

A COMPARATIVE STUDY OF THE INTERPRETATION OF QISHASH PUNISHMENT IN THE THOUGHT OF IMAM IBN ABIDIN AL-SHAMI AND IMAM MALIK

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Abstrak

This study examines the methodological and epistemological differences between Imam Malik and Ibn Abidin al-Shami regarding the method of executing qishash punishment in cases of intentional murder. This study uses a qualitative approach based on library research with comparative analysis of two primary texts: al-Mudawwanah al-Kubra by Imam Malik and Radd al-Muhtar by Ibn Abidin. The analysis was conducted using the maqashid sharia framework, covering hifz al-nafs, al-'adl, raf' al-mafsadah, al-zajr, karamah insaniyyah, and social legitimacy of law. The epistemological approach of fiqh was used to describe how each scholar reasoned about texts, traditions, and social realities. The results of the study show that Imam Malik's opinion emphasizes substantive justice through equal punishment, while Ibn Abidin emphasizes procedural justice and protection of the dignity of the perpetrator by rejecting methods of execution that mimic brutal forms of murder. The maqashid analysis found that both views have their own strengths, but Ibn Abidin's opinion is more consistent with the principles of avoiding harm, judicial stability, and human values in the context of modern law. This study concludes that Ibn Abidin's approach is more dominant in terms of maqasid for application in a contemporary context, as it minimizes the risk of torture, guarantees procedural justice, and preserves human dignity. However, Imam Malik's opinion remains relevant as a supporting principle in understanding the concept of moral equivalence in qishash. These differences enrich the discourse of fiqh and provide a basis for the formulation of Islamic criminal law that is more contextual, proportional, and humanistic.

Kata Kunci: *Epistemology of Fiqh, Imam Malik, Ibn Abidin, Execution of Punishment, Maqashid Sharia, Qishash*

PENDAHULUAN

The most controversial issue in qishash does not stop at the certainty that murderers must be sentenced to death, but rather lies in the fundamental question of *how to end the life of a murderer according to the standards of Sharia justice*. This is where Islamic law enters the most critical area of criminal law—when

Sharia mandates the state to take a life, every aspect of the method of execution becomes a highly sensitive moral, legal, and theological issue. The method of execution is not merely a technical element, but a reflection of how Sharia balances the rights of the victim, the rights of the perpetrator, and the basic principle of protecting life. Therefore, the debate over how to carry out qishash becomes a litmus test to

determine whether Islamic law appears as a dignified justice system or has the potential to give rise to practices of revenge that are undesirable under sharia law (Faradila & Sa'i, 2025).

The tension between the principle of *al-mumathalah* (equality of action between perpetrator and victim) and the principle of *taqlil al-alam* (minimizing suffering) has shifted this discussion from a mere technical issue to a philosophical battle of concepts. Some scholars place justice in the equality of action, namely that the perpetrator should suffer consequences identical to their actions. Others assert that Sharia does not mandate equality of suffering, but rather equality of the final outcome, namely the loss of the perpetrator's life in the quickest and least painful manner. This is what makes the method of qishash execution not only a fiqh issue, but also a deeply ethical and humanitarian issue (Alim et al., 2025).

In contemporary social reality, the issue of methods of execution continues to be a sensitive and complex debate. In various countries, differences in methods of execution—ranging from firing squads, lethal injections, hanging, to beheading—have sparked heated discourse regarding the limits of what is reasonable in imposing punishment. The global community pays close attention to how a country treats its death row inmates, as execution methods are often seen as a reflection of a country's level of civilization, humanitarian values, and commitment to human rights. International criticism of countries that still use certain methods shows that modern societies view execution methods not only as technical actions, but also as symbols of morality and the legitimacy of the state in exercising supreme power over its citizens (Abdillah & Huda, 2024).

