



THE DYNAMICS OF THE APPLICATION OF STONING CRIMINAL LAW FROM AN ISLAMIC PERSPECTIVE IN INDONESIA AND OTHER MUSLIM COUNTRIES*

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Abstract

The stoning punishment, despite having a legal basis in Islam, sometimes sparks controversy as it clashes with modern values such as human rights and national constitutions. This study analyses the dynamics of implementing stoning as a criminal punishment from an Islamic perspective, particularly in Indonesia. It compares it with other Muslim-majority countries such as Saudi Arabia, Pakistan, and Malaysia. This research employs a qualitative method, examining literature in the form of scholarly articles, legal documents, and relevant books. The findings indicate that the enforcement of stoning as a criminal punishment, both in Indonesia and in other Muslim countries, has sparked significant debate and even international condemnation for allegedly violating human rights. At first glance, stoning may appear cruel, but behind this punishment lies a crucial lesson for society—it serves as a deterrent to prevent others from committing adultery. In different countries, the implementation of stoning laws varies depending on the legal system, social acceptance, and interpretations of Islamic law. In Indonesia, the stoning punishment is only enforced in the province of Aceh. The position of Islamic criminal law in Indonesia is influenced by the principle of *Bhinneka Tunggal Ika* (Unity in Diversity), which emphasises the nation's cultural and religious diversity. Consequently, the application of Islamic criminal law must align with the principles of democracy, human rights, justice, and national diversity.

Keywords: Islamic Criminal Law; Stoning; Objectives of Sharia (*Maqasid al-Syariah*)

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A. INTRODUCTION

Hukum Criminal law in Islam, known as *jinayah*, has the primary objective of protecting five fundamental aspects of human life: religion, life, intellect, lineage, and property (*maqasid al-shariah*).¹ One widely known form of criminal punishment is stoning, which is applied to perpetrators of adultery under certain conditions. This punishment has a textual basis in the hadiths of Prophet Muhammad and is explicitly mentioned in the Quran, Surah Al-Nur, verse 2. However, its implementation often sparks debate, both in terms of positive law and social acceptance, especially in countries with diverse Muslim-majority populations. In Indonesia, as the country with the largest Muslim population, Islamic criminal law—including stoning—is not fully implemented within the national legal system but is more commonly found within customary or local legal frameworks, such as in Aceh.²

One prominent case study is the implementation of the stoning punishment in Aceh Province, Indonesia, which enforces Islamic law in a limited manner, as outlined in Law No. 11 of 2006 on Aceh Governance. The stoning punishment became controversial when implemented, mainly due to differences between interpretations of Islamic law and the national constitution, which emphasises the protection of human rights. In comparison, in other countries such as Saudi Arabia, stoning is formally carried out as part of the Islamic judicial system.³ Meanwhile, countries such as Pakistan and Malaysia impose this punishment only under certain conditions, accompanied by stringent legal procedures. This dynamic illustrates how the implementation of stoning laws varies across different social, cultural, and political contexts within each country.

Previous research has demonstrated that considerations of political legitimacy and social acceptance frequently influence the application of stoning laws. For example, a study by Esposito (2003) noted that Islamic criminal law is more often used as a symbolic tool to reinforce religious identity amid the

¹ Nurhalisa Is Tjan and others, (2024). 'Electronic Traffic Law Enforcement (ETLE) Dalam Perspektif Hukum Pidana Positif Dan Fiqh Jinayah', *AN-NIZAM Jurnal Hukum Dan Kemasyarakatan*, 18.1, pp. 29–64.

² M Ikhwan and Muhammad Heikal Daudy, (2019). 'Pelembagaan Hukum Jinayat Di Aceh Sebagai Bagian Sistem Hukum Pidana Indonesia', *Islam Universalia: International Journal of Islamic Studies and Social Sciences*, 1.2, 180–212.

³ Ahmad Bunyan Wahib, (2014). 'Reformasi Hukum Keluarga Di Dunia Muslim', *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 14.1, 1–19.

challenges of modernity rather than as an effective legal instrument.⁴ In the context of Aceh, a study by Feener (2013) suggests that the implementation of the stoning law in Aceh is driven more by the need to assert regional autonomy than by purely theological reasons.⁵ This proves that non-legal aspects, such as politics and culture, play a significant role in the implementation of this punishment.

Other relevant research highlights the complexity of applying Islamic law in countries with plural legal systems. A study by Hallaq (2009) states that the implementation of Islamic law, including criminal laws such as stoning, often faces challenges from modernity and universal values such as human rights.⁶ In the Indonesian context, research by Hooker (2008) found that although there are aspirations to implement Islamic law more broadly, the legislative process is often hindered by the need to align Sharia norms with the principles of national positive law.⁷

This study aims to analyse the dynamics of the application of stoning punishment in Islamic law, particularly in Indonesia, by comparing it with its implementation in other Muslim countries. Utilising theoretical frameworks, empirical data, and previous research, this article will examine how stoning law is shaped by normative, political, and social factors, as well as its implications for the legal system and society.

