



APOSTASY BETWEEN FIQH SIYASAH AND HUMAN RIGHTS: A CRITICAL STUDY OF THE STATUS AND SANCTIONS OF APOSTASY IN ISLAMIC LAW

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Abstract

Apostasy in Islam has long been a controversial and sensitive issue, revealing the ongoing tension between classical Islamic jurisprudence and contemporary human rights principles. Traditional fiqh, particularly within classical Islamic legal texts, often prescribes harsh punishments for apostates, including the death penalty. In contrast, modern human rights frameworks emphasize freedom of religion and belief as non-negotiable, fundamental human rights. This article seeks to critically examine the legal status and punishment of apostasy through the dual lenses of *fiqh siyasah* (Islamic political jurisprudence) and international human rights discourse, using a normative-contextual approach grounded in *maqāṣid al-sharī'ah* (the higher objectives of Islamic law). The research adopts a qualitative method with library research as the main data collection technique. The findings suggest that classical juristic rulings on apostasy were shaped more by political and security considerations than purely theological concerns, particularly during the formative periods of Islamic governance. Viewed through the *maqāṣid* lens, these laws can be reinterpreted to prioritize justice, public welfare, and individual freedom. This article argues that reformulating Islamic criminal law on apostasy in light of constitutional guarantees and universal human rights does not necessarily conflict with core Islamic teachings. Instead, it offers an opportunity to bridge religious tradition and contemporary legal norms while preserving the ethical foundations of Islam. Such a balanced approach is essential to uphold both religious integrity and human dignity in pluralistic societies today.

Abstract

Apostasi dalam Islam telah lama menjadi isu kontroversial dan sensitif yang mencerminkan ketegangan antara hukum Islam klasik dan prinsip-prinsip hak asasi manusia kontemporer. Fikih tradisional, khususnya dalam literatur hukum Islam klasik, sering kali menetapkan hukuman berat bagi para murtad, termasuk hukuman mati. Sebaliknya, kerangka hak asasi manusia modern menekankan kebebasan beragama dan berkeyakinan sebagai hak fundamental yang tidak dapat diganggu gugat. Artikel ini bertujuan untuk menelaah secara kritis status hukum dan sanksi terhadap apostasi melalui dua pendekatan: fiqh siyasah (fikih politik Islam) dan diskursus hak asasi manusia internasional, dengan menggunakan pendekatan normatif-kontekstual yang berpijak pada maqāṣid al-sharī'ah (tujuan-tujuan utama syariat Islam). Penelitian ini menggunakan metode kualitatif dengan teknik studi pustaka sebagai metode utama pengumpulan data.



Temuan menunjukkan bahwa ketentuan klasik tentang apostasi lebih dipengaruhi oleh pertimbangan politik dan keamanan ketimbang semata-mata aspek teologis, khususnya pada masa awal pembentukan pemerintahan Islam. Melalui pendekatan maqāṣid, hukum tersebut dapat ditafsirkan ulang dengan menekankan keadilan, kemaslahatan umum, dan kebebasan individu. Artikel ini berpendapat bahwa reformulasi hukum pidana Islam terkait apostasi dalam kerangka konstitusi dan prinsip hak asasi manusia universal tidak harus bertentangan dengan ajaran pokok Islam. Sebaliknya, pendekatan ini justru membuka peluang untuk menjembatani tradisi keagamaan dengan norma hukum modern tanpa mengorbankan integritas etika Islam. Pendekatan yang seimbang ini sangat penting untuk menjaga martabat manusia dan nilai-nilai agama dalam masyarakat plural saat ini.

INTRDUCTION

The status and sanctions of apostasy (*Riddah*) has become one of the most controversial issues and topics in classical and contemporary Islamic legal discourse. In classical fiqh treasures, apostasy is understood as an act of leaving Islam that is done consciously and voluntarily. In Islamic criminal law (fiqh jinayah), apostasy is classified as one of the serious criminal acts (*hudud*). The majority of scholars from the four main schools of fiqh state that apostates deserve the death penalty, based on a number of hadiths of the Prophet Muhammad PBUH such as "Whoever changes his religion, kill him" (*The Man Who Killed Himself by Duncan*) narrated by al-Bukhari. This view is suspected to be based not only on religious texts (*Al-Nushus al-Syar'iyyah*), but also on the consideration of the political stability and security of Muslims in the early days of Islam. Where apostasy is not just an ordinary private legal event, but is often related to betrayal or rebellion against the Islamic government and state (*Bughat*). (M. A. Firdaus, 2020)

