



## The Criteria for Determination of Tazeeri Punishments in Islamic Jurisprudence

**Abdul Qader Nael**

*Associate Prof at Kabul University, Faculty of Sharia  
Department of Jurisprudence and Law, Kabul- Afghanistan.*

### Corresponding Authors\*

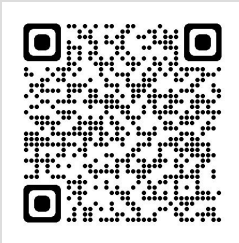
Abdul Qader Nael

### Article History

Received: 25.04.2025

Accepted: 08.05.2025

Published: 25.05.2025



**Abstract:** Punishments in Islam aim to preserve fundamental individual and societal values, including the protection of religion, life, property, dignity, and social order. They also function as means to implement other Islamic legal rulings. Within this legal framework, punishments are categorized into Hudud, Qisas, and Tazir. Among these, Tazir represents a significant and dynamic component, characterized by its discretionary nature. Unlike Hudud and Qisas, Tazir punishments are not explicitly defined in the Qur'an and Sunnah; instead, their determination is delegated to the discretion of the head of the Islamic state or judges. This paper examines whether such discretion implies a lack of regulation or whether it is governed by clear jurisprudential guidelines. Through qualitative analysis of both classical and contemporary Islamic jurisprudential sources, the study finds that the authority to issue Tazir punishments is not absolute. Rather, it operates within a framework of specific jurisprudential principles (Dhawabit) that ensure alignment with the broader objectives of Shari'ah. Although

scholars have proposed various criteria, this research focuses on six widely acknowledged and frequently applied standards. These include considerations of public interest, proportionality, consistency, and legal precedent. The paper outlines how these criteria serve to regulate discretionary penal authority and ensure justice, coherence, and contextual sensitivity. The study ultimately contributes to the understanding of Tazir as a balanced legal tool that accommodates both textual integrity and contemporary judicial needs within Islamic criminal jurisprudence.

**Keywords:** *Criteria, Discretionary, Judge, Principles, Punishments and Tazir.*

### Introduction

All praise is due to Allah, the Lord of all worlds, and peace and blessings be upon our Prophet Muhammad, his family, and his companions.

Allah, the Almighty, says: "Indeed, Allah commands justice, the doing of good, and liberality to kith and kin; He forbids all shameful deeds, injustice, and rebellion; He instructs you, that ye may receive admonition." (Surah An-Nahl, 16:90).

One of the important topics in the field of Islamic practical rulings is the issue of punishments. This topic is significant because it is one of the means and supports for ensuring justice and the implementation of other Islamic rulings. One of the key aspects of Islamic punishment is the issue of discretionary punishments (ta'zir), which is assigned to the judgment of the Imam or his deputy. However, this delegation is not without criteria (Dhawabit) and is not due to negligence towards the issue; rather, it has specific criteria (Dhawabit) and characteristics that the jurists have explicitly mentioned, ensuring that the determination of discretionary punishments aligns with the general framework of legislation, which is the realization of justice.

In light of the above, this study aims to collect and present the mentioned criteria, (Dhawabit) explaining each one and emphasizing their importance for the authorities and officials in this field, as well as for those who believe that the determination of discretionary punishments is without Islamic legal criteria, (Dhawabit) and that the head of the Islamic state has complete freedom in determining them.

### **Importance of the Study**

This study delves into the Criteria (Al- Dhawabit) governing the determination of discretionary punishments. The significance of this topic lies in the fact that discretionary punishments constitute a large and important part of punishments in Islam. However, unlike the punishments of Hudud and Qisas,<sup>1</sup> their extent and, in some cases, their nature have not been explicitly defined. Instead, the determination of these punishments in Islamic law has been delegated to the discretion of the Wali al-Amr (ruler) or his representative, who decides the type and extent of punishment based on the circumstances of the crime and the specific conditions of the offender. It is important to note that the authority of the Wali al-Amr in this regard is not absolute; it is subject to certain principles and legal Criteria (Dhawabit) that must be understood and followed in order to prevent any abuse of this legal authority. Therefore, understanding the Criteria (Al- Dhawabit) involved in this matter is crucial, and this paper aims to clarify them.

### **Research Questions**

The main question is: Does Islamic law provide Criteria (Dhawabit) for determining discretionary punishments?

What principles and legal Criteria (Dhawabit) must the Wali al-Amr (ruler) observe when determining discretionary punishments?

What are the overall principles and Criteria (Dhawabit) in Islamic law related to the determination of discretionary punishments?

### **Research Objectives**

---

<sup>1</sup> The Hudud and Qisas are both types of punishments that have been predetermined in Islamic law. The difference lies in the fact that Hudud are punishments related to various offenses, such as the punishment for committing zina (adultery), qadhif (false accusation of adultery), theft, highway robbery, drinking alcohol, apostasy, while Qisas is the punishment for crimes that involve harm to the human soul or body, such as intentional murder or intentional harm to one of the body parts of a person, where the punishment of Qisas can be applied.

The primary objective of this study is to answer the aforementioned questions regarding the Criteria (Dhawabit) for determining discretionary punishments and the extent of the Wali al-Amr's authority in this matter. Other objectives of this paper include providing an overview of discretionary punishments, explaining their types and characteristics, clarifying the purpose of Islamic law in granting the authority to determine discretionary punishments to the Wali al-Amr, and outlining the principles and Criteria (Dhawabit) that govern the determination of discretionary punishments by the Wali al-Amr or his representative.

### **Literature Review**

Although there has been considerable discussion regarding discretionary punishments as a significant part of Islamic penal law, and various aspects of them have been examined in books and independent theses, the principles and Criteria for determining discretionary punishments by the Wali al-Amr (ruler) have also been discussed in some contemporary fiqh books. However, as far as my efforts have shown, I could not find a structured and independent work on the Criteria for determining discretionary punishments by the Wali al-Amr in English, Dari, or Pashto languages. Therefore, it seems appropriate, with the grace of Allah, to address this topic in the current paper.

### **Research Methodology**

In the preparation of this research, a primarily library-based approach has been utilized. Before beginning the practical work of organizing and structuring the article, visits were made to several accessible specialized libraries, such as the library of the Faculty of Sharia, the Central Library of Kabul University, some relatively well-stocked bookstores in Kabul, and some credible electronic libraries. After gathering and preparing the necessary resources, each source was used based on its relevance to the topic. Specialized internet websites were also optimally utilized to obtain important technical books.

In addition, the following important points were observed:

1. Collecting materials from both old and new credible sources related to the topic.
2. Documenting the issues discussed in this research from their original and trusted sources.
3. Proper citation of Qur'anic verses with reference to the surah and verse number.
4. Referencing hadiths from authentic hadith books such as Sahih al-Bukhari and Sahih Muslim.
5. Writing the topic according to modern spelling rules and adhering to punctuation marks.

