



Amnesty And Abolition From The Perspective Of Fiqh Jinayah: Implications For The Modern Criminal Justice System

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Abstract

Background. This article discusses the concepts of amnesty and abolition from the perspective of *fiqh al-jinayah* (Islamic criminal law), and their relevance to the dynamics of the modern criminal justice system. In a positive legal system, amnesty and abolition are legal instruments that give the head of state the authority to halt or end criminal proceedings against specific individuals or groups in the public interest, such as political reconciliation or national stability.

Aims. However, in the context of *fiqh jinayah*, similar concepts are found in the form of *'afw* (forgiveness), *ṣulḥ* (reconciliation), and *takwīf al-ḥadd* (suspension of execution), each of which has normative limitations based on the rights of Allah (*ḥuqūq Allāh*) and human rights (*ḥuqūq al-'ibād*).

Methods. This article uses a qualitative-normative approach, with comparative and hermeneutic analyses of classical and contemporary *fiqh*.

Result. The results of the study show that Islam opens space for forgiveness in the criminal realm, especially in the categories of *ta'zīr* and some *qīṣās*, while still emphasizing substantive justice as the main principle.

Conclusion. In the context of the modern criminal justice system, the redefinition of amnesty and abolition within the framework of *maqāṣid al-syarī'ah* is essential to prevent abuse of authority while guaranteeing the rights of victims and the public benefit.

Keywords: fiqh jinayah, amnesty, abolition, Islamic crime, maqāṣid al-syarī'ah, criminal justice system.



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INTRODUCTION

In the dynamics of the modern legal system, especially in the field of criminal law, amnesty and abolition are two essential instruments that are within the area of the authority of the state executive, especially the head of state or president (Scott, 2025). Both fall under the category of prerogatives that allow the termination of criminal proceedings (abolition) or the

legal removal of a criminal act (amnesty) against an individual or group, especially in specific contexts such as political stability, national reconciliation, or humanitarian considerations. In Indonesia, this prerogative is guaranteed by the constitution through Article 14 of the 1945 Constitution of the Republic of Indonesia, which states that the President can grant clemency, amnesty, abolition, and rehabilitation (Rohmah et al., 2021). However, the exercise of this prerogative often triggers public debate on juridical, ethical, and political grounds. On the one hand, it is considered a constitutional outlet to resolve political impasse or social conflict. On the other hand, it is seen as injurious to substantive justice, especially when it is given to perpetrators of serious crimes or those who have close ties to power.

The phenomenon that has occurred in recent years shows that the discourse on amnesty and abolition is not only legalistic, but has become part of a broader moral and social discourse. When a state grants amnesty to someone under investigation or prosecution, or to a group involved in lawlessness in the name of a particular political interest, critical questions arise in society about the fairness of the law. Has justice been served, or is the state creating privileges for certain groups? This is where the tension among the three main poles arises: the interests of the law, which demand consistency in law enforcement; the interests of victims, who are often ignored in the political process; and the interests of the state, which uses legal instruments to stabilize power. In a democracy that upholds the rule of law and the principle of due process, amnesty and abolition decisions grounded in substantive justice values can create a crisis of public trust in the criminal justice system. (SH & Wahyuni, 2021).

Within the framework of Islamic law, especially *fiqh al-jinayah*, which *governs Islamic criminal law, the question of the possibility and justification of granting amnesty and abolition is of great importance and warrants in-depth examination*. Islamic law recognizes pardon (*'afw*) as part of a legal mechanism that allows the waiver or reduction of punishment, especially in cases involving individual rights such as *qiṣāṣ* and *diyat* (Khomsah & Afifah, 2025). In addition, there is also room for *ṣulḥ* (reconciliation) and *siyasah syar'iyah* (shari'i policy) as a form of authority policy in safeguarding the welfare of the ummah. However, *fiqh jinayah* also has strict restrictions on certain delicacies that fall into the category of *ḥudūd*, which are criminal acts with fixed sanctions determined by the sharia and cannot be contested, unless the conditions of proof are not met in *qath'i*. In this context, the granting of abolition or amnesty to the perpetrators of the crime of *ḥudūd*, absolutely without going through a

legitimate legal process, would be contrary to the principle of divine justice, which is the primary foundation in *fiqh jinayah* (Senyonjo, 2024).

The tension between the principle of normative justice in Islamic law and the flexibility of modern legal systems demands the elaboration and reinterpretation of sharia values to provide a just, contextual, and fixed solution within the framework of *maqāṣid al-shari'ah*. *Maqāṣid al-syarī'ah*, as the primary foundation in the development of contemporary Islamic law, emphasizes the protection of the five primary purposes of sharia: religion, soul, intellect, descent, and property. (Suhaili, 2025). In the context of amnesty and abolition, the application of *maqāṣid* can be the basis for assessing whether a decision to pardon the state really brings about the public benefit (*maṣlaḥah 'āmmah*) or actually gives birth to greater *mafsadah* (damage), such as the loss of deterrent effect, injustice to the victim, or the destruction of the dignity of the law itself.

The relevance of this discussion is even stronger because many countries with Muslim-majority populations—including Indonesia—are still struggling to find a common ground between the secular national legal system and Islamic legal values. In contemporary public debate, there is often a dichotomy between "state law" and "sharia law", even though the two can interact harmoniously to fill the policy space through the approaches of *ijtihad* and *siyasaḥ shar'iyyah*. Therefore, scholars of Islamic law need to contribute to formulating a view of Islamic law that is responsive to contemporary issues, including amnesty and abolition.

