



## Ta'zir Punishment in the Mazhab Syafi'i and Its Application in Syariah Court of Brunei Darussalam

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### Abstract:

*Ta'zir* refers to discretionary punishments imposed for offences not covered by *Hudud* or *Qisas*. In Brunei Darussalam, *ta'zir* is codified under the Syariah Penal Code Order 2013 (SPCO 2013). This study examines the application of *ta'zir* punishments in Brunei Darussalam, focusing on the extent to which contemporary Syariah criminal practice reflects the principles of the *Mazhab Syafi'i* as the country's official *Mazhab*. The main question addressed in this article concerns how classical Syafi'i Fiqh on *ta'zir* is translated into a modern, codified legal system and what tensions arise in this process. This research adopts a normative legal method, relying on doctrinal analysis of classical Syafi'i fiqh sources alongside Brunei's Syariah criminal legislation and related legal documents. A comparative approach is employed to identify points of convergence and divergence between classical jurisprudence and contemporary judicial practice. The findings indicate that the implementation of *ta'zir* in Brunei is predominantly grounded in Syafi'i principles, particularly regarding judicial discretion, deterrence and the protection of public welfare. The originality of this study lies in its identification of Brunei's *ta'zir* framework as a hybrid model that selectively adapts classical Syafi'i doctrine to contemporary governance requirements, contributing to broader discussions on the harmonization of Islamic Jurisprudence and modern criminal law.

### Abstrak:

*Ta'zir* merujuk kepada hukuman yang dikenakan bagi kesalahan yang tidak termasuk dalam *Hudud dan Qisas*. Dalam konteks Negara Brunei Darussalam, *ta'zir* diperuntukkan di bawah Perintah Kanun Hukuman Jenayah Syariah 2013 (PKHJS 2013). Kajian ini meneliti pelaksanaan hukuman *ta'zir* dalam sistem Perundangan Syariah di Brunei Darussalam dengan memberi tumpuan kepada sejauh mana amalan perundangan semasa mencerminkan prinsip *Mazhab Syafi'i* sebagai mazhab rasmi negara. Persoalan utama kajian ini ialah bagaimana konsep *ta'zir* dalam fiqh klasik *Mazhab Syafi'i* diaplikasikan dalam sistem Perundangan Syariah yang digubalkan secara formal dan berkanun serta ketegangan yang timbul antara teori dan amalan kehakiman moden. Kajian ini menggunakan kaedah penyelidikan perundangan normatif dengan menganalisis sumber-sumber fiqh klasik *Mazhab Syafi'i* dan perundangan undang-undang jenayah Syariah Brunei, disokong oleh pendekatan analisis teks dan perbandingan perundangan bagi mengenalpasti persamaan dan perbezaan antara kedua-duaya. Dapatan kajian menunjukkan bahawa pelaksanaan *ta'zir* di Brunei

secara umumnya berteraskan prinsip *Mazhab Syafi'i*, khususnya dari segi penekanan terhadap budi bicara hakim, pencegahan jenayah dan kepentingan kemaslahatan umum. Sumbangan Ilmiah kajian ini dilihat pada dapatan bahawa pelaksanaan *ta'zir* di Brunei menjadi kerangka adaptif yang menyesuaikan prinsip fiqh klasik *Mazhab Syafi'i* dan konteks tadbir urus moden.

## A. Introduction

Islamic criminal law is generally divided into three main categories: *hudud*, *qisas* and *ta'zir*. *Ta'zir* is one of the important concepts in Islamic jurisprudence where the punishment is determined at the discretion of the judge or those in leadership (*ulil 'amr*).<sup>1</sup> The study of *ta'zir* has progressively developed from the discussions of classical jurists to contemporary debates related to the implementation of modern law. Early Muslim scholars initially discussed *ta'zir* as a mechanism for safeguarding public welfare and moral conduct within society.<sup>2</sup> Scholarly attention at that time focused on the scope of judicial authority, the types of offences subject to *ta'zir* and the permissible forms of punishment such as fines, flogging and more.<sup>3</sup> It is more into maintaining a balance between prevention and mercy or leniency in the administration of justice. The discussion then developed towards administrative punishments for the sake of political stability. The *fiqh* books began to systematically organize the principle of *ta'zir*, distinguishing the differences of opinion among the *mazhab* and demonstrating the flexible nature of *ta'zir* in adapting to the new norms.<sup>4</sup>

The study of *ta'zir* then shifted towards issues of compatibility with modern criminal law and comparative studies began to emerge. Contemporary discussions emphasize aspects of human rights, the consistency of legal rulings and the role of *ta'zir* in addressing new forms of crime such as cybercrime and others. In this era, contemporary applications discussed the balance between prevention, rehabilitation and the protection of society. Case studies from

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<sup>1</sup> Yang Berhormat Mufti Kerajaan, *Qanun Jenayah Syariah: Satu Pengenalan* (Negara Brunei Darussalam: Jabatan Mufti Kerajaan, 2013), 203.

<sup>2</sup> Al-Syirazi, *Al-Muhazzab fi al-Imam al-Syafi'i li Abu Ishaq al-Syirazi*, Jilid 5 (Jeddah: Dar-Albasyir, 1997), 218

<sup>3</sup> Al-Mawardi, *Al-Ahkam al-Sultaniyyah* (Kaherah: Dar al-Hadith, 2000), 344-345

<sup>4</sup> Abdullahi, J. A., and I. A. Idris, "Ta'zir Punishment in Islam and Its Implication in Our Society," *Middle East Journal of Islamic Studies and Culture* 3, no. 4 (2023), Mukhtor Akramov. Ta'dhir in Islamic Law: Types of Crimes and Punishments. *Jurnal ISO: Jurnal Ilmu Sosial, Politik dan Humaniora*, Vol.: 4 No.:2 (2024)

countries that implement Islamic law provide insights into application of *ta'zir* within the modern judicial system.<sup>5</sup>

The *Mazhab Syafi'i* which has historically shaped Islamic Jurisprudence across Southeast Asia, hold prominence in Brunei Darussalam where it serves as the primary reference for the Syariah legal system. According to the Brunei Constitution 1959, which states:

*The religion of Brunei Darussalam shall be the Muslim Religion according to the Shafeite sect of that religion. Provided that all other religions may be practiced in peace and harmony by the person professing them in any part of Brunei Darussalam.*<sup>6</sup>

Despite this central role, the extent to which Syafi'i principle are applied in the provision and implementation of *ta'zir* punishment within Brunei Syariah Court has not yet been thoroughly examined.

