkuhan-asn-depok-divonis-2-bulan-penjara-1642604512>>.

¹² Farid Assifa, 'Kasus Zina Di Aceh, Ini Alasan Perempuan Dicambuk 100 Kali Dan Pria Hanya 15 Kali', *Kompas.Com*, 2022 <<https://www.kompas.com/wiken/read/2022/01/15/071145381/kasus-zina-di-aceh-ini-alasan-perempuan-dicambuk-100-kali-dan-pria-hanya?page=all>>.

¹³ Vika Azkiya Dihni, "Selama 2021, Angka Dispensasi Pernikahan Anak Menurun 7%,"

Databoks.Katadata.Co.Id, 2022, <<https://databoks.katadata.co.id/datapublish/2022/03/08/selama-2021-angka-dispensasi-pernikahan-anak-menurun-7>>; Rosmha Widiyani, 'Hindari Zina, 1 Dari 4 Anak Perempuan Menikah Sebelum Umur 18 Tahun', *Health.Detik.Com*, 2018 <<https://health.detik.com/berita-detikhealth/d-4229956/hindari-zina-1-dari-4-anak-perempuan-menikah-sebelum-umur-18-tahun>>.

¹⁴ Khoirul Abror, 'Pernikahan Wanita Hamil Akibat Zina (Studi Komparatif Menurut Hukum Islam Dan UU No. 1 Tahun 1974)', *Asas: Jurnal Hukum Dan Ekonomi Islam*, 10.01 (2018), 370667.

¹⁵ Dayu Putra, 'Pembuktian Tindak Pidana Zina Di Dalam Pasal 284 KUHP Berdasarkan Bukti Petunjuk', 2020 <<https://dspace.uui.ac.id/123456789/28277>>.

¹⁶ Mirza Fahlevy, 'Alat Bukti Dalam Perkara Pidana Menurut Kitab Undang-Undang Hukum Acara Pidana (KUHP)', *Pengadilan Negeri Jantbo* <<https://www.pn-jantbo.go.id/>> [accessed 11 December 2023].



attain sexual gratification.¹⁷ Consequently, teenagers are experiencing a high prevalence of abortions and the transmission of sexually transmitted infections, such as syphilis and HIV/AIDS. According to research conducted in Malaysia in 2000, there were a total of 400 women who were found to be infected with HIV. The number experienced an increase, reaching a total of 875 from 2006 to 2009.¹⁸

In Indonesia, a similar phenomenon occurs, with approximately 2.3 million abortions taking place annually. Of these, 30% are attributed to teenagers engaging in promiscuous behavior and committing adultery. To conform to current trends and the lifestyle of the social elite, numerous adolescents engage in detrimental activities, such as adopting the role of sugar babies. Typically, they fulfill the desires of a wealthy benefactor through sexual relations (adultery) to satisfy the demands of a lavish lifestyle.¹⁹ If this situation persists, the perception of adultery could potentially transform. Initially regarded as a societal ailment, adultery can evolve into a necessity and entitlement for every individual. If this occurs, the authority of customary and religious norms to administer penalties for adulterers and impart knowledge to others will be nullified.

This condition contradicts Islamic teachings as stated in the Quran. Adultery is primarily punished due to its malicious nature, as it infringes upon individual rights and contravenes societal principles and norms, disrupting the structure of human social life.²⁰ Legal scholars (*fuqaha'*) have established various principles to substantiate the punishment for adultery. The fundamental tenets of Islamic

criminal law are founded upon the principles of rejection and abolition, aiming to safeguard individuals from abhorrent acts that may undermine their dignity. If these conditions are not met, the original law becomes invalid and is replaced by *ta'zir*, which involves providing a dowry for questionable sexual intercourse. Essentially, any unlawful sexual intercourse will inevitably be accompanied by legal penalties.²¹

This article will conduct a thorough analysis of the issue of adultery, with a particular focus on the challenges that arise when providing evidence. Adultery must be proven for the perpetrator to face legal consequences. This sanction can serve as a deterrent not only to offenders but also to others, potentially serving as a didactic example. However, it is crucial to uphold human dignity, particularly for individuals who are suspected of engaging in adultery. Accusing someone of a crime can be seen as an indirect assault on the accused person's peace, particularly their self-esteem, and honor.

Furthermore, the allegation of adultery constitutes a moral offense.²² Hence, unless there is compelling evidence to support the accusation of adultery, it is imperative to prioritize and safeguard the accused individual's dignity, which is their fundamental human right. This condition of fundamental human rights aligns with the principle of presumption of innocence as stipulated in Article 18 of Law No. 39 of 1999 regarding Human Rights.²³

In addition to this, the issue of adultery has been extensively examined and studied from multiple perspectives. Several articles analyze the legal statutes regarding adultery, which are

¹⁷ Aditya Jaya Iswara, 'Survei PDRM: 9 Dari 10 Gadis Remaja Di Malaysia Kecanduan Seks' <https://www.kompas.com/global/read/2021/09/28/080959770/S> <<https://www.kompas.com/>> [accessed 12 December 2023].