### **Structure of the Research**

This work includes an abstract, introduction, statement of the significance of the research, research questions, research objectives, research methodology, structure of the research, the main body of the article, discussion of theories and reasons, and conclusion. The main body of the article covers topics such as defining the concept of "Dhabita" (Criterion), the distinction between "Dhabita" and "Qaida", explaining the concept of "Ta'zir" (discretionary Crime and punishment), the legitimacy of discretionary punishments, introducing various types of discretionary punishments, presenting AL-Dhawabit (the Criteria) for determining discretionary

punishments such as the Criterion of the legitimacy of the punishment, maintaining proportionality between the crime and the punishment, ensuring the objective legitimacy of discretionary punishments, etc. It also includes a discussion of theories regarding the limitation of the relevant Dhawabit (Criteria) and the details concerning some of these Dhawabit (Criteria).

#### The Concept of Dhabita and Its Difference from Qawa'id

In this section, we will briefly discuss the concept of "Dhabita" and its distinction from "Qawa'id."

#### The Lexical Meaning of Dhabita "Criterion"

The term "Dawabit" (the plural of "Dhabitah") literally means the necessity or confinement of something, as well as the careful preservation or guarding of it (Ibn Manzur, 1993, Vol. 7, p. 340). The central idea behind all these meanings of "Dhabet" revolves around restriction and containment. Therefore, "Dhabitah" also inherently includes the concept of limitation and restriction (Al-Bahsin, 2011, p. 56).

#### The Concept of the Term Dhabita "Criterion"

There are three viewpoints regarding the definition of Dhabita "criterion" and its relation to Qaida "rule." The first viewpoint asserts that Dhabita "criterion" and "rule" Qaida are synonymous and have the same meaning. The second viewpoint holds that "Dhabita" is more specific than "Qaida." The third viewpoint, in contrast to the second, suggests that "Dhabita" is broader than "Qaida." However, the second viewpoint, which distinguishes between "Dhabita" and "Qaida," seems to be the most widely accepted among well-known scholars and appears to be the more plausible perspective, while the other mentioned theories also remain relevant to the topic (Al-Bahisīn, 2011, p. 58).

Therefore, Dhabita "criterion" can be succinctly defined as: "It is anything that limits the details of a specific matter" (Al-Bahisīn, 2011, p. 61). In other words, Dhabita is any (word or phrase) that confines the branches and details of a specific issue.

Based on the explained theories, it can be concluded that Qaida "rule" and Dhabita "criterion" differ in the following ways:

- According to many scholars, unlike Dhabita "criterion," the term "rule" is not specific to a single subject (Al-Nadawi, 1994, p. 46; Al-Bahisīn, 2011, p. 57 and onwards; Al-Rababah, 2006, p. 75).
- Qawa'id "rules" tend to have more exceptions and deviations than Dhabita "criteria," because Dhawabit "criteria" cover topics related to a specific chapter or subject, thus leaving little room for numerous exceptions.
- In terms of the scope of meanings and the collection of branches, Qawa'id "rules" are broader and more inclusive compared to Dhawabit "criteria" (Al-Nadawi, 1993, p. 46 and onwards; Al-Rababah, 2006, p. 75).

It should be noted that in this discussion, the term "Dhawabit" (criteria) refers to the set of principles that restrict and define the judge's discretion in determining the type and extent of

discretionary punishment, providing them with the correct direction. The judge is required to make decisions based on these criteria (Al-Khunein, 2011, p. 55).

#### The Linguistic Meaning of Ta'zir

The term "Ta'zir" in its literal sense is used to mean rejection, prohibition, assistance, and reverence (Ibn Manzur, 1993 CE, Vol. 4, p. 561). Since the meanings of reproach, prohibition, and discipline are closely related, while the concepts of assistance, support, and reverence are, in a way, opposite to them, lexicographers have classified "Ta'zir" as one of the words with multiple meanings and opposites (Ibn Manzur, 1993 CE, Vol. 4, p. 561).

#### The Juridical Definition of Ta'zir

The definitions of "Ta'zīr" given by the jurists revolve around the concept of discipline for a sin or offense for which there is no prescribed legal punishment (ḥadd) or expiation (kaffāra). Some of the definitions are as follows:

1. "Ta'zīr" is discipline that is less than a prescribed punishment (al-Zayla'ī, 1895 CE, Vol. 3, p. 207).
2. "Ta'zīr" is discipline (for the purpose of correction) and deterrence for committing sins for which there is no prescribed legal punishment or expiation (Ibn Farḥūn, 1986 CE, Vol. 2, p. 288).
3. "Ta'zīr" is discipline for the commission of a sin or offense for which there is no prescribed punishment or expiation (al-Sharbīnī, 1994 CE, Vol. 5, p. 522).
4. "Ta'zīr" is a lawful punishment for a crime for which there is no prescribed punishment (Ibn Qudāma, 1985 CE, Vol. 9, p. 148).

As can be observed, the definitions are quite similar in content. However, the following points regarding them are noteworthy:

1. In the mentioned definitions, the concept of disciplinary action (ta'zīr) seems to be universally accepted.
2. In the definition of Ḥanafī jurists, the term disciplinary action (ta'zīr) is restricted by the phrase "less than the prescribed punishment (ḥadd)," and unlike the view of other jurists, there is no mention of the type of sin that warrants ta'zīr.
3. In the definition of Ḥanbalī jurists, the sin that necessitates ta'zīr is only limited by the phrase "for which there is no prescribed punishment (ḥadd)," not by "no expiation (kaffāra)," because in their view, ta'zīr can sometimes be combined with kaffāra (al-Najjār, 2007, p. 15).

#### The Legitimacy of Taziri (Discretionary) Punishments

The legitimacy of discretionary punishments is established by reasons from the Qur'an, Sunnah, Ijma' (consensus), and Athar (the sayings of the Sahabah). Some of these reasons are explained below

1. Allah says: "And those [women] from whom you fear disobedience – admonish them and forsake them in bed and strike them. But if they obey you, they seek no means against them. Indeed, Allah is ever Exalted and Grand." (An-Nisa, 4:34). This verse clearly as per the text

(Ibarat al-Nass) indicates the legitimacy of Ta'zir and discipline by the husband towards the wife in cases of disobedience and marital discord. It refers to one of the methods mentioned: advice and counsel, separation in bed, and physical discipline, all intended to preserve and strengthen the marital bond, and these are deemed legitimate means for this purpose. As can be seen, the blessed verse refers to two things: one is the legitimacy of ta'zir (discretionary punishment), and the other is the gradual approach in its implementation (Al-Qurtubi, 1964, Vol. 5, p. 172; Al-Zuhaili, 1997, Vol. 5, pp. 58 and 61). Therefore, if the goal of reforming the individual being disciplined can be achieved with a milder method, it should be adhered to.