In this study, the article will examine, normatively and conceptually, the concepts of amnesty and abolition from the perspective of *fiqh al-jinayah*, explore the theological and juridical limits of the practice of forgiveness in Islamic law, and evaluate how these values can be applied or contextualized in the modern criminal justice system. This study will also use the *maqāṣid al-shari'ah* approach to assess whether forms of state pardon, such as amnesty and abolition, can be justified within the framework of benefit and justice, or are contrary to the basic principles of sharia. In the methodological realm, this article adopts a qualitative approach, combining a normative analysis of classical and contemporary *fiqh* texts with a review of judicial practices and state policies in the modern legal system. Thus, this paper is expected to make a theoretical and practical contribution to the development of contemporary Islamic criminal law, as well as provide an ethical framework for the state in using its authority wisely and fairly.

Problem Formulation

1. How are the concepts of amnesty and abolition understood and applied in the positive criminal justice system?
2. What are the basic principles in related to forgiveness or forgiveness for the perpetrators of criminal acts?
3. What is the view of *fiqh jinayah* on the legitimacy and limits of granting amnesty and abolition by state authorities?
4. To what extent can *maqāṣid al-syarī'ah* be used as a basis for assessing amnesty and abolition policies in the modern penal system?
5. What are the theoretical and practical implications of the integration of *fiqh jinayah* values into the contemporary criminal justice system in terms of granting amnesty and abolition?

Research Objectives

1. To explain the concept and legal basis of amnesty and abolition in the positive criminal law system, including the mechanism and scope of its application by the state.
2. To elaborate on the principles of related to forgiveness for the perpetrators of criminal acts, as well as to trace the forms of forgiveness in the Islamic legal tradition.
3. To analyze the view of *fiqh jinayah* on the legality, limitations, and conditions of granting amnesty and abolition within the framework of the rights of Allah (*ḥuqūq Allāh*) and human rights (*ḥuqūq al-'ibād*).
4. To evaluate the role of *maqāṣid al-syarī'ah* in formulating state pardon policies proportionately and contextually in accordance with the principles of Islamic justice.
5. To identify the theoretical and practical implications of the integration of *fiqh jinayah* values for the reform of the modern criminal justice system, particularly in amnesty and abolition policies.

METHODS

This research is a normative-qualitative study with a multidisciplinary approach that combines a normative legal approach and an Islamic approach (*fiqh al-jinayah*). This research aims to examine amnesty and abolition not only as a positive legal product, but also within the epistemological framework of Islamic law and the values of *maqāṣid al-syarī'ah* that accompany it.

The primary data sources in this study consisted of:

1. The primary legal materials are:
 - a) Laws and regulations that regulate amnesty and abolition, such as the 1945 Constitution, the Criminal Code, and related regulations.
 - b) Official texts of presidential decisions, contemporary legal debates, and other state documents.
2. Secondary legal materials, namely:
 - a) Classical and contemporary jihat fiqh literature (such as *Al-Mughni*, *Al-Umm*, *Bidayah al-Mujtahid*, works by Ibn Qudamah, Imam Shafi'i, and Ibn Rushd).
 - b) Modern academic works that discuss amnesty and abolition in the perspective of Islamic law and national law.
 - c) Journal articles, research results, and opinions of scholars and legal experts.
3. Tertiary legal materials, such as legal encyclopedias, dictionaries of Islamic legal terms, and bibliographic guides.

Data collection is conducted through library research, including searches of legal documents and authoritative fiqh texts.

Data were analyzed qualitatively using descriptive-comparative analysis methods, namely:

- a) Systematically describe the definition, legal basis, and practice of amnesty-abolition in the positive legal system;
- b) Compare with the concept of forgiveness and the elimination of punishment in Islamic jihadist fiqh;
- c) Compile a normative synthesis to see the possibility of integration and harmonization of Islamic legal values with modern criminal justice policies.

This analysis also considers the approach of *maqāṣid al-syarī'ah* to assess the benefits and potential losses (*mafsadah*) in implementing amnesty and abolition, from the perspectives of the state, victims, and perpetrators.

Previous Studies

Studies on amnesty and abolition have been widely discussed in the criminal law and constitutional law literature, both in positive and comparative contexts. However, the discussion from the perspective of *fiqh al-jinayah* is still relatively limited and requires further

in-depth exploration. Therefore, it is essential to examine previous research as a conceptual and argumentative foundation.

First, Safitri et al., (2025) in a journal article titled "*Amnesty and Abolition in the Indonesian Constitutional System: The Need for Regulation to Ensure Legal Certainty*", explained that the expansion of the amnesty and abolition functions to the realm of general crimes, including corruption as an extraordinary crime, raises constitutional and ethical dilemmas. The establishment of a special law is seen as urgent to strengthen the system of checks and balances, ensure accountability, and restore the historical functions of amnesty and abolition as instruments of political reconciliation for the stability and safety of the country. The results of this study strengthen the urgency of legal reform in the framework of democratic, just law enforcement. (Safitri et al., 2025).

Second, research by Ariyani and Marlina (2023) in their article titled "*The Concept of Al-Islam and the Restorative Justice Approach in Settlement of Criminal Cases*", stated that in the process of resolving the crime of persecution through restorative justice by bringing together the victim and the perpetrator of the crime to jointly solve the problem until there is no longer a harmed party, in other words the rights of the victim and the perpetrator of the crime are fulfilled in the form of good responsibility, with forgiveness from the victim, so that the perpetrator of the crime is not sentenced. In the concept of forgiveness in Islamic Criminal Law as a form of forgiveness/liberation from the victim against the perpetrator of a criminal act, a process called al-islah is applied, meaning that the perpetrator and the victim are reunited. They agree to reconcile so that the problem can be resolved without proceeding to the Court (Ariyani & Marlina, 2023).

Third, research by Amiruddin and Zainal Asikin (2021) in the book "*Introduction to Legal Research Methods*" It is important to note that criminal amnesty, such as clemency, amnesty, and abolition, are part of the corrective system of criminal law that can provide space for the state to balance legal interests and socio-political interests. However, this research remains positivist and does not incorporate the framework of Islamic law. (Amiruddin & Asikin, 2021).