B. METHODS

This research employs a qualitative approach using the library research method. The data used is sourced from previous research articles, scientific journals, books, and relevant legal documents. Primary data is obtained from scientific articles, legal documents such as Law No. 11 of 2006 on the Governance of Aceh, as well as fatwas from scholars and legal rulings related to the implementation of stoning law. Meanwhile, secondary data are sourced from books, Qur'anic exegeses, collections of hadith, and other literature that discuss Islamic criminal law, stoning law, and the social, cultural, and political contexts that influence its application. Data collection techniques include

⁴ Khamami Zada, (2002). *Islam Radikal: Pergualtan Ormas-Ormas Islam Garis Keras Di Indonesia* (Teraju).

⁵ Khamami Zada, (2014). 'Pemberlakuan Hukum Jinayah Di Aceh dan Kelantan', LSIP.

⁶ Nurul Etika, 'Latar Belakang Sosial Politik Dan Pertimbangan Fiqhiyah Qanun Jinayat Aceh'.

⁷ S H Dharma Setiawan Negara and S H Lufsiana, *HUKUM DAN PEMBANGUNAN* (Cipta Media Nusantara).

literature review and documentation, while data analysis is conducted using descriptive and comparative methods with a content analysis approach.

This study also applies the maqasid al-shariah theoretical framework to understand the objectives of Islamic law and the legal pluralism theory to analyse the implementation of the stoning law within a pluralistic legal system, such as Indonesia. The validity of the data is ensured through source triangulation, which involves comparing data from multiple literature sources to verify validity and reliability. Through this method, the study aims to provide a comprehensive overview of the dynamics of stoning law implementation from an Islamic perspective, particularly in Indonesia, and its comparison with other Muslim-majority countries.

C. RESULTS AND DISCUSSION

1. The Meaning of Stoning and The History of Stoning Law

Stoning (Rajam) is a form of punishment applied in Islamic law for adultery committed by a married person (muhsan). This punishment is carried out by throwing stones at the offender until they die. Stoning is considered one of the sanctions to uphold purity and moral values in society.⁸

The punishment of stoning was known before the arrival of Islam, particularly in Jewish tradition. In the Torah, stoning was prescribed as a punishment for adultery as a form of justice and atonement for sin. When Islam emerged, Prophet Muhammad ﷺ continued specific laws from previous religious laws, including stoning, but with stricter conditions and modifications. During the Prophet's time, the punishment of stoning was carried out on several occasions. For example:

- a. **Maiz bin Malik**, A man who admitted to committing adultery voluntarily was sentenced to stoning after being verified multiple times by the Prophet. (H.R. Bukhari and Muslim)
- b. **The Ghamidiyah woman**, who also confessed to committing adultery, was sentenced to stoning after giving birth to her child and nursing the child until they could eat independently. (H.R Muslim)

⁸ Muhammad Adib Afik and Moch Najib Imanullah, (2022). 'Kajian Hak Asasi Manusia Terhadap Hukuman Rajam Bagi Pelaku Tindak Pidana Perzinaan Dalam Hukum Pidana Islam', in *Prosiding Seminar Nasional Program Doktor Ilmu Hukum*, pp. 74–84.

These cases show that the implementation of stoning is not carried out arbitrarily. The process requires a voluntary confession or evidence from four eyewitnesses who directly witnessed the act of adultery. This demonstrates caution in law enforcement to prevent errors or slander. In the context of Islam, stoning is often considered a method of purification for adulterers who have violated social and religious norms.

Several hadiths support the implementation of stoning, including: From Abu Hurairah, that Prophet Muhammad (peace be upon him) said: "Take it from me, take it from me. Indeed, Allah has prescribed the punishment of stoning for a married person who commits adultery." (H.R. Bukhari and Muslim).

2. Conditions for The Implementation of The Stoning Law⁹

- a. Carried out by authorised authorities: The punishment of stoning can only be carried out by a legitimate judge or ruler, not by individuals or specific groups acting independently.
- b. Conducted in an open space: The execution process must take place in public as a form of deterrence (zawajir) to serve as a warning to others.
- c. Implemented in accordance with Islamic law standards: The punishment must be carried out in accordance with the procedures established in fiqh, without adding to or reducing the applicable law.

3. Controversy and Differing Views Regarding the Law of Stoning

Stoning as a punishment often sparks debate in society. Several factors contribute to these debates within the community:¹⁰

- a. **Human Rights (HAM):** Many parties consider stoning to be a violation of human rights. They argue that this punishment is not in line with the principles of justice and humanity.

⁹ Rokhmadi, 'Rokhmadi', (2015). Hukuman Rajam Bagi Pelaku Zina Muhshan | 311', *Jurnal At-Taqaddum*, 7.2, 311–25.