Based on what is stated in the blessed verse, scholars say that it is permissible for the Imam or his deputy to apply discretionary punishment in order to preserve the community and prevent its disintegration or collapse, for those who disobey the rulings and laws of Shari'a (Suleiman Al-Najjar, 2007, p. 18, as cited in Tafseer Ibn Kathir and Al-Tafseer Al-Muneer).

2. The Prophet (PBUH) said: "Do not flog more than ten lashes, except for the punishment prescribed by Allah" (Al-Bukhari, 1993, Vol. 6, p. 2512). This means that physical discipline for individuals who violate Shari'a Criteria and commit sins (other than the specified Shari'a boundaries) is permissible to the extent of no more than ten lashes (Al-Najjar, 2007, p. 19).

3. The Prophet (PBUH) said: "Command your children to pray when they reach seven years of age and beat them for it when they reach ten years" (Ibn Hajar, 2000, Vol. 11, p. 369). Based on the guidance of this Hadith, disciplining children for neglecting their prayers is correct.

4. Ali (may Allah be pleased with him) said regarding the punishment of someone who calls another person wicked or immoral: "There is no prescribed punishment for him; the ruler will discipline him as he sees fit" (Al-Bayhaqi, 2003, Vol. 8, p. 440). This means that for such a person, there is no specific, fixed Shari'a punishment, but rather the ruler or the authority in charge of the affairs of the Muslims will administer a discretionary punishment based on their judgment. This statement clearly indicates that for sins and transgressions that do not carry a fixed punishment of the hadd type, the Muslim ruler can apply and enforce a discretionary punishment.

5. Regarding the legitimacy of discretionary punishments, there is also a consensus (Ijma) of the ummah (the community) (Al-Zayla'i, 1895, Vol. 3, p. 207; Ibn Farhun, 1986, Vol. 2, p. 289; Al-Sharbini, 1994, Vol. 4, p. 191; and Suleiman Al-Najjar, 2007, p. 19, as cited in Al-Ijma by Ibn al-Mundhir, p. 113).

In conclusion, discretionary punishments, alongside other Shari'a penalties, have been legitimized to achieve a set of objectives such as: rebuking and reproaching the offender and reforming him, reforming society and preventing lawlessness, ensuring justice for the harmed party and the victim, compensating for the lost rights, and demonstrating the ability of Islamic law to address unexpected criminal incidents in society (Suleiman Al-Najjar, 2007, pp. 20-22; Al-Khunein, 2011, pp. 27-31).

#### Types of Taziri (Discretionary) Punishments

The discretionary punishments legitimized in Islam are numerous and varied. These include physical punishments, with the most well-known being flogging and execution; psychological punishments, such as imprisonment and exile; financial penalties; and other forms of sanctions. Accordingly, these types of punishments range from reprimands and reproaches to the ultimate penalty of death, with the most common being threats, public shaming, flogging, imprisonment, exile, execution, confiscation of property, deportation, and severing ties with the offender (Suleiman, 2007, pp. 33-65).

However, regarding the types of discretionary punishments mentioned, three points are noteworthy:

**First**, not all the discretionary punishments listed are universally accepted by all jurists or applicable in every case. For example, the punishment of financial fines is not considered valid by most of the Hanafi scholars (Ibn Abidin, 1966, Vol. 4, p. 61).

**Second**, while most of the punishments mentioned can be applied to all discretionary crimes and their perpetrators, some are specific to certain types of discretionary offenses, such as the punishment of dismissal from office or deprivation of certain rights, which are only applicable in certain contexts and are not generalizable to all discretionary crimes.

**Third**, each of the discretionary crimes mentioned, according to those who permit them, has its own specific details, branches, and conditions, which must be considered when imposing such a punishment. For example, in the case of exile, the character of the person being exiled, the duration of the exile, and the location of the exile must be considered, because in some cases, applying this punishment might have an adverse effect and may not lead to the person's reform. Similarly, the punishment of discretionary death should be limited to specific cases and serious crimes, so that its absolute and unlimited application does not become a tool for abuse by corrupt or unqualified rulers (Sulaim, 2007, p. 55-62).

Thus, discretionary punishments form a collection of non-fixed and unspecified penalties that range from advice and reprimand to the most severe punishments, such as imprisonment and flogging, and in cases of dangerous crimes, can extend to the death penalty. However, the selection of the appropriate type and extent of the punishment, based on the gravity of the crime, the offender's circumstances, and prior records, is entrusted to the religious judge (Auda, n.d., Vol. 1, p. 685).

#### Determining and Assigning Discretionary Punishments

The meaning of determining discretionary punishments by the judge and granting authority to the judge in this matter is that Islamic law has granted the judge the authority to select an appropriate punishment for the committed crime and the circumstances of the offender, based on the set of discretionary punishments established in Islamic law. These punishments range from simple methods and approaches such as advising, warning, or giving a stern look, to more severe punishments such as imprisonment, flogging, and even execution. This means that, firstly, a set of punishments under the title of discretionary punishments is outlined in Islamic law; secondly, specific criteria and Criteria have been established in this regard; and finally, the judge is granted

the discretion to choose and apply the appropriate punishment from among the predetermined options, in light of the specific circumstances of the crime and the offender (Suleim Al-Najjar, 2007, p. 23; al-Mawsu'ah al-Fiqhiyyah, 1983 CE, Vol. 12, pp. 261–263).

The aim of Islamic law in granting this authority to the ruler or his deputy is to address new criminal events and to deal with urgent situations for which there is no explicit text. This approach reflects the ability and adaptability of Islamic law to assess and determine an appropriate discretionary punishment for each crime, in accordance with the time and place of its occurrence, whether it concerns an individual or society (Auda, n.d., Vol. 1, p. 127; Suleim, 2007, p. 23). Ibn Qayyim, a prominent Hanbali scholar, explains in this regard: Since the harmfulness of discretionary crimes varies in terms of severity, frequency, and extent, the determination of punishment for the offender is entrusted to the judgment of the jurists and the decisions of those in authority. This is done based on the interests of time and place, and regarding the specific circumstances of both the crime and the criminal (Ibn Qayyim, 2019, Vol. 2, p. 429).

