



Ambiguity of Adultery Concept (*Zina*) in Criminal and Justice System (A Comparison between Indonesia, Pakistan, and Turkey)

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Abstract

Indonesia is a country that has an ideological foundation, namely Pancasila, while Turkey is a country that has a foundation of ideology of Kemalism. Every country must have a different ideological foundation and certainly has a different legal system, as well as the country of Pakistan. In this article, what will be discussed is regarding adultery. Adultery is intercourse between men and women who do not have a legitimate marriage bond according to religion, adultery also can defined sexual relations between men and women who are not bound by marital relations. In the book *Bidayatul Mujtahid* it is stated that adultery is intercourse that occurs not because of a legitimate marriage, not because of false marriage, nor because of ownership (of slaves). Sahal Mahfudz expressed the opinion of the Imams of the School of Understanding adultery with three main points of understanding. Such understanding has been agreed upon by the scholars. Adultery is the path to damage that can lead to human descent from noble to despicable degrees. In Indonesia, adultery is a crime stipulated in article 284 of the Criminal Code, the article applies if one of the adulterers has been bound to marriage, so for those who are not bound by marriage cannot be criminalized, in article 284 of the Criminal Code as a criminal offense with a prison sentence of up to nine months, with the following conditions; He who is an adulterous wife is being aware that article 27 of the Criminal Code applies to him and married women who commit adultery. In the country of Turkey, adultery is not a criminal act, it is based on secular Turkish ideology and considers that sexual relations are a private area, but adultery can be a cause or an excuse to file a divorce. This makes the perpetrators of adultery who have not or are not bound by marriage do not have any impact or risk of the adultery that they have committed. Whereas in Pakistan, zina acts are adjusted to existing Islamic law.

Keyword: Indonesian Penal Law, Turkey Penal Law, Pakistan Penal Law, Sexual relationship

INTRODUCTION

Indonesia, Turkey, and Pakistan are three state entities that have different ideological foundations and different legal systems. Indonesia as a country that has a foundation of Pancasila ideology. Turkey as a country that has a unique history and has a

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color in the history of Islamic civilization and world civilization, and become a secular state now. Then in Pakistan, the law is adapted to applicable Islamic law which is then called the Islamization process.

Understanding the legal system in other countries is very useful in supporting the understanding and development of national law, in addition, it can deepen the understanding of the institutions of society and culture itself and bring a critical attitude towards the legal system itself (Nawawi Arif, 2010).

Comparison of law can be done both in the field of private law and public law, it can even be done by comparing a legal institution in the past with the present, thus the comparison of law leads us to legal history. With the comparison of laws, we can find the elements of equality and also the elements of difference between the two legal systems, knowing the causes and backgrounds of these differences and similarities, knowing the life and outlook of other nations including the law (Soeroso, 2006).

Comparative law has an important role in the field of law nationally and internationally, therefore, it is increasingly necessary to know because it has various benefits, namely having an important role in the framework of relations between nations and in all fields of law. According to Randall, the purpose of comparative law is an effort to collect various information about foreign law and explore the experiences made in the study of foreign law in the context of legal reform (Fuady, 2007).

As it is known that codification in Indonesia is much influenced by the codification in the Netherlands. In the Netherlands the first codification was in 1809 called *Het Crimineel wet boek vet het koninlijk Holand*. The codification of the year was long because in 1811 until 1813, the Dutch were occupied by France so that the Penal Code was implemented until 1866. Actually since the first codification for 73 years, the Dutch had prepared a draft criminal law regulation which was completed in 1881 and was promulgated on September 1, 1886 and was often called the *Netherlands Wet Boek van Strafrecht* was adopted in Indonesia and named the Criminal Code (KUHP) in 1946 (Prasetyo, 2011).

Unlike the case with the country of Turkey, a country that is highly respected in its time because of the power of war and its strategic geographical location so that it becomes the central region for trade traffic. Turkey as a country that has implemented Islamic law in its entirety by referring to the Qur'an and sunnah later because of the penetration influence of the western world and political pressure gradually applied secular ideology so that it removed all its Islamic attributes and replaced them with western law.

This interesting phenomenon is inseparable from the socio-political realities that developed in the *Tanzimat* government, the rapid flow of cultural penetration and Western power over the Islamic world and the internal upheaval of Muslims and the response to the decline of Muslims strongly colored the current social political situation. In such situations and conditions, *Tanzimat* formulates and implements policies and politics in its legal development (Ikhwan, 2017).

Unlike the case in Pakistan, the country that has the second largest Muslim population in the world adheres to the Islamic family law system which is a rule that conceptualizes the civilization of Muslims regarding marriage, inheritance, and matters concerning the scope of *Ahwal as-syakhsyiyah* who later in Islamic terms it is referred to as *Fiqhul Ushrah*. One of the phenomena that emerged in the Muslim world in the 20th century was the attempt to reform family law (marriage, divorce and inheritance) in Muslim-majority countries (Mufti, 2012).