In the context of Muslim societies themselves, the issue of execution methods is no less complex. Countries that implement Sharia law or some Sharia punishments face public scrutiny regarding how qishash is carried out. Differences in implementation methods, including the use of swords in some jurisdictions, have led to mixed reactions in society. Some see it as a form of consistent implementation of Sharia law, while others question the compatibility of this method with humanitarian principles and modern values. This debate shows that society is not only questioning *whether qishash is permissible*, but also *how qishash is carried out* and whether the methods used reflect the value of justice (Anjas Saputra et al., 2024).

Additionally, advances in medical technology, international ethical standards, and increasing public sensitivity to issues of violence reinforce the urgency of discussing methods of carrying out the death penalty from a religious perspective. This phenomenon confirms that the issue of qishash methods is not merely a classical discourse, but a social reality that continues to intersect with socio-political dynamics, global moral standards, and the Muslim community's perception of Islamic law (Z). Thus, the differences in scholars' views regarding the method of qishash execution have gained new relevance in responding to the challenges and demands of a contemporary society that is increasingly critical of the way the state carries out the death penalty (Siregar et al., 2024).

The implementation of the death penalty—including qishash—has always been a subject of complex legal debate because every judicial system strictly regulates the procedures and methods of execution as part of the protection of the rights of the convicted. Many countries impose strict standards regarding the tools, mechanisms, and actions of execution to ensure that the implementation of the punishment does not cause excessive pain and is in accordance with applicable legal principles. For example, in various international legal instruments, such as *the International Covenant on Civil and Political Rights* (ICCPR), countries that still apply the death penalty are required to ensure that the methods of execution are not cruel, inhuman, or degrading. These legal provisions indicate that execution methods are not a matter of technical choice, but an integral part of legal protection for convicts (Kanggas et al., 2025).

At the same time, in the legal systems of Muslim countries that apply Sharia law partially or fully, there is diversity in execution methods based on the fiqh interpretations adopted by each legal authority. Some jurisdictions refer to the opinions of scholars who emphasize beheading as the standard method of execution, while others adopt methods such as hanging or firing squad because they are more in line with modern legislation (Suarning et al., 2025). This diversity shows that the differences in opinion among classical scholars regarding qishash execution methods have a direct impact on contemporary regulations, in which countries must choose between following standardized execution methods or adjusting punishments to human rights principles and international regulations (Pratama & Rasmawan, 2025).

In the context of national law in Indonesia, although qishash is not regulated in the positive legal system, the existence of the death penalty in legislation still mandates that the method of execution must meet strict procedural standards. Law No. 2 of 1964 regulates the implementation of the death penalty by firing squad and emphasizes the need for procedures that do not cause excessive suffering. This provision indicates that the principle of minimizing suffering has become part of modern legal standards (Bahri & Chalili, 2025). This legal fact gives new relevance to the classic debate between Ibn Abidin al-Shami and Imam Malik, as it shows that the choice of execution method has legal consequences that must be in accordance with contemporary legal principles, both at the national and international levels (Natalis et al., 2025). Thus, the study of differences in qishash execution methods is not only theoretically relevant, but also important in assessing how Islamic legal principles can interact with modern legal standards (Putera et al., 2024).

The debate over the method of execution in Islamic law is one of the most heated and argumentative issues in fiqh. This issue arises from differences in how scholars understand the principle of justice in qishash: whether justice is determined by *the equality of actions* or by *the equality of the final result*, which is the loss of the perpetrator's life without causing excessive suffering. From this difference, two major schools of thought have emerged, representing different fiqh frameworks. The first group—one of whose representatives is Ibn Abidin al-Shami from the Hanafi school of thought—asserts that qishash execution must be carried out in the fastest, most precise, and least painful manner, namely by using a sword. For this group, the use of a sword is not only based on Arab tradition, but also on the principle of *taqlil al-alam*, which is the obligation to minimize pain in the execution of punishment. They argue that Sharia law does not require qishash to be identical to the method of murder used by the perpetrator; the main thing is to achieve *maqsud al-'uqubah*, which is the taking of life as a form of retribution and the enforcement of justice. Thus, standardizing the method of execution is seen as a form of protection of human dignity and avoidance of torture.

