



The Law of Hand Amputation in the Perspective of Fiqh Jinayah and Modern Social Theory

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ABSTRACT

This study analyzes the law of hand amputation (*ḥadd al-sariqah*) from the perspectives of *fiqh jinayah* and modern social theory. Using a qualitative library research approach, the study examines classical Islamic legal sources and contemporary sociological theories to explore the meaning, conditions, and relevance of this law in modern contexts. The findings reveal that *ḥadd al-sariqah* functions not merely as a physical punishment but as a mechanism of social justice aimed at protecting property and maintaining public order. Through dialogue between Islamic jurisprudence and modern theories of Durkheim, Foucault, and Satjipto Rahardjo, this research concludes that *ḥadd al-sariqah* can be reformulated contextually through *ta'zīr* and *maqāṣid al-sharī'ah* principles to align with universal values of justice and human dignity.

INTRODUCTION

The punishment of hand amputation (*qaṭ' al-yad*) represents one of the most discussed aspects of Islamic criminal law (*fiqh jinayah*). It is explicitly mentioned in the Qur'an, particularly in Surah Al-Mā'idah [5]:38, which commands that "as for the thief, male and female, cut off their hands as a recompense for what they committed." Within the classical *fiqh* tradition, this command is understood as part of the *ḥudūd* system—divinely prescribed punishments designed to preserve justice, security, and social order (Hamim, 2020).

Classical jurists such as Ibn Rusyd (2004) and Al-Māwardī emphasized that *ḥadd al-sariqah* was not implemented arbitrarily. The punishment was applied only when strict conditions were met: the stolen property must reach a specific value (*nisab*), be taken from a protected place (*ḥirz*), and be proven beyond doubt. This precision reflects the moral foundation of Islamic law, which prioritizes justice (*'adl*) and the prevention of injustice (*ẓulm*).

Despite its clear scriptural basis, the implementation of *ḥadd al-sariqah* has been subject to intense debate in modern times. Critics question its compatibility with universal human rights principles and argue that physical amputation contradicts humanitarian ethics. On the other hand, contemporary Muslim scholars stress that *ḥudūd* laws should be applied only in societies where justice and welfare are fully ensured, such that theft arises from moral failure rather than economic deprivation (Hanafi, 2024). This debate reflects the tension between textual fidelity and socio-ethical contextualization within Islamic jurisprudence. From a *maqāṣid al-sharī'ah* perspective, the purpose of *ḥadd al-sariqah* lies in protecting wealth (*ḥifẓ al-māl*) and maintaining public trust. The punishment functions as a deterrent mechanism rather than a mere retributive act. As Al-Syatibi and later scholars argued, the objective of *sharī'ah* is to secure human welfare and prevent corruption within society (Khaliq & Pangestu, 2025). Accordingly, the essence of the hand amputation law is not physical violence but the protection of social justice and property rights.

In contemporary Muslim societies, the relevance of *ḥadd al-sariqah* must be re-examined within changing social, political, and economic contexts. The emergence of modern legal systems influenced by Western jurisprudence, alongside evolving notions of human rights, necessitates a dialogical approach between Islamic law and modern theory. Thinkers such as Émile Durkheim, Michel Foucault, and Satjipto Rahardjo provide valuable theoretical lenses for reinterpreting *ḥadd al-sariqah*—not as a static legal provision but as a dynamic instrument of moral and social regulation.

Therefore, this study aims to analyze *ḥadd al-sariqah* through two interrelated perspectives: *fiqh jinayah* and modern social theory. It seeks to explore its historical foundations, legal philosophy, and social implications while formulating a contextual reinterpretation that aligns Islamic principles with universal values of justice, compassion, and human dignity.

LITERATURE REVIEW

The literature review in this study aims to explore the theoretical foundations that frame the discussion of *ḥadd al-sariqah* within both classical Islamic law and modern social theory. This section synthesizes key perspectives from *fiqh jinayah*, *maqāṣid al-sharī'ah*, and contemporary sociological thought to provide a comprehensive understanding of how Islamic punishment functions not only as a legal instrument but also as a moral and social mechanism. Reviewing previous scholarly works is essential to identify the intersection between religious normativity and sociological interpretation, revealing how divine law interacts with social change and human justice.

