

Criminal Provisions on Death due to Subsequent Effects of a Crime: A Comparative Jurisprudential Study

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Abstract

This research focuses on discussing the extent to which the aggressor guarantees the subsequent effects of their crime, known as "sariyah" in Islamic jurisprudence. The research examines cases where there is doubt regarding the validity of such guarantee, especially if it is based on an authorized act. The research follows the content analysis of the Quoranic texts, hadiths, and juirists' opinions regarding the provisions on sariyah. This research includes three sections in addition to conclusions and introduction. The first section discusses the teath due to subsequent effects of punishment or retribution. The second section explores the provisions on the death due to subsequent effects of crime after being pardoned while the third section deals with the provisions on the death due to subsequent effects of crime after taking compensation pre- healing. The study concludes that it is crucial to distinguish between the subsequent effects of a crime that are justified in their essence and those that result from aggression. It is also recommended for the important to practice the application of legal texts to the statements of scholars and develop skills in navigating conflicts and prioritizing between different opinions of jurists.

Keywords: *jurisprudence, Criminal Provisions, sariyah.*

Introduction

The subsequent effects arise when a crime is committed from a legal perspective is very essential topic, due to their connection to personal and financial necessities. Therefore, in this research, I have focused on addressing one aspect of criminal liability, which is related to the consequences and subsequent effects of the crime, especially since these issues may have practical implications in some contemporary cases. I have rolled up my sleeves, seeking help from the Almighty, hoping for acceptance, and emphasizing the importance and purpose of the progression in the following elements.

Research importance and objectives

The issues of criminal provisions are among the topics that scholars have been concerned with, due to the availability of rulings that are similar to precedents that can be measured and graduated. Therefore, their importance lies in their connection to applied jurisprudence, which enhances the aspect of mastery for the jurist, in addition to the cognitive aspect related to the acquisition of knowledge about the researched issues and rulings. Therefore, the important aspects can be summarized as follows:

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- 1- The need to care for the criminal jurisprudential heritage and train on the mechanism of addressing these issues by scholars and how to examine them, as this provides training and development of jurisprudential skills.
- 2- Highlighting the accuracy and justice of the Islamic jurisprudential system in distinguishing between the consequences of crimes and their necessities, considering their underlying causes, and that what is permissible in its origin does not match the aggression of the crime.
- 3- The importance of judicial applications in the process of jurisprudential development and highlighting the richness of the jurisprudential code that can be utilized in contemporary issues.

Literature Review

Despite the importance of provisions on the subsequent effects of a crime and its abundance of applications, I have not come across a dedicated study that delves into the intricacies and details of financial inclusion. It is often mentioned in general fiqh discussions or within unrelated contexts. Additionally, I hope that this study can provide an added perspective by linking this concept to financial liability or wastage.

Sariya comes from the verb "sara" which means to go and pass, and it refers to traveling at night (Al-Zubaydi, 2001). Sariya-the plural of Sariya- as a technical term refers to having influence over and connected with other words. For example, "Sariya al-Itq" (the influence of the one who frees a slave) refers to their influence over the rest of the freed slave's body and life, and "Sariya al-Hadd" (the influence of the punishment) refers to its influence over the rest of the punished person's body and life, and so on (Abdel Moneim, 2006). Destruction by subsequent effects has multiple forms that can be reduced to two cases:

The first point discussed pertains to the consequences of disciplinary actions, punishment, education, training, and similar measures. However, since the concept of Sariya does not explicitly apply to these actions, they are beyond the scope of our discussion. Instead, the legal tradition of Sariya tends to focus on situations involving harm, damage, punishment, or aggression resulting from another act.

The second point addressed concerns the outcome of punishment, retribution, or a crime that is pardoned. Crimes that are not pardoned are not the focus of our discussion, as there is no disagreement regarding their status as punishable offenses. The disagreement arises when considering the effect of a crime that occurs after retribution or pardon. Should it still be considered a crime or should it be compensated differently? Additionally, should a distinction be made between cases where pardon is granted in exchange for compensation and cases where no compensation is required? These matters will be examined in detail within the context of the research.

Death due to subsequent effects of punishment or retribution

This section discusses the details of the ruling of capital punishment through the implementation of the prescribed punishment (Hadd) or retribution (Qisas) in cases where there is no violation or neglect in carrying out the punishment. The form of capital punishment through the prescribed punishment includes scenarios such as lashing an unmarried fornicator, a drinker of alcohol, or a person who throws another without any violation from the ruler or executioner, resulting in the death of the person being punished. It also includes cutting off the hand of a thief, leading to their death.