¹⁰ Andi Mardika, (2023). 'Hukuman Rajam Terhadap Pelaku Zina Muhsan (Perspektif Hak Asasi Manusia Dan Siyasah Syar'iyah)', *Tanfidziy: Jurnal Hukum Tata Negara Dan Siyasah*, 2.2, 207–26.

- b. **Relevance in the Modern Context:** Some Muslim scholars believe that the punishment of stoning is no longer relevant in the modern era, which prioritises rehabilitation over physical punishment.
- c. **Differences Among Schools of Thought:** There are differing views among Islamic schools of thought regarding the implementation of stoning. Some consider it an obligation, while others do not.¹¹

4. Legal Basis of Stoning Punishment According to The Qur'an and Hadith

Stoning punishment (rajm) is a death penalty carried out by throwing stones at the perpetrator of zina muhsan, which refers to a man or woman who has been married and commits adultery. This punishment has been a subject of deep discussion in the history of Islamic law, particularly regarding its legal foundation, which is derived from historical accounts, the Qur'an, and Hadith.¹²

a. Legal Basis in The Qur'an

The Quran does not explicitly mention the punishment of stoning (rajm) but refers to the punishment for adultery in general in Surah An-Nur 2:

الرَّائِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ ﴿٢٤﴾

"The female fornicator and the male fornicator—flog each of them one hundred times, and do not let compassion for them prevent you from (carrying out) the law of Allah if you believe in Allah and the Last Day. Let a group of believers witness the punishment."

This verse speaks about the punishment of flogging (jild) for those who commit zina ghayru muhsan (fornication by those who are not married).¹³ However, scholars interpret that for zina muhsan (adultery committed by a married person), the punishment of stoning applies based on the rulings of Hadith and the consensus ijma of scholars. There are also narrations stating that a verse about stoning once existed but its recitation was abrogated (naskh tilawah), while its ruling remained in effect. Umar bin Khattab mentioned this

¹¹ M Quraish Syihab, (2013). 'Wawasan Al-Qur'an: Tafsir Tematik Atas Pelbagai Persoalan Umat', Bandung: Mizan Pustaka.

¹² Nurdin Nurdin, (2023). 'Implementasi Isolasi Terhadap Pelaku Zina Ghair Muhsan (Studi Komparatif Hukum Pidana Islam)', Posita: Jurnal Hukum Keluarga Islam, 1.1, 24–31.

¹³ Ana Ainur Rohmah and Melati Mawadatul Fitroh, 'HUKUM ZINA QS. AN-NUUR 2-9'.

in one of his sermons: "Indeed, Allah revealed a verse about stoning, but we did not write it down. The ruling of stoning remains applicable to men and women who commit adultery if they are married." (H.R Bukhari and Muslim)

b. Legal Basis in Hadith

The Hadith provides a more explicit explanation of the punishment of stoning, with numerous authentic narrations indicating its implementation. Some of them include:¹⁴

a. **The Story of Maiz bin Malik**

Prophet Muhammad ﷺ ordered the stoning of Maiz after he confessed his actions and requested to be purified through this punishment. The Prophet ensured that his confession was repeated multiple times before carrying out the punishment. (H.R. Bukhari and Muslim)

b. **The Story of the Ghamidiyah Woman**

In this hadith, the Prophet gave the woman time to give birth and nurse her child before the stoning punishment was carried out. This process highlights the aspects of mercy and careful consideration in the enforcement of the law. (H.R. Muslim)

c. **Hadith Narrated by Umar bin Khattab**

Umar affirmed that stoning is part of Islamic law, agreed upon from the time of the Prophet until the caliphs after him, even though it is not written in the Quranic manuscript. (H.R. Bukhari)

5. The Law of Stoning in Islamic Criminal Law

The law of stoning in Islam is a form of punishment that has often been the subject of lengthy debate. This punishment is applied to those who commit adultery under Islamic law, as stated in the Qur'an and firmly established.¹⁵ As the most primary and absolute source of Islamic law, the Qur'an has explicitly established various laws, including a strict prohibition against adultery.

¹⁴ Helfi Helfi, (2019). 'Eksistensi Hukuman Rajam Dari Penelitian Hadis Sampai Kritik Penafsiran', Aura.

¹⁵ Rifka Wiranti Hunta, (2018). 'Pelaksanaan Hukuman Rajam Terkandung Asas Praduga Tak Bersalah Yang Harus Dipenuhi Kajian Hukum Islam', *Lex Et Societatis*, VI.9, 78–86.

