

An Examination of Attempted Murder.... (Muhammad Al Amin Bancin & Sudirman Suparmin)

An Examination of Attempted Murder in Islamic Criminal Law

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Abstract. This research examines attempted murder (gatl al-amd) in Islamic criminal law, which is considered a serious offense with strict legal consequences. In Islamic law, the intention (niyyah) and concrete action to kill someone are seen as morally and legally equivalent to the successful act of murder, referring to the principles of protection of human life (hifz al-nafs) and justice ('adl). Attempted murder can arise in a variety of situations, including physical attacks with weapons or other life-endangering devices. This research explores the main criteria in assessing attempted murder, namely the existence of an intention to kill as well as concrete actions to achieve that goal. Based on a normative juridical approach and analysis of primary legal texts, the study found that Islamic law provides for proportionate punishment while taking into account factors such as the intention of the perpetrator, the condition of the victim, and the social context of the event. In addition, the principle of reconciliation in Islamic law emphasizes the need for a fair and balanced solution in dealing with cases of attempted murder. These findings are expected to enrich the understanding of the implementation of justice in Islamic criminal law as well as its relevance in the context of modern criminal law Keyword: Attempt; Criminal; Islamic; Murder.

1. Introduction

Attempted murder is a life-threatening act and is taken very seriously especially when viewed from the perspective of Islamic law. This act, even if it does not achieve its goal, is still seen as a grave violation of the main principles upheld in Islam, this is what has come to be known as "*Maqasid Sharia*". Simply put, maqasid sharia encompasses five main objectives: protecting religion (*hifz al-din*), soul (*hifz al-nafs*), intellect (*hifz al-'aql*), offspring (*hifz al-nasl*), and property (*hifz al-mal*). Of these five aspects, the protection of the soul occupies a very important position, emphasizing that efforts that endanger or threaten a person's life are contrary to Islamic teachings. Therefore, the act of attempted murder, even if it only crosses the mind, remains part of the attention and sanctions that are quite serious in Islam.¹

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¹ Riski Maulana and Sudirman Suparmin, "The Medan City Drainage Development Policy Review of Al-Maqashid Sharia Theory," *Law Development Journal* 5, No. 3 (September 8, 2023): P. 287–300, <u>https://doi.org/10.30659/ldj.5.3.287-300</u>.



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The tragic incident that happened to the late Sheikh Ali Jaber on September 13, 2020 in Bandar Lampung illustrates the real threat of attempted murder. In this case, Sheikh Ali Jaber, a prominent religious figure, was stabbed by the perpetrator AA (Alfian Andiran) while giving a tausiah at a mosque. The perpetrator was sentenced to four years' imprisonment, a lighter sentence than the prosecutor's recommendation of ten years. This verdict shows the importance of balance in providing fair and proportional punishment for acts that threaten someone's life.

In the Islamic legal system, attempted crimes are not necessarily subject to fixed penalties such as hadd or *qisas*, which are applied to completed or executed crimes. Instead, punishment for attempted criminal acts is provided in the form of *ta'zir*, which allows flexibility for the judge to adjust the sanction according to the circumstances, social impact, and seriousness of the offender's intentions. *Ta'zir* does not have rigid rules of punishment, which allows for a more contextual approach, such as advice to sensitize the offender, threats to deter future misconduct, or even exile to remove the offender from an environment that could trigger similar acts. In fact, in particularly dangerous cases, *ta'zir* can include severe punishments that are expected to have a deterrent effect while keeping the community safe.

Scholars, including Abd al-Aziz Amir, mention that *ta'zir* punishment includes a variety of approaches, ranging from forms of advice, threats, exile, to other severe punishments, depending on the intention and degree of harm of the act committed by the offender. In the Islamic view, punishment is not only intended to punish the offender, but also to educate, prevent future criminal acts, and ensure the security and well-being of the wider community.²

Through this research, the author will delve deeper into how Islamic law views attempted murder, focusing on the philosophical basis of *maqasid sharia* values and the application of *ta'zir* as an effort of prevention and social protection. This research not only aims to explain the concepts of Islamic law related to attempted criminal offenses, but also to show how the principles of justice and security can be maintained through the application of appropriate, fair, and educative punishment in the context of Islamic law. Thus, this research is expected to provide a deeper insight into the importance of a contextual and responsive legal approach in maintaining social stability and order in accordance with Islamic values.