#### The Criteria (Al-Dhawabit) for Determining Discretionary Punishments

As previously mentioned, the purpose of the Criteria for determining discretionary punishments is a set of principles that limit and constrain the judge's discretion in determining the type and severity of the punishment, while also providing direction and guidance. The judge is obliged to make decisions based on the specified rules (Al-Khunein, 2011 CE, p. 55). Some of the important principles and rules discussed are as follows:

##### Dhabita "Criterion" 1: Legitimacy of Discretionary Punishments

Just as the punishments for crimes of Hudud and Qisas are specified in Islamic law, many important discretionary crimes and their corresponding punishments are also outlined. Therefore, discretionary crimes and their punishments are governed by the principle of "legality of crime and punishment," and adhere to the rule of "no crime or punishment without text." When a judge issues a punishment for a discretionary crime, they must respect the meanings and objectives intended by the prescribed punishments, ensuring that personal inclinations or external influences do not interfere. The judge must consider the welfare of the society, which, according to Islamic texts, is a duty to preserve and uphold (Suleim, 2007, p. 126).

However, the determination of discretionary crimes and punishments in Islamic law is not as rigid as the determination of Hudud and Qisas crimes and their corresponding punishments. Rather, a degree of flexibility is considered for them. Instead of specifically detailing the act constituting the crime and assigning a fixed punishment, as is done in the case of Hudud, Qisas, and Diyah, Islamic law for discretionary crimes stipulates that any act or behavior that harms the social order or its welfare should be punished with discretionary penalties, as deemed necessary by the judge. The judge, however, is obliged to consider the texts and rules of Sharia when determining the punishment, ensuring that the punishment chosen serves the purpose of deterrence and correction (Suleim, 2007, p. 127).

The Criterion established regarding discretionary offenses according to Islamic jurists is: "Any sin that does not have a fixed punishment (ḥadd) prescribed for it is subject to ta'zir

(discretionary punishment)." This means that any violation of the commands and prohibitions of Islamic law, which are considered obligatory or prohibited, is recognized as a crime. The nature of these offenses is included within the prescribed offenses, regardless of whether their harm is specific or general. In other words, for such offenses, the principles of Islamic law are applied to preserve the interests of religion, life, lineage, intellect, honor, and property. Islamic law considers all actions and situations that harm the order of society or its welfare as criminal, and through the delegation of authority to the judge, an appropriate punishment is determined for the perpetrator, even if it is not explicitly mentioned in the textual sources of Islamic law (Auda, n.d., Vol. 1, pp. 149–154; Al-Khaneen, 2013 [corresponding to 1434 AH]).

Similarly, the nature of fixed punishments in Islamic law serves as the basis for determining discretionary punishments, whether these punishments aim to protect religion, life, lineage, intellect, honor, or property. For example, the punishment for accusing someone of adultery (qadhf) is a fixed penalty, and for lesser offenses, such as insult, which is less severe than qadhf, a punishment that is less than the fixed penalty is considered. It is crucial, however, to be cautious in determining and applying the punishment to the offender, as applying a punishment in such a way that it prevents the offender from fulfilling their religious obligations or harms their human dignity is prohibited. For example, it is not permissible to punish an offender by striking their face, amputating body parts, denying their basic food or drink, or exposing them to the sun. The judge is not bound to choose a specific type or degree of punishment; rather, any legitimate punishment that aims to educate, reform, and punish the offender, while protecting society from harm and further offenses, is permitted (Al-Khaneen, 2013 [1434 AH ≈ 2013 CE], pp. 59–60; Auda, n.d., Vol. 1, pp. 686–687).

Thus, as a Criterion, it is necessary for the judge to consider and adhere to the textual sources and general principles of Islamic law when determining discretionary punishments (Al-Khaneen, 2013, pp. 63–65).

#### Criterion 2: Adherence to the Purpose of Legitimacy of Punishments

As mentioned in previous discussions, the objectives of the legitimacy of discretionary punishments and their enforcement include deterrence, reform of the offender, rectification of their mistakes, justice for the victim, the improvement of society's condition, and its stability based on Islamic principles, as well as maintaining security. Therefore, it is essential for the judge to consider these objectives when determining the discretionary punishment and ensure their achievement.

Thus, the punishment should not lack a deterrent effect and must be set to the extent necessary to achieve these goals. It should not be increased beyond what causes deterrence and suffering, nor should it be reduced to the point where the objective of the legitimacy of the punishment is not realized. Additionally, it is necessary to maintain a balance between achieving this objective and the benefit of reforming the people, their steadfastness based on Islamic principles, and ensuring their security, so that none of these aspects outweighs the others.

It is noteworthy that sometimes the objective of the legislator in combating crime is to protect society from corruption and crime, while not disregarding the offender's character. Similarly,

reforming the offender through the prevention of further crimes is a priority, and the fight against crime is not overlooked in this context. Therefore, the judge should, as far as possible, consider these aspects, as the protection of society from crime is always desirable, and addressing the offender's situation is also important, if it does not undermine the fight against crime (Auda, Vol. 1, p. 611).

Hence, the judge must aim to achieve these goals and maintain a balance between them when determining the type and extent of discretionary punishment. With the experience and insight the judge has of the society, offenders, and the various discretionary punishments, they can determine whether a particular punishment, such as flogging, is sufficient for one offender, while another might require imprisonment to undergo reform, or even death if the person is deemed too dangerous, and no other form of punishment would suffice in their rehabilitation (Al-Khin, 2013 [corresponding to 1434 AH], p. 82).

Thus, another of the Islamic legal principles that prevents the Imam or his representative from exceeding their authority in determining discretionary punishments is the necessity of maintaining a proper correspondence between the punishment imposed for a crime and the objective behind legislating that punishment. Imam al-Qarafi states in this regard: "It is obligatory for the Imam to adhere to what the public interest demands when determining discretionary punishment, rather than ruling based on his personal desires and inclinations, such that he imposes what he wishes and avoids what he does not wish, as such actions are in fact sinful and contrary to consensus" (al-Qarafi, n.d., Vol. 4, p. 182).

Therefore, the absolute authority of the judge in determining discretionary punishments is conditioned by the need to comply with the objectives of Sharia in legislating punishments (al-Rabbi 'ah, 2006, p. 84). Even though Imam al-Zayla'i, while acknowledging the judge's absolute authority in determining discretionary punishments, emphasizes the importance of considering the circumstances of the people and determining which type of punishment is most appropriate and conducive to achieving the Sharia objectives (al-Zayla'i, 1895 [1313 AH], Vol. 3, p. 208).

### Criterion 3 : Maintaining Proportionality Between Crime and Punishment

Discretionary crimes vary depending on the type of crime, the offender, and the victim. The punishment for each crime should not be considered the same across the board. The judge must focus on achieving a balance between the crime and its punishment, determining the appropriate punishment according to the nature of the crime. The judge should avoid excessive punishment while not underestimating the severity of the crime. To achieve this, the judge must consider the type and severity of the crime. If the crime is of a type that carries a specific legal penalty (ḥadd), but due to certain obstacles or special conditions, the prescribed penalty cannot be applied, then discretionary punishment should be imposed at the maximum allowable level, but still below the fixed penalty (ḥadd). The judge should also consider the offender's circumstances, the impact of the crime on the individual and society, the repetition of the crime, and its prevalence (Al-Khaneen, 2013, pp. 93-94).

