



METHODOLOGICAL RATIONALITY BEHIND THE NON-STANDARDIZATION OF TA'ZIR PUNISHMENTS IN HADITH: IMPLICATIONS FOR HANDLING SEXUAL VIOLENCE IN INDONESIA

Mohamad Mashudi^{*}, Ahmad Muchlishon¹, Nahrul Pintoko Aji¹

¹UIN Sultan Maulana Hasanuddin, Banten, Indonesia

^{*}mohamadmashudi@uinbanten.ac.id

Abstract

Sexual violence causes prolonged physical, emotional, and psychological trauma, necessitating a legal framework that not only punishes perpetrators but also prioritizes victim protection and recovery. The enactment of the Law on Sexual Violence Crimes (UU TPKS) in Indonesia marks a progressive shift towards victim-centered justice. However, its implementation often faces conservative religious resistance rooted in a rigid, textualist interpretation of Islamic criminal law, which tends to conflate all penal sanctions with the fixed punishments of hudud. This study aims to explore the methodological rationality behind the non-standardization of ta'zir (discretionary punishment) in the Hadith and its implications for handling sexual violence within the framework of the UU TPKS. Employing a normative-qualitative legal research method, this study utilizes Syuhudi Ismail's contextual hadith hermeneutics to analyze the classical hadith corpus, classical fiqh literature, and contemporary positive law. The findings reveal three main points. First, hadiths limiting ta'zir punishments must be interpreted contextually; the Prophet and classical jurists delegated the form and severity of ta'zir to the authorities based on the crime's severity, the perpetrator's condition, and the impact on the victim. Second, this non-standardization is not a legal vacuum but a methodological rationality reflecting the elasticity (murunah) of Islamic law, grounded in the individualization of punishment (tafrid al-'iqab) and restorative justice for human rights violations (Haqq al-Adami). Third, this flexibility provides a strong epistemological foundation for the UU TPKS. The law's provisions such as sentence enhancements based on unequal power relations and mandatory victim restitution are modern manifestations of ta'zir and radd al-mazhalim (restoring the rights of the oppressed) based on siyasah syar'iyah (Islamic public policy). The study concludes that the flexibility of ta'zir allows Islamic criminal law to harmonize seamlessly with modern progressive jurisprudence, offering a contextual, humane, and victim-centric penal framework for addressing sexual violence in Indonesia.

Keywords *Ta'zir, Sexual Violence, UU TPKS, Victim-Centered Justice, Hadith Hermeneutics, Siyasah Syar'iyah*

INTRODUCTION

Sexual violence is a serious issue because its impacts do not stop at physical harm, but also extend to emotional and psychological damage. Victims may experience trauma, a sense of powerlessness, stigma, and anxiety over a prolonged period. (Carolina et al., 2022, p. 64) Some of the physical, emotional, and psychological impacts felt by victims of sexual violence include Rape Trauma Syndrome (RTS), depression, PTSD, as well as eating disorders and dissociation. In addition, such trauma can also lead to difficulties in building relationships with others and a decrease or loss of sexual desire (Hypoactive Sexual Desire). (Saputra, 2025, p. 636) Therefore, the handling of sexual violence requires laws that not only punish perpetrators but also provide protection and recovery for victims.

The enactment of Law No. 12 of 2022 concerning Sexual Violence Crimes (UU TPKS) is a significant milestone in the history of Indonesian law, transitioning the national

framework towards a victim-centered approach. UU TPKS serves as a comprehensive criminal law instrument to strengthen law enforcement against sexual violence crimes through prevention, handling, and victim recovery efforts. It provides systemic legal protection through compensation, restitution, medical services, psychosocial rehabilitation, legal protection and assistance, and places the victim as a subject in the judicial process, while simultaneously integrating penal means to address crimes that have occurred and non-penal means to prevent the underlying causes of sexual violence. (Nurisman, 2022, p. 22)

However, the implementation of progressive legal mechanisms in a predominantly Muslim society often faces resistance rooted in conservative religious discourse. Rigid textualist interpretations of Islamic jurisprudence (*fiqh*) frequently demand strict evidentiary thresholds such as four eyewitnesses, historically associated with *zina* (adultery) when handling sexual violence cases. These formalistic demands create systemic barriers, leaving victims vulnerable and denying them substantive justice.