This review is structured into five main parts. The first examines the concept of *ḥadd al-sariqah* in *fiqh jinayah*, explaining its textual and jurisprudential foundations. The second discusses the principle of *maqāṣid al-sharī'ah* as a philosophical basis for understanding the objectives of punishment in Islam. The third and fourth sections analyze Durkheim's functionalist theory and Foucault's perspective on power and discipline, providing theoretical tools for sociological interpretation. The final part explores Satjipto Rahardjo's progressive law theory, which integrates humanistic and contextual approaches to justice. Together, these frameworks establish an interdisciplinary foundation for analyzing the law of hand amputation within its historical, moral, and social dimensions.

Concept of Ḥadd al-Sariqah in Fiqh Jinayah

In the classical corpus of *fiqh jinayah*, *ḥadd al-sariqah* (the punishment for theft) is one of the fixed penalties (*ḥudūd*) prescribed by divine revelation. Its primary scriptural foundation lies in the Qur'an, Surah Al-Mā'idah [5]:38, which commands: "As for the thief, male and female, cut off their hands as a recompense for what they committed, an exemplary punishment from Allah." This verse establishes *ḥadd al-sariqah* not as an arbitrary sanction, but as a manifestation of divine justice aimed at maintaining social order, protecting property rights, and upholding communal morality (Hamim, 2020).

However, Islamic jurisprudence never intended the punishment to be applied indiscriminately. Jurists from all major schools (*madhāhib*) agreed that *ḥadd al-sariqah* must be preceded by clear proof and specific conditions — such as the fulfillment of *nisab* (the minimum value of stolen property), the existence of *hirz* (a secure place from which the property was taken), and the absence of *shubhah* (doubt or ambiguity). Ibn Rusyd (2004) and Al-Māwardī both emphasized that the purpose of these conditions was to safeguard justice and ensure that punishment is imposed only when moral culpability is beyond dispute.

Furthermore, the maxim *dar' al-ḥudūd bi al-shubuhāt* ("hudud punishments are to be suspended in cases of doubt") demonstrates Islam's prioritization of mercy and fairness over literalism (Miftahuddin & Muhajir, 2021). In this way, *ḥadd al-sariqah* serves both as a deterrent and as a didactic mechanism to prevent social harm. It reinforces honesty, respect for others' property, and moral integrity. As modern scholars such as Mustafa and Nurjanah (2023) argue, *ḥadd*

al-sariqah reflects a balance between divine justice and human compassion, ensuring that punishment is both legally sound and ethically justifiable.

The Principle of Maqāṣid al-Sharī'ah

The theory of *maqāṣid al-sharī'ah* – literally “the higher objectives of Islamic law” – offers a philosophical foundation for understanding the spirit and intent behind every legal injunction. Classical jurist Al-Syatibi systematized this theory in his work *Al-Muwāfaqāt*, explaining that the law was revealed to preserve five essential human interests: religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nasl*), and property (*ḥifẓ al-māl*) (Khaliq & Pangestu, 2025). Within this framework, *ḥadd al-sariqah* is designed primarily to achieve *ḥifẓ al-māl* – the protection of property – as a vital component of human welfare. Theft, therefore, is not merely a violation of individual rights but a disruption of social trust and moral order. Yet, *maqāṣid al-sharī'ah* also provides a dynamic interpretive tool that allows scholars to respond to contextual changes. For instance, when Caliph Umar ibn al-Khattab suspended the *ḥadd* punishment during a famine, he did so based on the principle of necessity (*ḍarūrah*) and public welfare (*maṣlahah*), recognizing that justice must never lead to further harm (Hanafi, 2024).