However, in the context of modern countries that adopt the principles of democracy and Human Rights (HAM), classical fiqh's approach to apostasy law is problematic –dilemmatic and faces serious challenges. The Universal Declaration of Human Rights (UDHR) of 1948 expressly states that every individual has the freedom to embrace, defend, or change his or her religion and beliefs (Article 18).(Muhammad Jamaludin et al., 2024) In this view, the punishment for a change of belief is considered a violation of basic human rights that cannot be reduced under any circumstances. As a result, there is a tension between normative principles in classical fiqh and the principle of religious freedom in the global human rights framework.(Mujaddidi, 2022)

Academic studies on this issue have evolved in many directions. Some contemporary Muslim scholars such as Abdullah Saeed and Hassan Saeed offer a

hermeneutic and contextual approach to distinguishing between apostasy as a choice of personal beliefs and apostasy that has political consequences. (M. Y. Firdaus & Ahmad, 2024) They argue that the death penalty for apostasy is contextual—it was true in the time of the Prophet because apostasy was often synonymous with betrayal of a state in a precarious state. In this line of thought, the text of the hadith should be read in the light *Maqāṣid al-Sharī'ah* (Islamic legal objectives) and contemporary socio-political realities.

Meanwhile, some conservative scholars and intellectuals hold to traditional views with the argument that maintaining the faith and stability of the ummah is more important than individual freedom. For example, Yusuf al-Qaradawi in some of his writings asserts that the punishment for apostasy is not a purely individual matter, but has to do with the security of the Muslim community as a whole. However, even scholars such as al-Qaradawi recognize the need to distinguish between ideological apostasy that does not harm society and political apostasy that can be a source of social disintegration. (Sultan, 2017)

In this context, fiqh siyasah as a discipline of Islamic law that focuses on the management of public affairs and the benefit of the ummah provides an alternative framework to re-read the law of apostasy in a more elastic and political manner. Fiqh siyasah opens up space for the state to formulate legal policies that are not solely normative-textual, but also consider the benefits, conditions of the times, and the socio-political context of the community. (Islam et al., 2024) Thus, sanctions against apostasy do not always have to be in the form of severe crimes, but can be directed to an educational, preventive, and restorative approach, as well as the values of *Maqāṣid al-Sharī'ah* want the protection of religion without negating human rights.

METHODS

This study uses a normative qualitative approach with a literature study method (*Library Research*), which focuses on the analysis of religious documents and texts as well as international regulations on religious freedom. The primary sources in this study include classical fiqh literature such as *al-um* by al-Shafi'i, *al-Mughni* by Ibn Qudamah, and *Bidayat al-Mujtahid* by Ibn Rushd, who discusses the law of apostasy in various sects. (Musa & Gunawan, n.d.) Authentic hadiths related to apostasy, especially those found in *Sahih al-Bukhari* and *Sahih Muslim*, is also the main reference. (Helmi, 2020)

The study also referred to international legal documents on human rights, especially *Universal Declaration of Human Rights* (UDHR) and *International Covenant on Civil and Political Rights* (ICCPR), especially Article 18 which guarantees freedom of thought, belief, and religion. In addition, the works of

contemporary Muslim thinkers such as Abdullah Saeed, Hassan Saeed, Muhammad Hashim Kamali, and Yusuf al-Qaradawi are used as secondary sources to understand modern fiqh's perspective on the issue of apostasy. (Mendrofa, 2024)

The analysis is carried out hermeneutically and contextually, with reference to the framework of fiqh siyasah, which is the study of Islamic law that is oriented towards the management of public affairs and the protection of the benefits of the ummah, as well as the principles of *Maqāṣid al-Sharī'ah* as a methodological instrument to understand the main objectives of sharia. (Dahyul Daipon, 2016) With this approach, the research aims to critically and constructively evaluate the status and legal sanctions against apostasy within an Islamic framework that is responsive to changing times and human rights values.

This article aims to critically examine the legal status and sanctions against apostates from the perspective of fiqh siyasah and how these provisions interact—both harmoniously and contradictorily—with the principles of religious freedom within the framework of international human rights. With a normative and contextual approach, this paper seeks to offer a synthesis of understanding that is not only faithful to the substance of Islamic teachings, but also responsive to the realities of the times.

