



# Zina Act Review from Islamic Law in Bandar Sinembah Village Tanjung Morawa

Syarifah<sup>1\*</sup>

<sup>1,2</sup>*Universitas Muslim Nusantara Al-Washliyah, Medan, North Sumatra, Indonesia*

*\*Corresponding author email: syarifah@umnaw.ac.id*

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## Abstract

Zina is an illegal sexual relationship carried out by a man and a woman outside the marriage bond. The prohibition of adultery, both contained in the Qur'an and hadith, in addition to enjoining good and evil, is also intended to maintain offspring and/or honor. Humans were created by Allah SWT as cultural creatures (civilized). As a cultured creatures, the biological impulses of humans are arranged in such a way with various living institutions. Even though humans are biological creatures, human sex life is different from animal sex behavior. The definition of adultery according to Islamic law is different from the meaning of adultery (overspel/adultery) in the Indonesian Criminal Code, or adultery in the Pakistan Criminal Code and the Indian Criminal Code. One of the primary objectives of Islamic law, (maqosid al-Shariah) is to protect offspring, human honor and human existence. It is not easy to prove the occurrence of adultery. To accuse someone of adultery requires at least four witnesses who saw the act. (Surat an-Nuur verse 4). In order to impose sanctions/criminal stoning (Sura An-Nuur verse 2-3) and (Sura An-Nissa verse 15) according to the principle of Legi a posterior derogat legi a priori, the punishment for stoning in the hadith has been included by Surah An-Nuur verse 2-3 and Surah An-Nissa verse 15. This study uses a descriptive qualitative method, with the aim of providing an overview and knowledge to the Muslim community in the village of Bandar Sinembah, Tanjung Morawa. Before the research was conducted, it was found that the people in the village of Bandar Sinembah, Tanjung Morawa, which consisted of multi-ethnic groups did not fully understand the meaning of adultery according to Islamic teachings due to their low and lack of knowledge about the religion of Islam. After doing research and approaches, the village of Bandar Sinembah has begun to understand the meaning of adultery according to Islamic teachings, and now, slowly they have left this bad habit.

*Keywords:* Zina, Adultery, and Islamic Law

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## 1. Introduction

The low level of knowledge of the people of Bandar Sinembah Village about knowledge and insight about adultery, of course, this is something that needs to be found a solution. So that the community, especially the people of Bandar Sinembah Tanjung Morawa Village, have an understanding of adultery in a review of Islamic law. What is Zina? Zina is an act of intimate intercourse committed by two pairs of people who do not have a previous marital relationship (Khaerunisa, 2021). Adultery is one of the acts that cannot be done by every human being for any reason. Every aspect of life, whether religious, cultural, or social, states that adultery is an act that is inappropriate for humans to do. Zina etymologically comes from Arabic which means intercourse outside of marriage (Ziba, 2011). The definition of adultery, in general, is the intercourse of a man and a woman without a legal marriage bond. From a moral point of view, this act is very dirty, despicable and despicable in the eyes of society, while from a religious perspective this act is punishable by sin. There is no denying in giving punishment except those whose minds are different under the control of their passions. They consider every violation of laws and regulations is a new creation of the philosophy of human life (McCrudden, 2008; Cane, 2012)

The life that exists today has set about the act of adultery. This arrangement is carried out by every aspect of life. There are three dominant aspects in regulating the act of adultery, including religious aspects, cultural aspects or customs and legal aspects. Each of these aspects has something in common with the statement that adultery is an act that violates human nature and should not be done by every human being. This illustrates that in every aspect of life nothing justifies adultery, therefore it is appropriate for humans to keep away from adultery in life. The regulation of adultery in the religious aspect is guided by the rules given by God in the holy books of each religion (Noor, 2010). Including Islam as the majority religion in Indonesia, has adultery arrangements in the holy book Al-Qur'an and also As-Sunnah. Zina in Islam has been regulated related to the prohibition and punishment. In Islam this is referred to as