In contemporary legal thought, *maqāṣid al-sharī'ah* bridges the gap between divine legislation and human experience. It enables reinterpretation of *ḥadd al-sariqah* through *ta'zīr* (discretionary punishment) when literal application contradicts ethical or humanitarian considerations. This view, as argued by Achmad et al. (2025), highlights that *maqāṣid* is not opposed to modernity but rather complements it – allowing Islamic law to evolve while maintaining its foundational values of justice (*'adl*) and mercy (*raḥmah*).

Thus, understanding *ḥadd al-sariqah* through *maqāṣid* shifts the focus from its physical form to its moral essence. The goal is not the act of amputation itself but the preservation of moral discipline, economic fairness, and public trust, all of which constitute the essence of *maṣlahah* in Islamic governance.

Durkheim's Functionalist Theory of Law and Morality

Émile Durkheim's sociological analysis of law provides a powerful theoretical lens for examining the moral and social functions of punishment. According to Durkheim (as cited in Arief, 2011), every form of law corresponds to a particular type of social solidarity. In societies with strong collective consciousness – such as early Islamic communities – law tends to be repressive, meaning it aims to reinforce moral unity by punishing actions that threaten the community's shared values.

Within this perspective, *ḥadd al-sariqah* operates as an expression of collective morality rather than mere state coercion. Theft represents a rupture in social cohesion, while its punishment reaffirms the sanctity of honesty and trust that bind the ummah together. Rochmawati (2021) explains that Durkheim saw punishment as a social ritual through which society expresses disapproval of deviant behavior and restores moral equilibrium.

Moreover, Durkheim's distinction between repressive and restitutive law can help reinterpret *ḥadd al-sariqah* in modern contexts. As societies evolve toward greater complexity, law transitions from punishing offenders to restoring

relationships and preventing future harm. In this sense, the concept of *ta'zīr* in Islamic jurisprudence parallels Durkheim's "restitutive" justice, which seeks restoration and education rather than vengeance (Hamim, 2020).

Therefore, a functionalist reading of *ḥadd al-sariqah* reveals that its enduring value lies not in physical severity but in moral pedagogy—the strengthening of communal ethics, accountability, and shared responsibility.

Foucault's Power and Discipline Perspective

Michel Foucault's theory of punishment, articulated in *Discipline and Punish* (1977), marks a critical shift in understanding law as a technology of power. Foucault argues that pre-modern systems of punishment, such as amputation or public execution, were designed to display the sovereign's power visibly on the body of the condemned. Over time, this overt spectacle of punishment gave way to subtler mechanisms of control—discipline, surveillance, and normalization—that operate within institutions such as prisons, schools, and even religious systems (Setiawan & Wahyuni, 2021).

When examined through Foucault's framework, *ḥadd al-sariqah* can be interpreted as a symbolic assertion of divine sovereignty over human conduct. The public and corporal nature of the punishment served to embody divine authority, reminding society of the moral boundaries established by God. However, as social consciousness evolves, the same moral objectives can be achieved through less corporeal means—education, moral counseling, restitution, or public accountability—without undermining the authority of divine law (Haque, 2024).

Foucault's concept of "discipline" thus provides a valuable lens to reinterpret Islamic punishment as a process of internalized morality rather than physical control. In this light, *ḥadd al-sariqah* functions not only to punish but also to cultivate ethical self-awareness and moral regulation. Modern Muslim thinkers who adopt this perspective argue that the transition from corporeal punishment to moral education aligns with the *maqāṣid al-sharī'ah* objectives of human welfare and dignity (Ibrahim et al., 2025).

Satjipto Rahardjo's Progressive Law Theory

Satjipto Rahardjo's concept of *progressive law* (*hukum progresif*) offers an indigenous yet universal philosophy of legal reform. Rahardjo emphasized that law should not serve itself but humanity. Law must be flexible, compassionate, and responsive to societal transformation (Nurhayadi & Darmawan, 2024). For him, justice is not found in the rigidity of written norms but in the conscience of the human being who applies them.