The core of this problem lies in a theological misconception: treating all Islamic penal sanctions as fixed and unchangeable laws (*hudud*). In reality, there are hadiths concerning criminal law, which encompass all the words, actions, and decrees of the Prophet Muhammad SAW that serve as the legal basis for regulating crimes and their sanctions in Islam. The scope of criminal law hadiths covers three main categories: *hudud*, *qishash*, and *ta'zir*. (Syabrun et al., 2026, p. 8158) *Ta'zir*, or discretionary punishment, is etymologically derived from the verbal noun (*masdar*) of the past tense verb (*f'il madi*) '*azzara*. Linguistically, *ta'zir* means education (*al-ta'dib*). The word *ta'zir* is also sometimes interpreted as *al-man'u*, meaning to prevent. Terminologically, *ta'zir* means punishing or taking action against sinful acts for which there are no stipulated *hadd* sanctions or *kaffarah* (expiation) payments, whether related to the rights of fellow humans or the rights of Allah, acting as an effort to deter the convict from repeating acts of disobedience to Allah. (Thohari, 2018, p. 252)

Ta'zir can be categorized as a punishment not specified by the Quran and hadith, relating to the violation of the rights of Allah and human rights, functioning to teach the convict a lesson and prevent them from repeating the same crime. Anyone who commits an act of disobedience (*maksiat*) that does not entail a *hadd* sanction and lacks the obligation to pay *kaffarah* must be subject to *ta'zir*, whether the act violates the rights of Allah or human rights. Such sinful acts may include preliminary actions that could potentially trigger a *hadd* sanction, such as engaging in intimate contact with another woman without resulting in vaginal intercourse (*coitus*), stealing property valued at less than one *nisab*, or stealing property from an unprotected storage location, and so forth.

Several previous studies have examined the concept and flexibility of *ta'zir* punishment in Islamic criminal law from various perspectives. Ahmad Syarbaini asserts that *ta'zir* is an integral part of '*uqubat* (punishments) that is educative in nature and does not have a specific type or extent of sanction stipulated in the *nash* (texts), leaving the full authority of its determination to the *waliyu amri* (authorities) or judges for the sake of public interest (*maslahah*) and the moral reform of the perpetrator. (Syarbaini, 2019, p. 9) This flexibility is further clarified by Azhari Akmal Tarigan, who highlights the importance of

the ruler's *ijtihad* (independent reasoning) so that *ta'zir* can encompass modern forms of crime such as corruption, drug abuse, and sexual harassment, while offering formal legal codification solutions to prevent the risk of government tyranny. (Tarigan, 2017, p. 169) Meanwhile, Darsi Darsi and Halil Husairi review *ta'zir* from the perspective of neo-classical legal theory, emphasizing the importance of transforming traditional sanctions deemed cruel into modern forms of punishment based on scientific research and oriented towards retribution, rehabilitation, and victim protection. (Darsi & Husairi, 2019, p. 60)

Research conducted by Ernida et al. indicates that both classical and contemporary literature affirm that the flexibility of *ta'zir* is not a legal void, but rather an adaptive instrument to respond to social dynamics and the growing complexity of criminal acts. The purpose of punishment within the framework of *ta'zir* includes aspects of upholding justice, deterrent effect (*zajr*), moral education of the perpetrator (*ta'dib*), protection of human rights and dignity, and the maintenance of social order. Its forms of sanction vary, ranging from reprimands, fines, and restriction of freedom, to more severe punishments, as long as they align with the principles of proportionality and utility. (Septiani et al., 2026, p. 197) *Ta'zir* can be defined as a sanction that is not specifically determined in the *nash* and provides room for discretion to the judge or *ulil amri*.

Other researchers, such as Ahmad Rofiq et al., state that *ta'zir* differs from *jarimah budud* (fixed crimes) and *qishash diyat* (retaliation and blood money). *Jarimah ta'zir* has a distinct characteristic based on public interest. This characteristic causes the specifics of *jarimah ta'zir* not to be detailed by the *nash*; instead, its types and punishments are delegated to the *ulil amri*. When viewed in the Indonesian context, it is not feasible to implement *jarimah ta'zir* in the midst of a pluralistic society. (Rofiq et al., 2021, p. 241) This present study aims to explore the pattern of varying sanctions in the hadith as the epistemic foundation for the flexibility of *ta'zir* and the methodological mechanism that allows the law to respond to changing forms of crime. Research on *ta'zir* and studies on sexual violence have largely proceeded separately. Sexual violence literature focuses more on victim protection, prevention, and psychological impacts, while *ta'zir* literature emphasizes penal authority. This article reconstructs the non-standardization of *ta'zir* punishment not as a normative void, but as a methodological rationality within the hadith that grants legal authorities the space to determine the form and extent of sanctions based on the character of the act, the level of harm, the perpetrator's condition, and the welfare of the victim and society. This framework is then utilized to read the UU TPKS as an actualization of the *ta'zir* flexibility principle within the Indonesian legal system.

