



El-Mashlahah

Volume 14 No. 1, June 2024

ISSN: E-ISSN: 2622-8645; P-ISSN: 2089-1970

DOI: [10.23971/el-mashlahah.v14i1.7354](https://doi.org/10.23971/el-mashlahah.v14i1.7354)

The Mapping Verses and Application of the Linguistic Approach and *Uşūl Fiqh* Toward the Law of Adultery

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Received: 26-09-2023; Accepted: 22-01-2024; Published: 25-03-2024;

ABSTRACT

It becomes a dilemma when Muslim communities cannot apply Islamic criminal law. In fact, a law is not only to be understood but also believed to be true by Muslims themselves. So, it is appropriate that the punishment for adultery is less likely to have a deterrent effect on the perpetrator. This is because, apart from conventional criminal law being poorly understood by the Muslim community, the sanctions are also quite light so that the deterrent effect desired by law enforcers cannot be realized. This research aims to analyze adultery law by applying linguistic approaches and *uşūl fiqh* to adultery law. This type of research is normative law using a language and *uşūl fiqh* approach. The data sources were primary and secondary, while data collection techniques were observation and literature study. The results of this research show that adultery is analyzed using a language and *uşūl fiqh* approach is the perpetrator of a criminal act who deliberately commits the elements of inserting male genitalia into female genitalia (in intercourse), which is unlawful according to the substance of the act, not because *subhāt* and women bring lust. The punishment for adultery is to *jilīd* one hundred times. This penalty can be applied if the legal action has been legal before the court by presenting four witnesses. The stipulated punishment cannot be changed with other types of punishment because the punishment is regulated by the text of the Al-Quran.

Keywords: Adultery Law; Linguistic Approach; *Uşūl Fiqh*;

ABSTRAK

Menjadi dilema tersendiri bilamana masyarakat Muslim tidak dapat menerapkan hukum pidana Islam. Padahal sebuah hukum bukan saja hanya untuk dimengerti, tetapi juga diyakini kebenarannya oleh kaum Muslim itu sendiri. Maka pantas jika hukuman bagi pezina kurang dapat menimbulkan efek jera bagi pelaku. Hal ini karena di samping hukum pidana konvensional kurang dimengerti oleh masyarakat Muslim, juga sanksinya cukup ringan sehingga efek jera yang diinginkan oleh penegak hukum kurang dapat

direalisasikan. Penelitian ini bertujuan untuk menganalisis hukum zina dengan penerapan pendekatan kebahasaan dan *uṣūl fiqh* terhadap hukum zina. Jenis penelitian ini merupakan hukum normatif dengan menggunakan pendekatan bahasa dan *uṣūl fiqh*. Sumber data yang digunakan adalah sumber data primer dan sumber data sekunder, adapun teknik pengumpulan data adalah observasi dan studi literatur. Hasil penelitian ini menunjukkan bahwa zina dianalisis menggunakan pendekatan bahasa dan *uṣūl fiqh* adalah orang yang dengan sengaja melakukan perbuatan memasukkan alat kelamin laki-laki ke dalam alat kelamin perempuan (berhubungan seksual), yang haram menurut substansi perbuatannya, bukan karena *subḥāt* dan perempuan mendatangkan syahwat. Hukuman bagi pezina adalah *jilīd* seratus kali. Dengan menghadirkan empat orang saksi, pengadilan dapat menentukan bahwa perbuatan hukum itu sah dan menjatuhkan hukuman tersebut. Karena hukuman diatur oleh Al-Qur'an, maka hukuman yang ditentukan tidak dapat diubah dengan bentuk hukuman yang lain.

Kata Kunci: Hukum Zina; Pendekatan Kebahasaan; *Uṣūl Fiqh*;

Introduction

This article describes the application of the linguistic approach and *uṣūl fiqh* toward the law of adultery. To compress the idea, the author limits the discussion to the study of (A.S. An-Nūr (24) 2) through linguistic perspective and exploring *uṣūl fiqh* manner. In general, there are definitions of adultery. First, intercourse between two people with different *mahram* (illegal relation or a valid marriage bond). Second, the actions of a married man to a woman who is not his wife or a married woman to a man who is not her husband.¹ The case of the practice of the two forms of adultery is contrary to human nature, which is essentially holy.² Adultery occurs along with the development of the times, which has implications for the behavior of a growing society and reflects the lack of adherence to norms, especially the norms of decency.³ According to the term *syarā'* as defined by Ruma'i ar-Ruhaily, adultery is the insertion of the male genitalia into the female genitalia (in intercourse), which is unlawful according to the substance of the act, not because it is *subḥāt* and the woman brings lust.⁴

Intercourse that occurs because of *subḥāt* also does not include adultery because such intercourse is not considered *harām*. *Subḥāt* intercourse is like a father having sex

¹*Kamus Besar Bahasa Indonesia Edisi Ketiga* (Jakarta: Balai Pustaka, 2005).

²Khairuddin, "Had Bagi Pezina Muhshan (Kajian Perbandingan Dalil)," *Media Syari'ah Jurnal Hukum Islam Dan Pranata Sosial* 13, no. 1 (2011): 109–20, <https://jurnal.ar-raniry.ac.id/index.php/medsyar/article/view/1746>.

³M Faizal Amirudin and Punta Yoga Astoni, "Sebagai Yurisprudensi Hakim Dalam Memutuskan Perkara Tindak Pidana Perzinahan," n.d.

⁴Ruway'i Ar-Ruhaily, *Fikih Umar (Penerjemah) Abbas M. Basalamah* (Jakarta: Pustaka Al-Kautsar, 1994), 85–88.

with his child's slave girl, a husband having intercourse with his wife's slave girl, and a husband accidentally having intercourse with a woman who has a resemblance to his wife. Women who trigger lust are living women, both young and adult women. So, intercourse with a corpse or an animal is not considered adultery, even though it is indeed forbidden. However, it is illegal here not because of adultery but other reasons. All forms of adultery, homosexuality, and other immoral practices are heinous acts.⁵ According to the theory of *Naḍāriyyah al-Hudūd*⁶ Muhammad Syahrur said in his fourth theory that *hudūd* (had limits) of legal provisions exist at the upper and lower limits located at one point (straight line, *mustaqīm*) simultaneously. Thus, there is no room for new *ijtihād*, it cannot be less or more than what has been determined by the text. Syahrur thinks this fourth form only applies when convicting adulterers, namely being bound one hundred times according to determined in (Q.S. An-Nūr (24) 2, 3-10). This punishment can only be imposed on the condition that there are four witnesses or through *li'ān*.⁷

Previous research on adultery law has been carried out by previous researchers, for example, research conducted by Ishaq⁸ in 2014 discusses the contribution of the concept of adultery in the reform of Indonesian criminal law. His research results state that the meaning of adultery and its sanctions are contained in article 284 of the Criminal Code, in fact, contrary to Islamic values,⁹ and cultural customs based on Pancasila. So, there must be renewal by incorporating Islamic religious values and cultural customs based on Pancasila. Even though they are both researching adultery, there are differences between

⁵Dudi Badruzaman and A Ropei, "Gender Equality For Women Victims Of Violence In Household," *Al-Ihkam: Jurnal Hukum Keluarga Jurusan Ahwal Al-Syakhshiyah Fakultas Syariah IAIN Mataram* 12, no. 1 (2020): 1–14, <https://doi.org/10.20414/alihkam.v12i1.2141>.

⁶The *Naḍāriyyah al-Hudud* theory is a theory of Islamic law initiated by Muhammad Syahrur to prove that in the provisions of Allah as explained in the Qur'an and as-Sunnah there is room for *ijtihād*, proven by the existence of boundaries or *hudud* (plural of the word *had* which means limit). Syahrur shows that Allah's law has a lower and upper limit for all human actions. The lower limit is referred to as the legal minimum limit that must be set in a particular case, while the upper limit is the maximum limit required by law. See Imam Syaukani, *Rekonstruksi Epistemologi Hukum Islam Indonesia* (Jakarta: PT Raja Grafindo Persada, 2006). Can see too Wael B. Hallaq, *Sejarah Teori Hukum Islam: Pengantar Untuk Ushul Fiqh Mazhab Sunni (A History of Islamic Legal Theories) (Penerjemah) E. Kusnadinigrat Dan Abdul Haris Bin Wahid* (Jakarta: PT Raja Grafindo Persada, 2000), 336–67..

⁷Syaukani, *Rekonstruksi Epistemologi Hukum Islam Indonesia*.