¹⁸ Nazerah Mustafa and others, 'Abstinence Education and Sexual Transmitted Disease Regarding Sexuality Health and Reproductive in Malaysia', *MENARA: Journal of Islamic and Contemporary Issues*, 3.1 (2022), 80–102.

¹⁹ Tiara Putri Winawati and Kismi Mubarokah, 'Seks, HIV, Kehamilan, Dan Aborsi: Fenomena Sugarbaby Pada Remaja Kota Semarang', *Griya Widya: Journal of Sexual and Reproductive Health*, 2.1 (2022), 22–35.

²⁰ Etim E Okon, "Hudud Punishments in Islamic Criminal Law," *European Scientific Journal* 10, no. 14 (2014): 227-238.

²¹ Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuhu*, Juz.VII (Beirut: Dar al-Fikr, 1997): 5348-5349.

²² Adami Chazawi, *Hukum Pidana Positif Penghinaan* (Media Nusa Creative (MNC Publishing), 2022): 1-298.

²³ Suparman Marzuki and Eko Riyadi, *Hukum Hak Asasi Manusia, Yogyakarta: Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia* (Yogyakarta: PUSHAM UII, 2017): 65-66.



established based on multiple perspectives. Two articles analyze the legal statutes that are applicable in Indonesia.²⁴ As per the Indonesian *Kitab Undang-undang Hukum Pidana (KUHP, Indonesian Penal Codes)*, *Zina* refers specifically to a sexual activity involving a married man and a woman.²⁵ Another article analyzes the legal consequences for confessions of adulterers under *ta'zir* punishment and have not been heard at the *Mahkamah Syariah* in Banda Aceh.²⁶ In addition, there is an article that explores a form of adultery called *zina bi al-jabr*, which is not explicitly addressed in the Quran and hadith. The initial three articles exclusively address the stipulations of legal penalties imposed on individuals engaged in adultery, encompassing both the regulations outlined in Indonesian law and those derived from Islamic law. Furthermore, the final article explores an alternative form of *zina*, specifically *zina bi al-jabr*.²⁷ Nevertheless, these four articles fail to address the challenges that arise when attempting to establish evidence of adultery. This research will focus on discussing the dilemmas and problems that arise when establishing adultery from an Islamic legal standpoint. This research will provide further evidence that Islamic law genuinely upholds the dignity of humans, as well as other living beings (Q.S. al-Isra': 70).

This research is normative as it investigates the principles of Islamic law of the challenges encountered in establishing evidence for cases of adultery. In Islam, the act of adultery is considered a criminal offense that requires proof. Paradoxically, the verification process must consistently prioritize human dignity and relevant

norms. Thus, the methodology employed is Islamic jurisprudence. The primary data for this research is derived from *Fiqh* books, Hadith's books, and books about human dignity. Secondary data is collected from various sources, including books, journals, and articles pertinent to research topic. The *Bayani* method will be applied to all data analysis. Scholars utilize the Quranic text, and Hadith to establish evidence to substantiate claims of adultery. The purpose of this article is to achieve moral excellence and promote human well-being by the goals of Islamic law (*maqasid al-shari'ah*).

Definition of Adultery in Islamic Law

In order to eliminate any ambiguity and ensure clarity, the definition of adultery will be presented based on the perspectives of scholars from different viewpoints. According to scholars in Malikiyah, adultery refers to the deliberate sexual intercourse performed by a *mukallaf* with someone who is not their spouse, without any sense of ownership, and involving the genitals of Adam's offspring. Contrary to the Hanabilah scholars, who provide a concise definition, adultery is viewed as a grave offense occurring in the *qubul* (vagina) or *rectum* (anus). According to Zahiriyah scholars, adultery refers to the act of engaging in sexual intercourse by an individual who is prohibited from observing their own genitals due to their awareness of its forbidden nature. Meanwhile, the Zaidiyah scholars describe it as the act of inserting the male genitals into the female genitals, which is considered both forbidden and prohibited in the context of sexual intercourse and anal penetration, without any

²⁴ Irfan Ardiansyah, Duwi Handoko, and Beni Sukri, 'The Indonesian Criminal Code: Unregulated Adultery (AN Overview OF Islamic Criminal Law)', *PENA LAW: International Journal of Law*, 1.1 (2022), 21–32 <<http://penajournal.com/index.php/PENALAW/article/view/8>>.

²⁵ Syamsul Huda, "Zina Dalam Perspektif Hukum Islam Dan Kitab Undang Undang Hukum Pidana," *Hunafa: Jurnal Studia Islamika*, no. Vol 12, No 2 (2015): 377–97, <http://www.jurnalhunafa.org/index.php/hunafa/article/view/401>.

²⁶ Nouvan Moulia, 'The Position of Defendant's Statement in the Proof of Adultery Case (The Analysis of

Syar'iyah Court Verdict Banda Aceh)', in *Proceedings of the International Conference on Law, Governance and Islamic Society (ICOLGIS 2019)* (Atlantis Press., 2020), pp. 121–24 <<https://doi.org/https://doi.org/10.2991/assehr.k.200306.195>>.