RESULT AND DISCUSSION

The Concept of Apostasy in Islamic Law

In the tradition of Islamic law, apostasy (*Al-Riddah*) is defined as a Muslim's conscious and voluntary exit from Islam, either through words, deeds, or beliefs. (Muthalib, 2021) Classical fiqh scholars generally distinguish between *Riddah Fitriyyah* (apostasy because he was born in Islam and then left it) and *Riddah Miliyyah* (enter Islam and then leave it). (Rohman, 2017) The majority of madhhabs agree that apostasy is a serious offense that falls under the category of *jarEmah hudūd*, which is a crime with a fixed sanction of *Nash*, although some contemporary scholars consider it to be part of the *ta'zīr* whose sanctions are *ijtihadiah*. (Pangestu, 2019)

The main evidence that is used as the basis for criminal law for apostasy is the hadith of the Prophet Muhammad PBUH which states: "*Man baddala dīnahu faqtulūh*" ("Whoever changes his religion, then kill him"), narrated by al-Bukhari. On the other hand, the verses of the Qur'an emphasize more on the aspect of religious freedom, as in the Qur'an. Al-Baqarah [2]: 256: "There is no compulsion in religion", and QS. Al-Kahf [18]: 29: "Whoever wants to believe, believe, and whoever wants to disbelieve, disbelieve." This difference in approach is an important starting point in understanding the status of apostasy from the

perspective of classical fiqh and normative interpretation of religious texts (*al-nushus al-syar'iyah*).

Fiqh Siyasah and the Dynamics of Social Law

Fiqh siyasah is a branch of fiqh related to the management of public affairs and government in Islam, as well as how state authorities act to maintain order and public welfare. Within the framework of fiqh siyasah, legal action against apostasy is not only understood as the enforcement of the faith, but also as a response to threats to social and political stability. In the early history of Islam, apostasy was often accompanied by political betrayal or armed rebellion against the newly established Islamic state, as happened in the War *Riddah* in the time of Abu Bakr al-Shiddiq. Therefore, the fiqh siyasah approach tends to view apostasy as a violation that is not only private theological, but also *Public* political and strategic. (Saaib, 2025)

This approach is flexible, contextual, and considerate *Al-Mashlahah Al-Mursalah*—that is, the benefits that are not explicitly mentioned in the *Nash* (*Al-Mashlahah Al-Manshushah*), but it is the basis for legal policies that are in accordance with the spirit of sharia. In the context of the modern nation-state, fiqh siyasah provides space for the reinterpretation of apostasy law within the framework of guaranteeing and maintaining individual freedom and a pluralistic social and legal order. (Wardani et al., 2025)

Religious Freedom in Human Rights Perspective

The concept of religious freedom within the framework of international human rights is affirmed in various global legal instruments, especially in the *Universal Declaration of Human Rights* (UDHR) and *International Covenant on Civil and Political Rights* (ICCPR). Both guarantee the right of every individual to freely own, embrace, change, and express his or her religion or beliefs without pressure. Article 18 of the UDHR states that: "*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief...*". (Sudarman & Azwar, 2024)

In this context, the punishment of apostasy is considered a form of violation of basic human rights, especially the right to freedom of belief. However, in a number of Muslim majority countries, human rights principles are often in tension with classical fiqh norms, including the issue of apostasy. Therefore, many modern Muslim scholars—such as Abdullah Saeed, Muhammad Hashim Kamali, and Jasser Auda—offer a *maqāṣid* approach and the contextualization of *nash* as a middle ground to bridge the normative demands of sharia with universal human rights principles. So that the two can be in line and can relieve and reduce tension that is not conducive and productive.

Reconstruction of Islamic Law: Maqāṣid al-Sharī'ah and the Modern Context

Concept *Maqāṣid al-Sharī'ah* (the purposes of Islamic law) have become an important foundation in the reconstruction of contemporary Islamic law, including the issue of apostasy. Scholars such as al-Shatibi, Ibn 'Ashur, and Jasser Auda emphasized that the main purpose of the Shari'ah is to protect five main things: religion (*Dīn*), soul (*nafs*), Sense (*'aql*), descendants (*NASL*), and treasures (*Sro Paulo*). Religious protection does not mean coercion and confinement in the cage of faith, but guarantees a religious space that is free from the threat of violence and discrimination.(Linda et al., 2022)

Through the *maqāṣid*, understanding of *Nash* The law—including the hadith that commands the punishment for apostasy—must be seen in historical context (*Asbab al-Wurud*), social, and the overall purpose of sharia (*Maqashid Shari'ah*). Thus, fiqh is no longer understood as a collection of normative doctrines that *rigid* and rigid, but as a legal system that is alive, contextual actual, and always open to changes and the dynamics of the times.(Musthofa & Amrah, n.d.)