Fourth, Mira Maulidar (2021) in the article with the title "*Philosophical Correlation Between Restorative Justice and Diyat in the Islamic Criminal Law System*", shows that the mention of restorative justice in Islam basically already exists in Islamic law, this can be seen by the concept of *qishas diyat* and forgiveness and the purpose of restorative justice so that the

perpetrator can be responsible for the losses caused by it to the victim and society. Philosophically, restorative justice has a correlation with the concept of *diyat* in the Islamic criminal law system if it is related to one of the goals of Islamic criminality, which is *al-istiadah* (restorative) as a method of responding to criminal acts by involving warring parties in order to repair the damage. This concept is evident in the existence of the *Diyat* Law as a substitute for *Qisas*. (Maulidar, 2021).

Finally, research by Abdillah & Suryani (2018) in an article titled "*The Model of the Transformation of Fiqh Jinayah into National Criminal Law; Nazhariyat Al-'Uqûbah's Criticism of the Criminal Code Material*" results in the conclusion that the existence of Islamic criminal law has an urgency to be accommodated into national criminal law based on philosophical arguments. Second, the paradigm of positivization of *fiqh jinayah* uses a critical paradigm. Also, the *Maqashidy istishlahy* integration model is the ideal model for integrating *jinayah fiqh* with national criminal law. (Abdillah & Suryani, 2018)

From these previous studies, it can be concluded that no study has specifically and systematically analyzed the position of amnesty and abolition in *fiqh al-jinayah*, highlighting their implications for the modern criminal justice system. This article seeks to fill this gap with a comparative, analytical, and contextual approach grounded in the *maqāsid al-syarī'ah* and the principles of justice.

Theoretical and Conceptual Framework

In the discourse of modern criminal law, the concepts of amnesty and abolition occupy a complex, dialectical position, especially when set against the principles of justice and the rule of law. In general, amnesty refers to the pardon granted by the state to a group of people who have committed a specific criminal offense, usually for political reasons or for a greater national interest. In contrast, abolition refers to the end of criminal proceedings against a particular act or group of perpetrators. (Fadhilah, 2022). These two instruments are not only juridical in size, but also contain ethical, sociological, and even ideological aspects, depending on the context in which they are used. In Indonesia's positive legal framework, amnesty and abolition are within the authority of the President, as stipulated in Article 14, paragraph (2), of the 1945 Constitution, taking into account the considerations of the House of Representatives. (Fauzi, 2021). However, the use of this authority often sparks fierce debate in the public sphere,

primarily when it is associated with politically sensitive cases or those concerning the rights of victims.

The problem will be more complex if it is brought within the framework of Islamic law, especially *fiqh jinayah*, which has its own characteristics in determining the category of criminal acts (*jarīmah*) and the type of punishment. *Fiqh jinayah* divides criminal acts into the categories of *hudūd* (fixed punishment based on nash), *qiṣāṣ-diyāt* (commensurate retribution or payment of *diyat*), and *ta'zīr* (punishment determined by the authority of the judge or the state) (Siregar et al., 2024). In this context, the concept of justice in Islam does not rely solely on formal legal norms but also encompasses moral, social, and spiritual aspects. The two main dimensions that must be understood in *fiqh jinayah* are the division of rights: *ḥuqūq Allāh* (the rights of Allah), which are public and cannot be annulled, and *ḥuqūq al-'ibād* (human rights), which allow for reconciliation or forgiveness by the victim. This category becomes very important in discussing the possibility of amnesty and abolition from the perspective of Islamic law, as it determines the extent to which the state or authority is authorized to grant amnesty.

The conception of *maqāṣid al-syarī'ah*, the primary purpose of Islamic jurisprudence, is a significant meeting point in building a bridge between Islamic criminal law and modern criminal policies such as amnesty and abolition (Sari, 2023). *Maqāṣid al-syarī'ah* places the benefit of the ummah as the main orientation of Islamic law, which includes five main principles: *hifz al-dīn* (protection of religion), *hifz al-naḥs* (soul), *hifz al-'aql* (intellect), *hifz al-nasl* (descent), and *hifz al-māl* (wealth) (Effendi, 2020). In this framework, the granting of amnesty or abolition can be seen as part of *siyasah syar'iyyah* (a legitimate public policy according to shari'i) if it aims to maintain state stability, prevent social unrest, or restore national reconciliation, as long as it does not violate the principles of justice and the rights of victims. The *maslahat* approach in *maqāṣid* allows for the breadth of scholarly *ijtihad* in responding to contemporary dynamics that are not always explicitly found in classical texts.

Furthermore, in Islamic criminal law theory, there is an instrument that can be considered analogously to the concepts of amnesty and abolition, namely the theory of *al-'afw* (forgiveness) (Mulyadi & Sh, 2023). In the context of *ḥuqūq al-'ibād*, as in the case of murder, the victim's family has the right to demand *qiṣāṣ* or grant forgiveness as a form of reconciliation. This mechanism shows that Islam accommodates human and social values in law enforcement, while maintaining the principle of substantive justice. (Wicaksono et al., 2025). On the other hand, in cases of *ta'zīr*, which is the domain of ulil amri's authority, the

state has the freedom to impose or revoke sanctions based on considerations of benefit. So in the case of abolition, as long as an act is not categorized as *hudūd* or does not touch the absolute rights of the victim, the abolition of legal process by the state authorities can be justified in the principle of *siyasah syar'iyah*.

In addition to the theory of 'afw and *siyasah syar'iyah*, *ijtihad* is an important element in responding to the dynamics of the use of amnesty and abolition. *Ijtihad* not only serves as a method of legal exploration of primary sources but also as a means of contextualizing the law so that it remains relevant and solvable to the evolving social reality. In this context, contemporary scholars have developed an integrative approach between *maqāṣid*, *maslahat*, and transitional justice in formulating criminal policies that can respond to the challenges of the times, including in dealing with the polemic of the use of amnesty against perpetrators of human rights violations, or the abolition of the legal process in some instances for reasons of national political stability.