²⁷ Ahmad Qusairi Zulkefly, Ruzman Md Noor, and Mohd Zaidi Daud, 'Pembuktian Zinā Bi Al-Jabr Menurut Hukum Syarak Dan Perundangan Semasa: Ulasan Kajian Lepas: Proof of Zina Bi Al-Jabr from Islamic Perspective and Contemporary Legislation: A Literature Review', *Journal of Shari'ah Law Research*, 6.2 (2021), 201–14 <<https://mjes.um.edu.my/index.php/JSLR/article/view/33963>>.



room for doubt.²⁸ This Islamic legal opinion diverges from the Shafi'iyah scholars who establish the prerequisites in the formula for adultery. According to their definition, adultery refers to consensual sexual intercourse between a man and a woman without any formal agreement or doubts about its legitimacy. It does not involve any sense of possession or uncertainty, and the person engaging in the act is aware that it is considered morally wrong.²⁹

Wahbah al-Zuhaili states that Hanafiyah scholars have provided an intricate definition of adultery. Adultery refers to the prohibited act of engaging in sexual intercourse with a mature woman's genitals in a country that enforces Islamic law without any element of coercion, ownership, doubt, marriage, or ambiguity.³⁰ The opinion of this Hanafiyah scholar provides a more comprehensive explanation, stating that adultery only takes place when two individuals engage in sexual activity. Engaging in intimate physical contact, such as kissing, exclusively with individuals of the opposite sex or within proximity indicates that it does not qualify as adultery. Similarly, if the act is perpetrated by minors or individuals with mental illness, they will evade the consequences of engaging in adultery. Adultery should only occur within the context of consensual relationships, and not involve any form of non-consensual activity. In addition, if this act is performed on an animal or a corpse, it is not considered adultery, as it is not typically conducted by a rational individual.³¹

Concerning coerced adultery, the ulama concurs that women who are compelled are exempt from punishment. Nevertheless, if a man is coerced, scholars hold divergent viewpoints on

this matter. According to Shafi'iyah and Malikiyah scholars, they consider it equivalent to women, which means that men who are coerced are not liable to face punishment and *ta'zir*. According to Hanabilah scholars, a person continues to be punished if they derive pleasure from it, indicating the absence of coercion. Abu Hanifah distinguishes between two types of compulsion: if the person exerting force holds a position of authority, the wrongdoer is not penalized; however, if the person exerting force lacks authority, the adulterer should be punished. This differentiation is predicated on coercion, which is exclusive to actions executed by authorities. Conversely, if authorities do not perpetrate coercion, the offender probably derives pleasure from it.³²

Regarding the field of technological engineering in the context of in vitro fertilization (IVF), which is currently prevalent, it can be argued that it constitutes adultery if the utilized sperm is not sourced from the lawful spouse. IVF using sperm from a deceased husband is strictly forbidden.³³ Alternatively, there exists a surrogacy technique wherein a woman, known as a surrogate mother, carries and delivers a child on behalf of a couple who are unable to conceive naturally. This method is considered *haram* because it involves the transfer of fertilized eggs, which are the result of the union of sperm and ovum from a husband and wife, into the womb of another woman, including the wife of the husband who provided the sperm.³⁴ The *Majelis Ulama Indonesia* (MUI) issued a *fatwa* on June 13, 1979, in Jakarta, confirming this information. Based on the aforementioned descriptions, it can be inferred that adultery refers to consensual sexual intercourse between a man

²⁸ Abd al-Qadir Audah, *Al-Tashri' Al-Jana'i Al-Islami* Juz.II (Beirut: Muassisah al-Risalah, 1997): 349; Farah Edhar Khaerunisa, "adultery in the perspective of islamic religious law and positive law in the indonesian community," *Hunafa: Jurnal Studia Islamika*, no. Vol 18 No 2 (2021): 158–74, <https://www.jurnalhunafa.org/index.php/hunafa/article/view/614/528>.

²⁹ Al-Mawardi, *Al-Hawi Al-Kabir*, Juz. XIII (Beirut: Dar al-Kutub al-Ilmiyyah, 1999): 217.

³⁰ Al-Zuhaili.

³¹ Ahmad 'Abd al Fatah, 'Radd Shubhah Al-Taswiyah Bayna Jarimata Al-Zina Wa Al-Ightisab Wa Atharuhu Fi Al-Fiqh Al-Islami', *Jcia.Journals.Ekb.Eg*, 8.1 (2023), 527–612.

³² Al-Zuhaili.

³³ Muh Idris, 'Bayi Tabung Dalam Pandangan Islam', *Al'Adl*, 12.1 (2019), 64–75.

³⁴ Irham Dongoran, "Bayi Tabung Dalam Tinjauan Hukum Islam (Analisis Maqashid Syari'ah)," *TAQNIN: Jurnal Syariah Dan Hukum* 2, no. 1 (2020); David Lahia, 'Aspek Hukum Terhadap Bayi Tabung Dan Sewa Rahim Dari Perspektif Hukum Perdata', *Lex Privatum*, 5.4 (2017).



and a woman who are not married to each other, without any form of coercion, but rather based on mutual affection.