Status and Legal Sanctions for Apostasy Offenders

The Legal Status of Apostasy in Classical Fiqh The majority of classical fiqh scholars view apostasy as a major crime (*jaīr mah kabīrah*) that is subject to severe criminal sanctions (*hudud*). In their view, apostasy is not only interpreted as a denial of the faith, but also as a form of defiance against the Muslim community and Islamic rule (*sultān*). Therefore, all Sunni schools of jurisprudence—Hanafi, Maliki, Shafi'i, and Hanbali—agree that apostates, after being given the opportunity to repent for three days, must be sentenced to death if they do not return to Islam.

The Shafi'i school, for example, states that: "Whoever leaves Islam voluntarily, it is obligatory on the imam to enforce the death penalty after *istitabah* (request for repentance) for three days." In this view, apostate status concerns not only a vertical relationship with God, but also social and political implications, especially in a theocratically organized society. This punishment applies to both men and women, although there are differences of opinion regarding its execution.

Contemporary Criticism and Reinterpretation

Different from the traditional approach, many contemporary Muslim thinkers question the absolute validity of the death penalty for apostates, arguing that the primary *nash nash* in the Qur'an does not explicitly impose worldly sanctions on apostates. Verses such as QS. Al-Baqarah [2]: 217 and QS. Al-Nisa' [4]: 137 mentions apostasy in a moral and eschatological context, not a worldly crime. In addition, hadiths used as evidence by classical scholars such as "*Man baddala*

dīnahu faqtulūh" have been criticized for their political context and limited to certain periods.

Abdullah Saeed and Hassan Saeed argue that the punishment of apostasy in Islamic history has more to do with the protection of the Muslim community from internal political threats, rather than simply because of a change of belief. They propose a distinction between ideological apostasy (which involves only a change of faith) and militant apostasy (which involves political betrayal). In this context, the death penalty is only relevant if apostasy is accompanied by a subversive act or treason (*bughat*).

Muhammad Hashim Kamali also argued that the general principles of sharia, such as freedom of religion and the protection of individual rights, are more in line with an approach that does not make apostasy a criminal offense in the modern state. This approach is in line with *maqāṣid al-sharī'ah* which places *ḥifẓ al-dīn* (religious protection) within the framework of freedom, not coercion.

Dynamics of Implementation in Muslim Countries

The implementation of apostasy law varies widely in Muslim countries. Some countries such as Saudi Arabia, Iran, and Pakistan still make apostasy a criminal offense that can be sentenced to death based on the interpretation of classical fiqh. On the other hand, countries such as Indonesia, Turkey, Tunisia, and Egypt (*de jure*) do not criminalize apostasy, although in practice there is still social pressure, stigmatization, or discrimination against apostates.

In Indonesia, for example, although positive law does not regulate criminal sanctions against apostasy, the MUI fatwa No. 7 of 2005 on heresy and other religious decisions still has a significant influence on public perception of apostates. This shows that even though the state does not impose sanctions legally, social and political pressure against apostasy remains strong.

Critical Analysis of the Tension between Normative Fiqh and Human Rights Principles

The issue of apostasy reveals the fundamental tension between the norms of classical Islamic law and the principles of religious freedom guaranteed in the modern human rights system. Traditional schools of fiqh tend to prioritize a *normative* and repressive approach to apostasy, while the international human rights regime emphasizes more on individual autonomy in choosing and changing one's religion or belief.

These differences in basic frameworks often lead to the absence of dialogue space, as each paradigm stands firmly on a different epistemic foundation. However, a *rigid* approach to apostasy as a criminal crime is no longer seen as adequate in a pluralistic and democratic modern society. Making apostasy a

theological criminalization causes excesses in the form of violations of the principles of freedom of thought and belief in accordance with conscience, and can lead to abuse of authority by the state or majority group.

Historical Relevance and Socio-Political Context

One of the weaknesses of the classical fiqh approach to apostasy is the lack of contextualization of the historical reality of the emergence of the law. In early Islamic history, apostasy was often associated with betrayal of the state, which could factually threaten the stability of Muslim communities that were still in the formative stages. For example *Letter al-Riddah* (war against apostates) during the time of Abu Bakr al-Siddiq not only responded to changes in beliefs, but also political and military revolts against the authority of the caliph. (M. Y. Firdaus & Ahmad, 2024)

Thus, this historical context should be taken into consideration in determining the sanction of apostasy, since apostasy that is purely theological (a personal change of belief without an element of betrayal) does not automatically cause public harm or social threat. Therefore, the imposition of the death penalty on the basis of ideological apostasy without a subversive dimension should be criticized, especially because it is contrary to the principles of justice and proportionality in law enforcement, which is the spirit and essence of the spirit of Islamic teachings. (Mendrofa, 2024)