Ibn Qayyim (may Allah have mercy on him) says: "It is a matter of reason that it is not appropriate to treat punishments equally when the crimes differ. If punishments are uniformly set

at the lowest level, the goal of deterrence and preventing crime will not be achieved; if they are set at the highest level, it contradicts wisdom and mercy. For example, it is not suitable for someone to be killed for simply looking at a non-mahram woman, or for a person who has stolen a single grain of grain to have their hand cut off" (Ibn Qayyim, 2019, Vol. 2, p. 419).

Therefore, maintaining a balance between the crime and its punishment when determining discretionary punishment is a necessary and prescribed matter in Islamic law. As Allah, the Almighty, says in the Holy Qur'an: "The recompense for an evil is an evil like it, but whoever pardons and seeks reconciliation, his reward is due from Allah. Indeed, He does not like the wrongdoers." [Ash-Shura: 40]. Some contemporary scholars argue that this verse expresses the general principle that "the punishment should be proportionate to the crime," and if the punishment exceeds the necessary limit, it constitutes injustice, and Allah does not love the wrongdoers (Al-Awwa, 2006, p. 313).

Therefore, the judge must ensure the necessary balance when determining the appropriate discretionary punishment for the crime under consideration, which is considered desirable according to Islamic law (Al-Khaneen, 2013, p. 94).

#### Criterion" 4: Maintaining Proportionality Between Punishment and the Offender

Another important Dhabita (Criterion) in determining discretionary punishments is maintaining balance and proportionality between the punishment and the offender's status, as offenders are not identical in nature or motivation for committing crimes. Some offenders may be individuals of honor, with their crime being a lapse or minor mistake; for such individuals, a lesser punishment should be considered, and even pardon might be more appropriate. On the other hand, individuals whose crimes are more serious or who hold specific responsibilities, such as a security official abusing their position for criminal activity, should receive a harsher punishment (Al-Khaneen, 2013, p. 95)

This Criterion, along with the preceding one, is part of the well-known principle of "consideration of mitigating and aggravating circumstances," which many scholars have recognized as an essential guideline in determining discretionary punishments. Ibn Farhoun Maliki states that scholars agree that for every crime in which a specific legal punishment (hadd) is not prescribed, discretionary punishment is permissible. However, this must be determined based on the severity of the crime and the level of the offender's malevolence (Ibn Farhoun, 1986, Vol. 2, p. 289). The goal of the "consideration of mitigating and aggravating circumstances" Criterion is to ensure that balance and proportionality between the crime and punishment, and between the punishment and the offender, are maintained and observed.

#### Criterion" 5: Considering Specific Circumstances and Conditions in Discretionary Punishments

Some specific circumstances and conditions are explicitly mentioned in legal texts, and it is obligatory for the ruler or his deputy to take them into account when determining discretionary punishments. For instance, a pregnant female offender is considered one of the mitigating conditions in Islamic law. This is explicitly acknowledged in the religious texts, where it is stated that her punishment may be delayed due to her pregnancy (Muslim, 1955, Vol. 3, p. 1324; Ibn

Majah, 2009, Vol. 3, p. 698). Delaying the execution of the punishment is viewed as a form of leniency, since, due to potential complications, the prescribed punishment might be annulled later (Al-Rababa, 2006, p. 85). Thus, when reviewing discretionary crimes, the pregnancy of the offender should be considered as a mitigating factor.

Additionally, there are certain conditions and circumstances that may intensify the punishment, such as the repetition of the crime. For example, Imam Abu Hanifah (may Allah have mercy on him) argued that if a crime is repeated and its nature warrants the death penalty, then the offender should be subjected to a discretionary death penalty. Ibn Taymiyyah (may Allah have mercy on him) shared a similar view, stating that if the corruption caused by an individual can only be eliminated through their death, then they should be executed (Ibn Taymiyyah, 1997 [1418 AH], p. 93).

Similarly, an individual's social status can be another factor that intensifies the punishment. Allah, the Exalted, has prescribed a double punishment for the wives of the Prophet (peace be upon him) due to their special social position (in the event of committing a crime), saying: "If any of you commits an immoral act, the punishment will be doubled" (Surah Al-Ahzab, verse 30).

Committing a crime at an old age is another factor that intensifies the punishment in the hereafter. The Prophet (peace be upon him) said: "Allah will not speak to three groups of people on the Day of Judgment: the elderly fornicator, the lying king, and the arrogant poor person" (Sahih Muslim, 1955, vol. 1, p. 102).

As we can see, the hadith and Ayah indicate that an individual's particular situation can affect the severity of the punishment.

Some other conditions and circumstances that influence the mitigation or intensification of discretionary punishments are non-textual and left to the discretion of the ruler or their deputy. They decide on the type and amount of punishment based on the impact the punishment would have on individuals and their circumstances (Al-Rubay'ah, 2006, p. 84).

Judge Abu Ya'li (may Allah have mercy on him) states regarding the principle of proportionality between punishment and the offender's circumstances: The discipline of individuals with a respected social position is lighter than the discipline of individuals who are shameless and foolish. As the Prophet (peace be upon him) said, "Forgive the mistakes of those in positions of authority, except in cases of fixed punishments" (Sunan Abu Dawood, 2009, vol. 6, p. 428). Thus, individuals are equal in terms of the prescribed Hudud punishments, but they differ when it comes to the application of discretionary punishments. For example, for someone with a high social position, a small punishment may suffice to reform them, while for individuals with a lower social standing, a reprimanding or humiliating speech, or imprisonment for varying durations, might be considered appropriate. Furthermore, if an individual repeatedly commits crimes and leads others into sin, they may be sentenced to exile and removal from their location (Abu Ya'li, 2000, p. 279).

Ibn Najim Hanbali (may Allah have mercy on him) also discusses the importance of considering aggravating circumstances when determining punishment and maintaining proportionality between punishment and the offender's situation. He states: If a person unjustly strikes another, and the victim retaliates by striking the offender, both individuals should receive discretionary punishment. However, the primary offender, who initiated the act, is punished first, as they are considered more unjust, and the punishment is obligatory upon them (Ibn Najim, n.d., vol. 5, p. 40).

#### Dhabita "Criterion" 6: Not Extending the Punishment to Others

Another important Shari'ah Dhabita (Criterion) in determining discretionary punishments for offenders is that the punishment imposed should be limited to the offender themselves and should not extend to others. As the crime is a personal act, its consequences should also be confined to the individual who committed it. It is therefore impermissible for someone to be punished for the sin of another. Additionally, the punishment applied to the offender should not harm or negatively affect others. The judge must ensure that the punishment imposed on the offender does not cause harm to their family or relatives unless they were involved in the crime. In such a case, however, the punishment should only apply to the accomplice, not extend to others, because in Shari'ah, it is prohibited to punish someone for the sin of another. Allah says: "No soul will bear the burden of another." (Al-An'am, 6:164). This principle is reiterated in the Qur'an in Surah Al-Isra (17:15), Surah Fatir (35:18), and Surah Az-Zumar (39:7).