The renewal of Islamic law seems unique in three categories of Muslim countries. First, some countries did not reform Islamic law at all and continued to apply

the laws contained in the books of fiqh in accordance with the schools they adopted. The countries included in this category are Saudi Arabia. Second, some countries have abandoned Islamic law and replaced it with secular law that is commonly applied in Europe. Turkey is one of the countries in this category. Third, some countries are reforming Islamic law by combining it with secular law. Countries included in this category are Egypt, Tunisia, Iraq, Syria, Pakistan, Indonesia and others (Huda, 2012).

Ideological differences and the legal system between Indonesia, Turkey and Pakistan affect the calcification of an act, for example adultery. Adultery in criminal law in Indonesia is an act that can be criminal, whereas in Turkey, after applying its secular ideology and slowly abandoning Islamic law, adultery is not a criminal act, meaning illegal sexual relations outside the marriage frame are deemed ordinary and private rights, meaning that the state does not interfere in that domain. So also different in the country of Pakistan, a country that is thick with Islamic law is certainly very concerned about adultery.

Determination of an act whether it is a criminal act or not depends on the criminal policies of a country, in this case the criminal law which contains defining rules, provides the basics and rules for:

1. Determine which actions should not be carried out, is prohibited accompanied by threats or sanctions in the form of certain crimes for anyone who violates the prohibition (*criminal act*).
2. Determine when and in what cases to those who have violated these prohibitions can be subjected to criminal sanctions as criminalized (*criminal liability*).
3. Determine how the imposition of criminal acts can be carried out if there are people suspected of violating criminal prohibitions (*criminal responsibility*) (Moeljatno, 2002).

If you pay attention to the types of offenses in the various Criminal Code of the various countries, there are real offenses that can be seen as neutral, meaning that all countries perceive such acts to be punished, such as acts; theft, murder, rape, fraud, persecution, and so on (Hamzah, 2008). Such offenses are found in all KUHP regardless of the ideology, culture and religion adopted in the country, which is rather different from criminal sanctions (Hamzah, 2008). Hermann Mannheim said; "Penal Code is the most faithful mirror of civilization of a nation" (the Criminal Code is the most trusted mirror of the civilization of a nation) (Nijboer, 2008).

In the opinion of Muhammad Mustofa who responded to the social phenomenon said: "... indeed in criminal law there are articles that regulate behavior deviations, but if the behavior is carried out is not referred to as crime but violations and violations of criminal law the level of seriousness depends on the socio-cultural views of the community where violations of criminal law are carried out, but the level of seriousness of violations of criminal law compared to behavioral deviations is more serious" (Mustofa, 2001).

Adultery can be categorized in social formulation as a deviation of behavior, meaning that it is seen in the sociological framework as an action whose level of seriousness in the violation of people's moral feelings is the lowest (Mustofa, 2012). In the view of an individualistic and liberalistic western society, individual freedom of rights is highly upheld, including freedom in sexual activities and moral relations between individuals who are free without coercion, such matters considered reasonable and impeccable (Nawawi Arief, 2012).

Thus, adultery as part of decency offenses has a relative or different position in each country and is not necessarily a criminal offense. However, it is not always a measure of the value of bad or not bad deeds that must be included in the Criminal Code. Sometimes other interests, such as public order so that an act needs to be

threatened with crime even though the act is not considered bad (Hamzah, 2008).

In the field of criminal law, especially in matters relating to decency offenses, developing understand that criminal law must stop at the bedroom door, "*The criminal law dictatorial power must end at the door of the bedroom or stop at the barn door*" (Setiadi 2004).

Based on these facts, the reality of differences in legal systems in some countries is the main factor in the importance of making legal comparisons because studying comparative laws can bring benefits to cultural fields of law in various countries so that they can be broader and critical in understanding the laws in their own countries (Fuady, 2007).

Differences in perceptions of adultery in the three legal systems in three countries that have different ideologies are interesting things to study, so that a comparison of the law on adultery in criminal law in Indonesia, Turkey and Pakistan will be explained and any factors that underlie the three countries in looking at adultery.

RESEARCH METHOD

The research was normative legal research, this research only analyzes laws and regulations concerning to the adultery in Indonesia. This article compares the laws and regulation concerning to adultery between Indonesia, Pakistan and Turkey in the Criminal Justice System.

FINDING AND DISCUSSION

Adultery According to Criminal Law in Indonesia

The country of Indonesia has the Pancasila philosophy of life by carrying out its five values as the spirit of its social behavior and personality. And the state has a role in creating order and social order in society through criminal law.

Criminal law is a special sanction law, meaning its use is *ultimum remedium* and is used selectively and limitatively, the Indonesian Criminal Code regulates the issue of adultery into a criminal offense whose arrangements are contained in Articles 284, 287 and 288 of the Criminal Code, but are limited to perpetrators who are bound by marriage and must begin with reporting from parties who feel disadvantaged (complaint complaints).

This article has limitations because it only applies to those who are subject to western law (BW). Whereas those that are subject to customary or religious law are clearly not applicable. According to Article 27 BW, a person, whether male or female, must not have sex with someone other than his wife or husband (Setiadi, 2004).

According to Article 287 (1) of the Criminal Code, "Whoever has sex with a woman outside marriage, even though it is known or appropriately should be suspected that she is not yet fifteen or if her age does not prove that she is unable to marry, is threatened with a maximum of nine years imprisonment."