The form of capital punishment through retribution includes scenarios such as the offender cutting off a limb that is subject to retaliation, and the victim receiving compensation from it, resulting in the death of the offender through retribution. It can

also involve taking retribution from the offender by blinding their eye or breaking their tooth without any violation in carrying out the retribution, thus fulfilling the principle of retaliation against the same offender. Scholars have differed regarding guaranteeing the implementation of capital punishment through the prescribed punishment and retribution. There are two opinions:

The first opinion is that capital punishment through the prescribed punishment and retribution is considered void. This is the majority opinion among the Maliki (Abdul-Wahhab, 2004; Al-Dardir, 2013; Al-Qarafi, 1994), Shafi'i (Al-Maawardi, 1999; Al-Nawawi, 1412 AH; Al-Shirazi, 1992), and Hanbali (Al-Buhuti, 1993; Ibn Muflih, 1997; Ibn Qudamah, 1968) schools of thought. They argued for this as follows:

1 - What was narrated about Umar and Ali (MABPWH) is that "Whoever is killed in retaliation or punishment, there is no blood money for him, as the right to kill him has been established." Narrated by Al-Bayhaqi, in Al-Sunan Al-Kubra while it was weakened by Al-Albani (1985).

2 - The statement of Ali (MABPWH) "There is no blood money on a man whom I have established punishment upon, and he dies, except for the drinker of alcohol..." (Sahih al-Bukhaari 6778; Sahih Muslim 1707). The justification for the above evidence is that Umar and Ali (MABPWT) waived the guarantee of retaliation and punishment, and they are the followers of a valid opinion.

3 - It is a retaliation cut, so its guarantee of negative consequence is not included, and permission contradicts guarantee (Al-Zurqa, 1989; Ibn Qudamah, 1968)

4 - It is not possible to restrict it to the safety of the outcome, as it would prevent the fulfillment of retaliation and punishment, and refraining from guaranteeing it is beyond one's capacity (Abdul-Wahhab, 2004; Al-Nawawi, Y. (1412 AH).

5 - It can also be argued that the disregard of retaliation specifically is supported by the general statement of Allah (There is no blame on those who enforce justice after being wronged), (42:41). Thus, there is no way to guarantee retaliation.

6 - Some scholars have mentioned consensus on this matter. Al-Maawardi (1999) stated after mentioning the statements of Umar ibn Al-Khattab and Ali ibn Abi Talib regarding the disregard of retaliation and punishment - which are mentioned with the evidence of the majority: And there is no opposition to them, so it became a consensus.

The second opinion states that the guarantee of retaliation and punishment is not disregarded, but rather it is ensured through the payment of blood money. This is the view of Abu Hanifa (Al-Ayni, 2000; Al-Kasani, 1328 AH Al-Zaila'i, 1314 AH). The evidence for the Hanafi school is that the intentional killing of a person without justification is the essence of guaranteed retaliation. The retaliation taker has taken more than his right, and the retenhas been deprived of his right, which is the cutting off of the offender's life. Similarly, the one who establishes punishment has exceeded his right, which is the cutting off of the offender's life. Both the one subjected to retaliation and the one who establishes punishment have deprived the guilty person of his life, even though they are only entitled to a part or an organ. Therefore, guaranteeing their safety is necessary to abu Hanifa (Al-Ayni, 2000; Al-Kasani, 1328 AH Al-Zaila'i, 1314 AH).

One can argue against the evidence of the Hanafi school by saying that it is not permissible to attribute the consequences of the prescribed punishment (Hudud) or retaliation (Qisas) to the victim or to transfer the right of retaliation to the one seeking it or implementing the punishment because it is a matter determined by Sharia law. This is in line with the statement of Umar and Ali (MABPWH), "The right to kill him has been established." (Sahih al-Bukhaari 6778; Sahih Muslim 1707.) They attributed the guarantee to the original lawful action, and the one who establishes punishment and the one subjected to retaliation are more like executors.

Giving preference

What is most likely - and God knows best - is what the majority of scholars have said regarding wasting the punishment and retaliation because of the strength of their evidence.

Death due to subsequent effects of crime after being pardoned, or satisfaction of compensation before healing

The principle is that the guarantee of compensation for the effects of a crime is undisputed because it is a consequence of the crime itself, and the crime is guaranteed. Therefore, its effects are also guaranteed. This is the default position. However, there may be exceptions where the guarantee of compensation is waived or accepted by the rightful party as compensation before full recovery or resolution. In the following two cases, there is a difference of opinion regarding whether these effects should be compensated for.