⁸Ishaq, "Kontribusi Konsep Jarimah Zina Dalam Pembaharuan Hukum Pidana Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 14, no. 1 (2014): 81–100, <https://doi.org/10.18326/ijtihad.v14i1.81-100>.

⁹Suwarjin et al., "Virginity and Cincin Penyembah: Sociological, Philosophical, and Maqāṣid Al-Sharī'ah Study on Serawai Tribe Traditional Marriage," *Ahkam: Jurnal Ilmu Syariah* 23, no. 1 (2023): 49–70, <https://doi.org/10.15408/ajis.v23i1.31077>.

the research conducted by Ishaq and the particular research that focuses on the study of application through a linguistic approach in cases of adultery law by conducting studies on (Q.S. An-Nūr (24) 2). Next, the research conducted by Hamid Fahiri discusses adultery, *Qadāf*, and liquor from the Perspective of Islamic Criminal Law,¹⁰ which discusses *jarīmah* (criminal acts) of adultery, *waṭī'* anal or anal sex, *syubhāt* in sexual relations (*waṭī'*), sexual intercourse by force, marriage after the occurrence of adultery, masturbation, the determination of had fornication, *khamr* (liquor), punishment for *khamr* drinkers and treatment with *khamr*. The research conducted by Hamid Fahiri has a broad scope and does not only discuss adultery. It is a differentiator from this research that focuses on the study of linguistic approaches in cases of adultery law.

Also, research conducted by Al Yasa' Abubakar and Iqbal Maulana discusses adultery with a focus on evidence and methods of proving the crime of adultery, whose research looks at *jinayāt* law and positive law in Aceh which have different views regarding the criminal case of adultery.¹¹ Although, both studies discuss adultery, the object and research focus are different from the particular research. This research focuses on a linguistic approach in adultery legal cases by conducting studies on (Q.S. An-Nūr (24) 2). Furthermore, research conducted by Dudi Badruzzaman examined the review of Islamic law on facilitators of adultery, the facilitators here include pimps, sex brokers, place providers, delivery workers, and so on. In the results of his research, adultery facilitators also include the actions of *jarimah ta'zīr* who play a role in the practice of *jarimah* adultery and get *ta'zīr* (punishment or sanctions).¹² The provider of this facilitator can also be trapped in Article 296 of the Criminal Code in positive law in Indonesia.¹³ This is different from the focus of this research.

Based on the literature review, this article locates the different position among previous articles, where this work discusses legal cases of adultery using a linguistic

¹⁰Hamid Fahiri, "Zina, Qadzaf, Dan Minuman Keras Dalam Perspektif Hukum Pidana Islam," *Mizan: Journal of Islamic Law* 2, no. 1 (2014): 83–96, <https://doi.org/10.32507/mizan.v2i1.135>.

¹¹Al Yasa' Abubakar and Iqbal Maulana, "Alat Bukti Dan Metode Pembuktian Terhadap Tindak Pidana Zina," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 7, no. 2 (2018): 173–89, <https://doi.org/10.22373/legitimasi.v7i2.3970>.

¹²Dudi Badruzzaman, "Tinjauan Hukum Islam Terhadap Fasilitator Perbuatan Zina," *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 3, no. 2 (2020): 79–94.

¹³Dudi Badruzzaman, "Kajian Hukum Tentang Internet Mobile Dalam Upaya Pencegahan Dampak Negatif Teknologi Informasi Dan Komunikasi Di Indonesia," *Ajudikasi: Jurnal Ilmu Hukum* 3, no. 2 (2019): 135–52, <https://doi.org/10.30656/ajudikasi.v3i2.1657>.

approach¹⁴ and *uṣūl fiqh* with analytical studies on the Qur'an Surat an-Nur verse 2. After conducting a literature review, no study has been found that focuses on legal cases of adultery in terms of a linguistic approach by analyzing and studying (Q.S. An-Nūr (24) 2). Therefore, this article aims to find out the mapping verses and application of linguistic approach and *uṣūl fiqh* toward the law of adultery that focus on the study of (Q.S. An-Nūr (24) 2).

Method

The research used qualitative research,¹⁵ with the normative juridical approach, which is an approach based on the main legal material by examining theories, concepts, legal principles, and statutory regulations related to this research.¹⁶ Normative legal research¹⁷ is a legal research that places law as the norm for system development.¹⁸ The research approach was a normative¹⁹ and philosophical.²⁰ Moreover, the type of data was qualitative, which is not in the form of statistics. The main objective of this qualitative research is to examine the process of reasoning in the context of social reality using an objective approach and a phenomenological paradigm. The qualitative approach is

¹⁴Sahkholid Nasution et al., "Learning Arabic Language Sciences Based on Technology in Traditional Islamic Boarding Schools in Indonesia," *Nazhruna: Jurnal Pendidikan Islam* 7, no. 1 (2024): 77–102, <https://doi.org/10.31538/nzh.v7i1.4222>.

¹⁵Mhd. Rasidin, Natardi Natardi, and Doli Witro, "The Impact of Unequal Marriage on Household Harmony (Case Study in Sungai Penuh City, Jambi)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 313–36, <https://doi.org/10.22373/sjkh.v4i2.8083>; Muhamad Izazi Nurjaman and Doli Witro, "The Relevance of the Theory of Legal Change According to Ibnu Qayyim Al-Jauziyyah in Legal Products by Fatwa DSN-MUI Indonesia," *El-Mashlahah* 11, no. 2 (2021): 167–86, <https://doi.org/10.23971/elma.v11i2.3181>.

¹⁶Shinta Azzahra Sudrajat, Arzam Arzam, and Doli Witro, "Legal Protection in Labor Dispute Settlement Through Industrial Relations Mechanism," *Khazanah Hukum* 4, no. 1 (2022): 1–9, <https://doi.org/10.15575/kh.v4i1.17027>; Dena Ayu et al., "A Sociological Approach to Consumer Protection in E-Commerce Transactions During the Covid-19 Pandemic," *Khazanah Hukum* 4, no. 3 (2022): 181–91, <https://doi.org/10.15575/kh.v4i3.18690>.

¹⁷Syaikhu, Sabarudin Ahmad, and Muhammad Luthfi Setiarno Putera, "Judicial Mediation: Is Reconciliation Impossible in Divorce Cases?," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 5, no. 2 (2023): 120–47, <https://doi.org/10.19105/al-manhaj.v5i2.11887>; Lisnawati and Sabarudin Ahmad, "Kada Balampu, Menyisir Sisi Tapih: Eksplorasi Nilai Islami Dalam Kearifan Lokal Urang Banjar," *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyarifan Dan Pranata Sosial* 9, no. 2 (2023): 312–28, <http://jurnal.iain-padangsidempuan.ac.id/index.php/elqanuniy/article/view/8578>.

¹⁸Darti Busni et al., "Implementation of the Hybrid Contract Concept in Multiservice Ijarah Financing as a Financing Alternative Health Service in the Covid-19 Pandemic," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (February 2022): 11–25, <https://doi.org/10.31958/juris.v21i1.5173>.

¹⁹Sabarudin Ahmad, Novita Anggraeni, and Andrian Kukuh Pambudi, "A. Djazuli's Thinking Regarding Hifzu Al-Ummah: Dismissing the Entangled Bureaucracy to Commemorate the Era of Society 5.0," *Journal de Jure* 12, no. 1 (2020): 86–101, <https://doi.org/10.18860/j-fsh.v12i1.8700>.

²⁰Asa'ari Asa'ari et al., "Considering Death Penalty for Corruptors in Law on Corruption Eradication from the Perspective of Maqāsid Al-Syarī'Ah," *Samarah* 7, no. 2 (2023): 920–36, <https://doi.org/10.22373/sjkh.v7i2.14944>.

characterized by its main objective of explaining the case through understanding the meaning and symptoms. This qualitative methodology centers on overarching principles derived from observing and analyzing a collection of phenomena that exist in the natural world of human existence. The data sources were primary and secondary. The primary data source was the Quran, Surah An-Nur verse 2, which is analyzed using a linguistic approach and *uṣūl fiqh*. Primary data sources refer to data obtained through the process of observation and analysis of the main literature. These sources are used to assess the harmony between the text and reality, using various forms of scientific studies.²¹ Primary data refers to information collected directly by researchers from the source, without involving intermediaries.²² Meanwhile, secondary data sources are in the form of articles, books, and other research documents that are relevant to the theme. Therefore, this study conducted a comprehensive review of relevant kinds of literature to identify specific topics on the focus of the research. This effort was made to obtain information from the library. These sources serve to complement and support the primary sources considered important for a particular research investigation. Secondary data refers to information that is directly obtained from the source.²³ The data collection techniques were observation and literature study. The technical data analysis was through inventory, classification, and analysis of data.²⁴

Findings and Discussion

Adultery in Islamic Perspective

Imam al-Jurjani explains the practice of adultery in his book, *al-Ta'rifāt*. He says that adultery is the behavior of inserting a penis into the vagina of a female who has no legal connection (marriage) and there is no *syubhāt*. Thus, adultery is a sexual relationship between two different sexes without any marriage ties.²⁵ In Indonesian positive law, regulated in section 284 of the Criminal Code (KUHP),²⁶ adultery is set to be punished

²¹Moh. Nazir, *Metode Penelitian Cetakan Ke-3* (Jakarta: Ghalia Indonesia, 1988).