Applying Rahardjo's view to *ḥadd al-sariqah* suggests that the ultimate goal of Islamic law is to uphold justice (*'adl*), not to insist on literal punishment when it leads to greater harm. This interpretation aligns with the Islamic maxim *al-ḥukmu yataḡayyar bi taghayyur al-azmān wa al-amkān* — that legal rulings may change according to time and place. Therefore, adapting *ḥadd* into a *ta'zīr* framework in modern contexts does not dilute divine law but fulfills its moral purpose through a human-centered approach (Darsi & Husairi, 2019; Thamsir et al., 2025).

Rahardjo's progressive paradigm resonates deeply with the *maqāṣid al-sharī'ah* tradition. Both emphasize that law must be contextual, humane, and oriented toward public welfare (*maṣlahah*). This perspective situates Islamic criminal law within the broader framework of restorative justice, where the focus shifts from punishment to reconciliation, education, and moral growth. In this way, Satjipto's theory bridges Islamic jurisprudence and modern legal philosophy, affirming that *ḥadd al-sariqah*—when interpreted through progressive and maqāṣid-based reasoning—remains not a relic of the past but a living embodiment of divine justice adaptable to human needs.

RESEARCH METHODOLOGY

This study employs a qualitative library research design that emphasizes textual and conceptual analysis within the framework of *fiqh jinayah* and modern social theory. The qualitative approach was chosen to explore deeply the philosophical and normative dimensions of the punishment for theft (*ḥadd al-sariqah*) rather than to measure it statistically (Creswell, 2014). As a library-based study, all data were obtained from textual sources, including the Qur'an, Hadith, classical works of Islamic jurisprudence such as *Bidāyah al-Mujtahid* by Ibn Rusyd and *Al-Muwāfaqāt* by Al-Syatibi, as well as contemporary academic writings related to Islamic law and social philosophy. Primary sources consisted of classical Islamic legal texts that provide the normative foundation for *ḥadd al-sariqah*, while secondary sources included journal articles, dissertations, and books written by modern scholars such as Hanafi (2024), Haque (2024), and Achmad et al. (2025). Data collection was conducted through a documentary study involving systematic reading, note-taking, and thematic classification of textual materials. The researcher examined these materials critically to identify key themes such as justice (*'adl*), deterrence (*zajr wa rad'*), mercy (*raḥmah*), and social harmony, which form the ethical core of Islamic criminal law (Krippendorff, 2019).

The data were analyzed using a historical-normative approach that integrates both diachronic and doctrinal dimensions. The historical dimension traces how *ḥadd al-sariqah* was applied and interpreted across different Islamic periods—from the era of the Prophet Muhammad ﷺ and the *Khulafā' al-Rāshidīn* to the legal transformations in modern Muslim societies—while the normative dimension examines the consistency of those interpretations with the Qur'an, Hadith, and the objectives of *maqāṣid al-sharī'ah*. A comparative theoretical analysis was then employed to synthesize insights from Durkheim's functionalism, Foucault's theory of discipline, and Satjipto Rahardjo's progressive law, allowing a contextual reinterpretation of *ḥadd al-sariqah* in harmony with human rights and restorative justice principles. To ensure validity, triangulation of sources was applied by cross-referencing different schools of *fiqh* and scholarly opinions to maintain balance and objectivity. The analytical process adhered to the standards of academic integrity through transparent citation and reference management following the APA 7th Edition guidelines.

RESEARCH RESULT

The findings of this study present a comprehensive understanding of the law of hand amputation (*ḥadd al-sariqah*) from two interconnected perspectives: the normative framework of *fiqh jinayah* and the historical practice of Islamic criminal law. These results are drawn from a qualitative library-based analysis of primary sources such as the Qur'an, Hadith, and classical *fiqh* texts, alongside modern academic and sociological works.

This section describes the empirical and textual findings without engaging in theoretical interpretation, which will be addressed in the discussion section. The results are divided into two major parts: (1) the historical development and implementation of *ḥadd al-sariqah* throughout Islamic civilization, and (2) the substantive principles within *fiqh jinayah* that regulate its conditions and objectives.