This article only regulates, among other things, intercourse with a woman not his wife who is under 15 years of age or has not been married. The threat of punishment for the perpetrator, a maximum imprisonment of 9 years. The element that must be proven in this problem besides the victim is not his wife, the perpetrator must also know that the age of the victim has not reached the age of 15 years or is not enough to be married. The problem that arises is the difficulty of measuring/determining age, where in certain cases it is very difficult to draw a clear line between a person's physical condition and the age of the person. In addition to this article including criminal complaints, except the age of the victim under 12 years or resulting in injury or death (Setiadi, 2004).

Whereas according to Article 288 (1) of the Criminal Code: "Whoever has sex with a woman in marriage, who is known or properly should be suspected that before being able to be married, is threatened, if the act results in injury, with a maximum imprisonment of four years".

Noting the provisions governing the problem of sexual crime as described above, it appears that although in general there have been threats to acts of sexual abuse but these provisions have not fully been able to ensnare the perpetrators. Such a fact can be seen from the existence of weaknesses that can open the chance for the perpetrators to escape (Setiadi, 2004).

The problem of the substance limitation of the Criminal Code is then reinforced by a statement at the United Nations Congress held 5 (five) years on "The Prevention of Crime and Treatment of Offenders" which states that the criminal law system has existed in several countries (especially those originating/imported from foreign law during the colonial era), generally are "*obsolete and unjust*" (obsolete and unfair) and "outmoded and unreal" (outdated and not in accordance with reality) (Nawawi Arief, 2002).

The reason is because the criminal law system in several countries originating / imported from foreign law during the colonial era was not rooted in cultural values and there was even a "*discrepancy*" with the aspirations of the people, and was not responsive to today's social needs (Nawawi Arief, 2002). Such conditions by the United Nations congress are stated as contributing factors to the occurrence of crime (a contributing factor to the increase of crime), in fact, it is stated that development policies (including the legal sector) that ignore moral and cultural values include foreign law colonial legacy (Nawawi Arief, 2002).

Sexual Crime Arrangement in the Draft Criminal Code Draft, philosophically the drafting of a new law is among others driven by a desire to make changes to existing laws. Likewise with the issuance of the draft Criminal Code, one of the underlying reasons is that the National Criminal Law material must be adapted to the legal politics, circumstances, and development of the life of the Indonesian nation and state (Setiadi, 2004). Regarding the issue of adultery in the concept of RKUHP, there are several expansions, both in terms of formulation and sanctions that are threatened to be more severe, among others; RKUHP concept (Departemen Kehakiman, 2000); In Article 419, it is affirmed that the threat of *zina* criminal acts is not only against acts committed by people who are subject to Article 27 of the Civil Code, but also applies to every person who is married. The criminal threat for perpetrators is a maximum sentence of 5 years imprisonment.

Adultery According to Law in the Country of Turkey

It is very important to review the historical problems of the Turkish state before arriving at how the legal system is because as mentioned in the previous section that Turkey has a unique history in the stage of Islamic world civilization in particular and the world in general (Nasution, 2013).

The emergence of the Ottoman Empire on the stage of history has a very important meaning, especially in order to save the Glory of Islam, after Baghdad collapsed even though it did not inherit Baghdad one hundred percent but it colored the Islamic world with the distinctive colors of the Kingdom of Turkey (Murtado, 1998).

From this particular color the Ottoman Empire, as said Ahmad Syalabi, was once called the "*fortress of Islam*" which was a "*stumbling block*" for Europeans to launch their colonial expansion to the east (Syalabi, 1998). Even this stumbling was the one who defeated the Christian army in the crusade that arose because it was sparked by a

prolonged fire of revenge so that the incident was recorded as the defeat of the European army the most fatal in the history of war against the Ottoman army (Syalabiy, 1998).

The Ottoman Turks reached their peak in the period of Sualiman I which was known by al-Qannuni (legislator) and Sulaiman the Great, in the time the territory of Turkey included Algeria, Egypt, Hijaz, Armenia, Iraq, Asia Minor, Balkans, Bulgaria, Bosnia, Greece, Hungary, Romania and three seas namely; Black Sea, Mediterranean Sea and Red Sea. Therefore, at this time Turkey became a superpower so it was not surprising that the last superpower of the Islamic Empire caused fear for Europeans to tear it down at that time (Esposito, 2014).

The might of the Ottoman Empire began to weaken after Al-Qannuni died (1556). Apparently, the death of al-Qannuni was not the main cause of the kingdom's weakness because there were still other causes including the weak authority of the rulers after that and the emergence of people's distrust to the government (Murtado, 1998).

This was seen in the seventeenth century, Turkey suffered various defeats of war against Europe so that it was forced to sign several agreements that were detrimental to Turkey, Turkey's loss due to this agreement was the narrowing of the Turkish territory (Murtado, 1998).

The term secularization in the world of renewal has at least two practical meanings, namely; a cultural (profane) distinction between the doctrinal one in religion as well as a "separation" between the two, something related to the cultural one is regulated using secular, worldly principles which are detached from religious doctrine (Rahman, 1992). Even though the secularization process has long lasted and reached its climax at Attaturk's time, all that has not provided the Turkish trademark as a secular state, proved to be a "back to Islam" movement in 1949, as well as in politics, Islam has played an adequate role big.