The interconnectivity of these previous studies demonstrates a convergence of views that the absence of standard benchmarks in the *nash* is not a lack of law, but rather a delegation of authority to realize dynamic public protection. Nevertheless, the majority of prior studies still view *ta'zir* generally or focus on regulatory codification solutions. It is here that this research takes a strategic role in complementing the limitations of previous literature. Unlike previous studies, this research specifically conducts a deep-dive into the Hadith as the primary source to dissect the methodological and epistemological rationality behind the non-standardization of *ta'zir* punishments. This focus is then operationalized specifically into the handling of sexual violence in Indonesia, thereby providing a

methodological foundation for harmonizing Islamic criminal law with national positive regulations such as the UU TPKS.

Therefore, the research questions of this study center on: What is the pattern of punishment provision in the hadiths that form the basis of the *ta'zir* concept? What is the methodological rationality behind the non-standardization of the types and extents of *ta'zir* punishments in the hadith? How can this rationality provide a perspective for handling sexual violence within the framework of the UU TPKS in Indonesia?

METHODS

This research is a normative-qualitative legal study focusing on the examination of legal norms within the hadiths and statutory regulations. Normative legal research focuses on written legal norms or rules found in various legal sources, such as laws, regulations, court rulings, and the doctrines of legal experts. (Sukmawan & Damayanti, 2025, p. 118) The approach utilized in this study is the hadith hermeneutics approach developed by Syuhudi Ismail. This approach aims to comprehend the *ta'zir* hadiths by taking into account the text, the context of the hadith's emergence, the form of the Prophet's response, and the variations of sanctions applied to different forms of violations. According to Syuhudi Ismail, understanding hadiths requires considering the context related to the Prophet himself, the background, and the circumstances surrounding the occurrence of the hadith. Consequently, some hadiths can be understood textually based on their explicit meanings, while others must be understood contextually by examining their underlying situations. (Wasman, 2014, p. 7)

This research utilizes three main groups of sources. First, the hadith corpus, selectively chosen from *Ṣaḥīḥ al-Bukhārī*, *Ṣaḥīḥ Muslim*, *Sunan Abī Dāwūd*, *Sunan al-Tirmidhī*, *Sunan al-Nasā'ī*, and *Musnad Aḥmad*. The selection of these hadiths is based not on the quantity of the sources, but on their relevance in illustrating the variations of actions, case characteristics, and the forms of the Prophet's legal responses. Second, classical Islamic jurisprudence (*fiqh*) sources, primarily the works of al-Māwardī, Ibn Qudāmah, Ibn Taymiyyah, and Ibn al-Qayyim including *al-Aḥkām al-Sultāniyyah* and *al-Turuq al-Ḥukmiyyah* which are used to examine how these hadiths were interpreted and developed within the construction of Islamic law, particularly in criminal matters (*jinayah*). Third, contemporary legal sources, comprising Law Number 12 of 2022 concerning Sexual Violence Crimes (UU TPKS), relevant implementing regulations, criminal law literature, and studies on sexual violence and victim-centered approaches. These three groups of sources are positioned dialogically to bridge Islamic normative sources with the development of contemporary criminal law.

The analysis is conducted through five stages. First, identifying hadiths that contain criminal or sexual violence cases lacking specific *ḥadd* provisions. Second, comparing the forms and degrees of the Prophet's legal responses to each respective case. Third, identifying the factors that likely influenced the variations in these responses, including the type of act, the extent of harm, the conditions of both the perpetrator and the victim, the social context, elements of recidivism, and considerations of public interest

(*maslahah*). Fourth, formulating the methodological patterns that emerge from these varied responses to discern the underlying principles of legal determination or application. Fifth, placing these patterns into a dialogue with the legal construction of the UU TPKS to explore the potential reconstruction of legal approaches to sexual violence. Therefore, this study does not treat hadiths merely as a legal source to be directly transplanted into a contemporary context; rather, it analyzes hadiths as data to discover patterns, uses these patterns as a foundation to formulate methodological principles, and establishes these principles as a basis for dialogue with contemporary sexual violence legislation.