In Surah An-Nisa, verse 59, Allah (SWT) provides clear guidance on the Qur'an's status as a source of law. Furthermore, through various other verses in the Qur'an, Allah (SWT) has also prescribed definitive (qath'i) punishments for those who commit adultery. The hadiths of the Prophet Muhammad (SAW), as the second source of law after the Qur'an, further reinforce and clarify the rules established in the Qur'an, including the punishment for adultery.¹⁶

For those who have never been married and commit adultery (Ghairu Muhsan), whether male or female, the applicable punishment is one hundred lashes. However, for those who are married and commit such an immoral act, there is a difference of opinion among scholars. Some scholars believe that the punishment of stoning for a married adulterer (Muhsan) originates from pre-Islamic religious law, as stated in the Torah.¹⁷

This can be seen from the first stoning incident carried out by Prophet Muhammad (SAW) against two Jews of Medina. They argue that even though the verse explicitly mentioning the stoning punishment has been removed from the Qur'an, its ruling remains valid. The opinion that the stoning sentence originates from a deleted verse has sparked a lengthy debate among Islamic jurists. This is because, when linked to the fundamental principles of Islam, it is difficult to accept a law that remains in effect without clear evidence from the Qur'an or an authentic hadith. Moreover, stoning is a highly severe punishment with significant legal implications. Therefore, many scholars question the validity of stoning as a legally binding punishment in Islam.¹⁸ Therefore, the punishment of stoning has been a long-standing debate among scholars for centuries. Some scholars support its implementation as a strict enforcement of Islamic law. However, many others question its legitimacy and humanity. They argue that stoning is too cruel and contradicts the spirit of rahmatan lil alamin in Islam.¹⁹

Several conditions and requirements must be met before someone can be sentenced to stoning. Among them are the presence of four witnesses who directly saw the act of adultery, a confession from the perpetrator, or a

¹⁶ Rifka Wiranti Hunta, (2018). 'Pelaksanaan Hukuman Rajam Terkandung Asas Praduga Tak Bersalah Yang Harus Dipenuhi Kajian Hukum Islam', *Lex Et Societatis*, VI.9, 78–86.

¹⁷ Usep Syafii Sanjabil, (2011). 'Pidana Rajam Menurut Hukum Islam Dan Ham', *Skripsi*, 1–146 (p. 47).

¹⁸ Fitri Mulyawan and Wendriadi, (2019). 'Tinjauan Ham Terhadap Pelaksanaan Hukuman Rajam Di Indonesia (Studi Analisis Perbandingan Hukum Islam Dan Hukum Nasional)', *Unes Law Review*, 2.2, 155–69 (p. 163).

¹⁹ Hunta, 'Pelaksanaan Hukuman Rajam Terkandung Asas Praduga Tak Bersalah Yang Harus Dipenuhi Kajian Hukum Islam'.

combination of both.²⁰ Additionally, the perpetrator must be fully conscious and not under coercion when committing the act.

6. Stoning Punishment According to Human Rights

Stoning punishment, as one of the cruel forms of the death penalty, has long been a subject of debate in the context of human rights (HAM). This practice, which involves throwing stones until the offender of a particular crime is killed, is generally associated with interpretations of specific religious laws. However, from the perspective of modern human rights, stoning is considered to conflict with fundamental principles of human dignity.²¹

Law No. 39 of 1999 on Human Rights explicitly states that every individual has fundamental rights inherent to their humanity, including the right to life, freedom, and protection from inhumane treatment.²² These rights are a gift from God that must be respected and protected by the state. Stoning, which takes a person's life, clearly contradicts the human rights principles outlined in this law, particularly the right to life. However, it is essential to note that the implementation of human rights in Indonesia can be restricted by law, provided that such restrictions aim to maintain public order and societal security. Therefore, although stoning fundamentally violates human rights, its application within Indonesia's legal system may be acceptable if there is a strong legal basis and its purpose aligns with the common good. Additionally, various international human rights conventions explicitly prohibit torture and other cruel, inhuman, or degrading treatment or punishment.²³

The conflict between stoning punishment and human rights becomes even more pronounced when we consider that this punishment is often carried out without a fair trial. Fair trial standards, including the right to be judged by an independent and impartial court, as well as the right to a fair and impartial

²⁰ Hunta, 'Pelaksanaan Hukuman Rajam Terkandung Asas Praduga Tak Bersalah Yang Harus Dipenuhi Kajian Hukum Islam'.

²¹ Ismail, Suaib Lubis, and Syahrul Affan, (2022). 'Hukuman Bagi Pelaku Zina Menurut Hukum Islam Ditinjau Dari Hak Asasi Manusia', *Stigma: Jurnal Ilmu Sosial Politik Dan Humaniora*, 1.2, 1-6 (p. 2).

²² Ismail, Suaib Lubis, and Syahrul Affan, (2022). 'Hukuman Bagi Pelaku Zina Menurut Hukum Islam Ditinjau Dari Hak Asasi Manusia', *Stigma: Jurnal Ilmu Sosial Politik Dan Humaniora*, 1.2, 1-6 (p. 2).