Turkey is a country with a majority Muslim population of around 99.2%, religion in the Turkish tradition has a large role in the social and political fields. In the initial period, Islamic Shari'a was carried out purely in accordance with the Koran and Sunnah, while in the mid period there had been attempts to incorporate Islamic law into state legislation, namely when the Caliph al-Manshur, the effort was realized after the emergence of the book Al-Majallah al- ahkam, Al-Adliyah in 1823.

Thus the decision of the Ottoman Turkish government was issued to use the law as a guide for the Judges in court. The book consists of 185 articles which are divided into 16 chapters.¹ Thus the book of the law is the first positive civil law law taken from the provisions of Islamic law and taken from the Hanafi school as the official state school at that time. Besides the book mentioned above, family law was issued (Qannun 'aliat) which was devoted to the problems of marriage and breakup of marriage, the issuance of these two laws was the first codification of the law originating from Islamic law.

Mustafa Kemal's reform in the field of law which is a policy to separate Islam from religious affairs, began to eliminate the existing religious institutions in the government, with the abolition of the Syaikh al-Islam Bureau and the Shariah² and Sharia law in marriage being replaced by Swiss law. Thus, marriage is no longer carried out

¹ (1) Buying and selling, (2) Rents, (3) Dependents, (4) Transfer of debt, (5) Pawn, (6) Courts, (7) Grants, (8) Confiscation, (9) Forgiveness, coercion and forced purchase rights, (10) Trade unions, (11) Representatives, (12) Peace and liberation of rights, (13) Recognition, (14) Claims, (15) Proof and Oath, (16) Courts.

² Islamic socio-religious laws, based upon the literal interpretation of the *Quran*, dating back more than 1400 years, and believed by Muslims to be the divine word of God.

according to the Shari'a but according to civil law, as well as in criminal law, commercial law, marine law, and bond law, western law is adapted to the needs of the Turkish people.

Breaking the boundaries of things that remain (*al-Tsawabith*) and things that can change (*al-Mutaghayyirat*) in Islamic law. In order to carry out legal reforms, Muslims in this case the authorities who determine the policy of legal development are no longer bound or no longer heed the limits of the ability to renew Islamic law. As a result, some areas of law that are traditionally seen as absolute and not *ijtihad* have been used as a field for legal reform. For example the substitution of *hudud* criminal with western laws ([Ikhwan, 2017](#)).

The condition of Turkey when Islamic Shari'a is still in force, adultery is a sexual relationship between a man and a woman who is not or has not been bound by marriage without any element of doubt in the sexual relationship and no ownership relationship. The punishment for the perpetrators of adultery is *Jarimah Hudud*, namely *jarimah* which is threatened with punishment, namely the prescribed sentence of the type and amount and is the right of God. Thus, the sentence does not have the lowest limit or the highest limit ([Hanafi, 1990](#)). Punishment which includes the right of God is every punishment desired by the public interest, such as to maintain public peace and security and the benefits of imposing a sentence will be felt by the whole community ([Hanafi, 1990](#)).

However, in the course of history after Turkey renewed it in the field of law, the principles of Islamic law that were considered outdated were then abandoned and then changed course by determining the attitude to separate religious affairs and state affairs, but this thought was the influence of the western and laden world with political pressure.

The journey of history has led Turkey to become a secular state and changed its entire legal system, this has caused many things to change and even then social change has become a historical fact in Islamic civilization and has implications for the weakening of Islamic countries in world relations. The condition of a country's historical background is in essence very influential on its development, both economic aspects and legal aspects.

As revealed by Tahir Mahmood, The history, nature, rationale, and implication of what is called: Islamic criminal law in fact the call for close, this law can be neither forthrightly rejected as a wholly outdated system unfit for our times not zealously enforced without a proper study and without correlating it to the local socio-economic condition ([Mahmood, 1996](#)).

Political dynamics in Turkey have an influence on law enforcement aspects and in the end the problem of adultery itself has become a hot issue in Turkey and a long debate, adultery will once be declared a criminal offense but westerners fear that Turkey will decide adultery as a crime secular-liberal and freedom, so in the end, the Turkish parliament once discussed a bill proposed by the government which stipulated adultery as a form of criminal crime, according to Turkish Prime Minister Recep Tayyip Erdogan, the law was intended to protect families and wives -the wife of her husband's adultery/adultery.

Adultery itself has an important position in family law in Turkey which is one of the portraits of family law reform in Turkey which has undergone several amendments. The legal rules regarding divorce in legislation have experienced a fairly rapid development compared to conventional *fiqh*.

The problem of adultery is one of the factors that can make divorce in the provisions concerning divorce regulated in Article 129 - 138 of the Turkish Civil Law of 1926. Husbands or wives who are bound to a marriage bond can submit divorce to the

court for the following reasons:

1. One party commits adultery.
2. One party conducts an attempted murder or serious mistreatment of the other party.
3. One party commits a crime or an act that is not commendable resulting in severe suffering in the life of the household.
4. One of the parties leaves a shared residence (house) three months or more intentionally and without a clear reason that causes harm to the other party.
5. One party suffers from a mental illness of at least 3 years or more which disrupts household life and is proven by a medical expert's certificate.
6. There is serious tension between husband and wife which results in suffering (Dirjen Bimas Islam, 2010).