²²Noeng Muhadjir, *Metodologi Penelitian Kualitatif* (Yogyakarta: Rake Sarasin, 1998).

²³Muhadjir.

²⁴Wahyudin Darmalaksana, *Metode Penelitian Kualitatif Studi Pustaka Dan Studi Lapangan* (Bandung: Pre-Print Digital Library UIN Sunan Gunung Djati Bandung, 2020).

²⁵Ririn Isna Magfiroh and Ashif Az Zafi, "Eksistensi Fikih Dalam Penerapan Hukum Zina Di Indonesia," *DIKTUM: Jurnal Syariah Dan Hukum* 18, no. 1 (2020): 102–117, <https://doi.org/10.35905/diktum.v18i1.1314>.

²⁶Rahmawati, "Tindak Pidana Perzinaan Dalam Perspektif Perbandingan Antara Kitab Undang-Undang Hukum Pidana Dan Hukum Pidana Islam," *An Nisa'a* 8, no. 1 (2013): 11–26, <https://jurnal.radenfatah.ac.id/index.php/annisa/article/view/834>.

by imprisonment for a maximum of nine months,²⁷ and then no prosecution is carried out except on complaints. Furthermore, if complaints do not apply to sections 72, 73, and 75, then complaints can be withdrawn again. And, the husband and wife apply section 27 BW²⁸ as explained in the research of Ismansyah and Ermawati (2012) talking about the crime. The result is that adultery is a part of a crime.²⁹ This adultery is divided into three. First, adultery committed with violence or threats of violence. Second, adultery committed by psychic coercion. Third, adultery is committed based on consensual.³⁰ This law is not a tool but a means. The adultery regulations in the previous Criminal Code provide an overview of the laws that live in society, both written and unwritten.³¹ In criminal law, the decision of the Supreme Court becomes more important because it functions as jurisprudence.³² The judge's decision can be followed by other judges if there is a similar case.³³ However, based on research conducted by Ishaq (2018), many criminal acts of adultery occur without filing complaints. Therefore, these criminal practices do not reach court.³⁴

Whereas in Islamic law, caning is a punishment for adulterers³⁵ for free people described in letter An-Nuur (24) verse 2. This verse explains that the punishment for (*az-zāni* (a male adulterer) and *az-zāniyah* (a female adulterer) is a hundred times with lashes, and it is not allowed to cause the adulterer to die. Therefore, verse 3 states that male

²⁷Simon Purba, Mustamam, and Adil Akhyar, "Penegakan Hukum Terhadap Pelaku Perzinahan Dalam Perspektif KUHP Dan Qanun Di Lhoksukon Aceh Utara," *Jurnal Ilmiah Metadata* 3, no. 2 (2021): 651–68, <https://ejournal.steitholabulilmi.ac.id/index.php/metadata/article/view/82>.

²⁸Tongat, "Tanggung Jawab Pidana Pemakai Jasa Prostitusi (Suatu Pendekatan Yuridis-Religius)," *Hukum Pidana Dan Pembangunan Hukum* 1, no. 2 (2019): 1–10, <https://doi.org/10.25105/hpph.v1i2.5551>.

²⁹Taufan Dirgahayu Kurnia and Erwin Syahrudin, "Konsep Tindak Pidana Zina Menurut Hukum Pidana Adat Dan KUHP Dalam Hukum Positif Di Indonesia," *Jurnal Pendidikan Dan Konseling* 4, no. 5 (2022): 109–19, <https://journal.universitaspahlawan.ac.id/index.php/jpdk/article/view/6551>.

³⁰Amirudin and Astoni, "Sebagai Yurisprudensi Hakim Dalam Memutuskan Perkara Tindak Pidana Perzinahan."

³¹Cut Asmaul Husna TR, "Penemuan Dan Pembentukan Hukum 'The Living Law' Melalui Putusan Hakim," *Mizan* 2, no. 3 (2012): 70, <https://gabenta.files.wordpress.com/2013/03/penemuan-dan-pembentukan-hukum-the-living-law-melalui-putusan-hakim.pdf>.

³²Rusdi Pieter Johan, "Putusan Pengadilan Sebagai Alternatif Pembentukan Hukum Dalam Perkara Pidana," *Let Ex Sociates* 1, no. 3 (2013): 126–37, <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/2456>.

³³Zulfiqar Bhisma Putra Rozi, "Perkembangan Delik Zina Dalam Yurisprudensi Hukum Pidana," *Veritas et Justitia* 5, no. 2 (2019): 286–301, <https://journal.unpar.ac.id/index.php/veritas/article/view/3612>.

³⁴Ishaq, "Perbandingan Sanksi Zina Dalam Hukum Pidana Adat Desa Koto Lolo Dan Kitab Undang-Undang Hukum Pidana," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 18, no. 1 (2018): 47–62, <https://doi.org/10.30631/alrisalah.v18i1.169>.

³⁵Rizqa Febry Ayu, "Iddah Wanita Hamil Karena Zina Menurut Hukum Islam Dan Hukum Positif," *El-Usrah* 4, no. 1 (2021): 216–43, <https://doi.org/10.22373/ujhk.v4i1.10097>.

adulterers only marry female adulterers or polytheists, and vice versa. If adulterers are sentenced to death, there will be no marriage between male and female adulterers.³⁶

The sin of the adulterer³⁷ is a big sin after disbelief, shirk, and murder, which is defined as an intimate relationship by a pair of people who have no previous marriage relationship.³⁸ Therefore, the practice of adultery is a heinous act as stated in the Al-Qur'an, Surah Al-Hijr Verse 32 (15: 32).³⁹ The process of punishing adultery is carried out by the authorities, not individuals or certain groups. This applies to Muslim-majority countries such as Indonesia, as well as other Islamic countries – except Saudi Arabia – which do not implement Quranic law.

The law sanction toward adultery is different due to the kind of law. The custom law has a different pattern from the Tolaki custom, one of the customs laws in Indonesia, having two kinds of sanctions. First, if the adulteress does not become pregnant, the penalty is to marry, but if one of them refuses, another party has to pay a fine. Second, if the adulteress is pregnant, the penalty must also be marriage, but if one of them refuses, they must pay a customary fine.⁴⁰ The imposition of these sanctions is to create a deterrent effect on perpetrators and functions as a preventive measure against the community. These customary criminal sanctions aim to protect the interests of the community from various disturbances⁴¹ and serve to control the balance of the birth and the rule of religion.⁴² In the future, national laws may not ignore aspects related to the human

³⁶Nuruddin, Aisyah Wardatul Jannah, and Dwi Martini, "Evaluating the Effectiveness of Age Restriction on Marriage in Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 2 (2023): 313–30, <https://doi.org/10.24090/volksgeist.v6i2.9844>.

³⁷Yahaya Ibrahim Abikan, "Examining the Admissibility or Otherwise of Evidence Generated from Closed-Circuit Television (CCTV) and Deoxyribonucleic Acid (DNA) Test as Means of Proof of Zina Under Islamic Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 83–96, <https://doi.org/10.24090/mnh.v17i1.8172>.

³⁸Sahran Hadziq, "Pengaturan Tindak Pidana Zina Dalam KUHP Dikaji Dari Perspektif Living Law," *Jurnal Lex Renaissance* 4, no. 1 (2019): 25–45, <https://doi.org/10.20885/jlr.vol4.iss1.art2>.

³⁹Indrawan Fajar Bin Zaufi Amri and M. Dachran S. Busthami, "Adultery in the Perspective of Islamic Law and the Criminal Law Legislation a Comparative Study," *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 23, no. 1 (2018): 51–55, <https://www.iosrjournals.org/iosr-jhss/papers/Vol. 23 Issue2/Version-1/I2302015155.pdf>.