2. Reaserch Methods

The research method used in this research is the library research method. This literature study aims to collect and analyze secondary data that will be used as a theoretical basis related to attempted murder in Islamic criminal law. The secondary data is obtained through a review of various literature sources, such as books, scientific journals, legal documents, laws and regulations, court decisions, and opinions of legal experts relevant to the research topic.³

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² Sudirman Suparmin, "Peran Maqasih Syariah Dalam Kehidupan - Repository UIN Sumatera Utara," *Uinsu.ac.id* 4, No. 1 (2017), <u>http://repository.uinsu.ac.id/2914/1/Maqasid%20Syariah%20-%20Copy.pdf</u>.

³ Iman Jalaludin Rifa'i et al., *Metodologi Penelitian Hukum* (Sada Kurnia Pustaka, 2023).



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As part of the normative juridical approach, this research focuses on document review to trace the understanding of Islamic law on attempted murder, which includes the study of legal rules, sharia rules, and juridical principles described by scholars. This normative juridical research can also be categorized as dogmatic legal research because it focuses on the study of legal theories and principles underlying the criminal act of attempted murder, as well as conceptual and applicative differences in Islamic criminal law compared to positive law.⁴

3. Result and Discussion

3.1. Concept of Islamic Criminal Law

Islamic criminal law, as an integral part of the Islamic legal system, offers a unique approach in dealing with crime and upholding justice. The concept not only focuses on the criminal act and the sanctions attached to it, but also emphasizes moral values, ethics, and principles of justice sourced from the teachings of the Qur'an and Hadith. Islamic criminal law serves as a reflection of the social and moral norms upheld in Muslim societies.⁵

In Indonesian positive law, attempted criminal offenses are regulated in Article 53 of the Criminal Code which emphasizes that acts that show malicious intent and preliminary actions towards a crime are still punishable, even if they are unsuccessful. This aims to protect the public and provide a deterrent effect on criminals. Article 53 of the Criminal Code confirms that attempted acts that show malicious intent and preliminary steps towards a crime are punishable, even though the crime has not been completed. By regulating the elements of intent, commencement of execution, and failure due to external factors, this article serves as a preventive measure and deterrent effect, protecting society from potential harm even before a crime occurs.⁶

Meanwhile, Islamic criminal law can be divided into two main categories: *hudud* and *ta'zir*. *Hududud* is a type of crime that has a sanction expressly determined by *sharia*, such as theft (*sariqah*), adultery (*zina*), and murder (*qatl*). The punishment for these crimes is considered part of Allah's right, so its implementation cannot be deferred. In this case, *hudud* punishment serves as a strong deterrent measure, given the severity of the consequences faced by the offender. For example, the sanction for theft can be hand-cutting, which is intended to create a deterrent effect and protect public property.⁷

On the other hand, ta'zir covers criminal acts that have no fixed punishment in sharia. Decisions regarding ta'zir punishments are left entirely to the judge, who must consider the social and moral context in determining sanctions. This allows for flexibility in law enforcement, given that each situation can have different nuances. Ta'zir aims at the

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⁴ Suyanto SH., *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris Dan Gabungan* (UNIGRES PRESS, 2023).

⁵ H. Hassan, "Review: Islamic Law: Theory and Practice: Islamic Law: Theory and Practice," *Journal of Islamic Studies* 13, No. 1 (January 1, 2002): P. 50–51, <u>https://doi.org/10.1093/jis/13.1.50</u>.