Previous studies on *ta'zir* punishment in Islamic criminal law generally converge on its conceptual foundations, jurisprudential flexibility and contemporary relevance. Several scholars provide comprehensive theoretical and doctrinal analyses of *ta'zir* within classical Islamic jurisprudence across the major *mazhab*. For instance, Abdullah and Idris (2023)<sup>7</sup> and Akramov (2024)<sup>8</sup> examine the concept, scope and types of punishment from classical perspective with Akramov further incorporating selected contemporary cases and emphasizing procedural aspects and the protection of the accused's rights. Similarly, Ahmad Syarbaini (2023)<sup>9</sup> offers an in-depth theoretical discussion of *ta'zir* within Islamic criminal law, although his study remains largely conceptual and do not address issues of practical implementation. In contrast, other studies focus on the contemporary application and adaptability of *ta'zir* in modern legal systems. Wan Naila Safira et al. (2025)<sup>10</sup> highlight the relevance of *ta'zir* in

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<sup>5</sup> Safira, W., et al., "The Relevance of the Concept of Ta'zir in the Contemporary Islamic Criminal Law System," *Jurnal Sababat ISNU* 2, no. 2 (2025),70-71; Ariel Ismail, Nabila. "Analysis of the Concept of Ta'zir in Law Enforcement Against Perpetrators of Sexual Harassment", *Syariat: Akhwal Syaksiyah, Jinayah, Siyasah and Muamalah*, Vol:1,No.: 03 (2024),151-152

<sup>6</sup> Brunei Constitution 1959, <https://www.icj.org/wp-content/uploads/2013/04/Brunei-Constitution-1959-eng.pdf> (accessed on: 8 June 2025).

<sup>7</sup> Abdullahi, J. A., and I. A. Idris, "Ta'zir Punishment in Islam and Its Implication in Our Society," *Middle East Journal of Islamic Studies and Culture* 3, no. 4 (2023)

<sup>8</sup> Mukhtor Akramov.. Ta'dhir in Islamic Law: Types of Crimes and Punishments. *Jurnal ISO: Jurnal Ilmu Sosial, Politik dan Humaniora*, Vol.: 4 No.:2 (2024)

<sup>9</sup> Ahmad Syarbaini, "Konsep ta'zir menurut perspektif hukum pidana Islam," *Jurnal Tabqiq* Vol. 17, no. 2 (2023)

<sup>10</sup> Safira, W., et al., "The Relevance of the Concept of Ta'zir in the Contemporary Islamic Criminal Law System," *Jurnal Sababat ISNU* 2, no. 2 (2025)

present-day Islamic criminal law by integrating classical principles with contemporary legal contexts, while Mutiara et al. (2025)<sup>11</sup> frame *ta'zir* within the discourse of restorative justice, portraying it as a flexible and humane form of punishment compatible with modern criminal justice objectives.

Collectively, the previous studies above focused on both its classical foundation and contemporary relevance. Therefore, this study is anchored in the *Mazhab Syafi'i* which is the dominant *mazhab* in Brunei. This study also focuses in integrate theoretical analysis of Syafi'i jurisprudence with practical application in Brunei's judicial system, examining how *ta'zir* is interpreted and enforced locally. This study aims to fill the gap by exploring the implementation in a Southeast Asian Islamic monarchy where Syafi'i law is central. By situating Brunei within the wider discourse, it adds a new comparative dimension demonstrating how *ta'zir* functions in a specific national and *mazhab* context, enriching the global understanding of Islamic criminal law.

## **B. Method**

This study is qualitative legal research using a comparative legal analysis approach. It focuses on doctrinal examination of *ta'zir* within the *Mazhab Syafi'i* and its application in Brunei Darussalam's legal system. The research is situated in Brunei Darussalam, where the Syariah Penal Code Order 2013 and related legal documents form the basis of analysis. Classical sources were accessed through library research and academic databases. The data were collected through library research like classical Syafi'i texts such as *al-Umm*, *Al-Mubazrab* and *Al-Ahkam Al-Sultaniyyah*, document analysis for example Brunei's constitution, Syariah Penal Code Order 2013 and other legal materials. Secondary sources such as academic articles, journal and scholarly commentaries relevant to *ta'zir*. Furthermore, the data were analyzed using comparative legal analysis which systematically compares Syafi'i jurisprudential theory with Bruneian legal practice. The analysis highlights point of convergence and divergence in areas such as types of punishment, objectives of punishment and so on. This method allows the study to bridge the classical theory with contemporary application in Brunei's judicial system. This approach allows researchers to elaborate on the implicit meaning and analyze

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<sup>11</sup> Riva Mutiara, Aprilia Yoshinta Putri and Muhammad Rivan Viawan. Ta'zir and Restorative Justice: Alternative Punishments from an Islamic Perspective. *Balada Al Mubaarok*. Vol. 1 No.1 (2025)

theory with current practice in more depth.

## C. Result

This study finds that the implementation of *ta'zir* punishments in Brunei Darussalam is predominantly grounded in the principles of the *Mazhab Syafi'i*, particularly in its emphasis on judicial discretion, educational objectives, and the protection of public welfare. However, the research also reveals a significant tension between classical fiqh theory and contemporary legal practice. While Brunei's codified Syariah criminal framework introduces statutory boundaries that constrain the breadth of discretion traditionally afforded to judges in Syafi'i jurisprudence, these provisions serve primarily as a reference and judges retain a degree of flexibility to consider the circumstances of each case, reflecting the adaptive nature of *ta'zir* within classical Syafi'i theory. This indicates a shift from purely discretionary *ta'zir* toward a regulated model shaped by state policy and modern governance needs. The key novelty of this study lies in demonstrating that Brunei's *ta'zir* system does not merely replicate classical doctrine but selectively adapts it, resulting in a hybrid legal practice that balances doctrinal fidelity with legal certainty. The findings suggest that while *ta'zir* remains an effective mechanism for addressing offenses not covered by fixed punishments, its application in Brunei reflects structural limitations inherent in codified law. These results have important implications for policymakers and scholars, highlighting the need to critically assess how classical Islamic jurisprudence is operationalized within modern Syariah legal systems and how judicial discretion is reshaped by contemporary institutional frameworks.

## D. Analysis and Discussion

### 1. The Concept of *Ta'zir* Punishment in the *Mazhab Syafi'i*

*Ta'zir* is taken from the word *'azzara* which means to censure, rebuke, reprove, reprimand, reprehend, scold, chide, upbraid, or tongue-lash.<sup>12</sup> According to *Al-Misbab Al-Munir*, *ta'zir* refers to disciplining or punishing a person without reaching the threshold of *hudud*. Additionally, the term also conveys meanings of support and honor, according to the

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<sup>12</sup> Dr. Rohi Baalbaki, *Al-Mawrid: Kamus Arab-Inggeris* (Beirut, Lebanon: Dar al-Ilm Lilmalayin, 2008), 760.

Quran: "That you [people] may believe in Allah and His Messenger and honor him and respect the Prophet."