Thus, the discussion of amnesty and abolition in *fiqh jinayah* cannot be separated from a complex, multidisciplinary, and contextual scientific framework. A deep understanding of the structure of norms in *fiqh* is required, including the categorization of criminal acts and inherent rights, as well as the ability to interpret the principles of *maqāṣid* and *maslahat* within the political framework of modern law. A review of the use of this instrument in the present day must consider not only formal legality, but also moral, sociological, and spiritual aspects in order to maintain the integrity of a criminal justice system that is fair, responsive, and oriented towards the public interest in a sustainable manner.

DISCUSSION

The Concept of Amnesty and Abolition in *Fiqh Jinayah*

In *fiqh al-jinayah*, the technical terms "amnesty" and "abolition" are not explicitly found in classical literature, as both concepts derive from the modern positive legal tradition that developed under the nation-state legal system. However, the spirit and principles underlying amnesty and abolition have a conceptual equivalent in classical *fiqh*, primarily through the concepts of forgiveness, peace, and the ruler's (*ulil amri*) legal discretion. This interpretation is important to show the flexibility and adaptive capacity of *fiqh jinayah* in responding to the needs of contemporary justice.

One of the concepts closest to amnesty in *fiqh jinayah* is *AFW*, i.e., forgiveness, especially in the context of the criminal *qishās*. In Islamic criminal law, *qishās* is a form of appropriate retribution for crimes against the soul or limbs. However, Islam gives room for the victim's family (*wali al-dam*) to forgive the perpetrator and replace the punishment of *qishās* with *diyat* (compensation), or even release him altogether without compensation. (Al Ikhsan & Daipon, 2024). The Qur'anic verse confirms this: "*Whoever is forgiven by his brother, let (the forgiver) follow in a good way, and (the forgiven) pay diyat to the one who forgives well.*" (QS. al-Baqarah [2]: 178). Concept *AFW*: *This is not only ethical but also has concrete legal value, namely the termination of the enforcement of punishment at the will of the victim or his heirs.* This shows that *fiqh jinayah* provides considerable space for restorative-based settlements rather than purely retributive.

Besides *AFW*, *fiqh jinayah* also knows the concept *ṣulḥ*, namely peace between the perpetrator and the victim or the disputing party. *Ṣulḥ* is often used as an alternative to imprisonment in minor criminal cases or in cases involving social impacts. (Sugiarto et al., 2022). In the practice of Islamic history, *ṣulḥ* is widely used to defuse conflicts, prevent bloodshed, and maintain socio-political stability. In this context, *ṣulḥ* can be seen as a form of de facto abolition, since the process of peaceful settlement can result in the discontinuation of formal criminal proceedings or the death of sentences. However, *ṣulḥ* remains subject to the principles of sharia and should not be contrary to Allah's absolute rights (*ḥuqūq Allāh*), as in the case of certain *ḥudūd* (Ekaa, 2024).

Regarding the termination of the execution of punishment in some instances, *fiqh* recognizes the doctrine *takwīf al-ḥadd* (suspension or annulment of the sentence *ḥudūd*), which can be done when there is a greater *shubhat* (doubt) or *maslahat* that requires the postponement of the execution (Kanggas et al., 2025). Hadith of the Prophet PBUH, which reads "*Idra'ū al-ḥudūd bi al-shubuhāt*" (avoid the application of *ḥudūd* if there is any doubt), becomes the epistemic basis for this approach. In the modern context, this can be interpreted as a form of judicial discretion or even political authority in stopping criminal proceedings in order to consider the broader interests (Gaddafi, 2023). In classical Islamic history, caliphs or qadhis could postpone or even cancel the implementation of *ḥudūd*, taking into account social conditions, potential conflicts, or the needs of the ummah.

Another concept relevant to amnesty and abolition in the realm of *ta'zīr* is the use of the principle of *istiḥsān* (legal preference) and *Istislāḥ* (Emphasis added). In the *fiqh* of *usul*,

istihsān is understood as a method of ijihad that allows deviation from the general rules to avoid difficulties or achieve greater justice. Meanwhile, *Istislāh* prioritizes consideration of the public interest (*Maṣlahah mursalah*) that is not explicitly defined in the text (CHAPTER, 2023). In this context, policymakers can choose to nullify sentences (abolition) or grant general amnesty (amnesty) as part of a legal policy that prioritizes the benefit, provided it does not conflict with the basic principles of sharia.

The authority to carry out amnesty or abolition structurally in fiqh jinayah is associated with the authority of ulil amri (ruler or political leader) (Razali et al., 2022). In Shari'i doctrine, the ruler has discretion to regulate public affairs and set legal policies, provided they do not conflict with the basic principles of sharia. Siyāsah shar'iyyah is not merely a representation of political power, but is a political practice oriented towards justice, benefit, and public benefit. Therefore, in this context, amnesty or abolition can be a form of implementation of the *shari'iyyah* if it is issued to prevent greater harm (*Dar' al-Mafasid*) or to achieve the common good (Azzahra et al., 2025).

This authority is reflected in the history of classical Islamic leadership, where the caliph or sultan could grant pardons to groups, such as surrendering rebels, or to specific individuals based on privilege. However, this forgiveness is still limited by the provisions of Allah's law (*ḥuqūq Allāh*), which cannot be interfered with by human authority unless its implementation depends on the ruler's decision, as in the case of *ta'zīr*. Therefore, in the context of amnesty and abolition, it is important to distinguish between the rights of Allah and the rights of man, since only human rights can be aborted through mechanisms such as *'afw* or *ṣulh*.