⁴⁰Handrawan, "Sanksi Adat Delik Perzinaan (UMOAPI) Dalam Perspektif Hukum Pidana Adat Tolaki," *Perspektif* 21, no. 3 (2016): 199–210, <https://doi.org/10.30742/perspektif.v21i3.582>.

⁴¹Reimon Supusesa, "Eksistensi Hukum Delik Adat Dalam Perspektif Pembaharuan Hukum Pidana Di Maluku Tengah," *Jurnal Mimbar Hukum* 24, no. 1 (2012): 41–54, <https://doi.org/10.22146/jmh.16148>.

⁴²Ishaq, "Customary Law Analysis about Criminal Act of Unlawful Sexual Intercourse (Zina) According to the Article 284 of Criminal Code in Renewal of Criminal Law," *The Social Sciences* 12, no. 7 (2017): 1201–6, <https://makhillpublications.co/view-article.php?issn=1818-5800&doi=sscience.2017.1201.1206>.

condition, nature, and traditions.⁴³ Thus, the prohibition of adultery aims to shape the morals of society.⁴⁴

Meanwhile, the implementation of Islamic law allows adulterers to repent and does not hinder good intentions in the form of marriage between the two adulterers. It is enough for both of them to repent, do good deeds, and get married because that is very good as said by Ibn Abbas. Even a man who commits adultery over a woman before anyone else immediately both parties are happy to marry. In the discourse on Human Rights, criticism is often delivered at conventional Islamic criminal law as several criminal laws still apply stoning (throwing stones at a criminal/adulterer until he dies) and *jilīd* (whipping). Today, the development of Islamic law has received proposals to change the orientation of *jinayāt*. Previously, punishment in Islam was enforced with the intent and purpose of being a form of revenge and atonement for sins and providing a deterrent effect, which later became the background for the birth of the *jawābir* theory.⁴⁵

At the same time, other opinions argue that the intention of *jinayāt* is none other than to cause fear and trepidation when committing a criminal act, which is then known as the *zawajīr* theory.⁴⁶ For followers of *zawajīr* theory, the punishment for cutting hands and *qiṣaṣ* must be carried out as exactly as the literal text reads. Meanwhile, the adherents of the theory of *zawajīr*, the punishment for cutting hands and *qiṣaṣ* can be replaced by other punishments that can provide a deterrent effect, be it in the form of imprisonment or other punishments. Similar to the case of adultery, according to the calculation of the theory of *jawābīr*, the perpetrator of adultery must be stoned.

The stipulations are firstly, perpetrators who are married or secondly flogged one hundred times for adulterers who are not married. As for the *zawājīr* theory, the perpetrator can be given a sentence in the form of imprisonment or exile to provide a deterrent effect on his adultery. The status of the prohibition on committing adultery is

⁴³Elwi Danil, "Konsepsi Pembaruan Hukum Pidana Di Indonesia," *Delicti* 9, no. 1 (2012).

⁴⁴Ishaq Ishaq, "Kontribusi Konsep Jarimah Zina Dalam Pembaharuan Hukum Pidana Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 14, no. 1 (2014): 81–100, <https://doi.org/10.18326/ijtihad.v14i1.81-100>.

⁴⁵The Jawabir theory is a theory that practices Islamic law purely in accordance with the texts or texts of the Al-Qur'an and al-Hadith. This theory has received a lot of criticism from Muslims themselves and it is often difficult to adapt to the culture of the local community.

⁴⁶The zawajir theory is a theory whose main aim is to terrify and deter criminals. This theory shifts punishment procedures for perpetrators of criminal acts from procedures in the texts of the Koran and al-Hadith to conventional procedures that can deter perpetrators of criminal acts.

followed by an explanation indicating that the prohibition on adultery must be shunned and abandoned. It stated by Allah SWT in Al Quran on Surah al-Isra, verse 32 (17:32):

وَلَا تَقْرُبُوا الزَّوْجَ إِتْمَانًا فَاحِشَةً يَوْمَ سَاءَ سَبِيلًا

Based on the previous explanation, it is clear that وَلَا تَقْرُبُوا followed by فَاحِشَةً shows that adultery is prohibited and it is a must to be left.⁴⁷ The prohibition of the adultery act is under the rules of *uṣūl fiqh*, “the original meaning of prohibition is haram”.⁴⁸ Referring to the opinion of each issue that is isolated from *qarīnah*, which shows that prohibition has an essential meaning, namely *haram*. The verse contains the form of a prohibition without any *qarīnah*, showing the nature of absolute prohibition.

Zawājir's theory follows the behavioral prevention theory.⁴⁹ Criminal punishment must be seen as a way so that the person concerned is no longer in the capacity to commit crimes again (incapacitation theory). And, the purpose of punishment is to facilitate the coaching that aimed at rehabilitating the convict so that he can change his personality to become a good person who is more capable to obey the rules (rehabilitation theory).

This theory is the result of the development of deterrence theory,⁵⁰ where this theory hopes that the effect of prevention can arise before the crime is committed, such as through threats, an example, and so on. Intimidation theory views punishment as a means to mentally intimidate the convict. The government may choose to consider the theory of *zawājir* rather than *jawābīr*. Both existed in Islamic crime but the first one turned out to be compatible with modern criminal theories. *Uṣūluyyīn* (the experts of *uṣūl fiqh*) are of the view that the *zawājir* theory can be applied as long as the law on *furū'* (branches, not the main law) does not conflict with *qaṭ'iy* argumentation. This argument is based on the fact that *qiyās*⁵¹ cannot be applied to something as long as there is a *qaṭ'iy* argument that contradicts it.⁵²

⁴⁷Nazar Bakry, *Fiqh Dan Ushul Fiqh* (Jakarta: PT Raja Grafindo Persada, 2003), 164.

⁴⁸Bakry, *Fiqh Dan Ushul Fiqh*.

⁴⁹Behavioral prevention consists of two words, namely behavioral and prevention. Behavioral means behavior that can be seen by other people. And prevention means preventing something from happening. So, behavioral prevention means efforts to prevent criminal acts that harm other people. See I.P.M Ranuhandoko, *Terminologi Hukum Inggris-Indonesia* (Jakarta: Sinar Grafika, 2006), 89.

⁵⁰*Deterrence theory* adalah teori menghalangi agar pelaku tindak pidana tidak mengulangi perbuatan melanggar hukum lagi. Ranuhandoko, *Terminologi Hukum Inggris-Indonesia*.

⁵¹Repelita, Nuzul Iskandar, and Mursal, “Uṣūl Al-Fiqh Literacy for the Local Community: A Study on Shaykh Mukhtar Ambai’s Manuscript,” *Al-Ahkam* 33, no. 2 (2023): 133–56, <https://doi.org/10.21580/ahkam.2023.33.2.17045>.

⁵²Abu al-Karim Zaidan, *Al-Wajiz Fi Ushul Al-Fiqh* (Kairo: Dar al-Tauzi, 1992), 67.

Aḥkām Verses on Adultery

Allah swt says on adultery problem through (QS. 24:2):

الرَّانِيَةُ وَالرَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ
وَالْيَوْمِ الْآخِرِ وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ

This verse correlates the bundle of other verses, as badness of adultery in (Q.S. an-Nissa' (4) 24, 25), (Q.S. al-Māidah (5) 5), (Q.S. al-Isra (17) 32), (Q.S. Maryam (19) 28), (Q.S. al-Mu'minun (23) 7), and (Q.S. al-Ma'ārīj (70) 31). Talking about the virtue of leaving the badness (Q.S. an-Nissa' (4) 31), (Q.S. al-Isra (17) 32), (Q.S. al-Mu'minun (23) 5, 10, 11), (Q.S. asy-Syūra (42) 37), (Q.S. an-Najm (53) 32) and (Q.S. al-Ma'ārīj (70) 29, 30, 31). Talking about the forcefulness of adultery (Q.S. an-Nūr (24) 33). Talking about the adultery of parts of the body (Q.S. an-Nūr (24) 30, 31). Talking about witnesseth of adultery (Q.S. an-Nisā' (4) 15), (an-Nūr (24) 4, 13). Talking about adultery accusation is a huge sin (Q.S. an-Nūr (24) 4, 23). Talking about punishing those who commit adultery and rejecting a witnesseth of adultery (Q.S. an-Nūr (24) 4). Talking about the repentance and withdrawing of adultery accuser (Q.S. an-Nūr (24) 5). Talking about whapping and wracking female servant adultery (Q.S. an-Nūr (24) 25). The verses correlated with this theme are findable but they will be not delivered in this work due to limited pages.