⁶ Dodi Ksatria Damopolii, "Percobaan Melakukan Kejahatan Menurut Pasal 53 Kitab Undang-Undang Hukum Pidana," *Lex Administratum: Jurnal Elektronik Bagian Hukum Administrasi Negara Fakultas Hukum Unsrat* 4, No. 2 (February 11, 2016).

⁷ Arafa MA, "Islamic Criminal Law: The Divine Criminal Justice System between Lacuna and Possible Routes," *Journal of Forensic and Crime Studies* 2, No. 1 (March 2018), <u>https://doi.org/10.18875/2638-3578.2.104</u>.



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rehabilitation of offenders and encourages them to correct behavior, rather than simply providing punishment.⁸

The importance of intention in Islamic criminal law cannot be ignored. In the Islamic perspective, intention is considered the main factor that determines the law of an action. As stated in the Hadith of the Prophet Muhammad SAW, *"The deed depends on the intention"* (HR. Bukhari and Muslim). Thus, the good intention of the perpetrator can influence the legal assessment of the act committed, indicating that Islamic criminal law places great emphasis on individual morality.⁹

The *maqasid sharia* principle is also the foundation of Islamic criminal law, which aims to protect five fundamental aspects of human life: religion (*hifz al-din*), soul (*hifz al-nafs*), intellect (*hifz al-'aql*), offspring (*hifz al-nasl*), and property (*hifz al-mal*). In this context, the protection of the soul is a top priority. Islamic criminal law is designed to protect individuals from threats that can endanger their lives. As stated by Al-Ghazali, any act that damages the human soul is considered a serious violation of the principles of sharia.¹⁰

Furthermore, Islamic criminal law emphasizes rehabilitation and education as the primary goals, rather than mere retribution. This concept supports the creation of a just and prosperous society, where every individual has an awareness of their social and moral responsibilities.¹¹ In Al-Qardawi's view, the enforcement of criminal law in Islam is not only to punish, but also to educate and correct individuals so that they can contribute positively to society.

Thus, the concept of Islamic criminal law is a comprehensive and profound system, integrating the principles of justice, morality, and rehabilitation. In this context, Islamic criminal law does not only function as a rule, but as a guide that emphasizes the importance of noble values in social life, as well as providing direction to achieve welfare and justice for mankind.¹²

3.2. Attempted Murder in Islamic Criminal Law

Attempted murder, as a serious crime, has a firm legal foundation in the Islamic penal system. In this context, Islamic law not only views the final act of successful murder, but also recognizes the intention and attempt to commit murder as a sanctionable offense. This

⁸ Rahman Rahman, "The Concept of Al-Amwal in the Perspective of Contemporary Islamic Law," ASASI: Journal of Islamic Family Law 4, No. 1 (October 23, 2023): P. 1–19, <u>https://doi.org/10.36420/asasi.v4i1.427</u>.

⁹ Eddy Marek, Norma Hukum Yang Tidak Adil Suatu Tanggapan Kritis Terhadap Diskursus Antara John Finnis Dan Robert Alexy (PT Citra Aditya Bakti, 2022).

¹⁰ Miftahul Amri, "Konsep Maslahat dalam Penetapan Hukum Islam (Telaah Kritis Pemikiran Hukum Islam Najamuddin At- ThuFi)," *Et-Tijarie: Jurnal Hukum Dan Bisnis Syariah* 5, No. 2 (December 4, 2018), <u>https://doi.org/10.21107/ete.v5i2.4585</u>.

¹¹ Marian Liebmann, *Restorative Justice: How It Works* (London: Philadelphia: Jessica Kingsley Publishers, 2007).

¹² Israr Hirdayadi and Hera Susanti, "Diversi Dalam Sistem Peradilan Pidana Anak di Indonesia dan Tinjauannya Menurut Hukum Islam," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 6, No. 2 (December 4, 2018), <u>https://doi.org/10.22373/legitimasi.v6i2.3954</u>.