Thus, *fiqh jinayah* provides a rich and adaptive conceptual framework for understanding and accommodating modern legal practices such as amnesty and abolition. Although the term is not used literally, the essence and value it contains—namely, forgiveness, discretion, benefit, and justice—are well known in the treasures of Islamic law. This opens up space for contemporary reinterpretation and *ijtihad* to integrate the principles of *fiqh jinayah* into the modern criminal justice system, both within the Islamic legal systems of Muslim countries and in the broader normative approach to criminal justice reform.

Comparative Studies: *Fiqh Jinayah* vs the Modern Criminal System

In the study of criminal law, both *fiqh al-jinayah* and the modern criminal system share the same orientation and basic principles: maintaining social order and providing legal protection to individuals and society. However, the approaches, legal sources, and mechanisms for implementing amnesty, such as amnesty and abolition, are very different in the two systems.

Characteristics of the Modern Criminal System in Granting Amnesty and Abolition

The modern penal system—such as those in Indonesia, Egypt, Morocco, and other countries—explicitly recognizes the state's authority to grant pardons through the executive branch. In the context of the Indonesian constitution, for example, Article 14 of the 1945 Constitution gives the President the authority to grant amnesty and abolition at the discretion of the House of Representatives. Amnesty is usually granted for political or national reconciliation purposes, as was the case with the Free Aceh Movement (GAM). Abolition, on the other hand, negates the legal process before a verdict is handed down and is more preventive. (Siregar et al., 2024).

In the practice of the modern penal system, the considerations underlying the granting of amnesty and abolition are often pragmatic and political. The state uses its prerogatives to achieve social stability, resolve horizontal conflicts, or make room for democratic transformation. However, this approach can invite criticism if it is not accompanied by accountability and transparency mechanisms, as it can ignore victims' rights, undermine people's sense of justice, and create loopholes in the politicization of the law.

Principles in Fiqh Jinayah

On the other hand, Jannah fiqh has a normative framework that is based on revelation and Sharia rationality. Islamic criminal law divides criminal acts into three broad categories: *hudūd* (fixed punishment for violation of the rights of Allah), *qisās/diyat* (retaliatory punishment related to individual rights), and *ta'zīr* (punishment of the type and size of which is left to the discretion of the judge or ruler) (Muslich, 2025).

In the context of *fiqh jinayah*, the concept of forgiveness has strict limits and cannot be exercised arbitrarily by the state or power holders (*ulil amri*). For example, in cases of *hudūd*, such as adultery, theft, or *qadzif*, forgiveness cannot be granted if the conditions of proof of *shari'i* (*al-bayyinah*) have been met. However, there is room in *fiqh* to stop the practice of

ḥudūd if there is a *syubhat* (doubt) in the proof. In the rules of *fiqh*, it is stated, "*idrā'u al-ḥudūd bi al-syubuhāt*" (*ḥudūd* can be aborted due to doubt).

As for the case of *qīṣās*, the pardon or abortion of the sentence depends largely on the victim's guardian. The state is not authorized to grant abolition or amnesty for the crime of murder if the victim's guardian does not forgive. This shows how strong recognition of individual rights is in *fiqh al-jinayah*, while ensuring participatory justice. (Idami, 2015).

For *ta'zīr*, the state or judge has a vast discretionary space. Therefore, it is in the area of *ta'zīr* that the discourse on amnesty and abolition in the context of *fiqh jinayah* is the most relevant to be studied contextually and in public policy. This discretion can be exercised taking into account *the maqāṣid al-shari'ah and public benefits, including, for example, national reconciliation, reducing the prison population, or pardons at certain religious moments.* (Husairi, 2018).

Convergence and Criticism Directions

Although differing in epistemological foundations, the direction of convergence between *jinayah fiqh* and the modern penal system lies in the spirit of human rights protection, restorative justice, and social reconciliation. In this regard, *maqāṣid al-syarī'ah* plays an important role as a bridge between Islamic legal principles and contemporary legal policy. However, a criticism of the modern penal system is that the pardon mechanisms practiced often ignore the principles of morality and substantive justice. In many cases, amnesty and abolition are used to protect political elites or perpetrators of human rights abuses from legal proceedings. This is undoubtedly contrary to the basic principles of *fiqh jinayah*, which place justice (*'adl*) and individual responsibility as the main elements.

On the other hand, *fiqh jinayah* was criticized for being rigid and less adaptable to contemporary socio-political complexities. Therefore, the actualization of *fiqh jinayah* in the context of the modern state requires a *maqāṣidī* approach that considers *maslahat*, as well as integration with the principles of the national penal system.

In contemporary criminal law, the concepts of amnesty and abolition have become legal instruments used by the state to halt prosecution or the imposition of punishment for specific criminal acts. The use of these policies is generally based on political, social, or humanitarian considerations, as well as on serving as an instrument in the process of national reconciliation or democratic transition. However, this practice also raises issues of both juridical and moral

justice (Daming, 2012). In a positive criminal law system, such as those in Indonesia, Egypt, or Morocco, amnesty and abolition are regulated in the constitution, laws, and regulations. In Indonesia, Article 14, paragraph (2) of the 1945 Constitution gives the President the authority to grant amnesty and abolition with the consideration of the House of Representatives. This practice is also adopted in Egyptian and Moroccan law, where the head of state has full authority to grant collective and individual pardons in certain situations, such as political conflicts or humanitarian considerations (Nasution, 2023).

Amnesty usually refers to the removal of the legal consequences of certain criminal acts, especially those of a political nature or involving a broader national interest. Abolition, meanwhile, is the termination of the prosecution process for a criminal act, even before it reaches the courts. From the perspective of the modern criminal system, especially in democratic countries, these two mechanisms are used as criminal policy to address conflicts that cannot be resolved by repressive legal approaches alone. (Dafit Riadi, 2025). However, in practice, amnesty and abolition are often politicized or used as instruments of political protection, both against state actors and against specific groups with close ties to power. This phenomenon has led to criticism from civil society and academia, who consider that the policy ignores the principles of substantive justice and the rights of victims.