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The word *watu'azziruhu* in this context carries the meaning of support and honour. The word '*azlara* is used in the form of *sighab musaggarah* as an expression of respect towards the Prophet Muhammad SAW. Early scholars (*Salaf*) have stated that *ta'zir* is permissible by hitting and leaving away a person such as refraining from interaction or association with the offender.<sup>14</sup>

According to the *Mazhab Syafi'i*, as detailed in *Al-Mu'tamad fi Fiqh Mazhab Syafi'i*, *ta'zir* refers to the punishment applied to sinful acts which, according to *Syariah* law, do not have a clear *hadd* or *kaffarah*. If a person commits a sin or engages in an act of immorality that does not fall into the category set by a certain punishment, then he will be subject to a penalty or corrective measure intended to educate and reform. This form of punishment can be applied whether the offense violates the rights of Allah SWT or human rights, especially when it is related to actions that can lead to violations that already have specific punishments.<sup>15</sup>

Imam Al-Mawardi explained in the book *Al-Abkam Al-Sultaniyyah* that *ta'zir* refers to a punishment that is prescribed for an act for which the punishment of *hudud* is not prescribed, and it varies according to the difference in the act and the condition of the offender. It can range from mild to severe, influenced by factors such as the type of act committed, the location and time of the occurrence, as well as the status of the individual and whether the act is a repeated offense.<sup>16</sup>

According to the *Mazhab Syafi'i* as outlined in *Fiqh Syafi'i*, *ta'zir* refers to the act of offering counsel or corrective guidance to an individual who has committed an offense that does not warrant a *hadd* punishment. The execution of such a punishment is carried out by the

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<sup>13</sup> Al-Fath. 48:9 (Semua terjemahan ayat Al-Quran dalam kajian ini adalah berdasarkan kepada: Pusat Da'wah Islamiyyah. (2014). *Mushaf Brunei Darussalam dan terjemahannya*. Negara Brunei Darussalam: Pusat Da'wah Islamiyyah).

<sup>14</sup> Ahmad bin Muhammad bin Ali al-Muqri al-Fayumi, *Al-Kamus Al-Misbab Al-Munir* (Beirut: Dar El-Fikr SAL, 2005).

<sup>15</sup> Prof. Dr. Muhammad Mustafa al-Zuhaily, *Al-Mu'tamad fi al-Fiqh al-Syafi'i*, jil. 10 (Selangor: Persekutuan Seruan Islam Selangor dan Wilayah Persekutuan, 2012), 233.

<sup>16</sup> Al-Mawardi, *Al-Abkam al-Sultaniyyah* (Kaherah: Dar al-Hadith, 2000), 344.

government.<sup>17</sup> The existence of this punishment can prevent the guilty individual from committing the same offense or a more severe offense.<sup>18</sup>

From the above understanding, it can be concluded that *ta'zir* is the punishment used for violations that do not have a clear basis or determination based on evidence from the Qur'an and Al-Sunnah and the punishment lies with the wisdom of the judge or *ulil 'Amr* and aims to educate and prevent the occurrence of undesirable things.

Understanding the principles of *ta'zir* in *Mazhab Syafi'i* is particularly important. This principle of discretion distinguishes *ta'zir* from rigid punitive measures and reflects the *Syafi'i* commitment to balancing justice with social and moral objectives. One of the important principles is discretionary nature where *ta'zir* is not fixed like *hadd* or *qisas*, it is left to the discretion of the ruler or judge. It ensures the flexibility in responding to offenses that are not explicitly defined in the Qur'an or Sunnah.<sup>19</sup>

According to Imam Al-Mawardi, proportionality of punishment must be proportionate to the severity of the offense and the punishments need to vary depending on the gravity of the offense and the offender's condition. Judges are expected to balance justice with mercy, avoiding excessive or unjust penalties which means reflecting justice tempered with mercy.<sup>20</sup>

Moreover, public interest (*maslahah*) in the punishment of *ta'zir*, as for *maslahah* it originally mean bringing benefit or repelling harm. The objective of the Syariah for humankind are five: to preserve their religion, their life, their intellect, their lineage and their wealth. Everything that ensures the preservation of these five is a *maslahah* and whatever violates these foundations is corruption (*mafsada*) and preventing it is a *maslahah*.<sup>21</sup> The guiding principle of

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<sup>17</sup> Al-Ustaz H. Idris Ahmad, *Fiqh Syafi'i*, Jilid 2 (Kuala Lumpur: Penerbitan Pustaka Antara, 1991), 508.

<sup>18</sup> Ustaz Abd Latif Muda dan Ustaz Rosmawati Ali, *Pengantar Fiqh* (Kuala Lumpur: Pustaka Salam, 1997), 322.

<sup>19</sup> Al-Mawardi, *Al-Ahkam al-Sultaniyyah* (Kaherah: Dar al-Hadith, 2000), 344,

Hussein, Mariam Justice in Classical Islamic Thought: The Perspectives of Al-Māwardī, Miskawayh and Ibn Taymiyya. *Manara - Qatar Research Repository*. Thesis. [https://doi.org/10.57945/manara.hbku.28007534.v159-61\(2022\)](https://doi.org/10.57945/manara.hbku.28007534.v159-61(2022)).

<sup>20</sup> Hussein, Mariam Justice in Classical Islamic Thought: The Perspectives of Al-Māwardī, Miskawayh and Ibn Taymiyya. *Manara - Qatar Research Repository*. Thesis. [https://doi.org/10.57945/manara.hbku.28007534.v159-61\(2022\)](https://doi.org/10.57945/manara.hbku.28007534.v159-61(2022)).

<sup>21</sup> Al-Ghazali, *Al-Mustafa min Ilm Al-Usul*, Vol. 1 Beirut: Dar Al-Arkam Ibn Abi Al-Arkam, (1994), 636-637

*ta'zir* is the protection of society and the common good. Punishments are designed to deter crime, correct behavior and maintain social order.<sup>22</sup>

Furthermore, the principle of *ta'zir* also provides correction and preventive function, when a leader of the Muslim community has taken firm action against the offender, with the aim that such *ta'zir* may serve as a deterrent, preventing him from committing the offense again. In addition, *ta'zir* can also reform the person, so that he returns to his religion.<sup>23</sup> *Ta'zir* is not only punitive but also corrective, aiming to reform the offender. It serves as a preventive measure to discourage future violations and protect society.

