

Criminal Provision for a crime Registered Against an Anonym: A Comparative Jurisprudential Study

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Abstract

Purpose: This research focuses on addressing criminal provisions when the perpetrator is unknown. Theoretical framework: This study highlights the richness of the jurisprudential heritage in practical applications that can be utilized in similar contemporary issues. Design/methodology/approach: The study undertook a content analysis to investigate the provision of criminal acts when the perpetrator is unknown. Findings: the study concluded that if the perpetrator is unaware of the victim's presence in certain circumstances, blood money is allocated; otherwise, it is paid from the public treasury. Perpetrators who fight transgressors or non-believers during war do not owe blood money if they later convert to Islam or repent. Research, Practical & Social implications: It's important to highlight the precedence of Islamic legislation for many current principles and regulations. Originality/value: The value of the study is shown in modernizing the jurisprudential to come up with the new issues that appear in societies.

Keywords: Anonymous, criminal provision, guarantee, inclusion.

Introduction

The issues of guarantee and compensation in cases of crime are highly significant in Islamic jurisprudence as they are closely related to the protection of life and property (Roziq et al., 2022; Sunaryo, & Albar, 2023). In this research, my focus has been on addressing a specific aspect of these issues, particularly when the identity of the perpetrator is unknown. It is important to note that these issues have practical implications in certain contemporary cases. With reliance on divine guidance, I have made efforts to shed light on this matter, highlighting its importance and relevance to the advancement of the following elements. These issues are of great importance to scholars due to the availability of precedents and rulings that can be used as a basis for comparison and graduation. Their significance lies in their connection to applied jurisprudence, which enhances the jurist's ability to make informed decisions. Additionally, they contribute to the acquisition of knowledge regarding the researched cases and rulings. It is necessary to establish a foundation for legal issues related to filing a case against an unknown perpetrator and how jurisprudence addresses such cases, such as situations where a victim is found in a desert, a village, or a river, as well as the consequences of combatting aggressors during times of war. Familiarity with the application of jurisprudential issues found in the traditional heritage to contemporary cases, while understanding the methods of reconciling and prioritizing between the statements of jurists. This research further emphasizes the valid excuses for differences

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among jurists by interpreting their conflicting views and clarifying the areas of disagreement.

Literature Review

Applications, especially in the field of jurisprudence have not encountered a comprehensive study that specifically examines the criminal provision when the crime is recorded against unknown, delving into its complexities and revealing its underlying details. Instead, it is often briefly mentioned within broader discussions or in unrelated contexts. Moreover, I anticipate that this study will make a valuable contribution by establishing a connection between this discourse and financial inclusion or wastage.