²³ Ismail, Suaib Lubis, and Syahrul Affan, (2022). 'Hukuman Bagi Pelaku Zina Menurut Hukum Islam Ditinjau Dari Hak Asasi Manusia', *Stigma: Jurnal Ilmu Sosial Politik Dan Humaniora*, 1.2, 1-6 (p. 2).

legal defense, are universal principles that must be guaranteed for every individual.²⁴ Stoning punishment, which is frequently carried out without adhering to these standards, is a clear and serious violation of human rights. Stoning punishment also contradicts the principles of social reform and rehabilitation. Instead of aiming to correct the behavior of offenders, it primarily serves as retribution, emphasising punishment. In contrast, modern criminal justice systems place a greater emphasis on rehabilitation and the social reintegration of offenders.²⁵

In the global context, which increasingly upholds human rights values, the practice of stoning has become more isolated and condemned by the international community. Countries that still implement stoning face intense pressure to abolish the practice and adopt a more humane and just criminal justice system. Nevertheless, the challenge of eliminating stoning remains significant, especially in countries where religious law holds considerable influence, such as in the Middle East, Africa, and the Americas.²⁶

At first glance, the punishment of stoning may seem inhumane. However, behind this punishment lies a valuable lesson for society: it serves as a deterrent. According to Surah Al-Nur, verse 2, the sentence of flogging (jild) is commanded to be carried out in an open space and witnessed by believers. This is intended to prevent others from engaging in adultery. It can be observed that in countries where the law of stoning is enforced, the rate of extramarital pregnancies is very low. In contrast, in countries that do not implement this law, the rate of extramarital pregnancies is high, and sexual harassment is widespread. In such cases, it is evident that women are the ones who suffer the most. Therefore, Allah commands the implementation of stoning to protect women's rights and uphold their dignity so that they are not easily violated or harassed by men.

²⁴ Ismail, Suaib Lubis, and Syahrul Affan, (2022). 'Hukuman Bagi Pelaku Zina Menurut Hukum Islam Ditinjau Dari Hak Asasi Manusia', *Stigma: Jurnal Ilmu Sosial Politik Dan Humaniora*, 1.2, 1–6 (p. 2).

²⁵ Ismail, Suaib Lubis, and Syahrul Affan, (2022). 'Hukuman Bagi Pelaku Zina Menurut Hukum Islam Ditinjau Dari Hak Asasi Manusia', *Stigma: Jurnal Ilmu Sosial Politik Dan Humaniora*, 1.2, 1–6 (p. 2).

²⁶ Ahmad Syarif, (2017). 'Rajam Dalam Perspektif Hak Asasi Manusia(Studi Analisis Perbandingan Hukum Islam Dan Hukum Positif)', *Skripsi Fakultas Syariah Dan Hukum, Uin Allaudin Makassar*, 1–74 (p. 49).

7. The Dynamics of The Implementation of Stoning Punishment in Saudi Arabia

Saudi Arabia, as a country with a Muslim-majority population that strictly applies Islamic law, enforces stoning as a form of criminal punishment. This punishment is generally imposed on married individuals convicted of adultery. However, in recent decades, there have been interesting dynamics regarding its implementation.

In the early years of the Kingdom of Saudi Arabia, stoning was frequently carried out as part of law enforcement. However, over time, due to changing social conditions and shifting public perceptions, the frequency of its application has begun to decline. Several factors influencing this decline include:²⁷

- a. Increasingly, people are questioning the ethics and humanity of stoning as a form of punishment. The demand for justice and human rights is also growing stronger.
- b. Pressure from the international community and human rights organisations against the practice of stoning is another factor driving change.
- c. The Saudi Arabian government has begun to realise that enforcing stoning punishments can negatively impact the country's image in the eyes of the world.

Nevertheless, stoning is still included in Saudi Arabia's criminal law. However, in practice, this punishment is rarely carried out. Some reports even suggest that stoning has been replaced with a more humane form of capital punishment, such as beheading. Thus, the dynamics of implementing stoning laws in Saudi Arabia indicate a shift from punishments considered cruel toward a more moderate approach in line with contemporary developments.²⁸

8. The Dynamics of The Implementation of Stoning Criminal Law in Brunei Darussalam

²⁷ Faidatul Hikmah, (2024). 'Studi Komparatif Penggunaan Analogi Dalam Hukum Pidana Indonesia Dengan Sistem Hukum Common Law Dan Syariah', *Jurnal Interpretasi Hukum*, 4.2, 392–404 <<https://doi.org/10.22225/juinhum.4.2.8301.392-404>>.

²⁸ Faidatul Hikmah, (2024). 'Studi Komparatif Penggunaan Analogi Dalam Hukum Pidana Indonesia Dengan Sistem Hukum Common Law Dan Syariah', *Jurnal Interpretasi Hukum*, 4.2, 392–404 <<https://doi.org/10.22225/juinhum.4.2.8301.392-404>>.

