

## TASYHIR (EXPOSURE TO THE PUBLIC) AS AN ALTERNATIVE PUNISHMENT ACCORDING TO ISLAMIC LAWS AND ITS IMPLEMENTATION IN MALAYSIA

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### ABSTRACT

Generally, *takzir* is infinite or is not bound by a particular type of punishment. It can be applied to anyone who makes mistakes regardless of their age and religion. One of the forms of *takzir* punishment is *tashir*, which is to expose the public to the offender's wrongdoing in a variety of ways, including calling it a call that hurts them. This article aims to explain the alternative forms of punishment according to Islamic Law and how it is implemented in Malaysia. Although its approach today is somewhat different from the previous one, however, the sentence is seen as elusive and still relevant to be used. One of their forms of execution is to publish the perpetrator's fault using mass media the aim is to achieve the same purpose of teaching the public so they will not be repeating the same mistake. This research uses qualitative methods by collecting the data and the views of the scholars on the *tasyhir* and the way it was practiced from the time of Rasulullah s.a.w up to present days. The analysis found that the way *tasyhir* punishment was implemented in ancient times to this day is still same where it uses the approach to advertise criminals for public viewing. However, nowadays, public broadcasts are partially carried out even without a court order. This requires special control so that no one is mistreated or publicly notified before they are found guilty.

Keywords: Tayshir, alternative forms of punishment, takzir, broadcasting, court

### INTRODUCTION

Punishment in Islam can be divided into 3 categories which are *hudud*, *qisas* and *takzir*. Each section has its own penalties that have been guided by Islamic Law and particularized by scholars. The thing that distinguishes between one part of the crime and the other is the *nas* in al-Quran and the scholars' interpretation on it. The sentence is sometimes imposed on *hudud*, *qisas*, *kaffarah*, *diyat* and *takzir*.

One of the parts of *takzir* is *tasyhir* or commonly known as public disclosure penalty. The origin of this sentence started from the time of jahilliyah and then to the time of the Prophet s.a.w, during the rule of the companions and the subsequent arrival of Islam in Malaya through the implementation of the Laws of Malacca and finally it also applies in the Syariah Law and Civil Law of Malaysia.

*Tasyhir* has been carried out with various ways. One of it is by calling the perpetrator with a bad name (depending on the type of mistake), go around the city while announcing the mistakes made by them and the latest approach is to publish photos and personal information along with crime made in the press and mass media. The main objective of *takzir* punishment to be implemented is to give lesson to the other people to avoid committing such offenses thus reducing criminal cases. Hence, the issue of irrelevance in the implementation of the penalties has never been raised as these kinds of punishments have greatly benefited the authorities in tracking down the wanted criminals. This is for the sake of the security for the country and religion, in keeping with Islam's principle in guarding the religion.

### THE DEFINITION OF PUNISHMENT OR UQUBAH

*Uqubah* origins from Arabic words which means punishment that intends to prevent human from committing any prohibited action and do what they have been asked to. Meanwhile *Iqab* means punishment given by Allah SWT. *Uqubah* was commanded to prohibit mankind from doing crimes, and if they have performed it, usually they would not repeat it because they have been punished with *uqubah*. This is what it means when they said *uqubah* can prevent crime before it is committed and threatens offenders after punished with *uqubah* (Dr. Mahmud Saedon. 1996: 149).

Some scholars agreed that *uqubah* dan *iqab* is equal to one another; however, few of them said that *uqubah* is the punishment in the world while *iqab* is the one that will be received at the hereafter. Hence, *uqubah* is obviously a punishment imposed by the Court to the offender after they was found guilty of committing the crime. (Dr. Mahmud Saedon. 1996: 149).

The punishment for crime or *uqubah* will be charged on people who have been convicted of a crime. The offender must be a *mukallaf* that can be held countable to his crime according to Islamic Law. Rasulullah S.A.W said which means:

“The Pen is lifted from three groups, a child until he reaches puberty (*baligh*), an insane man until he comes to his senses and one who is asleep until he wakes up.”