Conversely, the second group—whose opinion is strongly represented by Imam Malik—adheres to the principle of *al-mumathalah*, namely the obligation to retaliate

against the perpetrator in the same manner as he committed the crime. For the Maliki school of thought, justice is not sufficiently achieved by merely ending the perpetrator's life, but must be realized in the form of equality of action. If the perpetrator kills using a stone, then he is punished with a stone; if he drowns the victim, he is punished by drowning; if he burns, he is punished with fire. This opinion stems from the understanding that qishash is not merely the death penalty, but a mechanism of moral and social restoration that affirms that the criminal acts committed by the perpetrator receive an appropriate punishment.

The difference between these two opinions reflects methodological differences in understanding Sharia texts. Scholars who support the use of the sword emphasize humanity, maqashid Sharia, and the principle of avoiding suffering in the implementation of punishment. Meanwhile, scholars who require retaliation identical to the method of murder emphasize the literal aspect of equality in qishash as reflected in Allah's words "*fa man i'tada 'alaykum fa'tadu 'alayhi bi mitsli ma'tada 'alaykum*" as the normative basis for the principle of retribution. This study has the main objective of providing a comprehensive, in-depth, and proportional understanding of the differences in opinion among scholars regarding the method of execution of qishash punishment, especially between the views of Imam al-Shami, who asserts that the execution must use a sword as the fastest means of killing, and the views of Imam Malik, who emphasizes that the method of qishash must follow the method of murder committed by the perpetrator. This study attempts to systematically reveal the basic fiqh arguments used by each scholar, whether sourced from the Qur'an and hadith, relevant fiqh rules, or the *istinbath* methodological framework that characterizes their *madhhab*. In addition, this study also explores the historical, social, and intellectual contexts that influenced the formation of these different views, because every scholar's opinion is always born from the space and time framework that shapes the way they see reality.

Through this study, it is hoped that it will become clear how these differences in perspective have implications for the principles of justice, benefit, and protection of life in Islamic law. The analysis of these two views is not only intended to reinforce the positions of each scholar, but also to reveal their relevance and possible application in the context of

contemporary law, especially in countries or institutions that still refer to jinayah law. This study provides a strong academic foundation for assessing the extent to which these two views can be understood within the framework of maqashid syariah, so that the concept of qishash execution is not only seen as a retaliatory action, but as a legal mechanism that aims to protect human dignity.

Practically, this research is useful for researchers, academics, and policymakers to understand that differences of opinion among scholars are not legal conflicts, but rather intellectual wealth that opens up space for dialogue and the development of laws that are more adaptive to the current situation. This research can also serve as an educational reference for the community and religious institutions in viewing the issue of qishash proportionally, where substantive justice and respect for the soul are the main foundations. Thus, this research not only contributes theoretically to the enrichment of criminal jurisprudence literature but also provides direct benefits in reinterpreting Islamic law in a more prudent, contextual, and responsive manner to modern social dynamics.

METODE

The research method applied in this study is qualitative research with a descriptive analysis approach. This approach is used to describe and analyze in depth how the method of executing qishash punishment in fiqh is reviewed in terms of justice. The scope of this study is to examine in detail the perspectives of usul and fiqh of Imam Ibn Abidin al-Shami from the Hanafi school of thought and Imam Malik from the Maliki school of thought.

The data for this study was sourced from secondary data, namely *the book Roddul Mukhtar Ala Ad-Durrul Mukhtar* by Imam Ibn Abidin al-Shami and the book *al-Mudawwanah al-Kubro* by Imam Malik, as well as various supporting literature in the form of books and scientific articles based on the Open Journal System (OJS) that examine the theme of *qishash*. The data collection process was carried out through library research, namely by searching, processing, and examining relevant written sources. Furthermore, the data was analyzed using a descriptive-exploratory approach, through the stages of data reduction, data