Brunei Darussalam is the only country in Southeast Asia that officially implements stoning as a punishment in its legal system. It can even be considered one of the most consistent countries in applying Islamic criminal law, which closely aligns with the principles of Islamic jurisprudence (fiqh). Through Order No. 83(3) of 2013, the Sultan of Brunei enacted the Syariah Penal Code, which serves as the foundation of the country's criminal law. This code, consisting of five parts, includes various Islamic criminal punishments, such as amputation, whipping, and stoning for different offenses.²⁹

Although it was not widely opposed by its society, the implementation of Islamic criminal law in Brunei faced challenges from the international community. After a brief delay in April 2014, the Sultan of Brunei officially began the first phase of implementing this law in May 2014. During this phase, prison sentences and fines were imposed on individuals who ate, drank, or smoked during fasting hours, failed to attend Friday prayers (for men), and engaged in khalwat (proximity) between two non-mahram individuals.³⁰

The debate intensified in the next phase when Brunei Darussalam announced plans to reinstate the punishment of stoning in 2019. This move triggered condemnation from various parties, including world leaders and multinational corporations. In 2019, Brunei officially enforced Sharia law, which included the death penalty by stoning for individuals engaged in same-sex or homosexual relations. Homosexual behavior is considered contrary to Islamic law, and Brunei Darussalam has regulated it accordingly. Homosexual conduct in Brunei Darussalam is governed under the Syariah Penal Code Order, 2013, specifically in Section 82 concerning Liwat, which states:³¹

- a. Anyone who engages in liwat (sodomy) is committing an offense and, if proven guilty, should be punished with the same penalty as prescribed for the crime of adultery.

²⁹ Mardiaz Safitringing Haqqi, (2022). 'Sanksi Pidana Terhadap Perilaku Homoseksual Menurut Qanun Aceh Dan Qanun Di Brunei Darussallam Serta Kontribusinya Dalam Pembaharuan Kuhp Indonesia'.

³⁰ Mardiaz Safitringing Haqqi, (2022). 'Sanksi Pidana Terhadap Perilaku Homoseksual Menurut Qanun Aceh Dan Qanun Di Brunei Darussallam Serta Kontribusinya Dalam Pembaharuan Kuhp Indonesia'.

³¹ Mardiaz Safitringing Haqqi, (2022). 'Sanksi Pidana Terhadap Perilaku Homoseksual Menurut Qanun Aceh Dan Qanun Di Brunei Darussallam Serta Kontribusinya Dalam Pembaharuan Kuhp Indonesia'.

- b. This ruling refers to liwat as intercourse between a man and another man or between a man and a woman who is not his wife, conducted outside of marriage through the dubur.

From the provisions above, it can be understood that the punishment for those who commit liwat is the same as the punishment for adultery, which is the Hadd punishment, a penalty for hudud crimes, namely being whipped 100 times.³² The implementation of this law has sparked significant international controversy, with many parties condemning it as a violation of human rights.

The stoning law in Brunei Darussalam is based on a strict interpretation of Islamic law. The Brunei government argues that implementing this law aims to protect the moral and religious values of society. However, critics contend that this punishment is inhumane and contradicts universal human rights principles.

An interesting dynamic arises from the differing perspectives between Brunei and Western countries. Western nations generally adhere to secularism and individual freedom, leading them to view stoning as a form of torture and inhumane treatment.³³ On the other hand, Brunei, as a Muslim-majority country, firmly upholds religious values and regards stoning as a form of justice based on God's law. The conflict between universal human rights principles and the interpretation of religious law is a key focus in Brunei's case. On one side, there is intense international pressure to abolish stoning. On the other hand, the Brunei government remains steadfast in its decision.

9. The Dynamics of Implementing Stoning Punishment in Iran

This country, dominated by Shia followers, has long incorporated stoning punishment as an integral part of its legal system—a policy that has sparked intense debate both domestically and internationally. The 1982 law regulating sexual offenses explicitly prescribed stoning for married men who committed adultery, the death penalty for male same-sex relations, and one

³² Mardiaz Safitringing Haqqi, (2022). 'Sanksi Pidana Terhadap Perilaku Homoseksual Menurut Qanun Aceh Dan Qanun Di Brunei Darussallam Serta Kontribusinya Dalam Pembaharuan Kuhp Indonesia'.

³³ Mardiaz Safitringing Haqqi, (2022). 'Sanksi Pidana Terhadap Perilaku Homoseksual Menurut Qanun Aceh Dan Qanun Di Brunei Darussallam Serta Kontribusinya Dalam Pembaharuan Kuhp Indonesia'.

hundred lashes for lesbian acts. However, in an effort toward modernization, a legal revision in 2013 explicitly removed stoning from their penal code.³⁴

Islamic criminal law explicitly regulates sanctions for those who commit adultery but have never been married. Meanwhile, for perpetrators of zina muhsan (adultery by married individuals), the law appears to be ambiguous. However, Shadi Sadr's perspective, as cited by Kamali, offers an interesting view. He argues that the absence of written regulations does not automatically abolish the punishment of stoning. Instead, this legal gap affords judges the discretion to make decisions based on Islam's primary sources—the Qur'an and the Sunnah. Thus, a judge has the right to punish rajm in zina muhsan cases, as long as it can be justified according to *shar'i* (Islamic law).³⁵