Islamic law or Islamic law which has binding power for Muslims. The punishment for unmarried adulterers (ghoiru muhsan) is based on the verse of the Qur'an Surah An-Nuur verse 2, which means: "Adulterers of women and adulterers of men lashed each of them a hundred times, and in carrying out Allah's provisions Do not be tempted by pity if you truly believe in Allah and the Last Day. There should be a group that oversees the execution of the punishment consisting of believers." For people who are married (muhsan) the punishment according to Islamic jurists is stoning (stoned) to death. This punishment is based on the Hadith of the Prophet SAW narrated by Muslim from 'Ubadah bin Shamit, which means: "From Ubadah Ibn ash-Shamit he said the Messenger of Allah said: take it from me, take it from me, verily Allah has provided a way out (punishment) for them (adulterers). Adultery and virgins are punished with a hundred lashes and exile for one year. While the punishment for widowers and widows is one hundred lashes and stoning for adultery can be proven either by confession or by a witness (Supardin and Syatar, 2021).

If there is a confession, according to Syafi'i and Malik, if the perpetrator is mature and reasonable who admits his actions, then the punishment must be imposed. Abu Hanifah, Ahmad, and Shia Imamiah are of the opinion that no punishment is imposed, unless the confession of the perpetrator is repeated four times. Something interesting in the execution of the stoning sentence for the adulteress of Muhsan is if the proof is based on his own confession. If he then escapes at the time of sentencing, according to the majority of jurists, there is no need to pursue him.

## 2. Research Methodology

This study uses a qualitative approach with Tri Anggulation. This triangulation is carried out to test the validity of the data which is carried out by testing the data to the same source with several varied techniques. An example is data obtained by means of interviews which are then tested by documentation, observation, or questionnaires.

## 3. Discussion

The regulation of adultery in the aspect of culture or customs cannot be separated from the customary law community. Customary law communities are human social communities that feel united because they are bound by common ancestry and or certain territories, have their own wealth, are led by one or several people who are considered to have authority or power, or have values as a way of life, and do not have a desire to separate. Arrangements related to adultery in customary law are included in the section on customary offenses. According to Bushar Muhammad that customary offense is every unilateral act of one-sided or group of individuals, threatening or offending or disturbing the balance in the life of the community, material or immaterial, against an individual or against society in the form of a unit, such an act or act results in a customary reaction that he is believed to be able to restore the balance that has been disturbed, among others by various ways and methods, with customary payments in the form of goods, money, holding salvation, slaughtering large/small animals and others.

### 3.1. Adultery in the Perspective of Islamic Law

The regulation of adultery in the legal aspect is very clearly visible, including in Indonesian law. Regarding the regulation of adultery in Indonesian law, it cannot be separated from the existing legal system in Indonesia. The Indonesian legal system or can be called the juridical system of the Indonesian Legal System is based on the 1945 Constitution so that it can be interpreted as follows: the highest and most decisive is "unwritten law" which is called "mystery atmosphere," or "spirit" or "rechtsidee". Basically, this is contained in the Preamble to the 1945 Constitution and is explained in the General section of the Elucidation of the 1945 Constitution. By the explanation of the 1945 Constitution this is referred to as "Unwritten Basic Law" or in foreign terms it is called "Droitv". Constitutional". In addition to this rechtsidee there is a basic law, namely a type of "written law" at the highest level as part of the basic law which by explanation is referred to as a foreign term "Loi Constituionelle" whose contents are instructions to the Central Government and other state administrators. In this written basic law, there are provisions and legal basis. Basically the legal system in Indonesia also regulates the issue of adultery. Adultery law in Indonesia has its own polemics from the provisions to the application of sanctions (Widyawati, 2020). How not, the law that regulates adultery in the Criminal Code (KUHP) is considered irrelevant to be applied in Indonesian society, especially adultery in Indonesia is considered a very inappropriate act and contrary to morals and norms in a cultured society. The regulation on Zina is contained in Article 284 of the Criminal Code. The regulation of adultery and sanctions is very clear that Article 284 of the Criminal Code only regulates the issue of infidelity, in which the article only applies if one of the perpetrators or both are still bound by a legal marriage with another person. Then in paragraph (2) explains adultery is a violation of the complaint, which can only be prosecuted if the legal partner objected or complained. As for cases of sexual relations outside the context of this article, the principle of legality will apply, as in the case of one celebrity in Indonesia in 2010, where the perpetrator was only prosecuted under Article 4 of the Pornography Law, Article 27 of the Information Technology Law and Article 282 of the Criminal Code (Siregar, 2017; Faridah, 2018).