From the description in the previous section it is known that the problem of adultery in law in Indonesia, Turkey and Pakistan has fundamental and fundamental differences, in Indonesia zina acts are specifically regulated in Article 284, 287, and 288 of the Criminal Code, but on a practical level there are limitations, namely adultery is a complaint of offense, consequently there must be complaints from those who feel disadvantaged, besides those articles cannot ensnare the perpetrators of adultery who are not bound by marriage, zina itself cannot be punished. Regardless of the reality of the problem, Indonesia has positioned zina as an act that can be punished, meaning that there is a clear attitude in viewing zina as an immoral act and the state intervenes in law enforcement through criminal law. This is one of the media in embodying Pancasila as an ideological foundation of the nation.

Unlike the case with Indonesia, Turkey as a country that has implemented Islamic law fully, and adultery when it is clearly an act that violates legal norms and norms of decency, but in the end along with political developments and changes in the legal system in Turkey then applying secular ideology, its secularism has made a strict barrier between the problems of religion and the state, automatically then zina deeds are no longer an act that violates legal norms, there is even strong protection from the state in protecting the private rights of its citizens including relations sexual.

Adultery According to Law in the Country of Pakistan

Pakistan has a process of Islamization under the leadership of General Zia-ul Haq (1977-88) with a dictatorial system, gender discrimination laws introduced through Islam in Pakistan which have undermined women's rights even further in orthodox and patriarchal societies.

Which will be discussed here, namely Adultery Hudud Ordinance³ and Evidence Law⁴ and Sharia perspective in Pakistani law⁵ and how gaps in this law can specifically encourage violence and legal injustice against women. The Islamization process starts with the politicization of Islam that supports, undermines, and erodes women's rights in regional and religious factors.

A liberal man named General Ayub Khan, introduced Muslim Family Law in 1961 by including several reforms recommended by the commission after the 1958

³ The *Hudood* Ordinance criminalizes *Zina*, which is defined as extra-marital sex, including adultery and fornication. It makes no distinction between consensual sex and rape.

⁴ The *Law of Evidence* states that the testimony of a female is considered half that of a man's in a Pakistani court of law.

⁵ Islamic socio-religious laws, based upon the literal interpretation of the *Quran*, dating back more than 1400 years, and believed by Muslims to be the divine word of God.

Military Law. The concept of Islamization was also introduced by Prime Minister Z.A. Bhutto in Pakistan. Thus, a process was initiated which would increase legal discrimination against women through the introduction of the Shariat Federal Court (Asma & Jilani, 2003).⁶ ratification of the New Evidence Law and ratification of the Hudood Zina Law⁷ The the process of developing politics in Pakistan leads to the Islamization of neighboring Afghanistan. Four major events in 1979 that collectively had a major impact on the Pakistani community were the introduction of the Hudud Ordinance by the military regime (Fareeha, 1994).

Events have greatly changed the socio-cultural ethics of Pakistani society and attracted the attention of educated Pakistani women both at home and abroad to begin investigating specific feminist issues. There were feminist activists and the founders of the Women's Action Forum named Mumtaz Khawar and Fareeda Shaheed, in reaction to Zia's introduction of the Hudood law in 1979, the pioneer women's rights organizations in Pakistan were formed, namely: On February 22, 1979, many fanfare and buildup of media, the first concrete step towards Islamization was announced by the military government. This took the form of the 1979 Hudud Ordinance, which included adultery, drunkenness, rape, theft and false witnessing. Ordinance makes Zina violate the state, unlike current UK law which assumes that adultery is a matter of personal violation of the husband (Mumtaz, Khawar & Shaheed, 1987).

It is clearly explained that nothing can "prevent the state from making special provisions to protect women ..." in Article 25 of the Constitution of Pakistan 1973, which deals with the basic rights of Pakistani citizens (Cawasjee, 2014) and there were also Pakistani ratifications CEDAW Convention (UN Convention on the Elimination of All Forms of Discrimination Against Women) in 1996 (Zia, Shahla & Bari, 1999).

The interpretation of the rules of guidance as stated in the Koran, the holy texts of Muslims which are also considered as divine words revealed by God through the angel Gabriel to the Prophet Muhammad, and the Sunnah based on Sharia Law in Islam⁸ The Sunnah also contains hadith which are considered based on the life of the Prophet himself (Mawdudi, 1993)⁹ which is a Tradition in Islam or the words of the Prophet.

The interpretation of the Qur'an by ulama (ulama) is considered a divine law as determined by God, namely Sharia, for Muslims to underlie the formation of law in the country of Pakistan. Abul A'la. Mawdudi, who is considered a renowned Islamic scholar and is one of the highest theological authorities in the Muslim world explains: "Sharia ... can create direction to regulate our collective and personal lives. These directives touch on varied subjects such as personal character, religious rituals, customs, morals, family relations, administration, social and economic affairs, legal justice systems, citizens' rights and obligations, international relations and the laws of war & peace. In short, this includes all the various social orders and departments of life that cover all and none that are lacking and that there is no excess (Mawdudi, 1980).