Together, these findings illustrate that Islamic criminal law does not function merely as a system of physical punishment, but as a complex moral and social mechanism aimed at achieving justice, deterrence, and protection of human dignity (*karāmah insāniyyah*).

Historical Context and Application of Ḥadd al-Sariqah

The application of the punishment for theft (*ḥadd al-sariqah*) in Islamic history has deep theological and sociological foundations. The command to amputate the hand of a thief is explicitly stated in the Qur'an: "As for the thief, male and female, cut off their hands as a recompense for what they committed, an exemplary punishment from Allah" (Q.S. Al-Mā'idah [5]:38). This verse affirms the principle of justice and individual accountability in protecting property and maintaining public order (Hamim, 2020).

During the time of the Prophet Muhammad ﷺ, this punishment was implemented with exceptional caution. The Prophet ensured that every element of theft was proven – such as the minimum value of stolen property (*nisab*), the condition of security (*ḥirz*), and the absence of coercion – before the punishment was applied (Ibn Rusyd, 2004). This careful approach reflected the ethical concern of Islamic criminal law to avoid injustice and prioritize social harmony (Wan Muhammad, 2020).

In the period of *Khulafā' al-Rāshidīn*, this principle of caution was further emphasized. The most well-known case occurred during the reign of Caliph Umar ibn al-Khattab, who suspended the implementation of *ḥadd al-sariqah* during *'ām ar-ramādah* (a period of severe famine). Umar reasoned that theft under extreme hunger and poverty could not be categorized as a crime in the strict legal sense, since necessity (*ḍarūrah*) suspended the usual rule (Hanafi, 2024). His decision illustrated a contextual and humanitarian interpretation of Islamic law, prioritizing social justice over literal punishment, and aligning with the *maqāṣid al-sharī'ah* principle of protecting life (*ḥifz al-nafs*) and wealth (*ḥifz al-māl*) (Khaliq & Pangestu, 2025).

Historically, the application of corporal punishment, including amputation, was not unique to Islam. Ancient civilizations such as Babylon under the Code of Hammurabi, as well as early Roman and Byzantine systems, also practiced similar retributive justice (Durrant, 2021). Islam, however,

reformed this tradition by setting strict evidentiary and moral standards—requiring a verified nisab, the existence of *ḥirz*, and the absence of *shubhah* (doubt)—to ensure that justice, not vengeance, remained the law’s central goal (Haque, 2024).

Later Islamic dynasties, including the Abbasids and Ottomans, selectively enforced *ḥadd al-sariqah* depending on socio-political stability and economic conditions. Some modern Muslim-majority countries such as Saudi Arabia still implement the punishment within their *sharī’ah* framework, while others, like Egypt and Pakistan, have adopted modified or symbolic applications through *ta’zīr* (Ibrahim et al., 2025). These variations demonstrate that *ḥadd al-sariqah* has historically been flexible and adaptive, reflecting Islam’s emphasis on *maslahah* (public welfare) and social justice (Achmad et al., 2025).

The Perspective of Fiqh Jinayah

Within *fiqh jinayah* (Islamic criminal law), *ḥadd al-sariqah* is regarded as a divinely ordained punishment (*qat’ī al-dilālah*), grounded in textual sources—the Qur’an and Sunnah. It serves to protect individual and collective property rights and to maintain social order, reflecting the *maqāṣid al-sharī’ah* objective of safeguarding wealth (*ḥifẓ al-māl*) (Miftahuddin & Muhajir, 2021). Nevertheless, Islamic jurists have imposed strict procedural and ethical conditions before this punishment can be applied. The thief must have acted with full awareness, without coercion, and the stolen property must have reached a specific threshold (*nisab*). Furthermore, the act must occur in a protected place (*ḥirz*), and there must be no doubt (*shubhah*) surrounding the act (Mustafa & Nurjanah, 2023). These principles illustrate Islam’s prioritization of justice and mercy over mechanical application of the law.