In (Q.S. An-Nūr (24) 2), the word *az-zāniyatu* “adulterers” can also mean prostitutes, rape,⁵³ adultery with women who look like wives,⁵⁴ adultery with children’s slaves, and so on. The meaning of *az-zāniyatu* becomes even wider when it is associated with adultery of the eyes, adultery of the hands, adultery of the ear, adultery of taste, adultery of the nose, and adultery of the feet. If it is expanded further, then the meaning of *az-zāniyatu* can be classified as adultery with animals, adultery with plants, and so on. Does the general definition of adultery apply to all of these categorizations? Does everyone who is categorized as an adulterer, in general, be subject to a had (punishment) for adultery? As defined by the scholars above, what is meant by the adulterer is the perpetrator who inserts the male genitalia into the female genitalia (read: intercourse)

⁵³Citra Dewi Keumala, Rizanizarli, and Syarifuddin Hasyim, “Testimonium De Auditū in The Case Rape of Childrens,” *Syariah: Jurnal Hukum Dan Pemikiran* 22, no. 2 (2022): 151–61, <https://doi.org/10.18592/sjhp.v22i2.4953>.

⁵⁴Arif Sugitanata et al., “Violation of Women’s Rights: The Kawin Magrib Tradition of the Sasak Muslim Community in Lombok, Indonesia,” *Journal of Islamic Law (JIL)* 4, no. 2 (2023): 197–217, <https://doi.org/10.24260/jil.v4i2.1772>.

which is unlawful according to the substance of the act, not because it is *subḥāt* and the woman brings lust. In Islam, adultery is not a trivial matter.⁵⁵ Adultery is a heinous act. The verses revealed by Allah SWT regarding adultery are spread out in 12 letters as presented in Table 1:

Table 1. Verses about Adultery and Abominable Deeds

No.	Surah Number	Verse Number
1	3. Ali 'Imran	135.
2	4. An-Nisaa'	15. 16. 19. 25. 156.
3	6. Al-An'aam	151
4	7. Al-A'raaf	33.
5	11. Huud	78
6	16. AnNahl	90
7	17. Al-Israa'	32
8	21. Al-Anbiyaa'	74.
9	24. An-Nuur	4, 7. 19. 21.23. 26.
10	29. Al-'Ankabuut	45.
11	33. Al-Ahzab	30,32.
12	65. Ath-Thalaaq	1.

In addition to actual adultery, it is also called the term adultery of the eye, adultery of the heart, and ear of adultery. The division of adultery as such is all the result of the interpretation of the scholars of the hadith ahad narrated by Abu Hurairah (Sahih Muslim No. 4801), which is never explained in the Qur'an itself.

Another verse demonstrates a similar context through (Q.S. al-Mu'min (40) 19) that is 'He knows (the look of) the treacherous eyes and what is hidden by the heart', this verse is interpreted by interpreters that it is as a lustful look towards women who are not *mahram*. Of course, this is an interpretation that is very open to criticism because the context of the verse is actually about monotheism, and there is no connection whatsoever with lust.

Adultery is a sexual relationship that is carried out outside the legitimate marriage bond (*dā'im* or *mut'ah*), not outside the predetermined limits, such as the prohibitions contained in (Q.S. An-Nisā' (4) 23) as follows:

حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَاتُكُمْ وَعَمَّاتُكُمْ وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُكُمْ أَلْسِنَ
أَرْضَعْتُمْ وَأَخَوَاتُكُمْ مِّنَ الرِّضَاعِ وَأُمَّهَاتُ نِسَائِكُمْ وَرَبِّبَاتُكُمْ أَلْسِنَ فِي حُجُورِكُمْ مِّن نِّسَائِكُمُ الَّتِي دَخَلْتُم بِهِنَّ فَإِن

⁵⁵ Asrizal Saiin Muhammad April, "Perfection of Sex for the Intersex (Khunṣa) to Get Married: Maqāṣid Syarīah Perspective on Corrective Surgery," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 2 (2021): 173–84, <https://doi.org/10.14421/ahwal.2021.14205>.

لَمْ تَكُونُوا دَخَلْتُمْ بِهِنَّ فَلَا جُنَاحَ عَلَيْكُمْ وَحَلَّلَ أَبْنَاءُكُمْ الَّذِينَ مِنْ أَصْلَابِكُمْ وَأَنْ يَجْمَعُوا بَيْنَ الْأُخْتَيْنِ إِلَّا مَا قَدْ سَلَفَ ۗ إِنَّ اللَّهَ كَانَ غَفُورًا رَحِيمًا

In contrast to the definition of adultery, the category of ‘eye adultery’ is understood as an act of mutual lustful glances between a man and a woman. Adultery of the heart means imagining sexual intercourse with someone, and adultery of the ear means listening to pornographic stories that cause lust. As a form of creative thinking that contains goodness, such analyses need not be debated.

If adultery is interpreted as a heinous act (*fāhisyāh*), then disgusting behavior such as same-sex relationships (homosexual, lesbian, and bestial or human-animal sex) can also be included in the category of adultery. This understanding of course raises a new problem that is quite complicated at the Islamic legal level because the notion of adultery loses its specificity.⁵⁶ Sexual relations between men and women outside of marriage are not equal in degree of heinousness to same-sex relations or sexual relations between humans and animals. To limit themselves from this problem, some interpreters differentiated between *fāhisyāh* which means illegal sexual relations between men and women, and *fāhisyāh* which means same-sex relations. The destruction of the people of Prophet Lut who were fond of same-sex relations showed Allah's greater wrath against homosexuals (*fāhisyāh*) compared to adulterers whose land was allowed to remain intact.

(Q.S. An-Nūr (24) 2) has been deleted by another verse (Q.S an-Nisā’ (4) 15-16).

⁵⁷ Whereas Amir Syarifuddin says that (Q.S. An-Nūr (24) 2) deletes (Q.S an-Nisā’ (4) 15-16).⁵⁸

وَالَّتِي يَأْتِيَنَّ الْفُلْحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهِدُوا عَلَيْهِنَّ أَرْبَعَةً مِّنْكُمْ ۖ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّىٰ يَتَوَفَّيَهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا ۗ ۝ ١٥ وَالَّذَانِ يَأْتِيَنَّهَا مِنْكُمْ فَادُّوهُمَا ۖ فَإِنْ تَابَا وَأَصْلَحَا فَأَعْرِضُوا عَنْهُمَا ۗ إِنَّ اللَّهَ كَانَ تَوَّابًا رَّحِيمًا

The sanction for adulterers at first was being locked up at home until they died, based on (Q.S. An-Nisā’ (4) 15-16). The law referred to in the paragraph is no longer

⁵⁶ Nur Faizah, “The Spiritualization of Domestic Violence in the Digital Era: Examining the Cathartic Role of Religious Institutions in Empowering Victims,” *De Jure: Jurnal Hukum Dan Syar’iah* 15, no. 2 (December 29, 2023): 251–67, <https://doi.org/10.18860/j-fsh.v15i2.23297>.

⁵⁷Taufiq Rahman, *Hadist-Hadist Hukum* (Bandung: CV Pustaka Setia, 2000), 160.

⁵⁸Amir Syarifuddin, *Ushul Fiqh, Jilid 2* (Jakarta: Logos Wacana Ilmu, 2008), 273.

valid with the existence of adultery as referred to (Q.S. An-Nisā' (4) 15-16). paragraph 2. Therefore, according to Al-Juwairi, the purposes of law can be grouped into 3, namely:

First, *Daruriyyāt* becomes a primary need in living life, which includes protecting and caring for the soul, lineage, religion, mind, and property. The aim is to create benefits in life that can truly be realized through the enforcement of Islamic law. Second, *Hajiyyāt* becomes a secondary need to be able to go to the primary stage, which includes universally upholding human rights. And Edict, it is tertiary needs that function to support human life needs to achieve secondary and primary needs.⁵⁹

Law is a need for human life, especially when it comes to actions that violate Islamic law and involve heinous acts.⁶⁰ Punishment can be imposed on anyone who is proven to have committed the act and has been decided by a judge. For example, the act of adultery is an act whose punishment has been determined and cannot be replaced with another if it has been proven guilty. All of this relates to the purpose of punishing to be able to continue to lead a *maṣlahah* without any dirty deeds that can take away human rights.

In the process of determining evidence for a *jinayāt* (a kind of sinful did), this is needed as a supporting tool to reveal and convince the judge in deciding a case. According to Hasbi ash-Shiddiqie, there are several pieces of evidence in Islamic law, namely: first *Iqrār* or confession, second *Ṣahadad* or testimony, third *qosamah* or oath, not applicable to criminal cases other than murder ranging from mutilation to destruction of property, fourth *nukul* or refused the oath and the five convictions of the Judge.⁶¹ (Q.S. An-Nūr (24) 2) has provided a clear picture regarding the prohibition of adultery because adultery is a forbidden act, including a heinous act. That way, clear evidence by inviting witnesses is needed to strengthen and convince the judge to make a decision.