⁶ The *Federal Shariat Courts* were established in 1980, and all their judges are Muslims, even though non-Muslims are also tried in these courts under Islamic laws. These courts have the exclusive jurisdiction to hear appeals against all convictions passed under the *Hudood Ordinances*. For details see [Jahangir, Asma and Jilani, Hina](#). *The Hudood Ordinances: A Divine Sanction?* Sang-e-Meel Publications, Lahore, Pakistan, 2003. p-1-3.

⁷ The *Law of Evidence* (The *Qanun-e-Shahadat*) draft was introduced into the Parliament, known as the *Majlis-e-Shoora* (The Council of Islamic Ideology) under Zia-ul-haq, in 1983, and passed in 1984. Its members were nominated by Zia, and not elected.

⁸ The Islamic teachings based on Prophet Mohammad's life.

⁹ *Ahadith* (plural of *Hadith*) are the collection of the instructions issued by Prophet Mohammed, and preserved by his disciples and those who were given an account by eye-witnesses. For detailed discussion.

Interpretation of Qur'anic texts is formed from various disciplinary factors and opinions from Islamic practices, such as: "Rationalists versus traditionalists; revealed by scholars from the hadith as a binder of religion, compared to those who consider almost all hadith as such; those who see their broad fundamentals as a perpetual system and interpret the Koran with literalism; those who believe imitate the practice of Islam during their lifetime, the Prophet contradicts those who apply Islam to consider different social and political climates; those who believe they must remain open to prevent stagnation of thought and those who claim the "door" of *ijtihad* (independent judgment) must be closed and those who believe that they must remain open to prevent stagnation of thought."¹⁰

There was a general named Muhammad Zia ul Haq in Pakistan. He proclaimed: "I have a mission, given by God, to bring the Islamic order in Pakistan" and claim the highest authority to "Islamize" his country.¹¹ Therefore, it is in line with the Islamization process which will instill all areas of administrative and civil life under one umbrella, namely fundamentalist Islam called the dictatorial regime system.

A long tradition that relies on Islam to define existing citizens' rights and national identity, although only symbolic restrictions have been imposed on non-Muslims and basic rights of Pakistanis continue to be generally defined liberally, then they are disqualified from the highest office contest in the state when General Muhammad Zia ul Haq took power in 1977. Zia, however, wanted to establish an Islamic state not only symbolically but substantially. He stated as follows, "I have a mission given by God, to bring the Islamic order to Pakistan". He describes the social order in which all sectors of life, including justice, administration, education, banking, agriculture, foreign affairs, trade, and industry are regulated in accordance with Islamic law and teachings. After that, adjust and follow the process of Islamization. Minority and non-Muslim women are direct victims of the reform. The Hudud Penalty Law, Evidence Law, Blasphemy, and several other regulations enforced by the Pakistani justice system directly contradict the human rights commitments made by the International community of the Government of Pakistan (Ishtiaq, 2003).

Civil and Family Law in some Muslim countries depends on the particular nature of Muslim countries and the freedoms and conditions guaranteed by the government, justice system and society, in Pakistan this cannot be related to *Hudood* even though *Sharia* law can be supplemented by this. Despite the existence of laws, there were still widespread protests by human rights groups and women. Ahmed explained: "Political leaders and the Government do not dare to revoke regulations because the legal basis or rules are claimed to be Islam. Most governments do not want to act because the political costs of opposing such strictures are very high and usually act inconsistently. So ratifying or signing international human rights treaties remains a symbolic act and many agreements can be ignored without legal impunity when signed (Ishtiaq, 2003).

General Zia-ul-Haq was also able to play the politics of his dictatorship and manipulate the situation under the guise of a Wahhabi fundamentalist¹² and introducing

¹⁰ For a detailed discussion on the various sources of Islamic law see "Intellectual Background: Islamic Sources of Information and the Development into Islamic Law.

¹¹ Interview given by General Zia-ul-Haq to British Broadcasting Corporation, (BBC) on April 4, 1978.

¹² Wahhabi theology advocates a fundamentalist, puritanical and legalistic stance in matters of faith and religious practice. Wahhabists see their role as a movement to restore Islam from what they perceive to be innovations, superstitions, deviances, heresies and idolatries. During the time of Mohammed Ibn Abdul Wahhab, whose prominence gave name to this movement, there

extreme Hudood Islamic Ordinance as 'Islamic' criminal law, which includes the Zina Hudood Ordinance and the Islamic model.