Legal Basis of Adultery in Islamic Law

Adultery is given significant consideration in the Quran and Hadith. Surah al-Isra' verse 32 of the Quran explicitly prohibits engaging in adultery, as it is considered a repugnant and morally reprehensible act. In addition to facing the consequences of their sins, the adulterers will endure numerous torments and eternal hell, as stated in QS al-Furqan: 68-69. This verse equates adultery with unjustifiable homicide and the worship of a deity other than Allah. Regarding global sanctions, individuals who commit adultery are subjected to a punishment of one hundred lashes. The presence of observers is necessary during this punishment for it to serve as an instructive example, as stated in verse 2 of Surah al-Nur. According to the prevailing consensus among scholars, this penalty is specifically meant for individuals who are not married and engage in adultery. Meanwhile, adulterers who have been previously married or are currently married are subjected to the legal punishment of stoning (*rajm*).³⁵ This punishment is derived from the following *hadith sahih*, specifically from 1690 in the Muslim narrative:³⁶

“Yahya ibn Yahya al-Tamimi told us, We were given the news by Husayim from Mansur from Hasan from Hithtan ibn Abdullah al-Raqasyi from Ubadah ibn Samit who said: Rasulullah SAW said, ‘Take it from me! Take it from me! Allah has indeed given them away. (for adulterers who are) unmarried will be flogged a hundred times and exiled for one year. Meanwhile (for adulterers who) are already married, they will be flogged a hundred times and stoned (rajm)’”

This hadith distinguishes between the penalties imposed on married adulterers and unmarried adulterers. Individuals who engage in extramarital affairs, regardless of their gender, and are not legally married will be subjected to a penalty of one hundred lashes and subsequently

banished to a remote location. Furthermore, individuals who are married and engage in adultery will face the penalty of receiving one hundred lashes followed by being stoned to death, a punishment known as *rajm*. Abd al-Qadir Audah argues that the differentiation in legal penalties for adulterers is rooted in Islam's commitment to safeguarding personal dignity, ethical standards, and future generations. For Muslims to marry, it is necessary for them to effectively manage their desires to prevent the spread of false accusations. If an unmarried individual commits adultery, the punishment is a hundred lashes and expulsion. However, if someone engaging in adultery is married and should be satisfying their sexual desires outside their marriage (*zina mubshah*), then it is expected that the penalties will be more stringent.³⁷

Proof of Adultery

Each newly committed offense is subject to legal penalties if it can be substantiated with compelling evidence rather than relying solely on the judge's knowledge and discretion. Similarly, the ulama only permits the punishment of flogging and stoning (*rajm*) for adulterers if it can be substantiated through three means: confession (*iqrar*), testimony of four witnesses (*shahadah*), and indication (*qarinah*).

Confession (*iqrar*)

Refers to the act of acknowledging or admitting one's wrongdoing or guilt. The use of confession as evidence relies on the testimony provided by the adulterer. Scholars hold divergent views regarding the frequency at which this confession should be uttered. Abu Hanifah and Ahmad deemed it necessary to obtain four confessions, as this number corresponded to the number of witnesses required to substantiate an accusation of adultery. If the individual engaging in adultery admits to the act fewer than four times, it indicates that they are not liable to face legal penalties. This law is derived from a hadith of the

³⁵ Pavel Pavlovitch, “The Islamic penalty for adultery in the third century ah and Al-Shafii’s Risala *”, *Bull. Sch. Orient. Afr. stud. Bulletin of the School of Oriental and African Studies*, 75.3 (2012), 473–97.

³⁶ Muslim, *Sahih Muslim* (Beirut: Dar al-Kutub al-Ilmiyah, 2003): 669.

³⁷ Audah.



Prophet Muhammad recorded by Imam Muslim, which recounts Abu Hurairah's account of Ma'iz's admission. While Rasulullah was in the mosque, Ma'iz approached him and openly admitted to committing adultery. At first, Rasulullah rejected him, but Ma'iz persisted in making this admission four times. Then Rasulullah inquired, "Are you mentally deranged?" He responded negatively. Then Rasulullah inquired once more, "Are you currently wedded?" He responded affirmatively. Ultimately, Rasulullah instructed his companion (*Sahabah*) to remove the individual and subject him to stoning (Muslim: 3207).

Imam Malik and Imam al Shafi'i asserted that a single clear confession from the adulterer is sufficient and does not need to be repeated, as confession serves as a definitive notification that does not require further elaboration. However, by reiterating the confession, the situation will improve. This law was derived from the precedent of Unais when Rasulullah commanded him to interrogate a woman who was accused of committing adultery. The Rasulullah stated that if she confessed, she should be subjected to stoning. Rasulullah intended the repetition in Ma'iz's confession to safeguard the soundness of his mental state. Hence, it was necessary to reiterate it four times.³⁸ According to al-Mawardi, a single confession can also carry significance if four confessions are deemed valid. Furthermore, the hadith of Ma'iz is classified as *abad* and contradicts fundamental principles, rendering it impracticable.³⁹

Meanwhile, the ulama concurs that the offender can retract the admission of committing adultery. The instructions for Ma'iz to withdraw his confession were derived from Rasulullah's questions. During the execution by stoning, Ma'iz attempted to escape but ultimately perished. Upon Ma'iz's departure, Rasulullah SAW remarked, "*Let him go, in the hope that he will seek repentance and that*