The provisions on blood of someone whose killer could not be identified

The victim is found in unowned land or in the middle of a river

The scholars have differed regarding the situation where the victim is found in unowned land or in the middle of a river. There are three opinions among the jurists: The first opinion is that of the majority of the Hanafi (Al-Kasani, 1328 AH; Al-Marghinani, 2018; Al-Samarqandi, 1994; Al-Zaila'I, 1314 AH), Maliki (Al-Imam Malik, 1324 AH; Al-Qarafi, 1994; Al-Qayrawani, 2019; Ibn Abdel Barr, 1980), and Shafi'i (Al-Maawardi, 1999; Al-Shafi'I, 1983) schools of thought. They state that if a deceased person is found in a remote and unowned land () where Muslims do not frequent(), or if a deceased person is found in the middle of a large river where water flows(), then it is considered waste (hadr). Their argument is based on the fact that such land or river does not belong to anyone and does not provide any benefit to the general Muslim community, so the responsibility for compensation falls on the public treasury (bayt al-mal) (Al-Kasani, 1328 AH Ibn; Abdel Barr, 1980). The second saying: The Hanbalis (e.g., Al-Zarkashi, 1993; Ibn Muflih, 1997; Ibn Qudamah, 1983, 1968) went as far as stating that the blood money should be paid from the Muslim treasury. They supported this with the following evidence: The narration the Prophet PBUH paid the blood money for the Ansari man who was killed in Khaybar when his killer was not known (Sahih Al-Bukhari 186; Sahih Muslim 1294). The basis of this evidence is that the blood money for this victim was paid from the treasury, so it can be applied to anyone whose killer is unknown. It is narrated that a man was killed in a crowd during the time of Umar ibn Al-Khattab, and his killer was not known. Ali ibn Abi Talib said to Umar, may Allah be pleased with them both: "O leader of the believers, in Islam, there is no leaving a way out (for the family of the victim), nor is the blood of a Muslim to be spilled in vain." Umar then paid his blood money from the bayt al-mal (Al-Tabarani, 1993; Ibn Hajar, 1994). Ali (MABPWH) said: "Whoever is killed in a valley of the earth, his blood money is to be paid from the public treasury (Bait-ul-Mal) so that the blood of a Muslim does not go to waste. And whoever is killed between two towns, the nearer one is held responsible." (Ibn Hazm 295). The first two pieces of evidence can be dismissed as they are irrelevant to the issue at hand, as the concept of waste in this matter is related to a place that does not belong to anyone, such as a remote place or in the middle of a river. However, the other two pieces of evidence are relevant, as they concern a slain person found in a populated area or amidst a crowd of people. Therefore, it is appropriate to refer to the Prophet's handling of the case of the Ansari man killed in Khaybar and Umar's handling of the case of the person killed in a crowd. As for their reliance on the words of Ali, this evidence is weak and not substantiated (Al-Tabarani, 1993; Ibn Hajar, 1994). The third opinion states that if the source of the water is in a non-Muslim territory, then the blood of the slain person is considered waste, regardless of whether the water flows in the middle or along the bank, because the source of the water is not in the hands of Muslims. However, if the source of the water is in a Muslim territory, then blood money is due from the public treasury, as it is in the hands of Muslims. This opinion is attributed to some Hanafi jurists such as Al-Karkhi and others (Al-Babarti, 1970; Ibn Abidin, 1992; Ibn Najim,

2022). It can be argued that the Islamic law considers the location of the slain person and applies the ruling accordingly, similar to the case of a slain person in a non-Muslim territory. Merely the emergence of water and its source from a Muslim territory is not sufficient to establish liability for blood money from the public treasure. Furthermore, linking the ruling to the location of the emergence of water and its source would necessitate swearings among the people of a village where the water emerges if a slain person is found at the mouth of another river in another place, which is invalid.

Giving preference

It appears, Allah knows best, that the first opinion is more likely to be correct. This is because the evidence for the other two opinions does not strongly support the transfer of the original responsibility, as the public treasury is for the benefit of all Muslims. There is no evidence to prove that they should bear the blood money for this slain person, and no one has ownership over unclaimed land or the great river until a ruling swearing is made.