*Ta'zir* punishments do not have fixed limits or predetermined penalties. They may include a range of disciplinary measures such as verbal reprimands, flogging, detention, and various other forms of sanction, all intended to raise awareness and deter the individual from repeating the offense. The implementation of *ta'zir* is based on the discretion and judgement of the ruler or authority, who takes into account the nature of the offense, the type of sin committed, the offender's background, and the circumstances surrounding the act.<sup>24</sup> Below are some examples of the types of punishments that may be imposed under *ta'zir*:

### **Imprisonment**

The Arabic terms for imprisonment are *al-habs* or *as-sijn* both referring to a place of detention or confinement. According to Imam Al-Mawardi, imprisonment as a form of *ta'zir* punishment varies depending on the offender and the nature of the crime (*jarimah*) committed. Some offenders may be sentenced to a minimum of one day in detention, while others may face significantly longer terms, depending on the severity of the offense and surrounding circumstances.<sup>25</sup>

The views of the *fuqoha* remain inconclusive and varied about the maximum duration of imprisonment under *ta'zir* punishment. However, from the perspective of *Mazhab Syafi'i*, the maximum permissible duration for imprisonment is one year. This is based on an analogy (*qiyas*) drawn from the punishment of isolation (*al-taghib*) in *hudud* cases of *zina*, which also

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<sup>22</sup> Ustaz Abd Latif Muda dan Ustaz Rosmawati Ali, *Pengantar Fiqh* (Kuala Lumpur: Pustaka Salam, (1997), 323

<sup>23</sup> Al-Syirazi, *Al-Muhazzab fi al-Imam al-Syafi'i li Abu Ishaq al-Syirazi*, Jilid 5 (Jeddah: Dar-Albasyir, 1997), 218

<sup>24</sup> Prof. Dr. Muhammad Mustafa al-Zuhaily, *Al-Mu'tamad fi al-Fiqh al-Syafi'i*, jil. 10 (Selangor: Persekutuan Seruan Islam Selangor dan Wilayah Persekutuan, 2012), 236-237

<sup>25</sup> Al-Mawardi, *Al-Ahkam al-Sultaniyah* (Kaherah: Dar al-Hadith, 2000), 344.

carries a one-year sentence. They argue that the punishment for *ta'zir* offences should not go beyond the penalties prescribed for *hudud* offences.<sup>26</sup>

However, not all *Syafi'i* scholars fully agree with this view. For instance, 'Abdullah al-Zubayri suggested that imprisonment under *ta'zir* could be limited to as short as one month or up to six months. Similarly, within the *Mazhab Maliki*, Imam Ibn al-Majishun proposed a range of two weeks to four months. This variation in opinion shows that the minimum length of a prison sentence isn't fixed but rather left to the discretion of the judge. The judge is expected to consider the individual offender, the location, and the specific circumstances of the crime.<sup>27</sup>

The purpose of imprisonment in this context is to instill a sense of remorse in the offender and to protect society from more serious criminal threats. As such, there is no specific standard regarding the level of hardship a prison sentence must involve. Instead, the severity and conditions of the punishment may be adjusted at the discretion of the judge, depending on what is necessary to uphold justice and to ensure that the sentence has a meaningful rehabilitative effect on the offender.<sup>28</sup>

*Mazhab Syafi'i* position on limiting imprisonment to a maximum of one year reflects a more structured and cautious approach compared to the *Mazhab Maliki*, which allows shorter ranges of punishment and the *mazhab Hanbali* which is generally more flexible in extending imprisonment. This demonstrates the *Syafi'i* emphasis on proportionality and analogy with *hadd* punishments, distinguishing it from other *mazahib* that priority broader judicial discretion.

## Flogging

Flogging in Arabic is known as *Jild* which is a form of corporal punishment carried out by striking the offender on specific parts of the body with a prescribed number of lashes. It may be implemented under *hudud* or *ta'zir* laws, and serves the purposes of discipline, deterrence, and to serve as a lesson.<sup>29</sup> In cases of *ta'zir* punishment involving flogging, the judge

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<sup>26</sup> H.M. Nurul Irfan, *Fiqh Jinayah*, ed. 1, cet. 1 (Jakarta: Prenadamedia Group, 2013), 152.

<sup>27</sup> Abdul Aziz Amir, *Al-Ta'zir fi al-Shari'ah al-Islamiyyah* (Riyadh Maktabah Al-Rushd, 2007), 367–368.

<sup>28</sup> Ahmadul Abrar dan Jufri Yahya, Ta'zir terhadap Pencurian di Bawah Nisab dalam Fiqh Jinayah menurut Imam Nawawi, *Siyasah wa Qanuniyah* 2, no. 2 (2024): 64–65. ISSN: 2987-8748 / e-ISSN: 2987-7415, 64-65.

<sup>29</sup> Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatub*, jil. 6 (Damsyik: Dār al-Fikr, 2004)

has full discretion to determine the number of lashes, taking into account the offender's circumstances, as well as the context and location of the offence.<sup>30</sup>

According to *Mazhab Syafi'i*, there are three main opinions regarding the maximum number of lashes in flogging punishments. The first opinion sets the upper limit at 39 lashes, while the second allows up to 75 lashes. The third view permits *ta'zir* flogging to exceed 75 lashes but not reach 100, provided that the *ta'zir* offence shares similar characteristics or severity with a *hudud* crime.<sup>31</sup>

Within the *Mazhab Maliki*, the predominant view holds that the discretion to determine the severity of *ta'zir* punishments rests with the governing authority. Meanwhile, Imam Abu Hanifah and Muhammad set the maximum limit for *ta'zir* flogging at 39 lashes, based on *Hadith* of the Prophet Muhammad SAW, which means:

*"Whoever exceeds the prescribed hadd punishment for offences that are not part of hadd, then they belong to those who overstep the limits."*<sup>32</sup>

Abu Yusuf and Ibn Abu Layla hold that *ta'zir* punishments can be as many as 75 lashes but should not exceed that number. On the other hand, Imam Malik and Al-Awza'i believe that the Muslim leader has the discretion to decide the number of lashes in *ta'zir* based on their own independent judgement (*ijtihad*).<sup>33</sup>

*Mazhab Syafi'i's* position on flogging reflects a balance between strict limits 39 lashes and broader discretion up to 75 or nearly 100, depending on the severity of the offence. This contrasts with *Mazhab Hanafi* stricter ceiling of 39 lashes, while aligning partially with the Maliki and Awza'i views that grant wider authority to the ruler. Thus, the *Mazhab Syafi'i* occupies a middle ground, emphasizing proportionality and analogy with hadd punishments, while still allowing judicial flexibility in exceptional cases.