The punishment contained in (Q.S. An-Nūr (24) 2) also describes how painful it is for the perpetrators of adultery to be beaten 100 times. This shows that adultery is not a trivial and ordinary act that requires an appropriate punishment to provide benefit to all.

⁵⁹Ishaq, "Kontribusi Konsep Jarimah Zina Dalam Pembaharuan Hukum Pidana Indonesia," 2014.

⁶⁰Sukron Ma'mun, Sheikh Adnan Ahmad Usmani, and Ibnu Akbar Maliki, "The Childfree Phenomenon Among Urban Muslims: A Multidisciplinary Examination of Science and Morality," *Akademika: Jurnal Pemikiran Islam* 28, no. 1 (July 3, 2023): 111–24, <https://doi.org/10.32332/akademika.v28i1.6773>.

⁶¹Abubakar and Maulana, "Alat Bukti Dan Metode Pembuktian Terhadap Tindak Pidana Zina."

The punishment is not only in the world but later in the hereafter will also receive punishment for the actions he committed.⁶²

Thus, Islamic law is very firm in eradicating this heinous act. The act of adultery is included in the problem concerning social life. Then, it must have four witnesses as reinforcement in stating that the act happened. Because if there are no witnesses who state the truth, it can be said with slander, which will also be very dangerous and detrimental to the party concerned. In the conditions for submitting evidence, there is also a *ṣahadah* in strengthening the case. If the number of witnesses is less than four people, then their testimony cannot be accepted and even slander will fall because they have been accused of adultery, and slander is crueller than murder. Therefore, this is a social problem that is considered and should not happen.

So, a person who accuses a good woman of adultery will also be punished in the form of lashes and eighty lashes. This also includes people who are accused of being men according to the interpretation of Ibn Kaṭīr. The conditions must meet three things, namely the person who accuses of adultery, the person accused of adultery, and something that is made to accuse of adultery.⁶³ This applies to the provision of witnesses for adulterers, including customary rules.

Not only that, the person accused of adultery has his testimony rejected, and he is classified as a wicked person (*fasīk*).⁶⁴ Accusations of adultery are widely seen on social media where the truth has not been proven and creates immorality for the person accused.⁶⁵ This accusation can also affect the marriage, children, and inheritance of the woman she is accused of talking about.⁶⁶ That is based on (Q.S. An-Nūr (24) 4-5:

وَالَّذِينَ يَرْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْفَاسِقُونَ (4) إِلَّا الَّذِينَ تَابُوا مِنْ بَعْدِ ذَلِكَ وَأَصْلَحُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ (5)

⁶²Dudi Badruzaman, "Tinjauan Hukum Islam Terhadap Fasilitator Perbuatan Zina," *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 3, no. 2 (2020): 87, <https://doi.org/10.29313/tahkim.v3i2.6367>.

⁶³Supriani and Wawan Saputra, "Jarimah Qadzaf (Menuduh Zina) Studi Komparasi Hukum Pidana Islam Dan Hukum Positif Indonesia," *Jurnal Darussalam: Pemikiran Hukum Tata Negara Dan Perbandingan Hukum* 1, no. 1 (2021): 1–19, <https://doi.org/10.59259/jd.v1i1.2>.

⁶⁴B Kisworo, "Tuduhan Berzina (Qazfu Al-Zina) Dalam Kajian Teologis Dan Sosiologis," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 1 (2020): 105–124, <https://doi.org/10.29240/jhi.v5i1.1419>.

⁶⁵Dinda Ayu Riskiana, "Tuduhan Zina Dalam Bentuk Meme Di Media Sosial Perspektif Fiqh Kontemporer," *Jurisy: Jurnal Ilmiah Syariah* 2, no. 2 (2022): 20–33, <https://doi.org/10.37348/jurisy.v2i2.187>.

⁶⁶Salma and Jarudin, "Perempuan Dalam Lingkaran Tuduhan Berzina Di Media Online," *Kafa'ah Journal of Gender Studies* 8, no. 1 (2018): 39–51, <https://doi.org/10.15548/jk.v1i1.210>.

Jarimah hudud becomes a crime that endangers *maṣlahah* (common goodness) of the community, including security and conveys it because it concerns God's right to those who are threatened with such punishment. In this case, *hudūd* is a punishment that is not negotiable because the level of punishment has been determined according to the Quran and Hadith. The punishment is absolute for anyone who commits an act such as adultery, even though he has repented or received forgiveness. However, it is not sufficient. And, the adulterer will still receive punishment for his actions because it is a harmful crime to the common good in his social environment.⁶⁷

Based on the phenomenon, the act of adultery is highly recommended to be avoided. According to Abdurrahman I. Doi, there are several reasons for the prohibition of adultery. First, the act of adultery can damage the sanctity of offspring, which is part of maintaining Islamic law. If it is not prohibited, there will be many children out of wedlock. Second, adultery is included in the big sin between murder and shirk. Third, adultery can trigger other crimes such as murder, theft, disease, and others.⁶⁸

Illāt (reasons) are very relevant as the impact is not only related to human rights but also the rights of Allah SWT. This reason is a warning for anyone to stay away and not commit adultery. The prohibition of adultery also applies to facilities and infrastructure that facilitate the occurrence of adultery, such as pimps, sex service providers, and anything that facilitates obscenity is also included in the forbidden punishment and prohibition.⁶⁹

The statement is similar to Q.S. An-Nūr (24) 2), which has stated the punishment for adulterers. The impact will be extraordinary. Religious morals and norms must be maintained by paying attention to benefits as a form of guarding and maintaining Islamic law, which is a guideline for every human being as it is appropriate to enforce Islamic law as the provisions stipulated in the Quran and Hadith.

⁶⁷Hamid Farihi, "Zina, Qadzaf, Dan Minuman Keras Dalam Perspektif Hukum Pidana Islam," *Mizan: Journal of Islamic Law* 2, no. 1 (2018): 86, <https://doi.org/10.32507/mizan.v2i1.135>.

⁶⁸Ishaq, "Kontribusi Konsep Jarimah Zina Dalam Pembaharuan Hukum Pidana Indonesia," 2014.

⁶⁹Islamia Ayu Anindia and R.B Sularto, "Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Prostitusi Sebagai Pembaharuan Hukum Pidana," *Jurnal Pembangunan Hukum Indonesia* 1, no. 1 (2019): 18–30, <https://doi.org/10.14710/jphi.v1i1.18-30>.

Conclusion

The linguistic approach and *uṣūl fiqh* in discussing the definition of a legal act such as adultery is an attempt to clarify the intent of the text and narrow the scope of the topic of discussion so that a legal act can be easily identified and classify the type of legal action, to what extent, the impact, its classification, and the punishment. Adulterers can define the perpetrator of a crime as intentionally carrying out elements of inserting male genitalia into female genitalia (in intercourse), which is unlawful according to the substance of the act, not because *subḥāt* and women bring lust. The punishment for adultery is to *jilīd* one hundred times. This penalty can be applied if the legal action has been legal before the court by presenting four witnesses. The stipulated punishment cannot be changed with other types of punishment since it is regulated by the text of the Al-Quran.

BIBLIOGRAPHY

- Abikan, Yahaya Ibrahim. "Examining the Admissibility or Otherwise of Evidence Generated from Closed-Circuit Television (CCTV) and Deoxyribonucleic Acid (DNA) Test as Means of Proof of Zina Under Islamic Law." *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (2023): 83–96. <https://doi.org/10.24090/mnh.v17i1.8172>.
- Abubakar, Al Yasa', and Iqbal Maulana. "Alat Bukti Dan Metode Pembuktian Terhadap Tindak Pidana Zina." *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 7, no. 2 (2018): 173–89. <https://doi.org/10.22373/legitimasi.v7i2.3970>.
- Ahmad, Sabarudin, Novita Anggraeni, and Andrian Kukuh Pambudi. "A. Djazuli's Thinking Regarding Ḥifẓu Al-Ummah: Dismissing the Entangled Bureaucracy to Commemorate the Era of Society 5.0." *Journal de Jure* 12, no. 1 (2020): 86–101. <https://doi.org/10.18860/j-fsh.v12i1.8700>.
- Amirudin, M Faizal, and Punta Yoga Astoni. "Sebagai Yurisprudensi Hakim Dalam Memutuskan Perkara Tindak Pidana Perzinahan," n.d.
- Amri, Indrawan Fajar Bin Zaufi, and M. Dachran S. Busthami. "Adultery in the Perspective of Islamic Law and the Criminal Law Legislation a Comparative Study." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 23, no. 1 (2018): 51–55. <https://www.iosrjournals.org/iosr-jhss/papers/Vol. 23 Issue2/Version-1/I2302015155.pdf>.
- Anindia, Islamia Ayu, and R.B Sularto. "Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Prostitusi Sebagai Pembaharuan Hukum Pidana." *Jurnal Pembangunan Hukum Indonesia* 1, no. 1 (2019): 18–30. <https://doi.org/10.14710/jphi.v1i1.18-30>.
- Ar-Ruhaily, Ruway'i. *Fikih Umar (Penerjemah) Abbas M. Basalamah*. Jakarta: Pustaka Al-Kautsar, 1994.