Finding the slain person in a specific locality

The scholars have differed regarding the case of a slain person found in a specific locality. There are two opinions: The first opinion states that the people of the locality are required to performe *alqasaama* (), regardless of whether there are other indications of prior hostility, etc. This is the opinion followed by the Hanafi (Al-Kasani, 1328 AH; Al-Shaibani, 2012; Al-Sarkhasi, 1955), and Hanbali (Al-Zarkashi, 1993; Ibn Abdel Barr, 1980) schools of thought. They base their argument on the following: The narration about the incident involving Abdullah bin Sahl, Abdul Rahman bin Sahl, Huwaisa, and Muhaisa, who went for trade to Khaybar. They and found Abdullah bin Sahl murdered. They reported this to the Prophet PBUH, who inquired about the perpetrator. Abdul Rahman, the brother of the slain, intended to speak, but the Prophet instructed him to let the elder to speak. Then, one of his uncles, either Huwaisa or Muhaisa, who was the elder of the two, spoke. He told the prophet about the murder. The prophet said: Who killed him? They said: Who will kill him except the Jews? The prophet said: The Jews were blessed with their oaths, so they said: We do not accept the oaths of an infidel people who do not care what they swore to. So, the prophet, PBUH, said: Do you swear and get the blood money of your friend? They replied, "We do not accept the oath of a disbelieving people who disregard what they swear by." The Prophet then said, "Do you expect to take an oath and yet you are deserving of the blood of your companion?" They responded, "How can we take an oath about something we did not witness or see?" Consequently, the Prophet PBHH wrote to the Jews, giving them the choice to either pay the bloody-money or agree to face the consequences of war from Allah and His messenger (Al-Musannaf, 35; Ibn Abi Shaybah, 2004). This hadith is the basis, and it has been mentioned generally in establishing the oaths of spoils among the people of a certain place, and it does not stipulate the requirement of *allawth* (). The mere presence of the customary enmity from the Jews in this incident is not explicit in indicating the requirement of impurity. When it was reported that a murdered person was found between two tribes of Yemen, Umar ibn al-Khattab ordered them to measure the distance between them. They found it closer to one of them, so Umar made them swear fifty oaths, each man among them saying, "I did not kill, nor do I know who killed," then he obliged them to pay the blood money (Al-Sanaani, 1970; Ibn Abi Shaybah, 2004). This narration is weak (Fath al-Bari 12/238). This evidence is explicit in giving consideration to the place and locality through measuring the closest distance, without any indication of investigating or asking about a previous enmity with the victim from either of the two tribes. The second opinion is that slain person's blood is shed, and the people of the locality are not obliged to performe the oaths, except in the presence of *Allawth* (impurity). *Mālikīs* (Al-Qarafī, 1994; Ibn Rushd, 2009; Ealish, 1984), and *Shāfi'īs* (Al-'Amrani, 2000; Al-Maawardi, 1999; Al-Shafi'i, 1983). hold this view. They base their opinion on the following: They based their opinion on the following: The hadith of the killing of Abdullah bin Sahl in Khaybar, in which the oaths were established due to the evident enmity of the Jews towards the Muslims. This is why when the relatives of Abdullah bin Sahl asked the Messenger of Allah

about his killer, they replied, "No one would kill him except the Jews." This evidence can be argued by what was mentioned in the first argument, that this evidence was generally mentioned in establishing the oaths among the people of a certain place, and it did not stipulate the requirement of (allawth) impurity. The mere presence of the customary enmity from the Jews in this incident is not explicit in indicating the requirement of impurity. The Prophet (PBUH) said: "If people were given whatever they claimed (in disputes), some people would claim the lives and wealth of others; but the oath (of denial) must be taken by the defendant." (Sahih Al-Bukhari 4552). This hadith indicates that the default regarding claims should be based on clear evidence, and relying solely on claims can lead to injustice and transgression. Therefore, the presence of impurity, which serves as an indication and a sign - even if its indication is not complete - is necessary (Al-Maawardi, 1999; Al-Qarafi, 1994; Ibn Qudamah, 1994). Furthermore, this hadith can be argued that the oaths are specific case exempted by the text from this requirement. They argued that the victim could be killed and then carried by the killer to the territory of another people to incriminate them, so his presence in their territory is not sufficient to establish their liability, and another indication, which is the presence of impurity, is necessary. It can be countered by the possibility that the killer from the local area might have killed the victim without evident prior enmity or impurity, so the assertion of their liability was a consideration for both possibilities.

Giving preference

It appears - and Allah knows best - that the first opinion is more likely, due to the general nature of the hadith of oaths (in the story of Abdullah bin Sahl) and the absence of a stipulation of impurity in it. If the victim is found in a place that is specific to a particular individual or group, whether by ownership or by control, they will be accused of killing him. Therefore, the Sharia obligates both: Oaths of denial: to dispel the accusation of Blood money: due to the presence of the victim among them So, taking an oath is to protect the lives of the people of the locality, while the blood money is due to the presence of the victim among them, similar to when a sane person bears the blood money.