RESULTS

Classical hadith literature shows that although the Prophet set fixed limits for a limited number of *hudud* offenses, he intentionally left the realm of *ta'zir* open for contextual evaluation. Hadiths recording discretionary interventions reflect various methods of correction tailored to the severity of social harm and the psychological impact on the victim. Al-Tirmidhi stated that there is only 1 hadith most suited to describe *ta'zir*, namely the hadith:

"لَا يُجْلَدُ فَوْقَ عَشْرِ جَلَدَاتٍ إِلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ"

This hadith is of *marfū'* status and is narrated through Abū Burdah al-Anṣārī. This hadith has been extracted by several hadith masters as follows:

Table 1. Classical Hadith Resources

Hadith Master	Book	Volume	Page	Notes
Imam Bukhārī	<i>Ṣaḥīḥ al-Bukhārī</i>	4	129	<i>Marfū'</i> from Abū Burdah
Imam Muslim	<i>Ṣaḥīḥ Muslim</i>	3	1332	<i>Marfū'</i> from Abū Burdah
Abū Dāwūd	<i>Sunan Abī Dāwūd</i>	4	629	Hadith no. 4491, <i>marfū'</i> from Abū Burdah
al-Tirmiḏī	<i>Jamī' al-Tirmiḏī</i>	4	63	Hadith no. 1463, <i>marfū'</i> from Abū Burdah
Ibn Mājah	<i>Sunan Ibn Mājah</i>	2	867	Hadith no. 2601, <i>marfū'</i> from Abū Burdah
al-Dārimī	<i>Sunan al-Dārimī</i>	2	176	<i>Marfū'</i> from Abū Burdah
Aḥmad Ḥanbal	<i>Musnad Aḥmad</i>	3 & 4	466; 45	<i>Marfū'</i> from Abū Burdah

This hadith is *ṣaḥīḥ* because it was narrated by al-Bukhārī and Muslim in their respective *Ṣaḥīḥ* collections (*muttafaquun 'alaiḥ*). The narrations of Abū Dāwūd, al-Tirmiḏī, Ibn Mājah, al-Dārimī, and Aḥmad also serve as corroborating accounts (*shuhahid*). Ibn Mājah also narrated hadith no. 2602 from Abū Hurairah with the wording

“ لا تعزروا فوق عشرة أسواط ”

But its chain of transmission contains ‘Abbād bin Kathīr al-Šaqafī, who is classified as *matruk* (abandoned), making that narration weak (*da’if*). (Sulaiman bin al-Asy’ats, 2009, p. 541)

Al-Khaṭṭābī explains that scholars hold differing opinions regarding the extent of *ta‘zīr* because they take into account differences in the severity of the crime and the condition of the perpetrator. Aḥmad bin Ḥanbal and Ishāq limited the strikes to ten lashes, al-Sya‘bī between one and thirty, while al-Syāfī, Abū Ḥanīfah, and Muḥammad bin al-Ḥasan did not permit *ta‘zīr* to reach forty. Abū Yūsuf, Ibn Abī Laylā, Mālik, and Abū Tsaūr granted broader discretion to the judge to determine the punishment based on the gravity of the crime. Furthermore, according to Malik and Abū Tsaūr, in extremely severe crimes, the punishment may reach or exceed a certain threshold typically serving as the *ḥadd* limit. These differences indicate that *ta‘zīr* does not have a single absolute measure, but is closely related to the scale of the crime and judicial discretion. (Hamd bin Muhammad al-Khattabi, 1932, p. 340)

According to al-Khaṭṭābī, the majority view of jurists positions *ta‘zīr* as a punishment of education and moral training, which is generally lighter than *ḥadd* punishments. Ideally, the measure of *ta‘zīr* follows the proportionality between the crime and the punishment, just as compensation for the damage of a part of the body is not equated with compensation for the damage of the entire body. Thus, al-Khaṭṭābī's core discussion is not merely about determining the number of lashes, but rather demonstrating the principle of proportional punishment based on the crime's severity, the perpetrator's condition, and the judge's assessment.