Additionally, Allah says: "Whoever does righteous deeds, it is for his own benefit, and whoever does evil do so against it. And your Lord is not ever unjust to the servants." (Fussilat, 41:46). Thus, everyone should be held accountable for their own wrongdoing, and no one should bear the sin of another.

The Prophet (PBUH), in part of his Farewell Sermon, addressed the Ummah, saying: "Beware! No one will be punished for the crime of another. A person will not be held accountable for the sin of their child, nor will a child be held accountable for the sin of their parent." (Tirmidhi, 1996, Vol. 4, p. 34). This means that the consequences of a person's crime are their own and do not extend to others, even if they are their father or son. Therefore, no one can be punished for the wrongdoing of another. It is essential for the judge to ensure that when determining and issuing a discretionary punishment for an offender, the punishment and the ruling should not extend to anyone other than the offender themselves.

#### Criterion 7: Considering the Consequences of Punishment

Examining the consequences and impacts of discretionary punishment when determining it for the offender is a significant and important matter, aimed at evaluating the magnitude of the punishment, pardoning the offender, or mitigating or intensifying the punishment. As the Prophet (PBUH) refrained from killing certain individuals despite knowing their disbelief, so that people would not say, "Muhammad (PBUH) is killing his companions" (Bukhari, 1993, Vol. 4, p. 1861).

The examination of the consequences of judicial rulings in adjudication and fatwa is a characteristic of those who have deep knowledge in the sciences of law and judgment. As Imam

al-Shatibi describes the learned scholar, he says: "A person who, before answering questions, considers the consequences of his response and reflects upon them" (al-Shatibi, 1997, Vol. 5, p. 233).

Given this, when determining discretionary punishments, the judge must adopt two balanced perspectives. The first is a focused consideration of the discretionary punishment that the judge intends to impose on the offender, considering the circumstances and conditions. The second is a focused consideration of the potential consequences of the intended punishment. If, after this careful consideration, the judge determines that there is an imbalance between the intended punishment and its consequences, and that applying it would yield undesirable results, the judge must re-evaluate the matter and seek an alternative that better aligns with the consequences and outcomes. Furthermore, when determining discretionary punishment, the consideration of its consequences also includes the authority of the ruler to reduce or pardon the punishment, if the interests of society are considered and the fundamental legal principles are not violated.

Of course, the necessity of considering the consequences of discretionary punishment does not imply that the judge should act solely based on his own rational judgment without regard to the texts of Islamic law and established principles. Anyone who does so would be accused of self-interest and would essentially be following their own desires. Therefore, it is essential for the judge to adopt proper methods for considering the consequences and outcomes, with the aim of ensuring the achievement of legal benefits and preventing harm, which ultimately contributes to fulfilling the objectives of Islamic punishment and the well-being of society (Al-Khin, 2013, pp. 97-98).

### Findings

After examining the views of scholars on the main topics related to the "criteria for determining discretionary punishments," the following key issues are considered debatable:

**First:** The definition of Dhawabit (criteria) and its relationship with Qaida (rules):

There are three views regarding the definition of Dhawabit (criteria) and its relationship with Qawa'id (rules):

One view is that Dhawabit (criteria) and Qawa'id (rules) are synonymous and can be used interchangeably. This perspective is based on the lack of distinction between Dhawabit (criteria) and Qawa'id rules. Proponents of this theory define Dhawabit (criteria) similarly to Qawa'id rules. Ibn al-Humam Hanafi, when discussing rules, states: "The meaning of Qaida (rule) is similar to Dhawabit (criteria), both referring to a principle or law." The second view is that Dhawabit (criteria) are broader than Qawa'id (rules). As described in the definition of Dhawabit (criteria), it is stated that: "A criterion is a general matter that applies to its details, allowing for their rulings to be derived from it." The third view is that Dhawabit (criteria) are more specific than Qawa'id (rules). Proponents of this theory define Dhawabit (criteria) as: "A general matter specific to a single subject, with its purpose being Al-Dhawabit (the Criterion) of similar issues." This definition is considered the prevailing and most widely accepted definition of Dhawabit (criteria).

**Second:** Definition of *Taziri* (Discretionary) Punishments:

*Taziri* punishments are defined in Islamic jurisprudence using different terms, such as the following definitions:

1. *Taziri* (discretionary) punishment is to strike (the offender) less than the prescribed legal punishment (hadd).
2. *Taziri* (discretionary) punishment is a form of reprimand less than the prescribed legal punishment (hadd).
3. *Taziri* (discretionary) punishment is a reprimand for committing a sin that does not have a prescribed punishment or expiation (kafara).

**Third:** Delegation of *Taziri* Punishments to the Ruling Authority

In Islamic law, *Taziri* punishments are indeterminate, and the determination of their type and extent is often delegated to the discretion of the Imam or his representative. The indeterminacy of *Taziri* punishments and their delegation to the ruling authority are among the most important characteristics distinguishing these punishments from those of hadd. The opinion of the Maliki, Shafi'i, and Hanbali scholars, as well as the predominant view in Hanafi jurisprudence, is that *Taziri* punishments are entrusted to the judgment of the Imam. The Imam or the head of the Islamic state has the authority to choose one or more punishments from the set of legitimate *Taziri* penalties, which range from reprimands and admonishments to imprisonment and exile, to apply to the offender.

**Fourth:** Criteria for Determining *Taziri* Punishments

In classical jurisprudential sources, there is no systematic and detailed discussion on the criteria for determining *Taziri* punishments. Some contemporary scholars have addressed this issue within the context of "judicial authority" and have identified a set of thirteen criteria in this regard, such as *Al-Dhabita* (the criterion) of the legitimacy of *Taziri* punishment, the criterion of adhering to the objective of legitimacy of punishments in Islam, the criterion of maintaining proportionality between the crime and the punishment, the criterion of maintaining proportionality between the punishment and the offender, the criterion of not exceeding the punishment for individuals who are not offenders, and the criterion of considering the consequences and impacts of the punishment. Additional criteria, such as ensuring the punishment does not cause harm, ensuring the punishment is not insufficient in relation to the crime, and others, are also discussed.

**Discussion**

First: In the discussion of defining "criteria" and its relationship with "principles," the theory of distinguishing between criteria and principles—where criteria pertain to issues related to a specific subject, while principles encompass matters related to various chapters—has been the dominant view among scholars and is considered more valid. Scholars such as Imam al-Sabki, al-Suyuti, al-Zarkashi, and Ibn Najim al-Hanafi have supported this view. Thus, there are differences between criteria and principles.