Death due to subsequent effects of crime after being pardoned

The evidence of pardoning a crime is the verse in the Quran (But if the offender is pardoned by the victim's guardian) (2: 178), which indicates that it is recommended (Al-Nawawi, 2000), as long as it does not lead to harm or corruption. Some forms of pardon may result in corruption or harm, such as if the killer does not deserve pardon because he is a rebel or kills a lot, or the pardon causes him to persist in aggression. In this regard, Ibn Taymiyyah (1984) affirms that retaliation is justice, and pardoning the offender is benevolence, and benevolence is better, but no benevolence only occurs after justice, which is that no harm is caused by pardoning, otherwise it is injustice" (p. 97). This is supported by Allah saying (Graciousness is closer to righteousness) (2: 237), and the verse (But whoever pardons and seeks reconciliation, then their reward is with Allah) (42:40).

When the victim pardons the offender and then the crime reoccurs, resulting in the loss of the victim's life, there is two different opinions among jurists regarding this case:

The first opinion: The blood money (diyah) is obligatory, except for the wound that was pardoned. This is the view of the Hanafi (Al-Kasani, 1328 AH; Al-Marghinani, 2020; Al-Sarakhsi, 1993), Maliki (Alhitab, 1992, Al-Azhari, 1997), Shafi'i (Al-'Amrani, 2000; Al-Maawardi, 1999; Al-Shirazi, 1992), and the majority of Hanbali (Al-Buhuti, 2000; Al-Mardawi, 1955; Ibn Muflih, 1997) scholars. They justify their opinion by stating that the crime has now resulted in taking a life, and the right of the victim is now in the life itself, not in what was previously pardoned. Therefore, the act of cutting off a limb has now become an act of killing, and the one who inflicted the injury has become a killer (Al-Maawardi, 1999). They argue that the payment of blood money is specific to what was previously pardoned. The reason why blood money is paid here instead of retaliation is because the act of pardon has introduced doubt, which is not compatible with retaliation (Al-Marghinani, 2020). Additionally, retaliation does not differentiate between different parts of the body. If it applies to one part, it applies to all. Therefore, it is replaced by its substitute, which allows for differentiation, and that is blood money (Al-Shirazi, 1992).

The second opinion states that the pardon renders the retaliation or blood money void, and neither retaliation nor blood money is obligatory in this case. This view is held by - Abu Yusuf Al-Qadi and Muhammad bin Hassan Al-Shaibani- companions of Abu Hanifa (Al-Sarkhasi, 1955; Al-Shawkani, 1414 AH), and some Hanbali scholars (Al-Kalwadhani, 2004; Al-Mardawi, 1955; Ibn Qudamah, 1994). Their argument is as follows:

- 1- The original crime did not incur any obligation, so the subsequent effects of the crime, which were pardoned, should also be pardoned (Al-Kalwadhani, 2004; Al-Mardawi, 1955; Al-Shawkani, 1414 AH).
- 2- It is impractical to fulfill retaliation for the loss of life without considering what was

previously pardoned. Therefore, the loss of life is treated as if it was pardoned, similar to the case of partial pardon by the guardian.

The second opinion can be countered with the following arguments:

1- The principle of pardoning the crime does not necessitate applying the same ruling to the subsequent effects of the crime. There is no justification for extending the ruling of the original crime to its subsequent effects. It is possible for something prohibited to arise from something permissible, and vice versa, or for something void to arise from something valid.

2- Regarding the argument of the impracticality of fulfilling retaliation for the loss of life without considering what was previously pardoned, it can be responded to by saying that it does not necessarily lead to disregarding the retaliation. Instead, it can be replaced by its substitute, which is blood money (diyah). Since retaliation cannot be partial, blood money allows for differentiation.

Giving preference

The majority scholars' view of the non-nullification of the subsequent effects after pardon is more valid, and the obligation to guarantee compensation for the victim's life except for what was previously pardoned, is more valid. This is due to the strength of their evidence and the potential deterrent effect of nullifying the subsequent effects, which may discourage people from initiating pardons. The importance of reconciliation and forgiveness in society is also evident.