Different schools of Islamic jurisprudence (*madhāhib*) interpret these requirements differently. The Shafi’i, Maliki, and Hanbali schools generally set the *nisab* at one-quarter of a gold dinar or its silver equivalent, while the Hanafi school raises it to ten dirhams, citing concerns of proportionality and social fairness (As-Sayyis, 2005; Asdar et al., 2023). These differences reflect the principle *dar’ al-ḥudūd bi al-shubuhāt*—that *ḥadd* punishments should be avoided whenever doubt exists—affirming Islam’s commitment to substantive justice over formal rigidity (Miftahuddin & Muhajir, 2021).

Classical scholars such as al-Qarafi (1995) explained that the main purpose of Islamic punishment is *zajr wa rad’* (prevention and deterrence), not retribution. Punishment, in this view, functions to educate and preserve social stability (*ḥifẓ al-amn*), aligning with modern criminological ideas of restorative justice (Firdaws & Azhari, 2022). Thus, *fiqh jinayah* can be seen as an early framework for what contemporary scholars call “restorative and moral justice,” balancing legal certainty with compassion and social welfare (Haque, 2024).

DISCUSSION

The interpretation of the findings reveals that the implementation and philosophy of *ḥadd al-sariqah* can be understood not only through normative *fiqh* but also through the lens of modern social theory. While classical Islamic jurisprudence emphasizes divine justice and deterrence, modern sociology explores how legal systems embody moral order, social control, and human

power relations. The following discussion integrates the results of this study with the frameworks of Émile Durkheim, Michel Foucault, and Satjipto Rahardjo to construct a dialogical understanding between *sharī'ah* and contemporary thought.

Durkheim's Functionalist Perspective: Law as Moral Cohesion

Émile Durkheim's theory of functionalism posits that law functions as a reflection of a society's collective conscience — the shared beliefs and values that maintain social cohesion (Rochmawati, 2021). In societies bound by religion and morality, such as classical Islamic civilization, punitive laws serve to reaffirm communal solidarity rather than merely punish individual wrongdoing. From this viewpoint, *ḥadd al-sariqah* can be interpreted as an instrument for preserving moral order and reinforcing the sacredness of honesty and trust within the ummah. The act of theft represents not only a material offense but also a symbolic breach of the community's shared moral code. The public implementation of *ḥadd* in early Islamic societies thus served an expressive function, restoring the integrity of the moral community — an idea consistent with Durkheim's conception of repressive law as a tool of collective unity (Durkheim, as cited in Arief, 2011).

Furthermore, this aligns with the Islamic objective of *ḥifẓ al-māl* (protection of property), which operates not as mere legal enforcement but as social pedagogy. In this sense, the deterrent effect (*zajr wa rad'*) described by classical scholars like al-Qarafi (1995) finds a sociological parallel in Durkheim's moral reinforcement theory. Law, in both traditions, maintains social solidarity through the reaffirmation of shared ethical commitments.

Foucault's Power Analysis: Law, Body, and Discipline

In contrast to Durkheim's focus on moral cohesion, Michel Foucault offers a critical reading of punishment as a mechanism of power and social control. In *Discipline and Punish*, Foucault (1977) explains that public corporal punishments — such as executions or amputations — represent a sovereign power's direct control over the body. Such punishment is not only legal but also political, dramatizing authority through the suffering of the physical body (Setiawan & Wahyuni, 2021).

Through this lens, *ḥadd al-sariqah* can be seen as a form of sovereign power exercised by the Islamic state to reinforce social discipline. The body of the offender becomes a visible symbol of law's authority, serving both as deterrence and as a manifestation of divine sovereignty. However, as societies evolve, Foucault argues that punishment transitions from physical spectacle to psychological control — from punishment of the body to discipline of the soul (Foucault, 1977).

This theoretical transition finds resonance in contemporary Islamic discourse that seeks to reinterpret *ḥadd* within frameworks of restorative justice and *ta'zīr* (discretionary punishment). Modern Muslim scholars argue that justice in Islam should prioritize human dignity (*karāmah insāniyyah*) and social reform rather than retribution (Hanafi, 2024). Thus, the literal amputation of hands can be reinterpreted as a symbolic expression of moral accountability and reformation within modern social systems.