Allah will grant him forgiveness." Thus, when the wrongdoer retracts his admission of guilt, he is exempted from receiving any form of punishment, which also applies to his accomplice. Nevertheless, as per al-Mawardi, if the individual refuses to retract their confession, they will still face legal consequences, even if their partner is not punished due to her denial of committing adultery with him. Nevertheless, Abu Hanifah argued that the two wrongdoers were immune from legal penalties in this particular situation.⁴⁰

Witness (*shahadah*)

The testimony of witnesses is crucial in establishing evidence, as adultery is a covert act that remains shielded from public scrutiny. The necessary testimony must be provided by four witnesses who personally observed the act of adultery. The Quran states this requirement, specifically in Surah al-Nisa' verse 15. Adultery requires the testimony of four witnesses to establish guilt, as their accounts will reveal the individual's dishonor and induce feelings of shame.⁴¹ Hence, the fact that four individuals have observed the act of adultery demonstrates the gravity of its occurrence. If there are less than four witnesses, the punishment is transferred back to them as they are considered to have made reckless accusations. The role of a witness in this case is challenging. On the one hand, they are required to provide an account of the facts they observed. However, on the other hand, they face the risk of punishment if their testimony fails to meet the stipulated criteria, specifically if fewer than four individuals are involved (Qs al-Nur: 4).

Throughout Islamic history, there have been no documented instances of successfully establishing adultery through the testimony of four witnesses. During the Caliphate of Umar ibn Khatab, the Governor of Basrah, al-Mughirah ibn Syu'bah, faced allegations of engaging in adultery with Umm Jamil bint 'Amr, a married woman. Abi

³⁸ Audah.

³⁹ Al-Mawardi.

⁴⁰ Al-Mawardi.

⁴¹ Al Yasa' Abubakar; Iqbal Maulana, "Alat Bukti Dan Metode Pembuktian Terhadap Tindak Pidana Zina,"

Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum, no. Vol 7, No 2 (2018): 173–89, <https://jurnal.ar-raniry.ac.id/index.php/legitimasi/article/view/3970/2589>.



Bakrah and his three half-brothers, Nafi', Ziyad, and Shubal ibn Ma'bad, made this accusation. Upon receiving this accusation, the caliph Umar ibn Khattab conducted a hearing to address and settle the matter. At first, the four witnesses affirmed that they had observed the events of which they were being accused. Nevertheless, Ziyad affirmed that he did not personally keep the encounter between the two genders. He observed a pair of unclothed individuals engaged in sexual activity. The testimony provided did not meet the criteria for establishing the occurrence of adultery.

Consequently, Umar ibn Khatab instructed that Abi Bakrah and three other witnesses be subjected to corporal punishment for accusing al-Mughirah without substantial substantiation. Following their caning, Nafi' and Ziyad retracted their accusations to preserve their credibility as witnesses. Meanwhile, Abi Bakrah adamantly declined to retract his accusation, permanently eroding his credibility as a witness.⁴²

Sign or Indication (*Qarinah*)

Qarinah, in linguistic terms, refers to a sign or indication that serves as a guide to something. Wahbah al-Zuhaili categorizes *qarinah*, based on its strength, into two types: strong *qarinah* and weak *qarinah*. A strong *qarinah* holds the same weight as a witness, serving as a foundation for the judge's ruling. However, a weak *qarinah* can only be regarded by the judge as a factor that bolsters the certainty of his ruling.⁴³ *Qarinah*, as evidence of adultery, is defined by the occurrence of pregnancy in a woman who is not married. This rule aligns with the hadith of Ali bin Abi Talib, which states that there are two distinct forms of adultery: concealed and overt adultery. Concealed infidelity necessitates the presence of four witnesses, whereas evident infidelity is indicated by a woman's pregnancy without a spouse and voluntary admission.⁴⁴ Pregnancies that may be indicative of adultery encompass pregnancies of women married to husbands who have not attained puberty (*baliqih*) or who lack mental capacity, as well

as pregnancies resulting from marriages that have not yet reached six months but have already produced offspring. During the time of Rasulullah, there was an instance of pregnancy resulting from adultery. A woman from Juhainah approached him and confessed to engaging in adultery, providing evidence of her pregnancy. Just like how the Rasulullah handled Ma'iz's confession, this woman's confession has also been repeatedly dismissed. Until the woman undergoes childbirth and her child reaches the age at which it is no longer dependent on breastfeeding. Rasulullah ultimately executed the woman's admission by implementing a sentence of stoning (Muslim: 3209 and Nasa'i: 1931).