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<sup>30</sup> Paizah Haji Ismail, *Undang-Undang Jenayah Islam*, cet. 5 (Petaling Jaya, Selangor Darul Ehsan: Tradisi Ilmu SDN BHD, 2008), 261-262

<sup>31</sup> Darsi Darsi dan Halil Husairi, "Ta'zir dalam Perspektif Fiqh Jinayat," *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum* 16, no. 2 (2018), 62

<sup>32</sup> Paizah Haji Ismail, *Undang-Undang Jenayah Islam*, cet. 5 (Petaling Jaya, Selangor Darul Ehsan: Tradisi Ilmu SDN BHD, 2008), 262

<sup>33</sup> Imam An-Nawawi, *Al-Majmu' Syarh Al-Muhadzab*, Vol 30, tahqiq and annotated by Muhammad Najib Al Muthi'i (Indonesia, 2009), 226-227

## Fine punishment

One of the penalties prescribed for *ta'zir* offences is the confiscation of a portion of the offender's property. The *fuqoha* hold varying opinions regarding the permissibility of imposing *ta'zir* punishments through property seizure. According to the opinions of Imam Syafi'i, Imam Malik, Imam Ahmad ibn Hanbal, and Imam Abu Yusuf, such fines are permissible if they serve the public interest (*maslahah*) and are imposed within clearly defined limits.<sup>34</sup> In contrast, Imam Abu Hanifah and Imam Muhammad, do not permit *ta'zir* punishments in the form of fines, due to concerns over potential injustice and arbitrary deprivation of property. Nevertheless, Abu Yusuf allows financial penalties as a form of *ta'zir* when necessity and public interest require it.<sup>35</sup>

Ibn Taymiyyah and his student Ibn al-Qayyim decided that the fine punishment is permissible under certain circumstances, aligning with the widely accepted opinion of Imam Malik, a group of Hanbali scholars, and one of the two predominant opinions within the *Mazhab Syafi'i*.<sup>36</sup> Importantly, these scholars emphasize that such penalties must not be punitive excesses, but corrective measures aimed at deterrence, reform, and the protection of public order.

*Mazhab Syafi'i* acceptance of fines as *ta'zir* punishment, provided they serve *maslahah*, places it closer to the Maliki and Hanbali positions, which emphasize judicial discretion and public interest. This contrasts with the stricter Hanafi view that generally rejects financial penalties, except in the minority opinion of Abu Yusuf. Thus, the *Mazhab Syafi'i* occupies a middle ground, permitting fines under conditions that safeguard justice.

## Other forms of *ta'zir* punishment

There are various forms of punishment that may be imposed for *ta'zir* offences in the *Mazhab Syafi'i*, *ta'zir* punishments consist of various discretionary measures intended to discipline offenders and prevent wrongdoing. These punishments may include exile for repeat offenders, public declaration of offences as a form of deterrence and other corrective measures

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<sup>34</sup> H.M. Nurul Irfan, *Fiqh Jinayah*, ed. 1, cet. 1 (Jakarta: Prenadamedia Group, 2013), 157-158

<sup>35</sup> Paizah Haji Ismail, *Undang-Undang Jenayah Islam*, cet. 5 (Petaling Jaya, Selangor Darul Ehsan: Tradisi Ilmu SDN BHD, 2008), 266

<sup>36</sup> Wahbah Al-Zuhaili, *Fiqh dan Perundangan Islam*, jilid VI, diterjemah oleh Dr. Ahmad Shahbaru Salamon (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1999), 213–214.

deemed appropriate by the authorities. The application of *ta'zir* is guided by judicial discretion and the objectives of the Syariah, particularly in safeguarding public order and moral values.<sup>37</sup>

These include publicly acknowledging the wrongdoing along with advice, requiring attendance in court, issuing warnings, reprimanding, capital punishment, removal from office, and other measures determining the most appropriate punishment based on the nature and severity of the offence committed.<sup>38</sup>

As discussed above, Islamic law recognizes numerous forms of *ta'zir* punishment. However, under the legal provisions in Brunei, most of these *ta'zir* punishments are not implemented in the Syariah Court of Brunei. Instead, only three forms of punishment are applied, which is imprisonment, flogging and fines.

## 2. The implementation of *ta'zir* in Brunei Darussalam

The formal adoption of Islam in Brunei Darussalam occurred during the reign of Sultan Muhammad Shah, around the year 1368 CE 14<sup>th</sup> century. Brunei Darussalam has continuously sought to align its governance with Islamic principles. This evolution reached a definitive milestone with the gazetting of the Syariah Penal Code Order 2013.<sup>39</sup> Central to this system is the category of *ta'zir* which serves as the versatile engine of the Brunei Syariah Court.

In *Syariah* Penal Code Order 2013, *ta'zir* punishments are classified under the category of general offenses (*Kesalahan-Kesalahan Am*), where the penalties are not explicitly prescribed in the Qur'an or the Sunnah of the Prophet Muhammad SAW. Instead, these punishments are determined by the authorities allowing judges to determine punishments based on the

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<sup>37</sup> Paizah Haji Ismail, *Undang-Undang Jenayah Islam*, cet. 5 (Petaling Jaya, Selangor Darul Ehsan: Tradisi Ilmu SDN BHD, 2008), 267,

Tindak Pidana Ta'zir dalam Hukum Pidana Islam: Definisi Dasar Hukum, Jenis dan Hukuman," *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam* 5, no. 1 (2024): 31, <https://jurnal.uinsu.ac.id/index.php/alqanun/article/download/21486/8783>

Mohd Syukri Hanapi, *Kamus Istilah Undang-undang Jenayah Syariah (Hudud, Qisas dan Takzir)* (Brunei: UNISSA, 2016), 260.

<sup>38</sup> Paizah Haji Ismail, *Undang-Undang Jenayah Islam*, cet. 5 (Petaling Jaya, Selangor Darul Ehsan: Tradisi Ilmu SDN BHD, 2008), 267

<sup>39</sup> Norfaezah Saban, "Jenayah Curi Menurut Undang-Undang Syariah dan Undang-Undang Brunei Darussalam dari Perspektif Mazhab Syafi'i," *Al-Shafi'i: Jurnal Antarabangsa Kajian Islam Kontemporari Pusat Penyelidikan Mazhab Syafi'i* 2, no. 2 (2022): 4, <https://doi.org/10.59202/as.v2i2.631>

circumstances, provided they remain consistent with *Syariah* law.<sup>40</sup> Examples of *ta'zir* punishments implemented in Brunei Darussalam include flogging (lashes), imprisonment, *arsh* (compensatory fines), exile, asset confiscation, bank account freezing, demotion, and other disciplinary measures.<sup>41</sup>

The implementation of these laws was strategically phased to ensure societal readiness, beginning in 2014 and reaching full enforcement on 3<sup>rd</sup> April 2019.<sup>42</sup> Crucially, the application of *ta'zir* in Brunei is not limited to the Muslim population, it extends to non-muslims in specific cases involving public interests and social sanctity, such as indecent behavior or disrespecting the month of Ramadhan.<sup>43</sup> By balancing judicial flexibility with a strict adherence to *Maqasid Syariah*, Brunei's *ta'zir* framework aims to protect the nation's more fabric and social order in a contemporary global context.<sup>44</sup> From the perspective of punishment implementation, the Prisons Department conducts rehabilitation programs in the form of spiritual and psychological development.<sup>45</sup>