This happened because videos of the perpetrators' actions were spread in cyberspace, so if the video was not available, then the perpetrators were not ensnared in any article, because Article 284 of the Criminal Code does not

apply to him. This provision creates problems in society. Public views on adultery are much more complex than those laid down in national law. Adultery is not only cheating, but more immoral and should be prevented early on, and not just after marriage. This perspective appears in society because of the influence of religious norms and the strong power of the people on the values of Pancasila, where the first teachings mention "Belief in the Almighty" so that laws that obey God are better than other laws. Thus the definition of adultery embedded in community values tends to be adulterous in religion, which considers adultery to be a heinous act, as stated in the Al-Quran Surah Al-Isra 'verse 32, Allah SWT says "And do not approach adultery, actually, adultery is an abominable act and a bad way."

The explanation regarding the regulation of adultery in the Criminal Code above provides an illustration that the community is more inclined to the regulation in the law that lives in the community. The law that lives in society is commonly referred to as the living law which has the meaning of law that is alive and currently in a society, so it does not require any more effort to actualize it. The living law is not something static, but continues to change from time to time. The living law is a law that lives in society, it may or may not be written. Seeing the explanation above regarding the concept in the regulation of adultery in the Criminal Code, basically it has several problems. The problems that exist in this arrangement are, among others, because people feel that the elements contained in the Criminal Code are no longer in accordance with the values that exist in Indonesian society).

### 3.2. Zina in Islamic Perspective

Zina according to fiqh is intercourse between a man and a woman without a valid marriage bond, namely inserting the male sex into the female genitalia, at least to the hasyafah (head of the testicles) limit. Sexual intercourse which is forbidden and is considered adultery is intercourse in the farji, where the testicles in the farji are like a stick in a coke bottle or like a bucket in a well. Sexual intercourse is considered adultery, at least with the immersion of the hasyafah (the tip of the penis) on the farji, or a similar type of hasyafah if the penis does not have a hasyafah, and according to a strong opinion, erection of the penis is not required (Junaidi and Imansyah, 2018). According to Abdul Halim Hasan, adultery means a man inserts his genitals into a woman's genitals, without marriage and subhat. This understanding is almost similar to the understanding put forward by Abdul Djamali, namely adultery is the act of inserting the male genitalia until it is inserted into the desired female genitalia.

As for fiqh scholars, the meaning of adultery is inserting the testicles into the farji which is forbidden without subhat. And according to Ibn Rushd the notion of adultery is intercourse which is done not because of a legal marriage and not because of the possession of a slave. Meanwhile, according to Hamka, adultery is all sexual intercourse outside of marriage, and in another juzu' he defines adultery as all intercourse that is not legalized by marriage, or whose marriage is not legal. In the Encyclopedia of Islamic Criminal Law, it is stated that the definition of adultery according to several schools of thought, which although different editors have the same meaning, is intercourse between a man and a woman carried out by a mukallaf who is not bound by a legal marriage. Adultery is a crime that is punishable by udd or ad, which is a punishment imposed on violations involving the rights of Allah.