Whoever dies after a felony is unlikely to have a fatal impact

One example of a minor offense that is unlikely to have an impact on the death of the victim is a very light blow that leaves no trace, or a wound that heals and the victim lives for a while before dying (Al-Maawardi, 1999; Al-Mawaq, 1994; Al-Rahibani, 1994; Effendi, 1328 AH). Similarly, a Shout out to the face of an adult in a stable place, and plucking the eyebrow or the head hair fall under the same category. The jurists of the Hanafi (Al-Babarti, 1970; Al-Zaila'i, 1314 AH; Effendi, 1328 AH). Maliki (Al-Imam Malik, 1324 AH; Al-Mawaq, 1994; Al-Qarafi, 1994), Shafi'i, (Al-Hajawi, 2017 AH; Al-Maawardi, 1999; Al-Shafi'i, 1983; Al-Shirazi, 1992) and Hanbali (Al-Zarkashi, 1993; Ibn Muflih, 1997) schools have agreed that there is no prescribed legal punishment for such acts, and they considered the death of the victim after such offenses - even if it occurs after a short time - to be a matter of agreement. They based this on the following: No weight is attached to fancy (Dris, 2013), and thus legal rulings are only established through preponderance of evidence or certainty. Conjecture and suspicion do not carry legal weight (Ad-Dasuqi, 2015; Al-Kharshi, 1317 AH; Al-Zurqā, 1989). It is known that such a minor offense has no impact on one's death, and guaranteeing oneself is related to what often or always leads to death (Al-Mawaq, 1994; Al-Rahibani, 1994; Effendi, 1328 AH). The wasting of wealth and blood money in these cases does not mean the loss of the right of the victim or their heirs to demand the punishment and discipline of the aggressor, and to seek retribution from them for their actions, if possible. This is based on the general saying of Allah, "If you retaliate, then let it be equivalent to what you have suffered." (16:126), and His saying, " So, if anyone attacks you, retaliate in the same manner." (2: 194), and "The reward of an evil deed is its equivalent." (42: 40). The injured person has been commanded to apply the same punishment and retaliation, so it must be considered as much as possible, and the most

appropriate is what he has been commanded to do. This injured person has been wronged, so it is obligatory to do to the aggressor what was done to him. If that is not possible, then what is closest and most appropriate is obligatory. This is the guidance of the Messenger of Allah (PBUH), his rightly guided successors, and pure analogy (Ibn Qayyim, 1991).

The crime of a transgressor and an infidel in times of war if he converts to Islam

After addressing the issue of the true ignorance of the perpetrator, we move on to discuss the ignorance of the ruler. If the killer is known by his gender but not by his specific identity, and if the crime is committed in the context of fighting aggressors or disbelievers. "Al-Bughat" is the plural of "Bagh", which means injustice, transgression, and any excess beyond the limit of something, is considered "Baghi". (Al-Farahidi, 2003). According to the jurists, the term "Al-Bughat" or "Ahlu Al-Baghi" is only applied to a group of Muslims who have the capability and power, and who have rebelled against their Imam with a valid interpretation (Ibn Farris, 1979). Therefore, the conditions for applying the rulings of "Ahlu Al-Baghi" on them are: They must have the capability and power, as they are considered "rebels" with specific rulings, not just mere Ahlu Al-Baghi. They must be Muslims. Non-Muslims who rebel against the ruler of the Islamic state are considered combatants and violators of the covenant. They must have a valid interpretation for their rebellion. Their rebellion must be against an "Imam," meaning that people have gathered under their own Imam and these rebels have gone against him (Al-Qarafi, 1994; Al-Samarqandi, 1994; Ibn Abi al-Fath, 2003). If they also declare the companions as disbelievers, or consider all sins as disbelief, then they are considered Khawarij. Therefore, it becomes clear from the above that the intended meaning of the crime of the rebels with a valid interpretation is that their rebellion and actions are based on texts whose apparent meanings do not support their interpretation. If those texts allow for multiple interpretations, then it is considered a valid interpretation. If the texts do not support their interpretation in any way, then it is an invalid interpretation. In the following two issues, we will present the ruling for each type.