Consequently, Foucault's framework helps reveal how Islamic law, when viewed dynamically, can shift from sovereign domination to ethical governance – from controlling the body to cultivating moral consciousness. This interpretive transition does not negate *ḥadd* but recontextualizes it in light of *maqāṣid al-sharī'ah* and universal human rights principles (Ibrahim et al., 2025).

Satjipto Rahardjo's Progressive Law: Humanizing the Legal System

Satjipto Rahardjo's theory of progressive law offers a complementary perspective by emphasizing that law must serve human interests rather than constrain them. According to Rahardjo, law should be dynamic, humane, and responsive to social change – a living instrument of justice rather than a rigid system of rules (Nurhayadi & Darmawan, 2024).

Applying this principle to *ḥadd al-sariqah*, the literal implementation of hand amputation should not be viewed as the only form of justice. Instead, the essence of the rule – protecting social order and deterring theft – can be fulfilled through more context-sensitive mechanisms such as restitution, rehabilitation, or social sanctions consistent with *ta'zīr* (Darsi & Husairi, 2019). This interpretation aligns with the *maqāṣid al-sharī'ah* paradigm, particularly the pursuit of justice (*'adl*) and welfare (*maṣlahah*).

Progressive law also calls for flexibility and moral reasoning (*ijtihād*) in adapting ancient legal principles to modern realities. In this sense, Rahardjo's approach mirrors the Islamic legal maxim *taghayyur al-fatwā bi taghayyur al-zamān wa al-makān* – that legal rulings can change according to time and place. Therefore, contextual reinterpretation of *ḥadd al-sariqah* through *ta'zīr* is not a departure from *sharī'ah*, but rather a fulfillment of its higher moral purpose: ensuring justice with compassion (Thamsir et al., 2025).

Integrative Interpretation: Sharia and Modern Social Theory

The dialog between Islamic jurisprudence and modern social theory reveals a convergent aim – achieving justice through social harmony, moral reform, and human dignity. While *fiqh jinayah* provides the ethical and theological foundation, social theory offers analytical tools to understand how law operates within evolving power structures and collective morality.

From a *maqāṣid al-sharī'ah* perspective, the reinterpretation of *ḥadd al-sariqah* into non-physical forms such as *ta'zīr* represents the balance between divine law and human welfare. Durkheim's moral solidarity, Foucault's critique of disciplinary power, and Rahardjo's progressive humanism together suggest that justice in Islam must be both principled and compassionate.

Hence, the discussion concludes that Islamic criminal law remains relevant and adaptable when read dynamically through interdisciplinary dialogue. The essence of *ḥadd al-sariqah* lies not in the act of amputation itself but in its enduring purpose – to establish justice, deter wrongdoing, and preserve social order in a manner consistent with both divine revelation and human ethics (Haque, 2024; Achmad et al., 2025).

CONCLUSIONS AND RECOMMENDATIONS

This study concludes that the law of hand amputation (*ḥadd al-sariqah*) should not be understood merely as a rigid physical punishment, but as a multidimensional concept within Islamic criminal law that integrates theological, moral, and sociological dimensions. The Qur'anic injunction in Q.S. Al-Mā'idah [5]:38 establishes *ḥadd al-sariqah* as part of a divine justice system aimed at protecting public welfare and social stability, not at inflicting harm or cruelty (Hamim, 2020; Ibn Rusyd, 2004).

From a historical perspective, the practice of *ḥadd al-sariqah* has always been contextual and cautious. The Prophet Muhammad ﷺ and his successors applied this law with strict procedural and moral safeguards, emphasizing fairness and avoiding punishment in cases of doubt (*shubhah*). The case of Caliph Umar ibn al-Khattab, who suspended the punishment during famine, exemplifies Islam's deep concern for human dignity and social equity (Hanafi, 2024; Khaliq & Pangestu, 2025).