**Second:** Many of the definitions proposed for ta'zir (discretionary punishment) are subject to discussion and critique:

- The definition of ta'zir as "punishing the offender with less than the prescribed hadd" (legal limit) does not seem accurate, because ta'zir is not limited to corporal punishment alone. As noted in the sources of Islamic jurisprudence and in the discussion of the types of ta'zir punishments, ta'zir can range from reprimands to imprisonment and even more severe measures. Therefore, limiting this type of punishment solely to corporal punishment contradicts the "comprehensiveness of the definition."
- The definition of ta'zir as "disciplining (ta'dib) the offender with less than the prescribed legal limit" also seems imprecise, because the term "discipline" includes corrective actions taken by parents towards children, spouses towards one another, and teachers towards students. However, the disciplinary actions of these individuals are not considered punishments in the legal sense. Therefore, ta'dib does not convey the primary meaning of ta'zir.
- Additionally, in many of the definitions, the authority responsible for determining ta'zir punishments, which is specifically the Imam and the head of state, is not mentioned. This omission contradicts the definition's completeness.

Therefore, ta'zir is a type of punishment that the Imam, head of state, or his representative determines and implements based on Shari'ah guidelines, in response to an act or statement that does not fall under a prescribed hadd, qisas or kaffara (expiation).

**Third:** The determination of ta'zir punishments in Islamic law is entrusted to the judgment of the ruler and head of state, who has the authority to choose an appropriate punishment from among a set of possible penalties for the offender. However, this authority is not absolute; rather, it is conditioned and restricted by a set of rules and conditions. A key aspect of these restrictions is the Shari'ah criteria for determining ta'zir punishments. These include considerations such as ensuring the legitimacy of the punishment, adhering to the goals of the legitimacy of the punishment, considering the circumstances of the offender, considering mitigating and aggravating factors related to the crime and the punishment, and addressing both the individual and social consequences of the punishment. In other words, Islamic law has defined a range of permissible ta'zir punishments and established specific criteria. It then grants the judge the discretion to select and implement an appropriate punishment based on the circumstances of the crime and the situation of the offender, in light of the established guidelines.

**Fourth:** The most important criteria for determining ta'zir punishments in Islamic law include: the criterion of the legitimacy of the punishment, the criterion of adhering to the goals of the legitimacy of punishments, the criterion of proportionality between the crime and the punishment, the criterion of proportionality between the punishment and the offender, the criterion of not exceeding the punishment on non-offenders, and the criterion of considering the consequences and outcomes of the punishment. Additionally, jurists have mentioned other criteria, such as ensuring that the punishment is not too lenient to the extent that it does not correspond to the crime committed, ensuring that the punishment does not cause harm, and similar principles. However, since many of these criteria overlap and are repetitive, this discussion will focus on the

most important ones, and other criteria that may seem repetitive are omitted. Similarly, the criterion of "not exceeding the limit of the ta'zir punishment beyond the limits of the legal punishment (hadd)" is also discussed and is important. However, due to the numerous and conflicting sub-rules related to this, which require a detailed discussion, an explanation of it is also omitted in this text.

The restriction of the criteria for determining ta'zir punishments, as discussed above, is an inductive restriction based on the research of the authors, not an intellectual restriction.

### **Conclusion**

From the study of the topic "Criteria for Determining Ta'zir Punishments in Islamic Sharia" and the examination of scholars' opinions in this regard, the following results were obtained:

1. The term ta'zir in linguistic terms has meanings such as rejection, prohibition, reproach, support, honor, and respect, and in this respect, it is considered a word of both common and contradictory meanings.
2. A ta'zir punishment is defined as a punishment that is imposed for the commission of an act or statement that is against Sharia, where no fixed legal punishment (hadd) or expiation (kafara) is prescribed and is determined and executed by the Imam or his representative in accordance with the legal principles of Sharia.
3. The implementation of ta'zir punishments in Islamic Sharia is legitimate and authorized, and their legitimacy is established by evidence from the Qur'an, Sunnah, consensus (ijma'), and analogy.
4. The legally prescribed Taziri punishments in Islam are numerous and varied, starting with reprimands and rebukes of the offender and extending to extreme cases, even including death. The most well-known among them are threats, public shaming, physical punishment, imprisonment, exile, execution, confiscation of property, displacement, and severing ties with the offender.
5. Taziri punishments differ from Hudud and Qisas punishments and have characteristics such as being undefined, subject to pardon, changeable, and the permissibility of leniency in their application.
6. The determination and specification of ta'zir punishments by a judge means that Islamic Sharia grants the judge the authority to, in light of the Sharia guidelines, select and apply the appropriate punishment from among the set of legitimate ta'zir punishments, based on the nature of the crime and the circumstances of the offender.
7. The purpose of the criteria for determining ta'zir punishments is to provide a set of principles that limit and constrain the judge's discretion in determining the type and extent of ta'zir punishment, directing it towards a correct and just decision.
8. The most important criteria for determining and specifying ta'zir punishments in Islamic Sharia include: the legitimacy of the punishment, adherence to the goal of the legitimacy of punishments in Islam, maintaining the proportionality between the crime and the punishment,

ensuring the proportionality between the punishment and the offender, ensuring the punishment does not harm the innocent, and considering the individual and social consequences of the punishment.

9. Other criteria have also been mentioned in this regard, such as ensuring the punishment is not too lenient so as to be disproportionate to the crime, ensuring the punishment does not cause harm, and applying gradual increases in punishment for repeat offenses. However, many of these additional criteria overlap and repeat those already explained.

10. The principle of "the punishment not exceeding the limit of hadd prescribed in Sharia" is also mentioned and is important in this context. However, due to the existence of many divergent details and subcategories, a brief explanation has been provided here.