Lawyers Hina Jilani and Asma Jehangir explained the intricacies of Hudud Procedure: "The Hudud Act, passed in 1979 and enacted in 1980, is a collection of five criminal laws, which are then collectively known as Hudud Law. Violations of Property Law relating to armed robbery and crime of theft. The Offense of the Zina Ordinance deals with the crimes of kidnapping, rape, sexual abuse and adultery. The word Zina has coverage, namely sexual abuse and adultery (Jahangir, Asma & Jilani, 2003).¹³

False allegations related to violations of Qazf's Law against Zina. The Prohibition Order prohibits the use of narcotics and alcohol or drugs. There was an execution of the Whipping Order sentence which regulated how to whip those who were punished under the Hudud Ordinance. As if, the Hudud Law was implemented to bring the Pakistani criminal justice system in accordance with Islamic orders. Therefore, the forms of punishment recognized by Islamic jurists were later introduced in the Ordinance. There are two levels of punishment in the form of two separate sets of rules of evidence determined. The first category or level is called Hadd which literally means "boundary" or "Tazir", which means "to punish". Hadd punishment must always be fixed so that there is no room for the judge to lighten the crime situation or consider relief for adultery or rape committed by married Muslim adults married, Hadd's sentence is stoned to death; for single adult non-Muslim and Muslim adults punished with 100 lashes. Tazir is only a backward position from Hadd. For example, the lack of evidence for Hadd does not mean freeing the defendant from criminal responsibility because the defendant is still responsible for Tazir (Jahangir, Asma & Jilani, 2003).

BIBLIOGRAPHY

- Ahmed, Ishtiaq. (2013). 'Pakistan's Human Rights Obligations', *Daily Times*, Pakistan, November 30.
- An-Na'im, A. A. (2015). *The role of 'community discourse' in combating 'crimes of honour': Preliminary assessments and prospects*, In Welchman, L and Hossein, S, editors, 'Honour': *Crimes, Paradigms and Violence against Women*. London: Zed Press.
- Al-Hafid, Ibnu Rusyd. *Bidayatul Mujtabid wa Nibayatul Muqtashid*, Beirut: Darul Fikri.
- Barlas, Asma. (2002). *Texts and Textualities: The Qur'an, Tafsir, and Ahadith, Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an*. Austin, USA: University of Texas Press.
- Burton, J. (1987). *The origin of the Islamic penalty of adultery*, UK: Transactions of the Glasgow University Oriental Society.
- Council of Islamic Ideology. (2016). *Hudood Ordinance 1979: A Critical Report*, Islamabad: Government of Pakistan.
- Cowasjee, Ardeshir. (2014). 'Injustice to Women', *The Daily Dawn*, Karachi, Pakistan.
- Dahl, Stang Tove. (1997). *The Muslim Family: A Study of Women's Rights in Islam, 'The Legal Techniques: Ijma, Qiyas and Ijtihad'*, (Translated from the Norwegian into English by Ronald Walford). Norway: Scandinavian University Press.
- Departemen Pendidikan dan Kebudayaan. (1995). *Kamus Besar Bahasa Indonesia Edisi Kedua*, Jakarta, Balai Pustaka, Cetakan Kelima.

were many practices that they believed were contrary to Islam.

¹³ *Zina*: A man and a woman are said to commit 'zina' if they willfully have sexual intercourse without being validly married to each other. Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the *Offence of Zina*.