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reflects the important principle in Islamic law that the intention and attempt to commit a crime are part of the moral and legal responsibility of the individual.¹³

Theologically, Islamic law understands that the act of murder, whether successful or attempted, is very detrimental to society and contradicts the purpose of sharia to protect the soul (*hifz al-nafs*). In the Qur'an, Allah SWT affirms, "*And kill not the soul which Allah has forbidden, except for a just cause*" (QS. Al-Isra: 33). This verse shows that human life has a very high value and must be protected, including from the threat of attempted murder.¹⁴

In the context of criminal law, attempted murder in Islam is categorized as an act that can be subject to *ta'zir* sanctions, because not all forms of attempts can be viewed as hudud crimes that have fixed sanctions. *Ta'zir* sanctions provide flexibility to the judge to assess and determine the appropriate punishment according to the context and nature of the offense, while considering the intention and impact of the act.¹⁵

Islamic criminal law stipulates that the punishment for attempted murder should be proportionate and reflect the seriousness of the act committed. When the offender attempts to kill but fails, the sanction will not be as severe as that for successful murder, but it should still have a deterrent effect and remind the offender of the consequences of their actions. This is in line with the objectives of maqasid sharia which focus on the protection of the soul and the welfare of society.¹⁶

One of the interesting aspects of attempted murder in Islamic criminal law is the emphasis on rehabilitation. Islamic law serves not only as a tool to punish, but also as a means to correct the offender's behavior. In many cases, attempted murder offenders can be given the opportunity to improve themselves and reintegrate into society, in accordance with the principles of restorative justice that are gaining increasing attention in contemporary legal discourse.¹⁷

Furthermore, it is important to understand that attempted murder, while considered an unsuccessful attempt, still has significant psychological and social repercussions. In this regard, communities should view such acts as a warning that there are deeper issues that need to be addressed, such as interpersonal conflict or social injustice. As such, prevention of attempted murder should be a priority, involving education and dialogue as part of a broader solution.¹⁸

¹³ Muh. Tahmid Nur, "MASLAHAT DALAM HUKUM PIDANA ISLAM," *Jurnal Diskursus Islam* 1, No. 2 (August 29, 2013): P. 289–314, <u>https://doi.org/10.24252/jdi.v1i2.6633</u>.

¹⁴ Sudirman Suparmin, "Peran Maqasih Syariah Dalam Kehidupan," *Al-Kaffah: Jurnal Kajian Nilai-Nilai Keislaman* 4, No. 1 (June 2016): P. 91–104.

¹⁵ M. Abdul Kholiq, "Kontroversi Hukuman Mati Dan Kebijakan Regulasinya Dalam RUU KUHP (Studi Komparatif Menurut Hukum Islam)," *Jurnal Hukum IUS QUIA IUSTUM* 14, No. 2 (March 21, 2007): P. 185–209, <u>https://doi.org/10.20885/iustum.vol14.iss2.art1</u>.

¹⁶ Vera Chatuningtias Safitri, "Penambahan Sepertiga Hukum Bagi Pelaku Tindak Pidana Perdagangan Orang Perspektif Hukum Pidana Islam," *Al-Jinayah: Jurnal Hukum Pidana Islam* 2, No. 1 (June 20, 2016): P. 158–177, <u>https://doi.org/10.15642/aj.2016.2.1.158-177</u>.

¹⁷ Julita Melissa Walukow, "Perwujudan Prinsip Equality Before the Law Bagi Narapidana di dalam Lembaga Pemasyarakatan di Indonesia," *LEX et SOCIETATIS* 1, No. 1 (March 31, 2013), <u>https://doi.org/10.35796/les.v1i1.1320</u>.

¹⁸ Mahrus Ali, "Penegakan Hukum Pidana Yang Optimal (Perspektif Analisis Ekonomi Atas Hukum)," *Jurnal Hukum IUS QUIA IUSTUM* 15, No. 2 (August 15, 2008): P. 229–238, <u>https://doi.org/10.20885/iustum.vol8.iss2.art6</u>.