Nevertheless, it is important to note that not all pregnancies can serve as conclusive proof of adultery, as there exists the potential for other contributing factors, such as coercion (rape), disease, doubt (*shubhat*) surrounding the validity of the marriage, or errors in artificial insemination. According to Imam Abu Hanifah, al-Shafii, and Ahmad ibn Hanbal, if there is no evidence of adultery in a woman's pregnancy, it is to be assumed that her pregnancy resulted from either force or illicit sexual intercourse. This assumption serves to exempt her from the legal consequences of adultery. Nevertheless, in the absence of any incriminating evidence linking her to these two matters, she remains immune from punishment for adultery, provided that she does not personally confess.⁴⁵

The Dilemma of Proving Adultery

Tranquility and serenity can be attained if all individuals can safeguard themselves against all manifestations of hostility. Nevertheless, attaining this goal is highly challenging due to the perpetual existence of criminals. Legally, crime refers to an action that contravenes established laws and regulations. From a sociological perspective, crime refers to an action that causes harm to either an individual or a group of people, thereby disrupting

⁴² Khaled Abou el Fadl, *Speaking in God's Name* (England: Oneworld Publications, 2003).

⁴³ Al-Zuhaili.

⁴⁴ Nurrohman, *Hukum Pidana Islam* (Bandung: Pustaka al-Kasyaf, 2007).

⁴⁵ Audah.



social order and tranquility.⁴⁶ Therefore, legal penalties are essential for addressing and managing criminal behavior. While not the primary determinant, criminal penalties can ensure compliance with the law.⁴⁷ Legal scholars assert that endeavors to address criminal behavior have been present since ancient times and are as ancient as human civilization on Earth. This endeavor will perpetually endure.⁴⁸

The perspectives of experts on the purpose of implementing legal sanctions are highly varied. Immanuel Kant, Hegel, Herbart, and Stahl, proponents of the theory of retribution, argued that the punishment inflicted upon criminals serves as a proportional retribution or compensation for their crimes.⁴⁹ According to other experts, legal sanctions have a specific objective, which can be either scaring (*afschrikking*), improving (*verbetering/reclasering*), or destroying (*onshadelijk maken*). The primary objective of implementing legal sanctions is to deter and prevent both general and specific instances of wrongdoing. General prevention (*algemene preventie theorieën*) can be achieved by publicly demonstrating the consequences of a crime to dissuade potential offenders from engaging in similar behavior. Meanwhile, specific prevention theories (*bijzondere preventie theorieën*) focus on enhancing measures to prevent the perpetrator's malevolent intentions or thwarting potential criminals from executing their nefarious schemes. This measure aims to effectively prevent criminals from perpetrating further offenses.⁵⁰

Islam shares the objective of implementing legal sanctions. Nevertheless, criminal penalties in

Islam are primarily focused on two aspects: the temporal and the metaphysical. Additionally, the purpose of sanctions in Islamic criminal law extends beyond the preservation of individual well-being. However, it also upholds the advantage of individuals by ensuring that their rights are not compromised in the pursuit of individual rights.⁵¹ The purpose of implementing *qisas* is to safeguard the lives of individuals from crimes perpetrated by others (QS. al-Baqarah: 179). Similarly, the implementation of caning as a form of punishment for individuals who commit adultery, observed by a gathering of Muslim individuals, was intended to impart a valuable lesson to deter them from engaging in the same behavior (QS. al-Nur: 2).

Adultery is a criminal offense that can result in legal penalties for the person who commits it. All religions recognize this fact, although there may be variations in the interpretation of the attributes of adultery. In Islam, adultery is considered a *hudud* crime as it infringes upon the rights of Allah, thus warranting condemnation and punishment. The scholars affirmed that *hudud* legal sanctions are divinely ordained.⁵² In addition to highlighting the immorality of adultery, both the Quran and hadith also prescribe legal punishments for those who commit adultery. Unmarried individuals are to receive one hundred lashes, while married individuals are subject to stoning (*rajm*). The scholars affirmed that all sanctions ordained by Allah and Rasulullah were designed for the welfare of humankind, both in the present life and in the hereafter. Scholars assert that the prohibition on adultery is designed to safeguard the continuation of human descendants (*nash*).⁵³ Adultery can result

⁴⁶ Putu Sekarwangi Saraswati, "Fungsi Pidana Dalam Menanggulangi Kejahatan," *Jurnal Advokasi*, no. Vol 5, No 2 (2015); <http://ojs.unmas.ac.id/index.php/advokasi/article/view/154>.

⁴⁷ Andi Istiqlal Assaad, 'Hakikat Sanksi Dalam Perspektif Hukum Pidana Indonesia Dan Hukum Pidana Islam', *Al-Ishlah: Jurnal Ilmiah Hukum*, Vol 20 No 2: November 2017, 2017, 50–64 <<http://jurnal.fh.umi.ac.id/index.php/ishlah/article/view/11/9>>.

⁴⁸ Ruben Achmad, 'Hakekat Keberadaan Sanksi Pidana Dan Pemidanaan Dalam Sistem Hukum Pidana',

Legalitas: Jurnal Hukum, Vol 5, No 2 (2013): Desember, 2017, 79–104

<<http://legalitas.unbari.ac.id/index.php/Legalitas/article/view/98/85>>.

⁴⁹ Assaad.

⁵⁰ Saraswati.

⁵¹ Assaad.

⁵² Okon.