On the other hand, Hussain observes a shift in views regarding the punishment of rajm in Iran. He notes increasing pressure to find more humane alternatives. Ayatollah Hussein Mousavi Tabrizi, a prominent scholar, has also expressed a similar opinion. He argues that enforcing rajm not only contradicts universal human values but also damages Islam's reputation in the eyes of the world.³⁶

10. The Application of Islamic Criminal Law in Aceh

The Qanuns enacted by the Aceh Government as part of jinayat (Islamic criminal law) are divided into four aspects: Qanun No. 11 of 2002 on the Implementation of Sharia in the Fields of Aqidah, Worship, and Islamic Law; Qanun No. 12 of 2003 on Alcoholic Beverages and Similar Substances; Qanun No. 13 of 2003 on Maisir (Gambling); and Qanun No. 14 of 2003 on Khalwat (Immoral Conduct).³⁷

One of the Islamic criminal laws implemented in Aceh is the punishment of rajam. Therefore, the focus of this discussion is how the rajam

³⁴ Hanif A'la Ilhami and Zul Efendi, (2024). 'Dinamika Hukuman Rajam Di Beberapa Negara Muslim Modern Dan Relevansi Penerapan Di Indonesia', *Jurnal Al-Maqasid: Jurnal Ilmu Kesyariahan Dan Keperdataan*, 10.1, 33–53 (p. 38).

³⁵ Hanif A'la Ilhami and Zul Efendi, (2024). 'Dinamika Hukuman Rajam Di Beberapa Negara Muslim Modern Dan Relevansi Penerapan Di Indonesia', *Jurnal AL-MAQASID: Jurnal Ilmu Kesyariahan Dan Keperdataan*, 10.1, 33–53.

³⁶ Hanif A'la Ilhami and Zul Efendi, (2024). 'Dinamika Hukuman Rajam Di Beberapa Negara Muslim Modern Dan Relevansi Penerapan Di Indonesia', *Jurnal AL-MAQASID: Jurnal Ilmu Kesyariahan Dan Keperdataan*, 10.1, 33–53

³⁷ Syarifah Mudrika, (2023). 'Implementasi Jarimah Zina Di Aceh Dalam Perspektif Hadis', *Legalite: Jurnal Perundang Undangan Dan Hukum Pidana Islam*, 8.1, 1–19.

punishment is applied in Indonesia and other Muslim-majority countries. Rajam is a form of capital punishment for married individuals (muhsan) convicted of adultery, carried out by stoning or similar means until death. The legitimacy of rajam as part of Islamic criminal law is widely accepted by almost all fuqaha (Islamic jurists). However, rajam can only be enforced if the crime is proven beyond doubt, with four eyewitnesses testifying to the act. The punishment can be nullified if the accused retracts their confession, if witnesses withdraw their testimonies, or if there is any denial from the accused.³⁸

The punishment of stoning has been enforced in several Middle Eastern countries that base their legal system on Islamic law. In Indonesia, there is a region that implements stoning and whipping for adultery, namely Aceh, which has autonomous rights to govern itself. Indonesia has established positive state law as the basis for legal decisions, including adultery, as stated in Article 284, Paragraph 1 of the Criminal Code (KUHP), which stipulates that perpetrators of adultery—whether married or not—are sentenced to nine months in prison. Paragraph 2 requires that a report must be filed with the authorities for the case to be processed.

As is well known, many Islamic criminal laws cannot be easily applied in Indonesia, such as amputation for theft, qisas (retributive justice), and other hudud punishments, due to several factors. One major factor is their perceived conflict with human rights protection, which advocates for fundamental human rights and opposes any form of violence that threatens these rights. However, the perception of harshness in some hudud laws would fade with an in-depth study of the reasoning and wisdom behind their implementation. This is because all sharia laws are fundamentally intended for the well-being of the Muslim community.³⁹

The Qanun on Jinayah Law in Aceh defines adultery (zina) as sexual relations between one or more men and one or more women outside of a legitimate marriage. The Qanun on Jinayah Law emphasises that adultery does not only occur between one man and one woman. Still, it can also involve one man with multiple women or vice versa, multiple men with one woman.

³⁸ Syarifah Mudrika, (2023). 'Implementasi Jarimah Zina Di Aceh Dalam Perspektif Hadis', *Legalite: Jurnal Perundang Undangan dan Hukum Pidana Islam*, 8.1, 1–19.

³⁹ Syarifah Mudrika, (2023). 'Implementasi Jarimah Zina Di Aceh Dalam Perspektif Hadis', *Legalite: Jurnal Perundang Undangan dan Hukum Pidana Islam*, 8.1, 1–19.