Thus, the punishment for adultery has been regulated by the Koran because it is the absolute right of Allah swt. Two kinds of adultery are subject to mandatory punishment for the perpetrators, namely: Ghairu Muḥṣan, meaning adultery committed by a person who has never entered into a legal marriage. This means that adulterers who are still single or virgins, namely those who are not married. The punishment imposed on adulterers with the status of ghair muḥṣan is a hundred times lashes based on Q.S. al-Nūr (24): 2. This verse describes the firmness in enforcing the punishment of ad, it is forbidden to give mercy in punishing the atrocities committed by the two adulterers, there is also a prohibition on canceling the punishment of ad or being gentle in enforcing it. Therefore, it is forbidden to delay the establishment of Allah's religion and delay His rights. The execution of the punishment should be carried out in front of the public, namely a group of believers, so that it is expected to have a deterrent effect and affect the souls of those who have committed adultery and provide lessons for those who witnessed the execution of the punishment. There are differences in the procedure for carrying out flogging.

According to Imam Malik, it was the back and surrounding areas that were beaten and had to take off his clothes. According to Imam Shafi'i, all limbs are afflicted, except for the genitals and face which must be avoided as well as undressing. According to Abu Hanifah, all limbs, except for the genitals, face and head, and the calendar of clothes. In addition to being beaten a hundred times, the perpetrator of adultery ghair muḥṣan was also exiled for a year, this is based on the statement of Ibn al-Munzir who said: "In the case of a servant who committed adultery with the employer of the daughter of the Prophet Muhammad. Swears that he will decide according to the Book of Allah. Then he declared that the servant should be punished with a hundred lashes and exiled for a year. That is the elaboration of the word of Allah and that is what Umar bin Khattab spoke on the pulpit and which was then practiced or practiced by the Khulafā' al-Rāsyidīn and agreed.

This is the basis of ijma' (consensus). Meanwhile, Muḥṣan is an adultery committed by a person who is mature, intelligent, free and has been legally mixed with someone of another gender. The punishment for adultery with muan status is stoning. Stoning is a death sentence by stoning. Because the punishment of stoning is not stated in the Qur'an, the Khawarij deny it. According to them, the punishment for muan and ghair muan adulterers is the same, namely lashing. There is no article on stoning in the Qur'an, but only on the statement of Umar ibn Khattab who had seen the Prophet Muhammad ordered the stoning of mu'an. Umar's statement is as contained in the hadith which reads:

Narrated from Sayyidina Umar bin al-Khatab r.a. He said: Verily Allah has sent Muhammad with the truth and has sent down to him the Qur'an.

Among those revealed to the king is a verse that touches on the law of stoning. We always read, guard and think about the verse. Rasulullah saw has carried out the punishment of stoning and after him, we also carried out the punishment. At the end of time I am afraid, there will be people who will say: "We do not find the punishment of stoning in Allah's book, namely the Qur'an so that they will go astray because they leave one of the obligations that Allah has sent down. Indeed, the punishment of stoning contained in the book of Allah must be carried out on adulterers who have been married, both male and female, if there is clear evidence or she is pregnant or with her own confession.

The giving of heavier punishments for the perpetrators of adultery muḥṣan, is a recompense for the perpetrators who have had the opportunity from God to experience a legal sexual relationship, through marriage. Thus the denial of the favor that has been given must be rewarded with the pain of stoning. Meanwhile, adultery ghairu muḥṣan was punished with flogging and exile because perhaps it was his curiosity that prompted him to commit adultery while he was not married so there was no place to channel his curiosity of syar'i. Because by nature there is a tendency between men and women. Therefore Islam justifies marriage and forbids adultery. So any relationship between a man and a woman outside the limits of the Shari'a is called zina.