The crime they validated with a sound interpretation

The scholars have differed regarding whether those who unlawfully spill blood through a valid interpretation are included in the category of those whose blood may be lawfully spilled in retaliation for their transgression. There are two opinions: The first opinion is that there is no guarantee for them, neither through blood money nor through the payment of a fine. The majority of the Hanafis (Al-Kasani, 1328 AH; Al-Marghinani, 2018; Al-Shaibani, 1975), Malikis (Ad-Dasuqi, 2015; Al-Mawaq, 1994; Al-Qarafi, 1994), and Hanbalis (Al-Buhuti, 1993; Ibn Muflih, 1997; Ibn Qudamah, 1994) adhere to this view. They base their argument on the following: Al-Zuhri reported: "The Fitnah (tribulation) occurred, and the companions of the Messenger of Allah (PBUH) were present. They agreed that every blood shed based on the interpretation of the Quran is fabricated, and every wealth seized based on the interpretation of the Quran is fabricated." (Ibn Abi Shaybah, 459).

The events took place during the time of the companions (MABPWT), such as the Battle of the Camel and the Battle of Siffin, and it is not reported that anyone demanded retribution for a life or wealth (Ad-Dasuqi, 2015; Al-Kasani, 1328 AH). Their inclusion as combatants lead to their exclusion from returning to obedience, so it is not legislated to include them as combatants (Ad-Dasuqi, 2015; Al-Kasani, 1328 AH). The second opinion: the inclusion of the rebels and non-wasting of what they have made permissible, even if it is based on a valid interpretation. This is the doctrine of the Shafi'i school (Al-'Amrani, 2000; Al-Juwayni, 2007; Al-Shirazi, 1992). They have argued for this as follows: They cited the general statement of Allah: "It is not lawful for a believer to kill another except by mistake." (4:92). The evidence is that Allah has given the guardian of the slain person authority over the killer, without exempting the rebels. Because they are two groups of Muslims, one is right and one is wrong, they are not equal in the falling of liability due to mere suspicion of interpretation (Al-'Amrani, 2000; Al-Juwayni, 2007; Al-Shirazi, 1992). Furthermore, they are souls and wealth that are absolutely protected and have been destroyed without

right or necessity to repel an allowed harm, their guarantee is obligatory, just like those destroyed in a non-war situation (Al-'Amrani, 2000; Al-Juwayni, 2007; Al-Shirazi, 1992). These evidences can be debated by the actions of the companions MABPWT in the Battle of Siffin and others, without denial - and similar instances mentioned in the evidences of the majority - specifically address all the generalities that the Shafi'is have inferred regarding the inclusion of the aggressor.

Giving preference

The most likely opinion, and Allah knows best, is that the majority view is to not include those who spill blood through a valid interpretation in the category of those whose blood may be lawfully spilled, due to the strength and validity of their evidence.

They validated their crime with an unsound interpretation

It has been mentioned that an invalid interpretation is one that the text cannot accommodate in any way. Examples of this include claims of prophethood in rebellion against the Imam, or the assertion that the command to rebel came from a divine inspiration to one of them, and similar cases. There is agreement among the scholars that an invalid interpretation is treated as if it does not exist. Therefore, they unanimously agree that if there is no valid interpretation or if their interpretation is unsound, then they are considered as rebels and highway robbers, not aggressors. Therefore, their rulings do not apply to them because the interpretation of aggressors must be plausible, even if its corruption is apparent (Al-'Amrani, 2000; Ibn Abdel Barr, 1980; Ibn Najim, 2022; Ibn Qudamah, 1994). If they are disbelievers, the ruling on that will be explained in the following section. If they are Muslims, there is no disagreement in including their transgression as that of highway robbers, due to the absence of any exception for them from the guarantee of retaliation and the general texts regarding retribution from the perpetrator (Al-'Amrani, 2000; Ibn Abdel Barr, 1980; Ibn Najim, 2022; Ibn Qudamah, 1994). If they are disbelievers, the ruling on that will be explained in the following section. If they are Muslims, there is no disagreement in including their transgression as that of highway robbers, due to the absence of any exception for them from the guarantee of retaliation and the general texts regarding retribution from the perpetrator.