Perpetrators of adultery are subject to a punishment of 100 lashes, regardless of whether they are married (muhsan) or unmarried (ghairu muhsan).⁴⁰

Unlike opinions in fiqh jinayah, which differentiate punishments between muhsan and ghairu muhsan, this Qanun imposes the same punishment for both. This is evident in Article 33, paragraph (1), which states: "Anyone who intentionally commits the crime of adultery is subject to a hudud punishment of 100 lashes." The term "anyone" in this context includes both married and unmarried individuals.⁴¹

The provisions of Article 33 are based on Allah's command in Surah An-Nur, verse 2: "The woman who commits adultery and the man who commits adultery, lash each of them one hundred times, and do not let pity for them prevent you from (carrying out) Allah's religion, if you believe in Allah and the Last Day. And let a group of believers witness their punishment."

This verse is general because the phrase *al-zaniyatu wa al-zaniy* (the adulterous woman and the adulterous man) is a general expression that includes both muhsan (married) and ghairu muhsan (unmarried) adulterers. The terms muhsan and ghairu muhsan originate from the sayings of the Prophet Muhammad, who prescribed the punishment of *rajm* (stoning to death) for muhsan adulterers. When a man committed adultery with a woman, the Prophet initially ordered him to be lashed. However, upon learning that he was muhsan, the Prophet then ordered him to be stoned to death.⁴²

The Qanun on Jinayah Law also introduces *tazir* punishment as an additional penalty for perpetrators of *zina* (adultery/fornication), alongside the primary hudud punishment. This applies to repeat offenders, those who commit *zina* with a child, and those who commit *zina* with someone who is a mahram (close blood relative). A person who repeatedly commits *zina* faces a punishment of 100 lashes and may receive an additional *tazir* penalty in the form of a fine of up to 120 grams of pure gold or imprisonment for up to 12 months. A person who commits *zina* with a child faces a *tazir* punishment of up to 100 lashes, a fine of up to 1,000 grams of pure gold, or imprisonment for up to 100 months.

⁴⁰ Syarifah Mudrika, (2023). 'Implementasi Jarimah Zina Di Aceh Dalam Perspektif Hadis', *Legalite: Jurnal Perundang Undangan Dan Hukum Pidana Islam*, 8.1, 1–19.

⁴¹ Syarifah Mudrika, (2023). "Implementasi Jarimah Zina Di Aceh Dalam Perspektif Hadis," *Legalite : Jurnal Perundang Undangan Dan Hukum Pidana Islam* 8, no. 1 (May 2): 1–19,

⁴² Syarifah Mudrika, (2023). "Implementasi Jarimah Zina Di Aceh Dalam Perspektif Hadis," *Legalite : Jurnal Perundang Undangan Dan Hukum Pidana Islam* 8, no. 1 (May 2): 1–19

A person who commits zina with a mahram faces a hudud punishment of 100 lashes and may also receive an additional tazir penalty of up to 100 lashes, a fine of up to 100 grams of pure gold, or imprisonment for up to 10 months.⁴³ There has been much debate, both for and against, regarding the legal status of adultery in Aceh. From a human rights law perspective, it is difficult to enforce the punishment of stoning in Aceh. The controversy surrounding this punishment persists because some people in Aceh and Indonesia, in general, oppose it, considering it a violation of human rights. On one hand, the implementation of stoning could be possible, as Aceh has the authority to enforce Islamic law fully. However, this presents a significant challenge, not only from a political standpoint but also in terms of legal and sociological aspects that influence the formation of Islamic law in Aceh.

D. CONCLUSION

The stoning punishment, which has been enforced both in Indonesia and in other Muslim countries, has sparked much debate, with strong pros and cons. It has even faced international condemnation for being considered a violation of human rights. At first glance, stoning may seem cruel. However, behind this punishment lies a valuable lesson for society—it serves as a deterrent. According to Surah Al-Nur, verse 2, flogging (jild) is commanded to be carried out in an open place and witnessed by believers. The purpose of this is to prevent other believers from committing adultery. It can be observed that in countries where stoning laws are implemented, the rate of out-of-wedlock pregnancies is very low. In contrast, in countries that do not enforce stoning, the rate of out-of-wedlock pregnancies is significantly high, and cases of sexual harassment are widespread. In such cases, women are the most disadvantaged. Therefore, Allah commands the implementation of stoning punishment to protect women's rights and elevate their dignity so that they are not easily violated or harassed by men.

In general, Islamic law applicable in Indonesia falls within the realm of civil law, particularly in certain aspects of family law, such as marriage, divorce, inheritance, and endowments (waqf). On the other hand, Islamic criminal law is not fully enforced in Indonesia, as it could trigger unrest and be seen as deviating from modern human rights norms. The status of Islamic criminal law

⁴³ Fakhrrurazi, (2020). "Jarimah Zina Dan Pemerkosaan Dalam Qanun Jinayat Aceh: Analisis Perumusan Metode Istimbath;" *Islam Universalia: International Journal of Islamic Studies and Social Sciences* 1, no. 3 (January 29): 400–433.

in Indonesia is also influenced by the principle of Bhinneka Tunggal Ika (Unity in Diversity), which emphasises the country's cultural and religious diversity. As a result, the implementation of Islamic criminal law must align with the principles of democracy, human rights, justice, and national diversity.

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