In terms of *fiqh jinayah*, the study reaffirms that Islamic criminal law contains an internal mechanism for flexibility through the principles of *maqāṣid al-sharī'ah*, *dar' al-ḥudūd bi al-shubuhāt* (avoidance of *ḥadd* when in doubt), and *ta'zīr* (discretionary punishment). These elements ensure that the enforcement of Islamic law remains balanced between divine command and human welfare (Miftahuddin & Muhajir, 2021; Mustafa & Nurjanah, 2023).

The integration of modern social theory provides new analytical insight into the socio-ethical significance of *ḥadd al-sariqah*. Durkheim's theory explains its function in maintaining social cohesion and moral solidarity (Rochmawati, 2021), while Foucault's analysis reveals the transformation of punishment from physical control to moral discipline (Setiawan & Wahyuni, 2021). Satjipto Rahardjo's progressive law contributes a humanistic framework that allows Islamic law to evolve in harmony with modern notions of justice and human rights (Nurhayadi & Darmawan, 2024).

Through this interdisciplinary dialogue, the study proposes that *ḥadd al-sariqah* can be reformulated as a contextual and restorative model of justice that retains its moral essence while avoiding physical harm. The reinterpretation through *ta'zīr* aligns with the *maqāṣid al-sharī'ah* principles of justice (*'adl*), mercy (*raḥmah*), and public welfare (*maṣlahah*). Therefore, the true objective of Islamic law — to establish justice and protect human dignity — remains preserved even when its literal form is adapted to modern contexts (Ibrahim et al., 2025; Haque, 2024).

In light of these findings, several recommendations are proposed. First, the implementation of *ḥudūd* laws should be approached contextually, with emphasis on restorative and educational dimensions rather than retributive action. Legal policymakers and Islamic jurists are encouraged to adopt interpretive flexibility through *ta'zīr* mechanisms that preserve the essence of deterrence and moral education. Second, contemporary Islamic legal systems should explicitly incorporate *maqāṣid al-sharī'ah* as the foundation of reform to ensure that the law remains aligned with universal values of justice, compassion, and social welfare (Thamsir et al., 2025). Third, the integration of *fiqh jinayah* with

modern sociology and philosophy should be strengthened through interdisciplinary research and academic collaboration, as this provides a deeper understanding of how Islamic law interacts with evolving social realities (Hanafi, 2024). Finally, following Satjipto Rahardjo's idea of progressive law, Islamic jurisprudence must continue to humanize legal structures by emphasizing that law exists to serve humankind (*al-ḥukmu li al-insān*), maintaining divine intent while addressing the dynamic needs of modern societies.

In conclusion, this study reaffirms that *ḥadd al-sariqah* embodies not punishment for its own sake, but a moral vision of justice rooted in divine revelation and realized through human compassion. The synthesis of *fiqh jinayah* and modern social theory demonstrates that Islamic law remains both timeless and adaptive – capable of guiding humanity toward a just, ethical, and dignified social order across changing civilizations.

ADVANCED RESEARCH

Every research study carries inherent limitations, and this work is no exception. The present study focuses primarily on textual and theoretical analysis of *ḥadd al-sariqah* using classical *fiqh jinayah* sources and modern social theories. While this approach provides a comprehensive conceptual understanding, it does not include empirical data or field-based observations that might further validate the theoretical findings. Future research is therefore encouraged to adopt comparative and empirical methodologies to examine how Islamic criminal law – particularly *ḥadd* and *ta'zīr* – is interpreted and applied across different Muslim societies.

Further studies could also explore public perception and socio-political implications of *ḥudūd* implementation in contemporary Muslim-majority countries. Integrating perspectives from human rights discourse, criminology, and legal sociology will enrich the interdisciplinary dialogue between Islamic jurisprudence and global justice systems. Moreover, quantitative studies could investigate correlations between moral education, religious values, and legal compliance, contributing to a more holistic understanding of the preventive function of Islamic law in modern societies.

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