If a non-Muslim combatant () attacks a Muslim during wartime and then converts to Islam

The scholars of the Hanafi (Al-Ayni, 2000; Al-Sarkhasi, 1971; Ibn Najim, 2022), Maliki (Al-Imam Malik, 1324 AH; Al-Qarafi, 1994; Ibn Rushd, 2009), Shafi'i (Al-Bujayrimi, 2007; Al-Haytami, 1995; Al-Shafi'I, 1983), and Hanbali (Ibn Qayyim, 1997; Ibn Qudamah, 1983; Ibn Taymiyyah, 1983) schools are of the opinion that if a combatant non-Muslim kills a Muslim during wartime and then converts to Islam, there is no guarantee of retaliation. Therefore, the combatant non-Muslim who converts to Islam after committing the previous crime during wartime is not held accountable, and the blood of the slain is considered to have been unlawfully spilled. They base their argument on the following: The general statement of Allah: "Tell the disbelievers that if they desist, their past will be forgiven." (8:83). The practice of the Prophet Muhammad (PBUH) and his companions, who did not seek retribution from those who killed as combatant non-Muslims and then embraced Islam, such as the case of Wahshi, the killer of Hamza (Sahih Al-Bukhari 4072). The absence of any reported cases where the companions, despite the spread of conquests in the lands of war, ruled for retaliation against a combatant non-Muslim who killed a Muslim (Al-Bujayrimi, 2007; Ad-Dasuqi, 2015; Ibn Najim, 2022). The hidh of the Prophet - PBUH - " Embracing Islam wipes out all that has previous misdeeds", (Sahih Muslim 121). The evidence for hidh includes the general implication that this obliterating and expiation encompasses all bloodshed. The hidh of the Prophet - PBUH - " God laughs at the two men one of whom kills the other; both of them will enter Paradise. They (the Companions) said: How, Messenger of Allah? He said: One is slain (in the way of Allah) and enters Paradise. Then God forgives the other and guides him to Islam; then he fights in

the way of Allah and dies a martyr" (Sahih Al-Bukhari 2826). The evidence for this saying is in the statement "guides him to Islam" after the statement "one of them kills the other," indicating his deserving of Paradise without facing retaliation in this world. The non-commitment of the combatant perpetrator to the rulings of Islam during his crime, and the consideration of the perpetrator's state at the time of the offense (Al-Ayni, 2000; Al-Haytami, 1995; Ibn Qayyim, 1997). Also, because including what he killed before his Islam serves as a deterrent from Islam and closes the door to repentance and return.

Methodology

The study undertook a content analysis to investigate the provision of criminal acts when the perpetrator is unknown.

Results

The study concluded that if the perpetrator is unaware of the victim's presence in certain circumstances, blood money is allocated; otherwise, it is paid from the public treasury. Perpetrators who fight transgressors or non-believers during war do not owe blood money if they later convert to Islam or repent. Research, Practical & Social implications: It's important to highlight the precedence of Islamic legislation for many current principles and regulations.

Conclusion

After addressing the criminal provision when the crime is recorded against an anonymous and examining the statements of the jurists, we can draw several observations and conclusions from this research, including the following: When the perpetrator is ignorant of the presence of the victim in a desert, people's settlement, or river, then blood money is allocated. Otherwise, it is paid from the public treasury. As for the fighting of transgressors or non-believers during the war, there is no blood money for the perpetrators if they later convert to Islam or repent. The necessity of highlighting the precedence of Islamic legislation for many principles and regulations established in the present time. The importance of delving into the precise and profound standards that governed the minds of diligent jurists and shaped their books and opinions.

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