Al-Ṭaḥāwī rejects the opinion that makes *ḥadd* punishment a ceiling or boundary for *ta‘zīr*. According to him, *ta‘zīr* is fundamentally a punishment delegated to the judge's or *imam*'s independent reasoning (*ijtihād*), allowing its severity to be mitigated or aggravated according to circumstances. He cites the decision of ‘Umar, who imposed one hundred lashes and banishment on a woman who committed zina, despite the consideration that the woman initially did not understand the prohibition of her act. The case of Ma‘n bin Zā‘idah is also used to show that *ta‘zīr* punishments can be administered repeatedly according to the level of guilt and the necessity to ensure a deterrent effect. (Abu al-Hasan Ali bin Khalf, 2003, p. 484)

Consequently, according to al-Ṭaḥāwī, Ibn al-Qaṣṣār, and al-Muhallab, the measure of *ta‘zīr* is not a fixed numerical value, but rather the severity of the crime, the condition of the perpetrator, and the effectiveness of the punishment in preventing recidivism. A person who is sufficiently deterred by a reprimand does not need to be flogged, whereas someone who is not deterred by a light punishment may be given a heavier penalty. This shows that the concept of *ta‘zīr* possesses a flexible and proportional character, with the primary consideration directed toward achieving educational and preventive outcomes. This simultaneously demonstrates that the hadith regarding the "ten lashes" limit is not

understood by all scholars as an absolute boundary for all forms of *ta'zir*, but is debated based on context, type of violation, and the objective of the punishment.

DISCUSSION

In the context of contemporary academic discourse, the methodological rationality of this non-standardization intersects strongly with the doctrine of individualization of punishment in modern legal systems. The non-standardized nature of *ta'zir* represents the elasticity (*murunah*) of Islamic law. This method enables Islamic jurisprudence to continuously adapt to transnational and modern forms of crime unknown in the classical era. (Yasir et al., 2026, p. 1269)

Judges are required to exercise *ijtihad tatbiqui* (implementative discretionary reasoning) while weighing the principle of *at-tanasub* (proportionality). The hadith concerning the limitation of ten lashes is positioned by modern jurists not as an absolute mathematical ceiling for all cases, but rather as a philosophical warning that no matter how severe a *ta'zir* formulated by the state may be, it must never lose the substance of *ta'dib* (moral reform/education) nor degenerate into torture that violates fundamental human rights, mirroring the protective boundaries of *hudud*. Consequently, the non-standardization of *ta'zir* proves rationally and methodologically to be the most sophisticated, time-responsive law enforcement mechanism, yet firmly controlled by the ethical and moral spirit of the Sharia.

In the evolution of modern criminal law thinking, a fundamental paradigm shift has occurred from retributive justice (punishment targeting the perpetrator) toward restorative justice (restoring the rights and condition of the victim). Within the discourse of *Fiqh Jinayah*, the paradigm of victim-centered justice actually possesses a strong ontological root, specifically through the instrument of *ta'zir*. The flexibility of *ta'zir* which is not rigidly standardized grants judges the discretion to formulate sanctions oriented not merely toward the physical suffering of the offender (*za'ir*), but also toward compensation, rehabilitation, and proactive protection for the victim.

Conceptually, classical jurists categorized the scope of criminal offenses into two domains of violated rights: *Haqq Allah* (public/divine rights) and *Haqq al-Adami* (private/individual rights). In *ta'zir* offenses infringing upon *Haqq al-Adami*—such as defamation (*sabb/syathm*), financial fraud, or physical assault falling short of *qishash*—the primary orientation of law enforcement is the fulfillment of the victim's rights. Imam Al-Qarafi (d. 684 AH) in his book *Al-Furuq* brilliantly asserts that violations against the rights of an individual (the victim) cannot be absolved merely through vertical repentance or physical punishment alone; they must be accompanied by conflict resolution and material or immaterial restitution. (Abu al-'Abbas Syihabuddin Ahmad bin Idris, n.d., p. 157)

Therefore, within the framework of victim-centered justice, *ta'zir* sanctions can transform from simple floggings or confinement into financial penalties (*ta'zir bi al-mal*) or compensation (*ta'widh*). Ibn Farhun (d. 799 AH) in *Tabshirat al-Hukkam* records practices of Islamic judiciary where judges imposed sanctions confiscating a perpetrator's assets to be handed over as restitution to the victim, or compelled the offender to issue a public apology to restore the victim's good name and dignity. This proves that the protection of

the victim's dignity (*hifẓ al-irdh*) serves as the epicenter in the rationality of imposing *ta'zīr*. (Ibrahim bin Ali bin Muhammad, 1986, p. 288)

This victim-protection approach is crucial in addressing modern crimes such as domestic violence (KDRT), cyberbullying, and investment fraud. In such cases, imprisoning the perpetrator often fails to offer a concrete solution for the victim's psychological trauma or financial loss. Conversely, a judge (through *siyasah qadhaiyyah*) can utilize discretionary *ta'zīr* authority to issue a restraining order to protect the victim from further threats, mandate the offender to finance the victim's psychological recovery, or facilitate peaceful mediation (*shulh*) if desired by the victim.