(Hadis Riwayat Abu Daud)

Islam does not take into account the act of crime done by someone who is unconscious, due to necessity or because it does not belong to a group of *mukallaf*. This is means, *uqubah* can only be charge upon someone who commits a crime that violates the rights of Allah, human rights or both if he has a sound mind, has reached the age of puberty, not due to necessity, not in a state of compulsion and doing so in a conscious state (Dr. Mahmud Saedon. 1996: 151).

Crime is committed either against life, property, offspring, self-respect, faith, rebellion against Allah, causing damage to the earth and so on. the punishment towards crime can be divided into *hudud*, *qisas* and *takzir*.

## TAK'ZIR

Literally, the word *takzir* means to reject or to prevent. Meanwhile, technically, it is defined as offence promoted due to a criminal act that is not within the limits of punishment and *kaffarah* whether it related to the rights of Allah (such as eating lunch during the month of Ramadan, accepting *riba* and so on) or the rights of his servants (such as stealing, accepting bribes and something related to it). (Dr. Mahmud Saedon. 1996: 337).

On the other point of view, it means a punishment that no one can explain about its weighing, but it will be handed over to the choice of the ruler or the judge that has been accepted as an original authority in Islamic Law

*Fuqaha* (an Islamic religious lawyer) defines it as a punishment that has no limit on it, obligated either as the right of Allah or the right of man, in every sin that has no limits and the *kaffarah*, which have the same purpose as *hudud*, that is to teach (*ta'dib*), perform recovery (*islah*), and create scary memories (*zajir*) ( Dr. Abd al-Aziz Amir tt: 52).

*Takzir* punishment covers crimes committed in all forms and circumstances other than crimes punishable by *hudud*, *qisas* and *diyat*. This means that the crime is widespread, and that the punishment is based on fair and appropriate one in the opinion of the faith or the court. It may be a death sentence or a light one which just enough to be warned and advised. As to the criminal penalties of *takzir*, it is up to the government (*imam* or court) to determine and administer it based on the *maslahah*. (Dr. Mahmud Saedon. 1996: 342).

### Types of crime that should be imposed with *Takzir*

Although *takzir* has the alternative has a vastly different alternative to its execution, but it is bound by a guideline that binds it. So, that it does not become a cruel sentence. Hence, it works if the offender does:

1. Offences that cannot be punish with *hudud* such as bribery, false testimony, *riba* and any matter that conflicted with rules established by the government for the purposes of public interest. (Dr. Mahmud Saedon. 1996: 340).
2. Offences that have the limit in punishment, but it cannot be carried out due to the lack of terms and conditions, such as the offender openly taking stolen goods in front of his owner.
3. Offences containing punishment limits, but at the discretion of the judge, it is agreed that offender should be imposed with *takzir*. (Dr. Mahmud Saedon. 1996: 340).

### Types of *Takzir* Punishment

The punishment for *Takzir* should be done in various ways, such as:

1. It should be done through the effective words, such as words that can embarrass the offender (*tasyhir*), criticize him, or scare him.
2. It should also be carried out through actions against the offender, such as twisting his ears, blackening his face or hitting him (according to the opinion of some scholars), exposing to the public, regional discard or imprisonment.
3. Take actions on their property, such as forfeiture it (based on the opinion of some scholars), destroy it (in the opinion of most scholars).
4. Murder is also required according to scholars of the Hanafi, Maliki and Hanbali Mazhabs (Dr. Mahmud Saedon. 1996: 34).

### TASYHIR (EXPOSURE TO THE PUBLIC)

*Tasyhir* means to portray someone with an act or character to make them shame in front of the public. According to the scholars in Mazhab Maliki, *tasyhir* is humiliating someone in front of other people (Abdul Rahman Abdullah. 2011: 46). According to the laws today, the definition of *tasyhir* has no different from the fuqaha's point of view, where it continues to achieve the same goal of hurting others by exposing and hurting them in front of other mankind. (Abdul Rahman Abdullah. 2011: 46)

According to the linguist, *tasyhir* has been carried out based on what has been written or recorded or what the court has decided by hurting the person involved (criminals) through the use of pictures, signals or newspapers. Or, nowadays, it is exposed through radio, television, the internet and other means of communication. (Abdul Rahman Abdullah. 2011: 49). It can also be done with public disclosure of the criminals by presenting their personalities from excerpts of facts in journals or writings. Alternatively, a person can be executed by submitting a person in writing, achieving the same purpose and intention of hurting the criminal's feeling (Abdul Rahman Abdullah. 2011: 49). In short, *tasyhir* is derived from writing and visualization, as well as the presence of other mediums to advertise it. Other ways to public exposure are through talks such as lectures, speech and story telling (Abdul Rahman Abdullah. 2011: 49).