**Conflict of Interest:** The author declares no conflict of interest.

## References

1. Al-Qur'an Al-Kareem.
2. Al-Khunein, A. B. M. B. S. (2013). *Sultah al-Qadi fi Taqdeer al-Uqoubah al-Ta'zeeriyah* (1st ed.). Riyadh: Dar Ibn Farhoun.
3. Al-Khunein, A. B. M. B. S. (2003). *Tawseef al-Aqdiyah fi al-Shari'ah al-Islamiyyah* (1st ed.).
4. Ibrahim, M., Al-Zayat, A., Abd Al-Qader, H., & Al-Najjar, M. (n.d.). *Al-Mu'jam al-Waseet*. Dar al-Da'wah.
5. Ibn Taymiyyah, A. A. A. B. A. H. B. A. (1997). *Al-Siyasah al-Shar'iyyah*. Ministry of Islamic Affairs, Endowments, Call and Guidance (KSA).
6. Ibn Hanbal, A. A. A. B. M. A.-S. (2001). *Musnad Imam Ahmad bin Hanbal* (Sh. Al-Arna'ut & A. Morshed, Eds.). Dar al-Risalah.
7. Ibn Abidin, M. A. (1966). *Hashiyat Radd al-Mukhtar 'Ala al-Durr al-Mukhtar: Sharh Tanwir al-Absar* (2nd ed.). Mustafa Al-Babi Al-Halabi.
8. Ibn Farhoun, I. B. A. B. M. (1986). *Tabsirat al-Hukkam fi Usul al-Aqdiyah wa Manahij al-Ahkam*. Al-Kulliyat al-Azhariyyah Library.
9. Ibn Qudamah, A. M. A. D. A. B. A. M. A.-H. (1985). *Al-Mughni: Sharh Mukhtasar al-Khiraqi*. Dar Ihya' al-Turath al-Arabi.
10. Ibn Qayyim, A. A. M. B. A. B. A. (2019). *A'lam al-Muwaqqi'in 'A Rabb al-'Alamin* (M. A. Al-Islahi, Ed.). Beirut: Dar Ibn Hazm.
11. Ibn Kathir, A. F. I. B. U. A.-Q. (1998). *Tafseer al-Qur'an al-Azeem* (M. H. Shams al-Din, Ed.). Dar al-Kutub al-Ilmiyyah.
12. Ibn Majah, A. A. M. B. Y. A.-Q. (2009). *Sunan Ibn Majah* (Sh. Al-Arna'ut & A. Morshed, Eds.). Dar al-Risalah al-'Alamiyyah.
13. Ibn Manzur, M. B. M. B. A. (1993). *Lisan al-Arab* (3rd ed.). Beirut: Dar Sader.
14. Ibn Najim, Z. A. (n.d.). *Al-Bahr al-Ra'iq Sharh Kanz al-Daqa'iq* (2nd ed.). Dar al-Kitab al-Islami.
15. Abu Dawood, S. B.A. A. A.-S. (2009). *Sunan Abu Dawood* (Sh. Al-Arna'ut, Ed.). Dar al-Risalah al-'Alamiyyah.

16. Abu Ya 'la, M. B. A.-H. B. M. B. K. A.-F. (2000). *Al-Ahkam al-Sultaniyyah* (M. H. Al-Faqi, Ed.). Beirut: Dar al-Kutub al-Ilmiyyah.
17. Amir Badshah, M. A. B. M.A.-B. (1932). *Tayseer al-Tahreer*. Cairo: Mustafa Al-Babi Al-Halabi.
18. Al-Hamawi, A. B. M. M., A. A. S. A.-H. (1985). *Ghamz 'Ayon al-Basa'ir fi Sharh al-Ashbah wa al-Nazair*. Dar al-Kutub al-Ilmiyyah.
19. Al-Babarti, M. B. M. B. M., A. A. A. B. A. S. S. A. D. (n.d.). *Al-'Inayah Sharh al-Hidayah*. Dar al-Fikr.
20. Al-Bukhari, M. B. I. A. A. A.-J. (1993). *Sahih al-Bukhari* (M. D. Al-Bagha, Ed.). Damascus: Dar Ibn Kathir, Dar al-Yamama.
21. Al-Bayhaqi, A. B.A.-H. B. A. B. M. (2003). *Al-Sunan al-Kubra* (M. A. Ata, Ed.). Beirut: Dar al-Kutub al-Ilmiyyah.
22. Al-Tirmidhi, A. I. M. B. I. (1996). *Sunan al-Tirmidhi* (B. A. Ma'ruf, Ed.). Beirut: Dar al-Gharb al-Islami.
23. Al-Shatibi, A. I. I. B. M. B.M. A.-L. (1997). *Al-Muwafaqat* (A. M. H. Al-Salman, Ed.). Dar Ibn Affan.
24. Al-Sharbini, S. A.-D. M. B. A. A.-S. (1994). *Mughni al-Muhtaj Ila Ma'rifah Ma 'ani Alfaz al-Minhaj*. Dar al-Kutub al-Ilmiyyah.
25. Al-Awwa, M. S. (2006). *Fi Usul al-Nizam al-Jinai al-Islami* (1st ed.). Cairo: Nahdat Misr Publishing.
26. Awda, A. Q. (n.d.). *Al-Tashree' al-Jinai al-Islami Muqaranan Bil-Qanun al-Wadh'i*. Beirut: Dar al-Katib al-Arabi.
27. Al-Firuzabadi, M. A. T. M. B. Y. (2005). *Al-Qamus al-Muhit* (Heritage Research Office, Ed.). Beirut: Al-Maktabah al-Ilmiyyah.
28. Al-Fayoumi, A. B. M. B. A.-A. (n.d.). *Al-Misbah al-Munir fi Gharib al-Sharh al-Kabir*. Beirut: Al-Maktabah al-Ilmiyyah.
29. Al-Qarafi, A. A. S. A. B. I. B. A. A.-M. (n.d.). *Al-Furuq = Anwar al-Buruk fi Anwa' al-Furuq*. Alam al-Kutub.
30. Al-Qurtubi, A. A. M. B. A. B. (1964). *Al-Jami 'li-Ahkam al-Qur'an = Tafsiir al-Qurtubi* (A. Al-Bardouni & I. Atfesh, Eds.). Cairo: Dar al-Kutub al-Misriyyah.
31. A Group of Authors. (1984). *Al-Mawsu 'ah al-Fiqhiyyah al-Kuwaitiyyah* (2nd ed.). Kuwait: Dar al-Salasel.
32. Al-Najjar, S. M. I. (2007). *Sultat al-Qadhi fi Taqdir al-Uqubat al-Ta 'zeeriyyah* [master's thesis, Islamic University of Gaza].
33. Muslim, A. B. A.-H. A.-Q. (n.d.). *Sahih Muslim* (M. F. Abdul-Baqi, Ed.). Beirut: Dar Ihya' al-Turath al-Arabi.
34. Al-Zuhaili, W. (2006). *Al-Fiqh al-Islami wa Adillatuh* (Vols. 1–9). Damascus: Dar al-Fikr.
35. Qaradawi, Y. (1995). *Fi Fiqh al-Dawlah fi al-Islam*. Cairo: Maktabat Wahbah.
36. Ibn Rushd, A. W. M. A. (2001). *Bidayat al-Mujtahid wa Nihayat al-Muqtasid*. Beirut: Dar al-Ma 'rifah.
37. Ibn Sina, A. A. A. H. (1952). *Al-Shifa: Al-Mantiq wa al-Tibb*. Cairo: Al-Hayah al- Ammah li-Shu'un al-Matabi 'al-Amiriyyah.