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Thus, attempted murder in Islamic criminal law is not just a matter of sanctions, but also reflects the moral, social and legal complexities that exist in society. This comprehensive approach of Islamic law shows that every crime, including attempted murder, must be understood in a broader context, with the ultimate goal of creating a safer and more just society.

3.3. Case Studies and Review of Premeditated Murder and Sanctions in Islamic Criminal Law

Within the framework of criminal law, premeditated murder occupies the most crucial position and takes center stage in the justice system. This crime not only threatens the lives of individuals, but also creates instability in society, damages human values, and tarnishes religious teachings. In this context, the stabbing of Sheikh Ali Jaber, a respected cleric in Indonesia, is a relevant example to examine the interaction between crime, justice, and punishment policy in Islamic criminal law.¹⁹

Ali Jaber Stabbing Case: Context and Background

On September 13, 2020, cyberspace and social media were shocked by the news of the stabbing of Sheikh Ali Jaber while he was giving a *tausiah* at a mosque in Bandar Lampung. This attack shocked the community, especially considering Sheikh Ali's position as an influential religious figure, peace promoter, and role model for many. The perpetrator, AA (Alfian Andiran), was sentenced to four years in prison.

Application of Sanctions in Islamic Criminal Law

In Islamic criminal law, there are two main sanctions that can be applied to criminals: diyat and *ta'zir*. In Sheikh Ali's case, his decision to forgive the stabbing perpetrator paves the way to examine the possibility of alternative sanctions in the sharia system.

1. Diyat (Financial Compensation)

In situations where Sheikh Ali chooses not to seek retribution (*qisas*), the victim's family has the option to accept *diyat*. *Diyat*, which is financial compensation, reflects the principle of restorative justice promoted by Islamic criminal law. By accepting *diyat*, the family not only avoids physical punishment for the perpetrator, but also promotes peace and reconciliation within the community. This shows that in the Islamic tradition, conflict resolution does not always have to be through the path of harsh punishment; there is room for peace and restoration.

2. Reduced Penalties

¹⁹ Tony F Marshall and Great Britain. Home Office. Research, Development and Statistics Directorate, *Restorative Justice: An Overview* (Coventry: Createspace Independent Publishing Platform, 2018).



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In many cases, courts in countries where sharia law applies take into account the attitude of the victim or the victim's family in rendering a verdict. If Sheikh Ali Jaber chooses to forgive the perpetrator, the judge has the authority to reduce the sentence imposed, creating a balance between justice and kindness. Thus, the law serves not only as an enforcement tool, but also as a means to create harmony in society.

3. Ta'zir Punishment

Although the decision to pardon may affect the punishment, the offender may still be subject to *ta'zir* sanctions. In Islamic criminal law, *ta'zir* refers to the punishment given by the judge based on moral and social considerations of the offender's actions. This gives judges the flexibility to determine sanctions that are appropriate to the context of the case. In Sheikh Ali's case, the perpetrator may be subject to a *ta'zir* punishment that considers the impact of his crime as well as efforts to rehabilitate the perpetrator.

4. Conclusion

In the Islamic view, any act of murder, whether successful or not, is a serious violation of human values and divine provisions. Strictly speaking, Islamic teachings forbid all forms of murder, making *qisas* and *diyat* the consequences that the perpetrator must face. Attempted murder, even if it does not result in death, still reflects a malicious intent that must receive serious attention from the legal system. Intent, as a fundamental element in Islamic law, is a clear indicator that even if the crime does not materialize, the perpetrator is still responsible for the planned action. However, in Allah's justice there is hope. Although Islamic law imposes strict sanctions, the door for forgiveness and repentance is always open for those who show genuine remorse. In this case, although the perpetrator must undergo a legal process to uphold justice, there is room for forgiveness that reminds us of Allah's infinite mercy and compassion. Thus, with fair law enforcement and forgiveness from victims or their families, we can build a more civilized, loving and respectful society.

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