This transformation from punishment to protection demonstrates that *ta'zīr* is not a tyrannical state instrument to punish citizens, but rather a protective canopy (*ri'ayah*) for the vulnerable and oppressed. Islamic law views true justice as achieved not merely when the offender suffers punishment, but when the victim's tears are wiped away, their losses compensated, and their sense of security reinstated. The integration of *maqashid as-syari'ah* values and the restorative justice approach makes *ta'zīr* relevant as a humanistic and emancipatory judicial model for the future.

The discourse concerning the methodological rationality of *ta'zīr* and the restorative justice paradigm finds practical urgency and relevance within the contemporary criminal law constellation in Indonesia, particularly following the enactment of Law Number 12 of 2022 on Sexual Violence Crimes (UU TPKS). Epistemologically, the construction of the UU TPKS can be read as a manifestation of *ta'zīr* codification grounded in *siyasah syar'iyah* (Islamic political-legal policy), where the state actively assumes the role of protecting human honor and dignity (*hifẓ al-irdh*) from forms of crime not precisely reached by classical *hudud* offenses.

Indecency offenses have frequently had their understanding reduced solely to the domains of *zīna* (adultery) or *qadzaf* (false accusation of adultery), which carry rigid and strict evidentiary requirements. Consequently, concerns arise regarding a legal vacuum for modern forms of sexual violence, such as physical/non-physical sexual harassment, sexual exploitation, forced abortion, or electronic-based sexual violence (KSBE). Addressing this impasse, Ibn Taymiyah emphasized a fundamental principle in *Bab al-Ta'zīr*: "*wahuma wajibun fi kulli ma'siyatin la hadda fiha*" (Every act of disobedience/crime lacking a prescribed *hadd* sanction is subject to *ta'zīr*). (Abdussalam bin Abdullah, 1369, p. 163) This principle provides theological and juridical justification for the state in this case, the Indonesian Government to formulate new penal sanctions outside the colonial-era Criminal Code (KUHP) to address the emergency of sexual violence.

Furthermore, the implication of the victim-centered justice paradigm within *ta'zīr* jurisprudence is vividly reflected in the substance of the UU TPKS. While previous law enforcement (retributive justice) frequently positioned sexual violence victims as "witnesses" vulnerable to revictimization, *ta'zīr* jurisprudence regards the victim as the holder of *Haqq al-Adami* (private rights) who must be restored. Ibn Taymiyyah in *As-Siyasah as-Syar'iyah* underscores the ruler's obligation to restore the rights of the oppressed (*radd al-mazhalim*). (Ahmad bin Abdul Halim, 2019, p. 148) Within Indonesia's current legal framework, the principle of *radd al-mazhalim* is institutionalized through mandatory

restitution from the offender to the victim, psychological support, guarantees of non-reoccurrence, and the protection of the victim's identity throughout judicial proceedings. The presence of progressive legislation on sexual violence in Indonesia is not a form of legal secularization, but rather a manifestation of Islamic law's inherent elasticity. Islamic legal scholars view the strict penalization and victim recovery instruments in the UU TPKS as realizations of *maqashid as-syari'ah*, particularly *hifz an-nafs* (protection of life), *hifz al-nasl* (protection of lineage), and *hifz al-irdh* (protection of honor). Thus, the *ta'zir* framework contributes a moral foundation and juridical rationality to criminal law reform in Indonesia, proving that the Sharia never turns a blind eye to the suffering of sexual violence victims, but instead mandates the state to exercise *ijtihad* in formulating the most beneficial and comprehensively protective legal system.

One of the most epistemological achievements of *ta'zir* discourse in Islamic criminal jurisprudence is the doctrine of *tafrid al-'iqab* (individualization of punishment) and the principle of *at-tanasub* (proportionality). The absence of standard benchmarks in *ta'zir* does not grant license to judicial arbitrariness; rather, it demands a comprehensive reading of contextual variables: who the perpetrator is (*hal al-jani*), who the victim is (*hal al-majni 'alayh*), and what the escalation of social harm is (*atsar al-jarimah*). In contemporary Indonesia, the adoption of this proportionality and contextual paradigm finds its most progressive codification in the construction of sanctions within the UU TPKS.