- Departemen Kehakiman. (2000). *Konsep Rancangan Kitab Undang-Undang Hukum Pidana*, Direktorat Perundang- Undangan Dirjen Depkeh dan perundang-undangan 1999-2000.
- Dirjen Bimas Islam, (2010) *Hukum Keluarga Kontemporer di Negara-Negara Muslim*.
- Esposito, John L., (2004). *Ancaman Islam, Mitos Atau Realitas*, Terjemahan Alwiyah Abdul Rahman dan MISSI. Bandung: Mizan.
- Fa'iz, Ahmad. (2002). *Cita keluarga Muslim*. Jakarta: Serambi Ilmu Semesta.
- Fuady, Munir. (2017). *Perbandingan Ilmu Hukum*. Bandung: Refika Aditama
- Gibb, H and Kramers, J, Zina. (1961). *In Shorter Encyclopedia of Islam*. Leiden: Brill.
- Hanafi, Ahmad. (1990). *Asas-asas Hukum Pidana Islam*. Jakarta: Bulan Bintang.
- Hamzah, Andi. (2018). *Perbandingan Hukum Pidana Beberapa Negara*. Jakarta: Sinar Grafika.
- Ikhwan,. (2017). 'Reformasi Hukum di Turki Usmani Eratanzemat (Suatu Tinjauan Historis Sosiologis)', *Jurnal In Innovatio*, Vol. 6, No. 12.
- Imam, A. (2015). *Women's reproductive and sexual rights and the o ense of zina in Muslim laws in Nigeria*. In Chavkin, W and Chesler, E., editors, *Where Human Rights Begin: Health, Sexuality and Women in the new Millennium*. New brunswick, NJ: Rutgers Univeristy Press.
- Jahangir, Asma & Jilani. (2013). *The Hudood Ordinances: A Divine Sanction?* Lahore Pakistan: Sang-e- Meel Publications.
- Jalal, Ayesha. (1991). *The Convenience of Subservience: Women and the State of Pakistan, Women, Islam and the State*. ed. Deniz Kandiyoti, Macmillan Press.
- Kamali, M H. (2016). *An Introduction to Shari'a*. Kuala Lumpur: Ilmiah Publishers.
- Lau, M. (2017). *Twenty-Fiveve years of Hudood Ordinances: A review*. Washington: Lee Law Review..
- Mahfudl, Sahal. (1994). *Nuansa Fikih Sosial*. Yogyakarta: LKIS.
- Mahmood, Tahir (1996). *Criminal Law Reform In Moslem Countries Glimpises Of Traditional an Modern Legislation*, dalam *Criminal Law In Islam and The Moslem World,; A Comparative Persfektive*. New Delhi: Institute of Objective Studies.
- Mawdudi, Abul A'la. (1980). *The Islamic Law and Constitution*. Lahore, Pakistan: Islamic Publications Ltd.
- Mawdudi, Abul A'la. (1993). *"Faith and Divine Law", Towards Understanding Islam*. Canada: Al Attique Publishers Inc.
- Mir-Hosseini, Z. (1993). *Marriage on Trial: A Study of Islamic Family Law, Iran and Morocco Compared*. London: I. B. Tauris..
- Mir-Hosseini, Z. (2009). *Toward gender equality: Muslim family laws and the Shari'a*, In Anwar, Z, editor, *Wanted: Equality and Justice in the Muslim Family*. Kuala Lumpur: Sisters in Islam.
- Mumtaz, Khawar & Shaheed Fareeda (1987). *Women of Pakistan: Two Steps Forward, One Step Back?* Lahore, Pakistan: Vanguard Books.
- Murtado, Ali. (1998). *Kerajaan Turki Utsmani, Pembaharuan Sebelum Moderen*. Padang: Pascasarjana IAIN Iman Bondjol..
- Mustofa, Muhammad. (2001). *Kajian Ilmiah Sosiologi Kriminalitas*. Jakarta: SELAPA POLRI.
- Muthahhari, Murtadha. (1998). *Fitrah*, Terjemahan oleh H Afif Muhammad. Jakarta: Lentera Basritama.
- Nasution, Harun. (2013). *Islam Ditinjau dari Berbagai Aspeknya*, (dalam makalah Ali Murtado).
- Nawawi Arief, Barda. (2002). *Kapita Selektta Hukum Pidana*. Bandung: Citra Aditiya Bakti.
- Nawawi Arief, Barda. (2010). *Perbandingan Hukum Pidana* (edisi revisi). Jakarta: Rajawali Pers.

- Nawawi Arief, Barda. (2003). *Perkembangan Delik Kesusilaan Dalam Konsep KUHP Baru, Bahan Penataran Nasional Hukum Pidana dan Kriminologi* Bandung: Citra Aditiya Bakti.
- Nijboer. (2018). *Een verkenning in het Verglijkend Straf en Strafprocesrecht*, dalam Andi Hamzah, *Perbandingan Hukum Pidana Beberapa Negara*. Jakarta: Sinar Grafika.
- Peters, R. (1994). *The Islamization of criminal law: A comparative analysis*. Die Welt des Islams
- Prasetyo, Teguh. (2011). *Hukum Pidana* (Edisi Revisi). Jakarta: Rajawali Press.
- Rahman, Fazlur. (1992). *Islam*. Jakarta: Bumi Aksara.
- Setiadi. (2014). *Bunga Rampai Hukum Pidana*. Bandung: UNISBA PRESS.
- Sidahmed, A S. (2001). 'Problems in contemporary applications of Islamic criminal sanctions: The penalty for adultery in relation to women', *British Journal of Middle Eastern Studies*,
- Soeroso, R. (2016). *Pengantar Ilmu Hukum*. Jakarta: Sinar Grafika.
- Sugandhi, R. (1981). *KUHP dan Penjelasannya*, Cetakan ke IV. Surabaya: Usaha Nasional.
- Syalabiy, Ahmad. (1998). *Sejarah dan Kebudayaan Islam*, (terjemahan; Aceng Bahaudin). Jakarta: Kalam Mulia.
- Thanwi, Maulana Ashraf Ali. (1992). *Bahishti Zewar (Heavenly Ornaments)*, Translated into English from Urdu by M. Masroor Khan Saroha. New Delhi, India: Saeed International Publishers.
- Viorst, Milton. (2001). *"Making the Sharia", In the Shadow of the Prophet*. USA: Westview Press.
- Welchman, L. (2017). 'Honour and violence against women in modern Shari'a discourse', *Hawwa: Journal of Women of the Middle East and the Islamic World*.
- WLUML (2013). *Knowing Our Rights: Women, Family, Laws and Customs in the Muslim World*, London: Women Living Under Muslim Laws.
- Women Working for Women Pakistan NGO's Directory (2002), Published by the Ministry of Women Development, Social Welfare and Special Education, Islamabad, Pakistan.
- Zafar, Fareeha (1994). *"A Feminist Activist in Pakistan"*, *Women's Studies, Women's Lives: Theory and Practice in Asia*. New Delhi, India: Kali for Women Publications.
- Zia, Shahla and Bari, Farzana (1999). *"Women in Non-Government Organizations": Baseline Report on Women's Participation in Political and Public Life in Pakistan. Project of International Women's Rights Action Watch-Asia Pacific*. Islamabad, Pakistan: Aurat Publications and Information Service Foundation.