- Asa'ari, Asa'ari, Jafar Ahmad, Zufriani Zufriani, Doli Witro, and Muhamad Taufik Kustiawan. "Considering Death Penalty for Corruptors in Law on Corruption Eradication from the Perspective of Maqāsid Al-Syarī'Ah." *Samarah* 7, no. 2 (2023): 920–36. <https://doi.org/10.22373/sjkh.v7i2.14944>.
- Ayu, Dena, Mursal Mursal, Putri Jianti, Doli Witro, and Rifqi Nurdiansyah. "A Sociological Approach to Consumer Protection in E-Commerce Transactions During the Covid-19 Pandemic." *Khazanah Hukum* 4, no. 3 (2022): 181–91. <https://doi.org/10.15575/kh.v4i3.18690>.
- Ayu, Rizqa Febry. "Iddah Wanita Hamil Karena Zina Menurut Hukum Islam Dan Hukum Positif." *El-Usrah* 4, no. 1 (2021): 216–43. <https://doi.org/10.22373/ujhk.v4i1.10097>.
- Badruzaman, Dudi. "Kajian Hukum Tentang Internet Mobile Dalam Upaya Pencegahan Dampak Negatif Teknologi Informasi Dan Komunikasi Di Indonesia." *Ajudikasi: Jurnal Ilmu Hukum* 3, no. 2 (2019): 135–52. <https://doi.org/10.30656/ajudikasi.v3i2.1657>.
- . "Tinjauan Hukum Islam Terhadap Fasilitator Perbuatan Zina." *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 3, no. 2 (2020): 79–94. <https://doi.org/10.29313/tahkim.v3i2.6367>.
- Badruzaman, Dudi, and A Ropei. "Gender Equality For Women Victims Of Violence In Household." *Al-Ihkam: Jurnal Hukum Keluarga Jurusan Ahwal Al-Syakhshiyah Fakultas Syariah IAIN Mataram* 12, no. 1 (2020): 1–14. <https://doi.org/10.20414/alihkam.v12i1.2141>.
- Badruzzaman, Dudi. "Tinjauan Hukum Islam Terhadap Fasilitator Perbuatan Zina." *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 3, no. 2 (2020): 79–94.
- Bakry, Nazar. *Fiqh Dan Ushul Fiqh*. Jakarta: PT Raja Grafindo Persada, 2003.
- Busni, Darti, Doli Witro, Iwan Setiawan, Nana Herdiana Abdurrahman, and Raid Alghani. "Implementation of the Hybrid Contract Concept in Multiservice Ijarah Financing as a Financing Alternative Health Service in the Covid-19 Pandemic." *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (February 2022): 11–25. <https://doi.org/10.31958/juris.v21i1.5173>.
- Danil, Elwi. "Konsepsi Pembaruan Hukum Pidana Di Indonesia." *Delicti* 9, no. 1 (2012).
- Darmalaksana, Wahyudin. *Metode Penelitian Kualitatif Studi Pustaka Dan Studi Lapangan*. Bandung: Pre-Print Digital Library UIN Sunan Gunung Djati Bandung, 2020.
- Dinda Ayu Riskiana. "Tuduhan Zina Dalam Bentuk Meme Di Media Sosial Perspektif Fiqh Kontemporer." *Jurisy: Jurnal Ilmiah Syariah* 2, no. 2 (2022): 20–33. <https://doi.org/10.37348/jurisy.v2i2.187>.
- Fahiri, Hamid. "Zina, Qadzaf, Dan Minuman Keras Dalam Perspektif Hukum Pidana Islam." *Mizan: Journal of Islamic Law* 2, no. 1 (2014): 83–96. <https://doi.org/10.32507/mizan.v2i1.135>.
- Faizah, Nur. "The Spiritualization of Domestic Violence in the Digital Era: Examining

- the Cathartic Role of Religious Institutions in Empowering Victims.” *De Jure: Jurnal Hukum Dan Syar’iah* 15, no. 2 (December 29, 2023): 251–67. <https://doi.org/10.18860/j-fsh.v15i2.23297>.
- Farihi, Hamid. “Zina, Qadzaf, Dan Minuman Keras Dalam Perspektif Hukum Pidana Islam.” *Mizan: Journal of Islamic Law* 2, no. 1 (2018): 83–96. <https://doi.org/10.32507/mizan.v2i1.135>.
- Hadziq, Sahran. “Pengaturan Tindak Pidana Zina Dalam KUHP Dikaji Dari Perspektif Living Law.” *Jurnal Lex Renaissance* 4, no. 1 (2019): 25–45. <https://doi.org/10.20885/jlr.vol4.iss1.art2>.
- Hallaq, Wael B. *Sejarah Teori Hukum Islam : Pengantar Untuk Ushul Fiqh Mazhab Sunni (A History of Islamic Legal Theories) (Penerjemah) E. Kusnadiningsrat Dan Abdul Haris Bin Wahid*. Jakarta: PT Raja Grafindo Persada, 2000.
- Handrawan. “Sanksi Adat Delik Perzinaan (UMOAPI) Dalam Perspektif Hukum Pidana Adat Tolaki.” *Perspektif* 21, no. 3 (2016): 199–210. <https://doi.org/10.30742/perspektif.v21i3.582>.
- Ishaq. “Customary Law Analysis about Criminal Act of Unlawful Sexual Intercourse (Zina) Accord_ing to the Article 284 of Criminal Code in Renewal of Criminal Law.” *The Social Sciences* 12, no. 7 (2017): 1201–6. <https://makhillpublications.co/view-article.php?issn=1818-5800&doi=sscience.2017.1201.1206>.
- . “Kontribusi Konsep Jarimah Zina Dalam Pembaharuan Hukum Pidana Indonesia.” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 14, no. 1 (2014): 81–100. <https://doi.org/10.18326/ijtihad.v14i1.81-100>.
- . “Perbandingan Sanksi Zina Dalam Hukum Pidana Adat Desa Koto Lolo Dan Kitab Undang-Undang Hukum Pidana.” *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 18, no. 1 (2018): 47–62. <https://doi.org/10.30631/alrisalah.v18i1.169>.
- Ishaq, Ishaq. “Kontribusi Konsep Jarimah Zina Dalam Pembaharuan Hukum Pidana Indonesia.” *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 14, no. 1 (2014): 81–100. <https://doi.org/10.18326/ijtihad.v14i1.81-100>.
- Johan, Rusdi Pieter. “Putusan Pengadilan Sebagai Alternatif Pembentukan Hukum Dalam Perkara Pidana.” *Let Ex Sociates* 1, no. 3 (2013): 126–37. <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/2456>.
- Kamus Besar Bahasa Indonesia Edisi Ketiga*. Jakarta: Balai Pustaka, 2005.
- Keumala, Citra Dewi, Rizanizarli, and Syarifuddin Hasyim. “Testimonium De Auditu in The Case Rape of Childrens.” *Syariah: Jurnal Hukum Dan Pemikiran* 22, no. 2 (2022): 151–61. <https://doi.org/10.18592/sjhp.v22i2.4953>.
- Khairuddin. “Had Bagi Pezina Muhshan (Kajian Perbandingan Dalil).” *Media Syari’ah Jurnal Hukum Islam Dan Pranata Sosial* 13, no. 1 (2011): 109–20. <https://jurnal.ar-raniry.ac.id/index.php/medsyar/article/view/1746>.
- Kisworo, B. “Tuduhan Berzina (Qazfu Al-Zina) Dalam Kajian Teologis Dan Sosiologis.”

Al-Istinbath: Jurnal Hukum Islam 5, no. 1 (2020): 105–124.
<https://doi.org/10.29240/jhi.v5i1.1419>.