Imam Ibn 'Abidin (d. 1252 AH) in *Radd al-Muhtar 'ala ad-Durr al-Mukhtar* explains the stratification of *ta'zir* sanctions based on the sociological profile of the perpetrator. He affirms that punishment for a public figure, scholar, or community leader who commits an immoral act must be significantly heavier than that for an ordinary citizen, because the hazard lies not merely in the sin itself, but in the abuse of authority and betrayal of public trust (*kbiyanat al-amanah*). This exact rationality was adopted with high precision by the UU TPKS. Under Article 15 of the UU TPKS, the principle of proportionality is upheld through a 1/3 (one-third) sentence enhancement mechanism if sexual violence is perpetrated by figures holding power relations over the victim, such as educators, healthcare workers, public officials, workplace superiors, or core family members.

This power-relation-based sentence enhancement is a tangible manifestation of contextual *siyasah qadhaiyyah* (judicial policy). Leading academic studies from the past five years highlight that sexual violence rarely occurs within a vacuum of equal relations. Frequently, these crimes are facilitated by imbalances in social structures and hierarchies of power. Ibn Qayyim al-Jauziyyah in *I'lam al-Munwaqqi'in* long ago affirmed the principle of *taghayyur al-fatwa bi taghayyur al-azminah wa al-amkinah wa al-ahwal* (the change of fatwas/laws alongside changing times, places, and conditions). Penalization that ignores the element of power-relation exploitation is inherently ahistorical and disproportionate.

Furthermore, the contextuality of punishment in synthesizing *ta'zir* concepts with the UU TPKS also materializes in the diversification of sanctions. Alongside imprisonment and fines, the UU TPKS introduces additional penalties, including revocation of custody rights, forfeiture of proceeds obtained from the crime, and public announcement of the perpetrator's identity. In classical jurisprudence, this strongly aligns with the concept of

ta'zir bi al-tasyhir (public shaming punishment), which was historically applied by Caliph Umar bin Khattab for manipulative crimes hazardous to the broader public.

This synthesis between *ta'zir* and the UU TPKS proves that Islamic criminal law does not always have to manifest as formalistic Sharia labeling at the statutory level (*formal-legalistic*), but can infiltrate national legal substance (*substantive-paradigmatic*). By providing tiered sanctions proportional to the gravity of the crime and contextual to the perpetrator-victim power dynamics, Indonesia's positive legal system has executed one of the most essential mandates of Islamic law: realizing public welfare and tightly sealing structured paths of oppression.

CONCLUSION

Based on the normative-qualitative analysis using a contextual hermeneutical approach to *ta'zir* hadiths, this study concludes with three main points addressing the research questions.

First, the pattern of punishment provision in *ta'zir* hadiths exhibits a very high degree of flexibility, delegated entirely to the discretion of the judge (*ulil amr*). Adopting Syuhudi Ismail's hermeneutical framework, the hadith limiting punishment to a maximum of "ten lashes" cannot be interpreted textually and rigidly as an absolute ceiling for all types of violations; rather, it must be read contextually. The patterns demonstrated by the Prophet and continued by the companions and classical jurists show that *ta'zir* is consistently adjusted according to the severity of the crime, the perpetrator's condition, the victim's loss, and the effectiveness of the punishment in achieving deterrence and moral education.

Second, the absence of standardization (*non-standardization*) regarding the types and extents of *ta'zir* punishments in the *nash* is not a legal vacuum, but rather a methodological rationality and a manifestation of the elasticity (*murunah*) of Islamic law. This rationality is built upon the doctrine of the individualization of punishment (*tafrid al-'iqab*) and proportionality (*at-tanasub*). This methodology enables the judiciary to shift away from mere physical punishment (retributive justice) toward victim-centered justice. In offenses infringing upon private rights (*Haqq al-Adami*), *ta'zir* rationalizes sanctions oriented toward restoration, financial compensation, the protection of human dignity (*hifz al-irdh*), and conflict resolution.

Third, this methodological rationality of *ta'zir* provides a robust epistemological foundation and theological justification for handling sexual violence through the instrument of the UU TPKS in Indonesia. The UU TPKS is not a form of legal secularization, but a modern manifestation of *ta'zir* grounded in *siyasah syar'iyah* and *maqashid as-syari'ah*. The principles of individualization of punishment and proportionality are precisely actualized in the UU TPKS through sentence enhancements based on power imbalances, diversified sanctions (such as asset forfeiture and public identity exposure, which align with *ta'zir bi al-tasyhir*), as well as mandatory restitution and victim recovery as a realization of *radd al-mazhalim* (restoring the rights of the oppressed).

Thus, integrating the philosophy of *ta'zir* into positive law proves that the Islamic criminal system can dialogue harmoniously with modern jurisprudence—providing a

contextual, humane, and victim-centric penal framework for addressing sexual violence in Indonesia.