In contrast to the modern penal system, which is positivist and legalistic, *fiqh jinayah*, or Islamic criminal law, bases its regulation on divine principles rooted in the Qur'an and Sunnah, and is explored through the methodology of *ijtihad* by the *fuqaha*. In *jinayah fiqh*, there is a division between the rights of Allah (*ḥuqūq Allāh*) and human rights (*ḥuqūq al-'ibād*), which implies limitations and leniency in the application of punishment. (Sari, 2023). For example, in the case of *qiṣāṣ*, the right to grant forgiveness is in the hands of the victim or his heirs, not in the authority of the state. This is in contrast to state amnesty in positive law, which could have abolished punishment without the victim's consent. The concept of *'afw* in *fiqh* reflects deep moral and spiritual values, namely the virtue of forgiving to obtain Allah's pleasure, while still considering the victim's justice and the prevention of social harm.

The concept of *ṣulh*, or peaceful settlement, is also known in *fiqh* as a legitimate non-litigation alternative for resolving criminal cases, especially those classified as *ta'zīr*. However, *ṣulh* does not necessarily absolve the perpetrator, but rather constitutes an agreement that must meet the principles of willingness and justice. In this context, jihadist *fiqh* emphasizes the balance between the public good (*maṣlahah 'āmmah*) and individual rights, and rejects

practices that prioritize political interests over substantive justice. Meanwhile, in the modern criminal system, national reconciliation through amnesty can be carried out top-down, even without the direct involvement of the victim. (Herlangga, 2025)

In a comparative study of *fiqh jinayah* and modern criminal law, it appears that in fiqh, the consideration of forgiveness (either through *'afw*, *ṣulh*, or *siyasah syar'iyah*) is closely related to *maqāṣid al-syarī'ah*, which is the protection of religion, soul, intellect, property, and descent. This *maqāṣid* is a parameter for formulating and justifying criminal law policies that are more preventive and corrective, rather than merely repressive. When the state or imam (*ulil amri*) grants forgiveness, it is not done solely because of power, but based on the consideration of the legitimate benefits of sharia. This is relevant to the theory of *siyasah syar'iyah*, which opens the door for state authorities to adopt legal policies that are not explicitly mentioned in the nash but are in line with sharia values and public welfare.

In contrast, in the modern secular legal system, amnesty and abolition are often situated within the framework of legal politics, without recourse to spiritual or transcendent values. Although it remains limited by the checks-and-balances mechanism between the executive and the legislature, there are not a few cases in which the amnesty policy is used as a tool of political compromise that ignores the values of substantive justice. In this context, *fiqh jinayah* offers a more moralistic and holistic paradigm, taking into account not only the interests of the perpetrator and the state, but also those of the victim, society, and God, the supreme source of law.

This comparative study shows that there are epistemological and axiological differences between *fiqh jinayah* and the modern penal system. If, in the modern system, amnesty and abolition tend to be political and instrumental, then in *fiqh al-jinayah*, the concept of forgiveness is bound by a stricter framework of *maqāṣid al-syarī'ah* and moral-spiritual values. Therefore, the integration of these two systems in the context of modern Muslim countries such as Indonesia needs to be carried out carefully and based on the principles of restorative justice and respect for the rights of victims. Efforts to reconstruct national criminal law by taking into account the values of *fiqh jinayah* can strengthen the moral legitimacy of the criminal justice system and ensure that the pardon policy is not used arbitrarily or undermines the public's sense of justice.

Critical Analysis and Policy Implications

State pardon policies in the form of amnesty and abolition occupy a strategic position in the discourse of modern criminal justice. On the one hand, this policy is an instrument of the state in resolving legal or political conflicts peacefully, avoiding the escalation of social tensions, and opening up space for national reconciliation. On the other hand, from the perspective of Islamic law, this mechanism should be reviewed within the framework of *fiqh al-jinayah*, which emphasizes the balance between justice, victim protection, and the public good.

1. Amnesty and Abolition in the Dialectic of Fiqh Jinayah

In the framework of *fiqh jinayah*, pardon in criminal cases is known as *'afw*, which is the abolition or forgiveness of the perpetrator, either by the victim, the victim's guardian, or by the ruler in a specific case. The granting of amnesty and abolition in the modern state system shares characteristics with *'afw*, but the scope and implementing actors differ substantially. Therefore, the legal analogy (*qiyās*) of the concept of *'afw* must be done carefully so as not to violate the basic principles of Islamic criminal law.

Sari, (2023) in his book entitled *Fiqh Jinayah* states that in *Fiqh Jinayah*, there are three types of criminal sanctions, namely:

1. *Hudūd*: fixed sanctions set by Allah SWT, such as adultery, *qadzaf*, theft, robbery, and drinking *khamr*. In this category, the jurists agree that if all elements of the crime and the evidence have been met, there should be no forgiveness from the state (ruler), including amnesty or abolition. This is because of its nature as *a ḥaqq Allāh* (God's right) that cannot be challenged by human authority.
2. *Qiṣāṣ wa Diyat*: retaliatory punishment or compensation for the crime of murder or persecution. In this case, Islam provides space for the victim's guardian to grant forgiveness (*'afw*) or accept *diyat* (compensation) as a form of peaceful settlement. The state does not have the authority to expunge the crime without the victim's guardian's permission.
3. *Ta'zīr*: sanctions that are not determined by the nash, and are left to the discretion of the judge or state authorities. In this region, the room for pardons by the state, including amnesty and abolition, remains open as long as they take into account *maslaḥah 'āmmah* and do not conflict with the principles of justice.

Thus, normatively, pardons by the state in the form of amnesty and abolition are valid only within the scope of *ta'zīr* and in the case of *qiṣāṣ* if the victim's guardian consents. This

means that the policy cannot be applied comprehensively in all criminal cases within the framework of Islamic law.