⁵³ Souha Korbatieh, 'Adultery Laws in Islam and Stoning in the Modern World', *Australian Journal of Islamic Studies*, 3.2 (2018), 1–20

<<https://doi.org/10.55831/ajis.v3i2.121>>.



in the termination of hereditary relations, particularly for children conceived and born as a consequence of the act. The destiny of these children is solely linked to their mother rather than her unfaithful companion. Furthermore, this also disrupts the connection of legal responsibility and succession between the two individuals, such as guardianship and inheritance, despite their biological kinship.⁵⁴

The preceding explanation elucidates the ramifications of adultery, not only on the individual committing the act but also on other blameless individuals, specifically children. Given its nature, it is not surprising that Islam unequivocally forbids adultery and imposes legal penalties on those who commit it. Nevertheless, administering punishment to an individual is a challenging task. The judge's guilty verdict must be predicated upon robust and substantiated evidence to determine and execute legal punishment. One of the fundamental principles of Islamic criminal law is to refrain from imposing legal sanctions when there is doubt (*shubhat*). A judge or leader would prefer to err in their decision-making rather than endorse an erroneous sentence.⁵⁵ This principle is derived from a hadith narrated by Aishah ra, in which Rasulullah SAW advised, "*Minimize the application of punishment by Muslims whenever possible. If an alternative route exists, then pursue it. A priest (judge) should err in granting forgiveness rather than err in imposing sanctions*".⁵⁶ Therefore, in the absence of compelling evidence, individuals who make unfounded accusations of adultery may face legal consequences. In the Quran, the act of falsely accusing someone of adultery is referred to as *qazf*. According to this, if the accuser fails to provide four witnesses to support their claim, they will be punished for 80 lashes. In addition, the individual's testimony is not indefinitely admissible (QS. al-Nur: 4).

Although scholars have identified three methods to substantiate adultery, namely the confession the perpetrator, testimony from four witnesses, and the presence of corroborating evidence such as pregnancy, these approaches are challenging to execute. The reason for this is that adultery is typically conducted covertly and in secluded locations to avoid detection by a large number of individuals, such as hotels, apartments, and boarding houses.⁵⁷ Establishing adultery through testimony will pose challenges due to the requirement of at least four individuals who must directly witness the encounter between the two genders. While the number of witnesses has reached four individuals, they may exhibit hesitancy in assuming the role of witnesses due to diverse factors. Examples of reasons include feeling threatened, reluctance to meddle in others' matters, or fearing retribution through *qazf*. In addition, the perpetrator typically refrains from acknowledging their act of adultery due to their apprehension of facing retribution. Even if an individual confesses, it may be motivated by their desire to seek redemption and cleanse themselves from their wrongdoing, similar to the cases of Ma'iz and the women from Juhainah. Alternatively, his motivation may stem from a desire for fame and popularity, achieved by engaging in adultery, as this particular domain lacks legal restrictions that could incriminate him solely based on confession.

However, it is important to note that not all instances of adultery will lead to pregnancy. The majority of adulterers who become pregnant are likely to undergo an abortion. According to research conducted by the *Guttmacher Institute*, the data from 2010-2014 indicates that there were 35 abortions per 1,000 married women and 26 abortions per 1,000 unmarried women. Paradoxically, the majority of abortions taking

⁵⁴ Syamsuddin Syamsuddin and Noer Azizah, 'Kedudukan Anak Zina Ditinjau Dari Yuridis Normatif', *HAKAM: Jurnal Kajian Hukum Islam Dan Hukum Ekonomi Islam*, 5.1 (2021).

⁵⁵ Hajed A Alotaibi, 'The Challenges of Execution of Islamic Criminal Law in Developing Muslim Countries: An Analysis Based on Islamic Principles and Existing Legal System', *Cogent Social Sciences*, 7.1 (2021), 1925413.

⁵⁶ Al-Tirmidhi, *Al Jami' Al Sahih Sunan Al Tirmidhi*, Juz. II (Beirut: Dar al Kutub al Ilmiyyah, 2000): 392.

⁵⁷ Anis Widyawati, 'Criminal Policy of Adultery in Indonesia', *JILS (Journal of Indonesian Legal Studies)*, Vol 5 No 1 (2020): Globalization, Law, and Crimes: The Various Aspects of Law in Broader Context, 2020, 171-86 <<https://journal.unnes.ac.id/sju/index.php/jils/article/view/36786/16044>>.

place in Muslim countries are characterized by a lack of safety measures and are frequently conducted covertly.⁵⁸ Marriages frequently serve as a means to conceal instances of pregnancy resulting from infidelity, particularly when the pregnancy is in its early stages, to avoid arousing suspicion and allegations.⁵⁹ This is due to the endorsement of certain religious scholars who permit pregnant women to enter into marriage, either with their current partner or with another individual. Indeed, the opinion of this *ulama* has been officially recognized as positive law, as exemplified by the *Kompilasi Hukum Islam* (KHI, Compilation of Islamic Laws) in Indonesia.