Death due to subsequent effects of crime after taking compensation pre- healing

Hastening to carry out retaliation or pay blood money before the complete recovery and settlement is prohibited. This is based on the narration of 'Amr ibn Shu'aib from his father from his grandfather that a man stabbed another man in his knee with a horn. The injured man came to the Prophet Muhammad (PBUH) and asked for retaliation. The Prophet Muhammad (PBUH) told him to wait until he recovers. The injured man came again and asked for retaliation, so the Prophet allowed it. Then, the injured man came once more and said that his injury had worsened. The Prophet Muhammad (PBUH) said to him, " I forbade you (to take retaliation until your wound was healed) but you disobeyed me, may Allah keep you away from His mercy (for your disobedience), and as for your lameness you are not entitled to any compensation (as he retaliated before he discovered the lameness otherwise he would have been entitled half the Diah)." (Musnad Ahmad 607; Sunan Al-Daraqutni, 88, and it was authenticated by Ahmad Shaker in his verification of the Musnad 461). After that, the Prophet Muhammad (PBUH) prohibited seeking retaliation for a wound until the injured person has fully recovered.

Jabir narrated that the Prophet (PBUH) forbade seeking retaliation from wounds until the injured person has fully recovered (Al-Tabarani 235; Sunan Al-Daraqutni, 88). It indicates that the Prophet (PBUH) prohibited hastening to carry out retaliation or pay blood money before complete recovery. The principle in this prohibition is that it is considered forbidden. If the victim rushes to seek retaliation or accepts blood money before complete recovery and settlement, and then the wound continues until it affects the victim himself, there are two opinions among the jurists:

The first opinion is that the retaliation or blood money becomes void, and the pardon applies to the subsequent effects of the crime. This is the view held by the Hanbali scholars (Al-Kalwadhani, 2004; Al-Mardawi, 1955; Ibn Qudamah, 1968, 1994). They build this opinion based on the following:

The previous narration of 'Amr ibn Shu'aib, where the Prophet (PBUH) nullified the retaliation of a person who hastened it while still injured. They argue that 'Amr ibn Shu'aib hastened to seek retaliation in case where patience is required; therefore, he forfeited his right, just like a person who kills his inheritor (Ibn Qudamah, 1968).

The second opinion states that the victim is entitled to receive full blood money. The complete blood money is paid to the victim and can be inherited. In this case, the amount of blood money for the victim is reduced by the compensation or previous retaliation that has been carried out, and the remaining amount is given to the victim. This view is held by the Hanafi (Al-Kasani, 1328 AH; Al-Sarkhasi, 1955; Ibn Abidin, 1992), Maliki (Abdul-Wahhab, 2004; Al-Qarafi, 1994; Ealish, 1984), and Shafi'i (Al-'Amrani, 2000; Al-Maawardi, 1999; Al-Shirazi, 1992) schools of thought. They argue that since it is a crime with subsequent effects, the right to compensation is guaranteed as if no retaliation had been sought.

They considered it as a crime with subsequent effects, and therefore the compensation is guaranteed even if retaliation has not been sought (Al-Maawardi, 1999; Al-Sarkhasi, 1955 Al-Shirazi, 1992). The argument against the evidence provided by the majority of scholars is that it revolves around analogizing the guarantee of the subsequent effects of a crime to the guarantee of the original crime. However, 'Amr ibn Shu'aib contradicts this opinion. Therefore, it is not appropriate to make an analogy when there is a clear textual evidence that addresses the issue.

Giving preference

Based on the researcher's analysis, it appears that the view of the Hanbali school, which states that the subsequent effects of a crime are nullified if the victim hastens to seek retaliation or compensation, is more likely. This is due to the presence of the narration of 'Amr ibn Shu'aib. Therefore, this view takes precedence over the evidence presented by the majority, while also considering the soundness of the Hanbali evidence in relation to any opposing evidence.

Conclusion

After analyzing the previous discussions and considering the opinions of the scholars, we can draw several observations and conclusions from this research:

- 1- It is crucial to distinguish between the subsequent effects of a crime that are justified in their essence and those that result from aggression. Permission for the original act, from which the subsequent effects arise, can be seen as a mitigating factor that may exclude those effects.
- 2- The Islamic legal system demonstrates precision and fairness in differentiating between the consequences of crimes and their necessary implications, taking into account the underlying causes.
- 3- It is important to practice the application of legal texts to the statements of scholars and develop skills in navigating conflicts and prioritizing between different opinions of jurists.
- 4- It is essential to acknowledge and respect the valid reasons for differences among scholars, recognizing that they stem from diverse perspectives, nuanced aspects of the issue, and varying interpretations

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