In Islam, humiliating other people is strictly prohibid (*haram*). This is because it can harm individual and the community which cause the relationship breakdown as well as misunderstanding among them. (Abdul Rahman Abdullah. 2011: 62). It can be proven through Allah SWT's words in Surah al-Nur, verse 19: -

**Meaning:** *As for those who love that indecency (adultery, shameful events, slander, evil) should spread among those who believe, for them there is a painful torment in this world and the Hereafter; and Allah knows, while you do not know.*

This verse shows the warning from Allah SWT towards the people that try to spread slander about the other mankind without investigating its truth, since Allah SWT is the only one and the most knowing in all matters.

However, in the other verse, Allah SWT explain the prohibition to expose others wrongdoing except for certain cases. This can be seen in Surah al-Nisa', verse 148:

**Meaning:** *Allah does not like the public mention of evil except by one who has been wronged. And ever is Allah Hearing and Knowing.*

The point of the above verse is that the oppressor is not guilty if he exposes the oppressor's crimes against him in order to obtain a defense. Based on the general meaning of the above verses, Islam gives everyone the right to freedom of speech and opinion, especially in matters that can bring good and prevent evil in society. This right is not only granted in the case of a particular issue, but it can be used in all circumstances as long as it can bring good and eliminate harm in society (Dr. Basir Mohammad. t.t. 17). Ibnu Majah narrated that The Messenger of Allah, s.a.w (peace and blessings be upon him), said: "Do not cause harm or return harm". This hadith explains a fundamental principle in Islamic life, that is, do not seek harm and cause harm to others. It is a great principle for the well-being of all humankind whether it be Muslim or non-Muslim (Abdul Rahman Abdullah. 2011: 66).

## SOME OF THE ALTERNATIVE FOR TASYHIR

### Implementation on the days of Islamic rules

*Tasyhir* punishment has been introduced since the early days of Islam. During the ruler of Rasulullah s.a.w, he has punished a man, which has been given a task to collect the obligatory alms (*zakat*). But he has divided the collected *zakat* and took half of it as a present for himself. However, the exact approach taken by the Messenger of Allah to the man was not stated (Muhammad Iqbal Siddiqui. 2003: 145).

According to the book entitled Crime and Punishment Under Hanbali Law, among the words of the *tasyhir* in the sentence of punishment are, adulterers, criminals, dogs, donkeys, goats, apostates, wicked men, liars, traitors, enemies of Allah, intoxicants, and transexual. These words were used to call the offender in public so that he could be recognized for his wrongdoing (Sheikh Ibrahim ibn Muhammad Ibn Salim Ibn Duyan: 1961: 86)

According to the view in Hanbali Mazhab, there is no obstacle to blacken the face of a person in *takzir* punishment and announce it. Imam Ahmad stated that, according to the witness who had given false statements in a case, Saidina Umar al-Khattab sentenced him to be shaved bald, blackened his face, and then he was exposed to the public and was eventually jailed for a long time.

During the the ruler of Khalifah Umar al-Khattab, in some cases, Khalifah Umar sentenced numbers of *takzir*. It is a punishment given for violating any provision, with restrictions and rules on how to execute it. As mentioned by Ibnu Farhun, *takzir* does not specialize in any particular act or word, as the Messenger of Allah (May peace be upon him) has given his destiny by interrogating and separating the offender. As for Khalifah Umar, there are varieties of ways as we know it by canning, imprisonment, burning of the house, separating them, intimidation, pay compensation and declaring or mocking the criminal in public. (*tasyhir*) (Dr. Muhammad Baltaji. 2007. 565)

*Tasyhir* punishment was carried out by announcing and mocking the criminal in public by blackening his face and hitting his head. This is exactly what he did to the witness who lied before he was arrested. Khalifah Umar had shown the accused to the crowds for a full day and then announces the name of the criminal in front of people

It is also said that Khalifah Umar had ordered a false witness to be beaten in the head, blacken his face and be put on vehicle in an upside-down manner. (Dr. Muhammad Baltaji. 2007. 565).