Criticism of the Practice of Amnesty and Abolition in the Modern System

In practice, the granting of amnesty and abolition often provokes criticism because it can undermine substantive justice values, mainly if carried out without the participation of victims or the community. For example, in cases of gross human rights violations or corruption, granting pardons without accountability can create distrust of the criminal justice system and exacerbate the collective wounds of society.

From the perspective of *maqāṣid al-syarī'ah*, justice (*'adl*) and public benefit (*maṣlahah 'āmmah*) are two main principles that must be maintained in all legal policies. Therefore, any policy of pardon must be strictly tested to determine whether it is in line with the protection of the five main objectives of the *Shari'ah*: religion (*al-dīn*), soul (*al-nafs*), reason (*al-'aql*), offspring (*al-nasl*), and property (*al-māl*). If forgiveness actually damages the social order or ignores the rights of the victim, then *maqāṣidī*, the policy loses moral and sharia legitimacy.

In addition, it should be noted that in some cases, amnesty and abolition are used by the ruler as political tools to protect his allies or cover up abuses committed by the power elite. This is in stark contrast to the spirit of *siyasah shari'a*, which demands that rulers act in the interests of the people and uphold justice in a fair, transparent, and accountable manner.

Implications for Modern Criminal Justice System Reform

The practical implications of this study suggest that the modern criminal justice system needs to adopt the principles of *fiqh in the context of jinayah*. In the context of countries with a majority Muslim population or that use Islamic law as the source of law, it is important to establish normative parameters that distinguish between:

1. Cases that allow amnesty or abolition, such as misdemeanors or administrative offenses in the category of *ta'zīr*, which are based on considerations of social welfare and rehabilitation.
2. Cases that cannot be annulled by the ruler, such as serious crimes against life or honor that have met the requirements of shari'i proof, are included in the realm of *hudūd* and *qiṣās*.

Criminal justice reform also demands the establishment of mechanisms to ensure victims' participation in the pardon process. The principle of restorative justice in modern law has a common point with the concept of *'afw in Islam, which emphasizes the restoration of social relations through awareness, apology, and reparations rather than the mere abolition of crimes.*

In addition, integrating *maqāṣid al-syarī'ah* into modern criminal justice policy can serve as a robust normative framework for assessing whether a policy of pardon actually creates justice and benefit, or rather perpetuates structural injustice.

Policy Recommendations

From the results of this analysis, several policy recommendations can be proposed:

1. The application of amnesty and abolition should be limited to cases that fall within the territory of *ta'zīr* or criminal areas that allow for sharia reconciliation.
2. The participation of victims and communities should be a key component of the forgiveness process, in line with the principles of *'afw* in Islam and the restorative justice approach.
3. State institutions, including the executive and legislature, should use *maqāṣid al-syarī'ah* as a normative guideline in formulating amnesty policies in line with the values of justice, welfare, and protection of human rights.
4. Firm and transparent regulations are needed in the process of granting amnesty and abolition, including public testing, judicial oversight, and the involvement of Islamic legal experts in the process of legislation and policy evaluation.

If you would like this section further developed into a journal or book manuscript, I am happy to help you compile positive legal appendices, case examples, or cross-country comparative analyses (e.g., Egypt, Saudi Arabia, Indonesia).

The discourse on amnesty and abolition in the modern criminal law system requires a critical study from the perspective of *fiqh jinayah*, given the fundamental differences between the characteristics of humanistic-secular positive law and Islamic fiqh, which is derived from revelation and considers transcendental values. *Fiqh jinayah* has a distinctive system of criminal classifications: *hudūd* (fixed punishments prescribed by Allah), *qiṣās* (appropriate retribution for a crime against the body or life), and *ta'zīr* (punishments imposed by a judge or ruler to protect public welfare). All three have different influences on the acceptance of the

concepts of amnesty and abolition. It is in this context that a critical analysis of the legality and implementation of amnesty and abolition from the perspective of *fiqh* needs to be studied more deeply in order to formulate the implications of policies that are just, beneficial, and in accordance with the spirit of *maqāṣid al-syarī'ah*.

First of all, amnesty and abolition, as instruments in the modern criminal justice system, are forms of pardons or the elimination of legal processes by the state for specific criminal acts committed by individuals or groups. In Indonesian law, authority rests with the President under Article 14 of the 1945 Constitution, with the Supreme Court (for clemency) or the House of Representatives (for amnesty and abolition) consulted. In a positive legal system, such policies are usually applied based on political interests, national reconciliation, conflict resolution, or in special situations such as transitions of government or the fulfillment of human rights. However, it is not uncommon for amnesty and abolition policies to be criticized because they have the potential to deny a sense of justice for victims, be misused to protect state criminals, and weaken the rule of law.

In *fiqh jinayah*, the concepts of amnesty and abolition are not known in technical terms. However, their substance can be found in some *shari'i* mechanisms such as *'afw* (forgiveness), *ṣulh* (peaceful reconciliation), or even *takwīf al-ḥadd* (cessation of the practice of *ḥudūd* due to *syubhat*). However, *fiqh* is very strict in distinguishing between the categories of criminal acts. In the case of *ta'zīr*, the state authority (*ulil amri*) has considerable discretion in imposing, suspending, or abolishing punishment based on the consideration of *maslahat*. Therefore, in this space, amnesty and abolition are possible, as long as they do not conflict with the principles of justice and the public interest.

On the other hand, in the category of *ḥudūd*, which is the right of Allah, *fiqh* is very strict in its proof, and its implementation should not be interfered with by any authority once the conditions have been met. Pardons or expungements of punishment in this case cannot be carried out by the state. However, if there is a *syubhat* or ambiguity in the proof, then the performance of the *ḥudūd* can be aborted. The principle of "*idrā'ū al-ḥudūd bi al-syubuhāt*" (abort *hudud* for *syubhat*) emphasizes the cautious attitude in the application of this fixed criminal law. Therefore, abolition or amnesty is only possible if a criminal act has not met the elements of *qath'i* proof.