It should also be noted that, although SPCO 2013 has been used as Brunei's legal system, the country has been practicing *ta'zir* punishment since before the implementation of *Syariah* law. This can be seen in other major laws of the country, where penalties for offences include fines, imprisonment, and similar sanctions.<sup>46</sup> The punishment of *ta'zir* should not exceed the punishment of *hadd* and *qisas*. If the crime of *hadd* does not meet the conditions or

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<sup>40</sup> *Kesalahan-kesalahan di bawah Perlaksanaan Kanun Hukuman Jenayah Syariah (PKHJS) 2013*, diakses 30 Januari 2025 [KESALAHAN-KESALAHAN DIBAWAH PKHJS 2013.pdf](#)

<sup>41</sup> Yang Berhormat Mufti Kerajaan, *Qanun Jenayah Syariah: Satu Pengenalan* (Negara Brunei Darussalam: Jabatan Mufti Kerajaan, 2013), 211.

<sup>42</sup> Siti Zubaidah Ismail dan Norasiah Awang Haji Amai, "Dari Keadilan Raja Kepada Undang-Undang Agama: Perkembangan Semasa Islam di Brunei," *Journal of Al-Tamaddun* 18, no. 1.3 (2023): 30–44.

<sup>43</sup> *Kesalahan-kesalahan di bawah Perlaksanaan Kanun Hukuman Jenayah Syariah (PKHJS) 2013*, KESALAHAN-KESALAHAN\_DIBAWAH\_PKHJS\_2013.pdf, diakses 30 Januari 2025 [KESALAHAN-KESALAHAN DIBAWAH PKHJS 2013.pdf](#).

Siti Zubaidah Ismail dan Norasiah Awang Haji Amai, "Dari Keadilan Raja Kepada Undang-Undang Agama: Perkembangan Semasa Islam di Brunei," *Journal of Al-Tamaddun* 18, no. 1.3 (2023): 41

<sup>44</sup> Z. bin Yusoff and H. bin Haji Abdul Latif, "Implementation of the Syariah Law According to the Maqasid al-Syariah: Brunei Darussalam's Approach in the Universal Periodic Review," paper presented at the *International Conference on Syariah & Law (ICONS)*, 2023, 33.

<sup>45</sup> Abdurrahman Raden Aji Haqqi, Ahmad Masum, Cecep Soleh Kurniawan, Mas Nooraini Mohiddin, Hanan Abdul Aziz, Supri Sudin, and Zurairatul Zakiah Rajid, "Peningkatan Kes Curi di Brunei Darussalam: Punca dan Penyelesaiannya, Analisis Awal dari Perspektif Agensi Perundangan," in *Proceedings Borneo Islamic International Conference*, vol. 13 (2022), 130–35, eISSN 2948-5045., 134.

<sup>46</sup> Siti Zubaidah Ismail dan Norasiah Awang Haji Amai, "Dari Keadilan Raja Kepada Undang-Undang Agama: Perkembangan Semasa Islam di Brunei," *Journal of Al-Tamaddun* 18, no. 1.3 (2023): 30–44.

evidence such as witnesses, then the criminal law of *hadd* moves to the law of *ta'zir* and is no longer contained in the law of *budud*.<sup>47</sup>

Moreover, the flexibility and adaptability of *ta'zir* to the contemporary cases allow the law to address new or evolving crimes for example fraud, corruption, cybercrime that were not present in classical times. This adaptability ensures the relevance of Islamic law across different contexts and eras.<sup>48</sup>

*Ta'zir* offences under the *SPCO 2013* are listed in Chapter IV: General Offences (*Kesalahan-kesalahan Am*). Here are some examples of General Offences (*Kesalahan-Kesalahan Am*):

**Table.1:** Among the provisions of the *SPCO 2013* (Source: *Constitution of Brunei Darussalam; Order made under Article 83(3) of SPCO 2013*)<sup>49</sup>)

Section	Offense	Explanation	Punishment
192	Punishment of committing <i>ghasab</i> .	“ <i>Ghasab</i> ” means the domination of the rights of others by tyrannically without the consent of the person who has the right. Any person who commits <i>ghasab</i> is guilty of an offence	Shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 5 years or both.
194	Failure to perform Friday prayer	Any male who is <i>mukallaf</i> who fails to perform the Friday prayer in a mosque without <i>uzur syar'ie</i> or without any reasonable	Shall be liable on conviction to a fine not exceeding \$200 for a first offence, a fine not exceeding \$300 for a second offence,

<sup>47</sup>Yang Berhormat Mufti Kerajaan, *Qanun Jenayah Syariah: Satu Pengenalan* (Negara Brunei Darussalam: Jabatan Mufti Kerajaan, 2013), 211.

<sup>48</sup>Ta'zir in Malaysia Legal System <https://www.ikim.gov.my/en/tazir-in-the-malaysian-legal-system-2/> accessed on 20 January 2026

<sup>49</sup> Perlembagaan Negara Brunei Darussalam (Perintah Kanun Hukuman Jenayah 2013) [https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette\\_PDF/2013/BM/b069.pdf](https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/BM/b069.pdf) access on: 30 Januari 2025

		excuse is guilty of an offence	and a fine not exceeding \$1,000 for a third or subsequent offence.
195(1)	Disrespecting month of Ramadhan.	(1) Any person who consumes in public any food, drink or tobacco during the fasting hours in the month of Ramadhan is guilty of an offence	Shall be liable on conviction to a fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

### 3. Analysis of the suitability of the implementation of *ta'zir* in Brunei Darussalam with the *Mazhab Syafi'i*

The implementation of *ta'zir* in Brunei serves as the primary mechanism of legislative flexibility, allowing the state to translate traditional Fiqh Syafi'i into a contemporary legal framework. Unlike the fixed boundaries of *hadd*, *ta'zir* grants the authorities the discretionary power to address modern crimes within a Syariah Compliant structure. This adaptability ensures that while *Mazhab Syafi'i* is upheld, the punishments remain relevant and proportionate to the socio-legal demands of modern state. Consequently, *ta'zir* acts as a vital interface, harmonizing classical Islamic jurisprudence with the administrative needs of Brunei's current judiciary.<sup>50</sup> Most of the *ta'zir* cases in Brunei is by imprisonment, flogging and fines. By focusing on these 3 punishments:

#### Imprisonment

The implementation of imprisonment sentences in Brunei courts under the *SPCO 2013* includes offences punishable by imprisonment, such as the following:

<sup>50</sup> Safira, W., et al., "The Relevance of the Concept of Ta'zir in the Contemporary Islamic Criminal Law System," *Jurnal Sababat ISNU* 2, no. 2 (2025),70-71,