- Lisnawati, and Sabarudin Ahmad. “Kada Balampu, Menyisir Sisi Tapih: Eksplorasi Nilai Islami Dalam Kearifan Lokal Urang Banjar.” *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial* 9, no. 2 (2023): 312–28. <http://jurnal.iain-padangsidempuan.ac.id/index.php/elqanuniy/article/view/8578>.
- Ma'mun, Sukron, Sheikh Adnan Ahmad Usmani, and Ibnu Akbar Maliki. “The Childfree Phenomenon Among Urban Muslims: A Multidisciplinary Examination of Science and Morality.” *Akademika : Jurnal Pemikiran Islam* 28, no. 1 (July 3, 2023): 111–24. <https://doi.org/10.32332/akademika.v28i1.6773>.
- Muhadjir, Noeng. *Metodologi Penelitian Kualitatif*. Yogyakarta: Rake Sarasin, 1998.
- Muhammad April, Asrizal Saiin. “Perfection of Sex for the Intersex (Khunsa) to Get Married: Maqāṣid Syarīah Perspective on Corrective Surgery.” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 14, no. 2 (2021): 173–84. <https://doi.org/10.14421/ahwal.2021.14205>.
- Nasution, Sahkholid, Hasan Asari, Harun Al-Rasyid, Rasyid Anwar Dalimunthe, and Aulia Rahman. “Learning Arabic Language Sciences Based on Technology in Traditional Islamic Boarding Schools in Indonesia.” *Nazhruna: Jurnal Pendidikan Islam* 7, no. 1 (2024): 77–102. <https://doi.org/10.31538/nzh.v7i1.4222>.
- Nazir, Moh. *Metode Penelitian Cetakan Ke-3*. Jakarta: Ghalia Indonesia, 1988.
- Nurjaman, Muhamad Izazi, and Doli Witro. “The Relevance of the Theory of Legal Change According to Ibnu Qayyim Al-Jauziyyah in Legal Products by Fatwa DSN-MUI Indonesia.” *El-Mashlahah* 11, no. 2 (2021): 167–86. <https://doi.org/10.23971/elma.v11i2.3181>.
- Nuruddin, Aisyah Wardatul Jannah, and Dwi Martini. “Evaluating the Effectiveness of Age Restriction on Marriage in Indonesia.” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 2 (2023): 313–30. <https://doi.org/10.24090/volksgeist.v6i2.9844>.
- Purba, Simon, Mustamam, and Adil Akhyar. “Penegakan Hukum Terhadap Pelaku Perzinahan Dalam Perspektif KUHP Dan Qanun Di Lhoksukon Aceh Utara.” *Jurnal Ilmiah Metadata* 3, no. 2 (2021): 651–68. <https://ejournal.steitholabulilmi.ac.id/index.php/metadata/article/view/82>.
- Rahman, Taufiq. *Hadist-Hadist Hukum*. Bandung: CV Pustaka Setia, 2000.
- Rahmawati. “Tindak Pidana Perzinaan Dalam Perspektif Perbandingan Antara Kitab Undang-Undang Hukum Pidana Dan Hukum Pidana Islam.” *An Nisa'a* 8, no. 1 (2013): 11–26. <https://jurnal.radenfatah.ac.id/index.php/annisa/article/view/834>.
- Ranuhandoko, I.P.M. *Terminologi Hukum Inggris-Indonesia*. Jakarta: Sinar Grafika, 2006.
- Rasidin, Mhd., Natardi Natardi, and Doli Witro. “The Impact of Unequal Marriage on Household Harmony (Case Study in Sungai Penuh City, Jambi).” *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 2 (2020): 313–36. <https://doi.org/10.22373/sjkh.v4i2.8083>.

- Repelita, Nuzul Iskandar, and Mursal. "Uşul Al-Fiqh Literacy for the Local Community: A Study on Shaykh Mukhtar Ambai's Manuscript." *Al-Ahkam* 33, no. 2 (2023): 133–56. <https://doi.org/10.21580/ahkam.2023.33.2.17045>.
- Ririn Isna Magfiroh, and Ashif Az Zafi. "Eksistensi Fikih Dalam Penerapan Hukum Zina Di Indonesia." *DIKTUM: Jurnal Syariah Dan Hukum* 18, no. 1 (2020): 102–117. <https://doi.org/10.35905/diktum.v18i1.1314>.
- Rozi, Zulfiqar Bhisma Putra. "Perkembangan Delik Zina Dalam Yurisprudensi Hukum Pidana." *Veritas et Justitia* 5, no. 2 (2019): 286–301. <https://journal.unpar.ac.id/index.php/veritas/article/view/3612>.
- Salma, and Jarudin. "Perempuan Dalam Lingkaran Tuduhan Berzina Di Media Online." *Kafa'ah Journal of Gender Studies* 8, no. 1 (2018): 39–51. <https://doi.org/10.15548/jk.v1i1.210>.
- Sudrajat, Shinta Azzahra, Arzam Arzam, and Doli Witro. "Legal Protection in Labor Dispute Settlement Through Industrial Relations Mechanism." *Khazanah Hukum* 4, no. 1 (2022): 1–9. <https://doi.org/10.15575/kh.v4i1.17027>.
- Sugitanata, Arif, Siti Aminah, Heru Sunardi, and Siti Khamidatus Sholikhah. "Violation of Women's Rights: The Kawin Magrib Tradition of the Sasak Muslim Community in Lombok, Indonesia." *Journal of Islamic Law (JIL)* 4, no. 2 (2023): 197–217. <https://doi.org/10.24260/jil.v4i2.1772>.
- Supriani, and Wawan Saputra. "Jarimah Qadzaf (Menuduh Zina) Studi Komparasi Hukum Pidana Islam Dan Hukum Positif Indonesia." *Jurnal Darussalam: Pemikiran Hukum Tata Negara Dan Perbandingan Hukum* 1, no. 1 (2021): 1–19. <https://doi.org/10.59259/jd.v1i1.2>.
- Supusesa, Reimon. "Eksistensi Hukum Delik Adat Dalam Perspektif Pembaharuan Hukum Pidana Di Maluku Tengah." *Jurnal Mimbar Hukum* 24, no. 1 (2012): 41–54. <https://doi.org/10.22146/jmh.16148>.
- Suwarjin, Muhammad Irfan Helmy, Iim Fahimah, Badrun Taman, and Wahyu Abdul Jafar. "Virginity and Cincin Penyembah: Sociological, Philosophical, and Maqāsid Al-Sharī'ah Study on Serawai Tribe Traditional Marriage." *Ahkam: Jurnal Ilmu Syariah* 23, no. 1 (2023): 49–70. <https://doi.org/10.15408/ajis.v23i1.31077>.
- Syaikhu, Sabarudin Ahmad, and Muhammad Luthfi Setiarno Putera. "Judicial Mediation: Is Reconciliation Impossible in Divorce Cases?" *Al-Manhaj: Journal of Indonesian Islamic Family Law* 5, no. 2 (2023): 120–47. <https://doi.org/10.19105/al-manhaj.v5i2.11887>.
- Syarifuddin, Amir. *Ushul Fiqh, Jilid 2*. Jakarta: Logos Wacana Ilmu, 2008.
- Syaukani, Imam. *Rekonstruksi Epistemologi Hukum Islam Indonesia*. Jakarta: PT Raja Grafindo Persada, 2006.
- Taufan Dirgahayu Kurnia, and Erwin Syahrudin. "Konsep Tindak Pidana Zina Menurut Hukum Pidana Adat Dan KUHP Dalam Hukum Positif Di Indonesia." *Jurnal Pendidikan Dan Konseling* 4, no. 5 (2022): 109–19. <https://journal.universitaspahlawan.ac.id/index.php/jpdk/article/view/6551>.

- Tongat. “Tanggung Jawab Pidana Pemakai Jasa Prostitusi (Suatu Pendekatan Yuridis-Religius).” *Hukum Pidana Dan Pembangunan Hukum* 1, no. 2 (2019): 1–10. <https://doi.org/10.25105/hpph.v1i2.5551>.
- TR, Cut Asmaul Husna. “Penemuan Dan Pembentukan Hukum ‘The Living Law’ Melalui Putusan Hakim.” *Mizan* 2, no. 3 (2012): 70. <https://gabenta.files.wordpress.com/2013/03/penemuan-dan-pembentukan-hukum-the-living-law-melalui-putusan-hakim.pdf>.
- Zaidan, Abu al-Karim. *Al-Wajiz Fi Ushul Al-Fiqh*. Kairo: Dar al-Tauzi, 1992.