#### 4. Conclusion

The law for adultery can only be determined if it meets the elements of adultery with several criteria. First, having intercourse outside of marriage that is legal and intentional. Sexual intercourse is considered minimal adultery with the immersion of the hasyafah (shoot of the testicles) on the farji, even if it is not erect. In addition, the perpetrators also know that their sexual intercourse is unlawful. In the crime of adultery, male and female adulterers are required to have intentional or unlawful intentions. Intention against the law is considered fulfilled if the perpetrator knows that he has intercourse with a woman who is unlawful for him. Also if the woman who commits adultery surrenders herself and knows that the person who has intercourse with her is not lawful for her. Second, the perpetrator is a mukallaf. Islam stipulates that every mukallaf can be sentenced to hudud if he is proven to have committed adultery regardless of whether he is married or unmarried. If a small child or crazy person has sexual relations outside of marriage then it is not included in the category of adultery in syar'i. Likewise, if it is done by an idiot, the paramedic admits this deficiency. Third, adultery is sexual intercourse carried out in a conscious condition without coercion, meaning that the perpetrators have agreed to commit adultery, not because of coercion. Forced intercourse is rape. If one of the parties turns out to be forced, then he is not the perpetrator but the victim. In this rape case, the perpetrator is still sentenced to ad, while the victim is not. Fourth, there is evidence that adultery has occurred.

There are three pieces of evidence to prove adultery, namely: a) Witnesses, the scholars agree that adultery cannot be proven except for four witnesses. This is the consensus of the scholars. Witnesses in the crime of adultery must be four men, mature, intelligent, hifẓun (able to remember), able to speak, able to see, fair and Muslim; b) Confession, Imam Malik and Imam Shafi'i are of the opinion that one confession is sufficient to impose a sentence. This opinion was also expressed by Ibn Dawud, Abu aur, al-Ṭabarī. Meanwhile, Imam Abu Hanifah and his followers, Ibn Abi Lala, Imam Amad and Ishaq argued that the punishment for adultery could only be imposed if there were four confessions which were brought forward one by one in different places. c) Qarīnah (Indication), a woman's pregnancy has required to be subject to ad punishment if the woman does not have a husband or owner.

#### References

- Bushar, M. (2006). *The Principles of Customary Law*. Jakarta : Pradnya Paramita.
- Cane, P. (2012). Morality, Law, and Conflicting Reasons For Action. *The Cambridge Law Journal*, 71(1), 59–85.
- Djamali, R. A. (2016). *Hukum Islam*. Bandung: CV. Mandar Maju.
- Faridah, S. (2018). Cyber Porn (Crime without Victim) in the country of Indonesia. *Janabadra Kajian Hukum*, 3(1).
- Hamka. (2017). *Tafsir Al-Azhar Juz XVII*. Jakarta: Pustaka Panjimas.
- Hasan, A. H. (2017). *Tafsir AL-Ahkam*. Jakarta: Kencana.
- Junaidi, M. and Imansyah, R. G. C. (2018). The Concept of Adultery Post-Revision of The Penal Code. *Al-ahkam Jurnal Ilmu Syari'ah dan Hukum*, 3(1), 13-25.
- Khaerunisa, F. E. (2021). Adultery In The Perspective Of Islamic Religious Law And Positive Law In The Indonesian Community. *Jurnal Hunafa: Studia Islamika*, 18(2), 158-174.

- McCrudden, C. (2008). Human Dignity and Judicial Interpretation of Human Rights, *European Journal of International Law*, 19(4), 655–724.
- Noor, A. B. M. (2010). Stoning for Adultery in Christianity and Islam and its Implementation in Contemporary Muslim Societies. *Intellectual Discourse*, 18(1), 97-113.
- Siregar, A. (2017). Pornography Criminal Act on Pictures under the Law Number 44 Year 2008 about Pornography and Islamic Law In Indonesia. *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)*, 22(10), 87-95.
- Supardin and Syatar, A. (2021). Adultery Criminalization Spirit in Islamic Criminal Law: Alternatives in Indonesia's Positive Legal System Reform. *Jurnal Hukum Keluarga dan Hukum Islam*, 5(1), 913-927.
- Widyawati, A. (2020). Criminal Policy of Adultery in Indonesia. *JILS (Journal of Indonesian Legal Studies)*, 5(1), 171-186.
- Ziba, M-H. (2011). Criminalising Sexuality: Zina Laws as Violence Against Women in Muslim Contexts. *SUR International Journal on Human Rights* 15, 8(2), 7-30.