Special lecture on the enforcement of the Syariah Penal Code Order, 2013 <https://www.agc.gov.bn/AGC%20Images/downloads/speech/english.pdf> access on 30 January 2025

**Table.2:** Among the provisions of the *SPCO 2013* (Source: *Constitution of Brunei Darussalam; Order made under Article 83(3) of SPCO 2013*<sup>51</sup>)

Section	Offence	Explanation	Punishment
196	<i>Khalwat</i>	(1) Any Muslim who commits <i>khalwat</i> is guilty of an offence  (2) Any non-Muslim who commits <i>khalwat</i> with a Muslim is guilty of an offence	(1) Shall be liable on conviction to a fine not exceeding \$4,000, <b>imprisonment</b> for a term <b>not exceeding one year</b> or both.  (2) shall be liable on conviction to a fine not exceeding \$4,000, <b>imprisonment</b> for a term <b>not exceeding one year</b> or both.
208	Practising etc. black magic.	(1) Any person who practises or advertises black magic is guilty of an offence	(1) Shall be liable on conviction to a fine not exceeding \$20,000, <b>imprisonment</b> for a term <b>not exceeding 5 years</b> or both.

An example of imprisonment sentences carried out in the *Syariah* Courts of Brunei can be seen in a case reported by *Media Permata* Brunei on April 9, 2020. A 21-year-old Bruneian man was sentenced to **one month's imprisonment** by the *Syariah* High Court in Bandar Seri Begawan for the offence of theft (*sariqah*). Muhammad Shafri Khairul Izzani bin Haji Muhammad Jeffri was found guilty under **Chapter 55(3)(b)** of the *SPCO 2013*, which carries a *ta'zir* punishment.<sup>52</sup>

### **Flogging**

The implementation of flogging in Brunei's *Syariah* Courts under the provisions of the *SPCO 2013* that are punishable by flogging, such as the following:

<sup>51</sup> Perlembagaan Negara Brunei Darussalam (Perintah Kanun Hukuman Jenayah 2013) [https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette\\_PDF/2013/BM/b069.pdf](https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/BM/b069.pdf) access on: 30 January 2025

<sup>52</sup> Media Permata <https://mediaPermata.com.bn/sariqah-lelaki-tempatan-dihukum-penjara-sebulan/> access on: 15 Ogos 2025

**Table.3:** Among the provisions of the SPCO 2013 (Source: Constitution of Brunei Darussalam; Order made under Article 83(3) of SPCO 2013<sup>53</sup>)

Section	Offense	Explanation	Punishment
112(2)	Declaring oneself as non-Muslim.	(2) Any Muslim who declares himself as a non-Muslim and it is proved by evidence other than those provided under subsection (1) is guilty of the offence of <i>irtidad</i>	(2) Shall be liable on conviction to imprisonment for a term not exceeding 30 years and <b>whipping not exceeding 40 strokes.</b>
108	Declaring oneself as God.	(1) Any Muslim who declares himself or any other person as God and it is proved either by <i>ikrar</i> of the accused, or by <i>syahadah</i> of at least two <i>syahid</i> according to <i>Hukum Syara'</i> after the Court is satisfied having regard to the requirements of <i>tazkiyah al syuhud</i> , is guilty of the offence of <i>irtidad</i>  (2) Any Muslim who declares himself or any other person as God and it is proved by evidence other than	(1) Shall be liable on conviction to death as <i>hadd</i> .  (2) Shall be liable on conviction to imprisonment for a term not exceeding 30 years and <b>whipping not exceeding 40 strokes.</b>

<sup>53</sup> Perlembagaan Negara Brunei Darussalam (Perintah Kanun Hukuman Jenayah 2013) [https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette\\_PDF/2013/BM/b069.pdf](https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/BM/b069.pdf) access on: 30 Januari 2025

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those provided under  
subsection (1) is guilty  
of the offence of *irtidad*

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In a case reported by *Media Permata* on 19 June 2024, the *Syariah* Court of Appeal reviewed the sentence of Muhd Munawarah bin Haji Abdul Kadir, who had been convicted for his involvement in the theft of copper cables, which resulted in disruption to telecommunication services. Initially, he was sentenced to five years and four months' imprisonment along with six strokes of whipping. However, following an appeal, the court revised the sentence and reduced the number of whippings from six to four. This adjustment was made in recognition of the accused's guilty plea and the cooperation he provided to authorities after his arrest.<sup>54</sup>

### **Fine punishment**

The implementation of fines as a form of punishment in the *Syariah* Courts of Brunei is outlined under the SPCO 2013. Among the offences punishable by fines under this legislation are:

**Table.4:** Among the provisions of the SPCO 2013 (*Source: Constitution of Brunei Darussalam; Order made under Article 83(3) of SPCO 2013*<sup>55</sup>)

Section	Offense	Explanation	Punishment
220	Contempt or brings into contempt etc. religion of Islam	Any person who, orally, in writing, by visible representation or in any other manner contempt or brings into contempt, disputes, questions, insults, makes fun of,	Shall be liable on conviction to a <b>fine not exceeding \$12,000</b> , imprisonment for a term not exceeding 3 years or both.

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<sup>54</sup> Media Permata (hukuman sebat) <https://mediaPermata.com.bn/hukuman-sebat-pesalah-kes-curi-kabel-dikurangkan/> access on: 5 Jun 2025

<sup>55</sup> Perlembagaan Negara Brunei Darussalam (Perintah Kanun Hukuman Jenayah 2013) [https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette\\_PDF/2013/BM/b069.pdf](https://www.agc.gov.bn/AGC%20Images/LAWS/Gazette_PDF/2013/BM/b069.pdf) access on: 30 Januari 2025

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		mocks, mimics or ridicules –	
		(a) the teaching of the religion of Islam;	
		(b) the practice or ceremony related to the religion of Islam;	
		(c) words that are regarded as holy by Muslims;	
		is guilty of an offence	

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232(1)	False report.	(1) Any complainant in a case who, before the judgement of the Court, or after the judgement of the Court but before the execution of the punishment, confesses or it is proved that he has lodged a false report or has lodged a report which he knows or believes to be false is guilty of an offence	(1) Shall be liable on conviction to <b>a fine not exceeding \$8,000,</b> imprisonment for a term not exceeding 2 years or both.
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In a case reported by *Media Permata Brunei* on 10 December 2020, a 33-year-old Bruneian man was fined BND \$8,000 for violating Section 220(c) of the Syariah Penal Code Order *SPCO*, which pertains to disregarding religious sensitivities. The Syariah Prosecution Division of the Ministry of Religious Affairs took legal action against Muhammad Zai'imuddin

bin Awang Mohd Zinin after an image showing his arm tattooed with a sacred Islamic phrase went viral on social media.<sup>56</sup>

The case between the Syariah prosecutor and Kamariah (not a real name) who was charged with committing the offence of *kehalwat* under section 196(1) of the SPCO 2013. In this case, the accused pleaded guilty and was sentenced to a fine of \$3,000 or 180 days imprisonment in default of payment.<sup>57</sup>

In a case who was charged with man posing as women or vice versa under section 198(1) of the SPCO 2013. In this case, the accused pleaded guilty and was sentenced to a fine of \$1,000 and must pay the fine before 2.30pm immediately after hearing or 40 days imprisonment in default of payment.<sup>58</sup>

**Table.5:** This table illustrates the application of *ta'zir* cases, tracing their basis in the *Mazhab Syafi'i* and their implementation in SPCO 2013 and Brunei's legal practice.