In the case of *qisās*, *fiqh* gives authority to the victim's guardian to forgive or accept *diyat* (compensation). That is, forgiveness in *qisās* is not the authority of the state, but a private

right (*ḥuqūq al-'ibād*) that is inherent on the part of the victim. The state only functions as a facilitator of the legal process and implements decisions. Therefore, the state cannot grant an abolition or amnesty for a crime that falls within the *qiṣāṣ* except with the full consent of the victim's guardian. This confirms that justice in *fiqh al-jinayah* pays excellent attention to the balance among individual (victim) rights, social responsibility, and transcendental values.

From a legal policy perspective, this sends an important message: the reform of the modern criminal justice system must strike a balance between the principle of forgiveness (social reconciliation) and justice for victims. The granting of amnesty and abolition should not be based solely on political considerations, but on the principles of substantive justice, the public interest, and accountability. In this context, *the maqāṣid al-syarī'ah, which include the protection of religion, soul, intellect, descent, and property, should serve as a reference in formulating the moral and ethical parameters of the state's amnesty policy.*

Maqāṣid al-syarī'ah can also be used to construct an evaluative approach to amnesty and abolition policies, for example: does the decision safeguard people's lives from larger conflicts? Does it provide social tranquility and avoid potential for revenge? Does it repair the damage to social structures due to crime or human rights violations? If the answer is positive and supported by the mechanisms of transparency, public consultation, and the restoration of victims' rights, then amnesty and abolition can be considered a beneficial and valid policy according to Sharia in the context of criminal *ta'zīr*.

As a practical implication, modern criminal law systems in Muslim-majority countries (such as Indonesia, Egypt, or Morocco) need to design an inclusive and just pardon format. The adoption of *fiqh jinayah* values, especially the concepts of 'afw, ṣulḥ, and the protection of victims' rights, can complement the positive legal mechanism to make it more humanistic and religious. In addition, regulations regarding amnesty and abolition need to be accompanied by social impact evaluations and public oversight to prevent politicization of policies. This not only maintains the accountability of the justice system but also ensures that the function of reconciliation is carried out without compromising the value of justice and substantive truth. Thus, in the approach of *fiqh jinayah* that is integrated with *maqāṣid al-syarī'ah*, amnesty and abolition are not taboo, but instruments that can be used under certain conditions. However, its use must be guided by the principle of justice, which balances individual rights, social needs, and the common good, and kept away from momentary political interests. *Fiqh jinayah*, in this

case, makes an important contribution to building a criminal justice system that is more just, humane, and in line with divine values.

CONCLUSION

A study of amnesty and abolition from the perspective of *fiqh jinayah* shows that although the two concepts are not terminologically known in the treasures of classical Islamic criminal law, their equivalents can be found in forms such as *'afw* (forgiveness), *ṣulḥ* (reconciliation), *takwīf al-ḥadd* (the cessation of the execution of *hudūd* due to *shubhat*), as well as the *istihsan* and *istislah* approaches in *ta'zīr*. This confirms that *fiqh jinayah* has the theoretical flexibility to respond to social needs and the dynamics of criminal policy through the *maqāṣid al-syarī'ah* approach.

In the perspective of Islamic criminal law, restrictions on state pardons, such as amnesty and abolition, do not rest on principled prohibitions but on the regulation of victims' rights and the limits of the sanctity of Allah's law (*ḥuqūq Allāh*). State forgiveness is only allowed in cases of *ta'zīr* that are administrative and can be changed according to the policy of *siyasaḥ shar'iyyah*. On the other hand, in the case of *qiṣāṣ*, the authority to grant forgiveness lies with the victim's guardian, and in *hudūd*, the execution of the law cannot be stopped if it meets the requirements of valid proof and there is no *syubhat*.

The comparison between *fiqh al-jinayah* and the modern penal system highlights fundamental differences in the sources of legitimacy, the orientation of justice, and the position of the victim. In the modern system, amnesty and abolition are often associated with political dynamics and national reconciliation, and can even potentially harm victims' justice and the rule of law. In *fiqh*, transcendent justice, protection of victims, and public benefit are the main principles that bind the authorities in granting forgiveness.

Recommendations

1. The recontextualization of the concept of forgiveness in *fiqh jinayah* needs to be developed to respond to the challenges of the modern penal system, while maintaining a balance between divine justice (*ḥuqūq Allāh*) and social justice (*ḥuqūq al-'ibād*).
2. The implementation of amnesty and abolition in the context of Muslim countries should take into account the principles of *maqāṣid al-syarī'ah* and the concept of *maslahat* in an

integrative manner, so as not only to reflect short-term political interests, but also to ensure restorative justice and dignified reconciliation.

3. There is a need for a fair and accountable criminal policy mechanism, both in the form of state amnesty review institutions and shura forums involving scholars, victims, and civil society to provide ethical, moral, and legal considerations before amnesty or abolition decisions are issued.
4. National criminal law reform, especially in Muslim-majority countries such as Indonesia, needs to open up an integrative space for the norms of fiqh jinayah that are beneficial and contextual, without ignoring the principle of substantive justice that is the soul of the Islamic legal system.
5. Further studies need to be carried out in a multidisciplinary manner, involving aspects of law, theology, sociology, and public policy to evaluate the effectiveness of granting state pardons in building a criminal justice system that is fair, civilized, and responsive to Islamic values.

Thus, the concepts of amnesty and abolition can be positioned as legitimate and functional legal instruments, provided they are situated within the framework of maqāṣid al-shari'ah and the values of Islamic justice, which are integral, balanced, and humanistic.

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