REFERENCES

- Abdussalam bin Abdullah, I. al-Taymiyah. (1369). *Al-Muharrar fi al-Fiqh 'Ala Madzhab al-Imam Ahmad bin Hanbal. Matba'ah al-Sunnah al-Muhammadiyah.*
- Abu al-'Abbas Syihabuddin Ahmad bin Idris, al-Q. (n.d.). *Anwar al-Furuq fi Anwa' al-Furuq* (Vol. 1). 'Alam al-Kutub.
- Abu al-Hasan Ali bin Khalf, I. al-Battal. (2003). *Syarh Sahih al-Bukhari* (2nd ed., Vol. 8). Maktabah al-Rusyd.
- Ahmad bin Abdul Halim, I. T. (2019). *Al-Siyasah al-Syar'iyyah fi Islah al-Ra'i wa al-Ra'iyyah* (4th ed., Vol. 1). Dar 'Ata at al'Ilm.
- Carolina, N., Saputra, W. A., Nafi'ah, H. H., Merkuri, Y. G., & Bakti, C. P. (2022). Strategi intervensi untuk menekan kasus kekerasan seksual: Isu dan tren. *Jurnal Mahasiswa BK An-Nur: Berbeda, Bermakna, Mulia*, 8(2), 60–65.
- Darsi, D., & Husairi, H. (2019). Ta'zir dalam Perspektif Fiqh Jinayat. *Al-Qisthu*, 16(2), 559785.
- Hamd bin Muhammad al-Khattabi, A. S. (1932). *Ma'alim al-Sunan* (1st ed., Vol. 3). al-Matba'ah al-'ilmiyyah.
- Ibrahim bin Ali bin Muhammad, I. F. (1986). *Tabsirah al-Hukkam fi Usul al-Aqdiyah wa Manahij al-Ahkam* (1st ed., Vol. 2). Maktabah al-Kulliyat al-Azhariyyah.
- Nurisman, E. (2022). Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022. *Jurnal Pembangunan Hukum Indonesia*, 4(2), 170–196. <https://doi.org/10.14710/jphi.v4i2.170-196>
- Rofiq, A., Pujiyono, P., & Arief, B. N. (2021). Eksistensi Tindak Pidana Ta'zir dalam Kehidupan Masyarakat Indonesia. *Journal of Judicial Review*, 23(2), 241–256.
- Saputra, M. T. (2025). Penanganan psikologis terhadap korban kekerasan seksual. *Maliki Interdisciplinary Journal*, 3(1), 635–640.
- Septiani, E., Kholid, M., & Sumardi, D. (2026). Tinjauan Konsep Ta'zir Terhadap Putusan Pengadilan Nomor 12/Pid. Sus/2023/PT. DKI Tentang Tindak Pidana Perdagangan Anak. *Maqasid: Jurnal Studi Hukum Islam*, 15(2), 194–209.
- Sukmawan, Y. A., & Damayanti, D. (2025). Metode penelitian hukum normatif dan empiris sebagai strategi penguatan perspektif kajian ilmu hukum. *Notary Law Journal*, 4(3), 114–128.
- Sulaiman bin al-Asy'ats, A. D. (2009). *Sunan Abi Daud* (1st ed., Vol. 7). Dar al-Risalah al-'Alamiyah.
- Syabrun, J., Wahyudi, F. R., Lumy, B. B. P., Herlino, F., & Hutabarat, F. R. M. (2026). Konsep Dasar Hadist Hukum Pidana (Hadis Tentang Hukuman Zina). *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 4(4), 8157–8168.
- Syarbaini, A. (2019). Teori ta'zir dalam hukum pidana islam. *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan*, 2(2).
- Tarigan, A. A. (2017). Ta'zir dan Kewenangan Pemerintah dalam Penerapannya. *AHKAM : Jurnal Ilmu Syariah*, 17(1). <https://doi.org/10.15408/ajis.v17i1.6223>
- Thohari, H. F. (2018). *Hadis Ahkam: Kajian hadis-hadis hukum pidana Islam (hudud, qishash, dan ta'zir)*. Deepublish.
- Wasman, W. (2014). Hermeneutika Hadis Hukum. *Al-Manahij: Jurnal Kajian Hukum Islam*, 8(2), 151–166.
- Yasir, M., Patimah, P., & Haddade, A. W. (2026). Kejahatan Dalam Perspektif Fikih Jinayah Kontemporer: Tantangan Dan Respons Hukum Islam. *Jurnal Ilmiah Nusantara*, 3(1), 1263–1273.