Example of cases	<i>Mazhab Syafi'i</i>	Brunei's Syariah Penal Code Order, 2013	Brunei's practice
Imprisonment (theft)	Syafi'i jurisprudence relies on juristic interpretation. There is no fixed maximum or minimum limit for prison sentences.	<b>55. (3)</b> Any person who commits sariqah – (b) in any circumstances stated in sections 56 and 57, is guilty of an offence and shall be liable on conviction to a fine not exceeding <b>\$40,000</b> , imprisonment for a term not exceeding <b>10 years</b> or both,	A 21-year-old Bruneian man was sentenced to <b>one month's imprisonment</b> by the Syariah High Court in Bandar Seri Begawan for the offence of theft ( <i>sariqah</i> ).
Flogging	Syafi'i jurisprudence relies on juristic	<b>55. (3)</b> Any person who commits sariqah -(a)(b) is guilty of an offence and	He was sentenced to five years and four months'

<sup>56</sup>Media Permata (hukuman penjara) <https://mediaPermata.com.bn/didenda-8000-diarah-hilangkan-tatu/> access on: 5 Jun 2025

<sup>57</sup> Norasiah binti Awang Haji Amai, *Hukuman terhadap pesalah wanita di mahkamah syariah Brunei Darussalam: Kajian terhadap pelaksanaan Perintah Kanun Hukuman Jenayah Syariah, 2013* (PhD diss., University of Malaya, Kuala Lumpur, Malaysia, 2023), 136.

<sup>58</sup> BM/MHRS/145a/016 attended on 23 Ogos 2022

	interpretation. Flogging in the category of ta'zir is allowed but not exceeding 99 lashes.	shall be liable on conviction to a fine not exceeding <b>\$40,000</b> , imprisonment for a term not exceeding <b>10 years</b> or both	imprisonment along with <b>six strokes of whipping</b> . However, following an appeal, the court revised the sentence and <b>reduced the number of whippings from six to four</b> .
Fine ( <i>Khalwat</i> )	In Syafi'i fiqh, <i>ta'zir</i> is tied to the ruler's discretion. Fines may be allowed as compensation for damages as well as for purposes that serves the public interest ( <i>maslahah</i> ).	<b>196. (1)</b> Shall be liable on conviction to a fine not exceeding \$4,000, <b>imprisonment</b> for a term <b>not exceeding one year</b> or both.	The accused pleaded guilty and was sentenced to a fine of <b>\$3,000 or 180 days imprisonment</b> in default of payment

As presented in the table above, while Brunei's codified Syariah criminal framework establishes statutory limits that temper the discretion traditionally granted to judges under Syafi'i jurisprudence, these provisions function mainly as guiding references, allowing judges some flexibility to account for the specific circumstances of each case illustrating the inherently adaptive character of *ta'zir* in classical Syafi'i theory.

#### 4. Assessing the consistency of Brunei Darussalam's *ta'zir* implementation with the *Mazhab Syafi'i*

By situating Brunei's practice within the Syafi'i tradition, this section highlights the extent to which *ta'zir* serves as a bridge between classical Islamic jurisprudence and modern legislative needs, ensuring that punishments remain proportionate, legitimate, and aligned with the principle of *ta'zir*.

<b>Area of alignment</b>	<b><i>Mazhab Syafi'i</i> and Brunei's Syariah law</b>
Judicial Discretion	Both Syafi'i fiqh and Brunei's law recognize <i>ta'zir</i> as discretionary, allowing judges to determine punishments based on the circumstances.
Objectives of the punishment	To emphasize prevention, correction and safeguarding the public interest.
Moral and Social Order	Both view <i>ta'zir</i> as a mechanism to preserve morality and maintain social harmony.

As of the area that is divergence between *Mazhab Syafi'i* and Brunei's Syariah law:

<b>Area of divergence</b>	<b><i>Mazhab Syafi'i</i></b>	<b>Brunei's Syariah law</b>
Classical flexibility and codified	Syafi'i jurisprudence relies on juristic interpretation.	While Brunei codifies punishment in statutory form, limiting discretion to what is prescribed as the foundation and reference.
Scope of crimes	<i>Ta'zir</i> offences are punishments that are not covered by hadd or qisas or which do not fulfill its essential legal elements or conditions.	Whereas Brunei extended into modern's crimes such as corruption, cybercrime and drug offenses.
State Authority	In Syafi'i fiqh, <i>ta'zir</i> is tied to the ruler's discretion	In Brunei it is exercised within a structured judicial system under codified law

## E. Conclusion

*Ta'zir* in *Mazhab Syafi'i* represents discretionary punishments for offenses not covered by fixed Islamic penalties, designed to educate offenders, deter future wrongdoing and safeguard public welfare. In the *Syariah* Courts of Brunei, *ta'zir* punishments commonly include fines, imprisonment and flogging applied according to the severity of the offence and the circumstances of each case. While Brunei's implementation largely aligns with Syafi'i principles, this alignment is not absolute. Judicial discretion, state policy, and the demands of modern governance introduce a degree of flexibility, highlighting the tension between classical fiqh theory and contemporary judicial practice. While Brunei's codified *Syariah* law constrains judicial discretion, it mainly provides guidance, enabling judges to apply *ta'zir* flexibly in line with the circumstances of each case. These dynamics demonstrate that *ta'zir* when properly guided can reconcile the moral and educational objectives of Islamic law with modern legal requirements, yet its application must remain cautious. This study is limited by reliance on documentary sources and the non-use of empirical court decision data, which may restrict understanding of how *ta'zir* is applied in practice. Future research could benefit from incorporating empirical analyses of court cases, interviews with judges, or comparative studies across different Muslim-majority countries to better assess how judicial discretion operates in contemporary settings. The implications of this study are significant for policymakers, legal practitioners, and scholars.

## F. Conflict of Interest Statement

The authors hereby affirm that there are no conflicts of interest related to the preparation or publication of this article.

## G. Acknowledgement

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