What should be noted when imposing a sentence is that, it should be comparable to the crime committed. As narrated from Umar al-Khattab to a false witness, he was ordered to be put on vehicle in an upside down manner and his face will be drawn, for he had been deceiving the real thing, then he had turned his face and he had made it dark with black paint) (Dr. Muhammad Baltaji. 2007. 567).

According to Shurayh, which is a famous judge during the ruler of Saidina Umar al-Khattab and Saidina Ali bin Abi Talib, the penalties for false witness cases will be exposed to the public so that he will be no longer be trusted, and most judges at that time are agreed with Shurayh's decision. However, the sentence is not limited only to the state where the offender committed the crime, but it will be distributed at every corner of the country by the judges at that time (Muhammad Iqbal Siddiqui. 2003: 145).

### The Implementation in Malaysia

The historical records in Malaysia show that *Clause II Laws of Melacca* also provides for criminal *takzir* penalties, such as stealing sugar cane, bananas, betel and fruits. When convicted, they do not cut off their hand, but fined ten dinars and all the stolen goods were hanging on the neck of the offender as they were taken to walk in the public around the city. (Mahmud Saedon. 1996. 158)

According to *Clause 36 Laws of Melacca*, if convicted of a witness has lied to the court, the sentence is punishable by not less than twenty whipped, and the witness is set before the public on Friday. (Mahmud Saedon.1996. 158).

There are some examples of offenses if convicted; the offender will be subject to *takzir* punishment provided for in *Laws of Melacca*. In general, the Islamic Criminal Law was widely practiced before the arrival of the colonists, with careful planning and eventually the Islamic Criminal Law was narrowed down in its scope, lowered its punishment, and applied only to Muslims. The situation continues to this day (Mahmud Saedon.1996. 158).

The Islamic Criminal Law such as *hudud*, *qisas*, *diyat* and *takzir* are laws that was just, superior and appropriate to every person, time and place because they are the laws of Allah, yet its justice, superiority and appropriateness cannot be proven if it is not governed fairly.

This means that the implementation of the Islamic Criminal Law and its modifications will require the administration of a good, smooth and dignified Shariah Court. This can only be achieved by the inclusion of comprehensive Criminal Law and the enhanced Islamic Evidence Law together with the Islamic Criminal Procedure as well as the Islamic Law as the final reference.

Based on the penalties contained in the Selangor State Syariah Criminal Procedure Enactment Act 2003, the implementation of the penalties only appears to have the scope of sections 32 (1) and (2) of which:

“(1) Every warrant of arrest issued by the Court under this Enactment shall be in accordance with Form 3 of the Second Schedule and signed by the Judge and must be sealed by the court.

“(2) Each of the warrants shall remain in force until it is revoked by the Court issuing it thereon until it is executed.

A warrant issued by the Court is for the purpose of a permit to detain an offender for a reported offense. Warrants are considered an advance to the penalties as they involve the detention of the perpetrator at home or in the public.

Studies show that there are no penalties in the Syariah Criminal Law in Malaysia that involve penalties in the public (*tasyhir*) like those applied in Islamic government in ancient times.

However, the Malaysian mass media is very sensitive to the ongoing litigation in the Syariah court and has led to indirect *tasyhir*. For example, in the case of The Kinabatangan Parliamentary Member, Bung Mokhtar with his spouse, Zizie Izette<sup>1</sup>. This case was published in Utusan Malaysia on 21<sup>st</sup> April 2010. The offense done by them was getting married and involve in polygamy without permission. This offense is based on section 124 and section 40 (2) of the Islamic Family Law (Selangor state) Enactment 2003 which states:

Section 124 “Any man who, during the subsistence of a marriage, contracts another marriage in any place without the prior permission in writing of the Court commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

Section 40 (2) Any person who marries, or purports to marry, or goes through a form of marriage with, any person contrary to any of the provisions of Part II commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.