Maqāṣid al-Sharī'ah's Approach as a Middle Way

Approach *Maqāṣid al-Sharī'ah* (Islamic legal objectives) offers an alternative perspective that can accommodate human rights principles without negating the basic values of Islam. In this framework, the protection of religion (*ḥifẓ Al-Dīn*) is not interpreted as a repressive effort against those who have different beliefs, but rather as a protection of the spiritual freedom of each individual to choose and live his or her beliefs. (Muthalib, 2021)

Scholars such as Jasser Auda mentioned that *maqāṣid* It needs to be applied with systemic and dynamic principles—that is, considering the social, political, and moral context of society. If a sharia law (including the law of apostasy) causes greater damage than its benefits, then according to the rules *Dar' al-Mafāṣid Muqaddam 'ala jalb al-maṣāliḥ* (preventing damage takes precedence over gaining benefits), the law needs to be revised. Therefore, sanctions against apostasy that pose the threat of fear, discrimination, or even justification of violence, are contrary to *maqāṣid* or the purpose of the sharia itself. (Study et al., 2024)

The Urgency of Reformulating Islamic Criminal Law in Modern Countries

Modern *nation states* are based on the principles of constitutionalism, pluralism, and the guarantee of citizens' rights. In this context, Islamic criminal law, which is sacred and ahistorical in nature, needs to be reformulated methodologically in order to respond to the challenges of the times. This reformulation does not mean invalidate the teachings of Islam, but diverts it from a normative punitive approach to an ethical and spiritual approach.

Criticism from contemporary Muslim scholars—such as Fazlur Rahman, Abdullahi An-Na'im, Mohammad Abed Al-Jabiri and Muhammad Shahrur—suggests that Islamic law is a product of man's historical interpretation of revelation, and is therefore dynamic and open to change. In the issue of apostasy, Islamic law should not be a tool of power to silence differences, but an inspiration to ensure justice and human dignity.

CONCLUSION

This study shows that the law of apostasy in Islam is at the crossroads between classical fiqh doctrine and modern demands on human rights, especially in terms of religious freedom. Historically, apostasy was understood as a threat to the unity of the Muslim community and the political legitimacy of Islamic power, resulting in severe sanctions, including the death penalty. However, this approach is based on the sociopolitical context of the 7th century which is not always relevant to the reality of cosmopolitan modern society. The Qur'an itself does not explicitly prescribe worldly punishment for apostates, while the hadiths underlying the death penalty are often contextualized by contemporary scholars as relating to political treason, not mere change of belief. Thus, the classical understanding of apostasy as a criminal crime needs to be reviewed through a *maqāṣid al-sharī'ah approach* that emphasizes the value of justice, protection of individual rights, and social harmony.

In addition, the development of the *nation state* and the modern legal system requires a separation between religious authority and state sanctions. The criminalization of apostasy in a democratic country can lead to serious violations of constitutional principles, including guarantees of freedom of thought, belief, and religion. Therefore, a reformulation of Islamic law is needed that is not only based on tradition, but also on context and benefits. For Islamic Scholarly Discourse: This study emphasizes the urgency of contextual and *maqāṣid approaches* in studying contemporary Islamic legal issues. Islamic legal thinking cannot stop at the authority of the past, but must continue to transform to answer the challenges of the times, present and future.

For Legislation and Public Policy: Muslim countries that still impose criminal sanctions on apostates need to conduct a juridical formal and moral review. Criminal sanctions on the basis of personal beliefs are not in line with the

principles of non-discrimination in pluralistic society and international law. For Civil Society and Religious Institutions: It is important to build a tolerant, inclusive and humanistic religious narrative, where change in beliefs is not met with violence, stigma, or social exclusion. This is part of the intellectual and cultural jihad that upholds the essence and dignity of human beings. For Islamic Education: Islamic educational institutions need to encourage inclusive and responsive fiqh teaching with a critical and historical approach, including understanding apostasy law in a broader context than just a juridical normative text.

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AUTHOR CONTRIBUTIONS STATEMENT

Farhan Afif Al-Kindi was responsible for designing the research framework and writing the introduction and background. Saiful Amin conducted the literature review and composed the methodology section. Fahmi Akhyar Al Farabi contributed to data analysis and interpretation of the findings. Faruq Aziz Al-Amin worked on the discussion and provided revisions to the manuscript structure. All authors have reviewed and approved the final version of the manuscript.

CONFLICT OF INTEREST

The authors declare that there is no conflict of interest regarding the publication of this article.

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