Meanwhile, the scholars asserted that pregnancy can serve as evidence of adultery if it is corroborated by other proof, specifically a confession. Their decision was founded upon the case of a woman from Juhainah who openly admitted to committing adultery with Rasulullah, providing evidence of her pregnancy despite not having a husband. Several Muslim countries, including Nigeria, have officially incorporated this opinion into their legal systems, making it a positive law. Nigeria, in particular, has embraced Sharia law since 1999. In 2002, the court sentenced several Nigerian women, including Amina Lawal, to death by stoning due to evidence of pregnancy outside of marriage and their admission of guilt.⁶⁰ The decision faced significant backlash and censure due to allegations of fraud during the trial, with claims that Lawal's confession was obtained under duress. In addition, Lawal is prohibited from summoning witnesses during the trial.⁶¹ However, it is important to note that this situation is distinct from the instances of admitting to committing adultery during the era of Rasulullah, as those

confessions were voluntary and not influenced by any form of coercion. Suppose this instance of fraud did indeed take place. In that case, it signifies that the verdict to execute Lawal by stoning (*rajm*) was founded upon questionable (*shubhat*) evidence and did not align with Islamic jurisprudence.

In addition to this fact, allegations of adultery can also significantly affect the human dignity of the individuals who are accused. In Eastern society, adultery is regarded as a grave transgression of moral and religious standards and can result in significant social ostracism. An individual who is accused of adultery may be perceived as morally corrupt and disrespectful, leading to potential ostracization, expulsion, or banishment from their community.⁶² Such actions can undoubtedly tarnish an individual's reputation and self-respect, inducing feelings of shame due to engaging in something dishonorable. Hence, allegations of infidelity necessitate meticulous scrutiny and the implementation of suitable measures to ascertain the veracity of the matter.⁶³ In a civilized society, it is imperative to regard everyone as innocent until they are legally and fairly proven to have committed adultery. The alleged person (in the adultery case) has a chance to present his defense and establish his innocence.

Islamic law places great importance on the preservation and respect for human dignity. In Islam, humans are regarded as the most esteemed beings among all of God's creations. Humans were created by Allah SWT to serve as representatives on earth, endowed with complete honor and dignity. Islamic law upholds and safeguards human dignity by granting significant reverence and safeguarding fundamental human rights, such as the right to life, freedom of religion, the right to

⁵⁸ Andini Naulina Rahajeng, 'Abortion in Islamic Law and Its Intersection with Human Rights', *Journal of Islamic Law Studies*, 3.2 (2020), 1–13.

⁵⁹ Fatimah Fatimah, 'Komparasi Terhadap Perkawinan Wanita Hamil Karena Zina Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam', *Jurnal Hukum Samudra Keadilan*, 16.1 (2021), 168–80.

⁶⁰ Gunnar J Weimann, *Islamic Criminal Law in Northern Nigeria: Politics, Religion, Judicial Practice* (Amsterdam University Press, 2010).

⁶¹ Hauwa Ibrahim, 'Rule of Law Prevails in the Case of Amina Lawal', *Human Rights Brief*, 11.3 (2004), 11.

⁶² Widyawati.

⁶³ Sudarti Sudarti and Ainun Najib, 'Punishment of Criminal Act of Accusing Adultery (Qadzaf) in Indonesian Positive Law: Perspective of Maqasid Al-Sharia', *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial*, 18.2 (2021), 261–80.



privacy, and protection from violence and discrimination. Islamic law ensures equal rights and treatment for all individuals, irrespective of their gender, race, religion, or social status. In addition, Islamic law mandates that individuals demonstrate respect and fairness towards others while upholding moral and ethical principles in their social interactions. According to Islamic law, any conduct that belittles, devalues, or harms human dignity is considered highly condemnable and is strictly forbidden. Simultaneously, within the realm of the justice system, the concept of human dignity is held in great esteem. Everyone is considered innocent until proven guilty lawfully and equitably for the alleged offense. Islamic law ensures the entitlements of individuals accused of engaging in illegal activities, such as the entitlement to legal representation, giving evidence, and a just trial.

Conclusion

Indeed, the challenge of proving adultery may create mistrust and apprehension within society, including the international community. Nevertheless, the challenge of substantiating adultery in Islam does not negate the fact that Islamic law regards this behavior as a grave transgression. Adultery in Islamic law is met with severe punishments, such as flogging and, in certain circumstances, even the death penalty. Nevertheless, Islamic law imposes numerous stringent prerequisites and restrictions on establishing evidence of adultery, aiming to prevent any inaccuracies or injustices in its implementation. Hence, the challenge of substantiating adultery in Islamic jurisprudence should be regarded as a deliberate measure to safeguard against potential misuse or inequity in the implementation of the legal framework rather than as a deficiency or incapacity of Islamic law to address this transgression.

Furthermore, Islamic law encompasses not only matters about criminal law but also extends to a wide range of domains, including ethics, morality, and spirituality. Hence, the global perception of Islamic law is shaped not only by its efficacy in addressing criminal matters but also by its

overarching perspective on and treatment of humanity as a whole. Islam imparts essential human virtues, including empathy, fairness, and sagacity, which can foster a favorable perception of Islamic jurisprudence within the global community. Every Muslim must embody Islamic values in their day-to-day existence, thereby demonstrating that Islam is a religion characterized by tranquility, compassion, and reverence for human rights.

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