The above provision does not promote the exposure to public at all. However, in the Syariah Court nowadays, the matters relating to marriage, divorce, religious exchange, proximity and alcohol consumption will be broadcast on the press and television for public awareness.

This effort benefited the public's institutions in combating *syariah* crimes such as drinking alcohol and the collapse of family institution although the Syariah Court does not have the authority for directing the media to disclose it to the public as an alternative of punishment.

In civil court, it is based on the Panel Code or Criminal Procedure Code or other acts. Among the criminal offenses provided to be given *takzir* is a punishable offense such as giving false testimony and offenses against public justice, offenses relating to government seal and money, weighing and measuring equipment offenses, health, safety, facilities, decency, morals and so on

For example, there are suggestions that it will be published in a press notice for traffic offenses. According to Utusan Malaysia newspaper dated February 7, 2004:

“Newspaper are once again become the most important medium in publicizing the names of those who are wanted for any reason. In the past, several public agencies have adopted the approach of revealing certain names in local newspapers”.

The minister in the Prime Minister's Department, Datuk Seri Dr. Rais Yatim explained that the Traffic Tribunal proposed to set up a traffic case that can be compounded, and the postponed cases in the court would use the press as a medium to ensure a notice of summons could be served on traffic offenders.

According to a proposal announced by Rais yesterday, traffic offenders whose names and types of offenses are reported in the newspaper will have to pay half portion of the advertising costs involved.

“According to Rais, there are currently 1.4 million summonses that cannot be served on traffic offenders due to various factors. This is because the address on the identity card is not up to date. It is understood that the government will collect RM200 million from compounded traffic cases if the method is implemented<sup>2</sup>.”

Spreading the name and information of offenders in newspapers is considered to reduce traffic problems in Malaysia while creating awareness for other Malaysian drivers to avoid from committing the same mistake.

In another case, the Royal Malaysian Police released advertisement for the wanted criminal on the website for public information. The offender is Osuji Kelly Prince who has a Nigerian nationality. In addition, the police also released the suspect's

<sup>1</sup>[http://ww2.utusan.com.my/utusan/special.asp?pr=PR11&y=2004&dt=0207&pub=Utusan\\_Malaysia&sec=Rencana&pg=re\\_02.htm](http://ww2.utusan.com.my/utusan/special.asp?pr=PR11&y=2004&dt=0207&pub=Utusan_Malaysia&sec=Rencana&pg=re_02.htm)

<sup>2</sup>[http://www.utusan.com.my/utusan/info.asp?y=2010&dt=0421&pub=utusan\\_malaysia&sec=Mahkamah&pg=ma\\_01.htm&arc=hive](http://www.utusan.com.my/utusan/info.asp?y=2010&dt=0421&pub=utusan_malaysia&sec=Mahkamah&pg=ma_01.htm&arc=hive)

personal information such as his identity card (passport), physical characteristics as well as the picture of the criminal. The criminal is said to be involved in drug crime<sup>3</sup>.

The police's action in advertising the details of criminals is a good step towards ensuring that the offender is arrested with the help of public. The public is also responsible for assisting police investigations in this case. Obviously, the penalties have a positive effect on crime problem in the country.

## CONCLUSION

The judgment in the form of public announcement (*Takzir*) is still relevant and accepted today but the approach taken is quite different from the past. With the advancement of technology, the implementation of *tasyhir* can be accomplished through a variety of ways. For example, by posting or advertising photos and offences as well as the penalties imposed by a judge in a newspaper or other social media. Since they are in the category of *takzir*, governments can choose forms of punishment that are appropriate as long as it is still in the framework of *takzir*. In short, this penalty can still be carried out over time. *Tasyhir* is not a cruel punishment as compared to the other punishments, but it is a penalty that is fair with the wrong done. In recent times, this form of punishment (*tasyhir*) has been indirectly widespread a person's wrongdoing even though the mass media has not not been directed by the court to declare the case involved.

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<sup>3</sup><https://www.facebook.com/PolisDirajaMalaysia/posts/642448479098796>