TEMUAN DAN PEMBAHASAN

A. Theoretical Framework of Qishash

1. Definition of Qishash

Qishash is one of the most important concepts in Islamic criminal law (*fiqh al-jinayah*) relating to retribution for crimes committed, particularly in cases of murder and grievous bodily harm. Linguistically, the word *qishash* comes from the root word "qassa-yaqussu" which means "to follow in the footsteps" or "to retaliate according to the 'footprints' of the deed" (Munawwir, 2007). This meaning emphasizes that qishash is not merely a punishment, but an act of retaliation that precisely follows the impact or type of the perpetrator's actions (Anis, 1987). In terms of terminology, scholars define qishash as the punishment of a criminal with a penalty equivalent to their crime, whether it be death in the case of murder, or the removal or damage of a body part in the case of abuse. In other words, qishash is a form of retributive justice that demands equality between the perpetrator's actions and the consequences of their punishment.

In the Qur'an, the concept of qishash is emphasized in Surah Al-Baqarah verse 178 as a legal provision that not only has value in terms of justice, but also in terms of life: "*And in qishash there is life for you, O people of understanding.*" This verse emphasizes that qishash is not intended as revenge, but as a legal system that regulates retaliation so that it is measured, controlled, and does not exceed limits. Before Islam came, the practice of revenge in Jahiliyyah Arab society was brutal and unlimited; the victim's family could kill anyone from the perpetrator's tribe, even more than one person. Islam came to eliminate this chaos and replace it with a binding legal mechanism, so that retribution is only given to the perpetrator or an equivalent party, without involving other innocent parties.

Classical scholars explain that qishash has detailed conditions, provisions, and limitations, so this law cannot be imposed arbitrarily. Qishash only applies when the killing is intentional (*al-qatl al-'amd*) and fulfills the elements of intent based on the means, intention, or actions that are generally considered lethal. Furthermore, qishash may not be carried out unless after a judicial process that confirms the truth of the incident and the identity of the perpetrator, and gives the victim's family the opportunity to choose between demanding qishash, accepting diyat (compensation), or forgiving. Thus, qishash is not absolute, but is closely related to the rights of the victim's family and the principle of balanced justice, *hifzh al-nafs* (.

Furthermore, qishash is a manifestation of *hifzh al-nafs* (protection of life) in maqashid syariah. Although it appears to be a harsh punishment, qishash actually serves to prevent crime, uphold the sanctity of life, and prevent vigilante justice. The provisions of qishash reveal the seriousness of Islamic law's " " in respecting human life: anyone who intentionally takes another person's life must be held accountable for their actions through a clear legal system, not through emotional revenge. Therefore, the definition of qishash within the framework of Islamic law cannot be understood merely as physical punishment, but as a legal mechanism that restores social justice, maintains social stability, and protects human dignity through strict, measurable rules based on divine revelation (M. Fahmi, 2025).

2. Legal Basis for Qishash

The legal basis for qishash in Islam has a very strong foundation, both from the Qur'an, the Sunnah of the Prophet, and the ijma' of the scholars, all of which emphasize that respect for human life is a fundamental principle in sharia. The verses of the Qur'an explicitly place qishash as an instrument of justice that not only serves to retaliate against criminal acts, but also maintains social stability and reduces the incidence of violence. One of the most frequently cited verses is Allah's words in Surah Al-Baqarah verse 178, "O you who believe, retribution for those who are killed is obligatory upon you." This verse emphasizes that qishash is not merely a permission, but an obligation aimed at establishing justice between the perpetrator and the victim. In another verse, the Qur'an reinforces the noble value behind qishash by emphasizing that "*In qishash there is life for you*," a moral message that shows that this punishment is not merely retaliation, but also a preventive mechanism so that humans do not easily hurt and take the lives of others.

In addition to the Qur'an, the legal basis for qishash is also confirmed through the Sunnah of the Prophet ﷺ, which provides practical examples in dealing with murder cases. The Prophet emphasized that the blood of a believer is very precious and should not be shed except for reasons that are valid according to Sharia law. In several hadiths, the Prophet enforced qishash against murderers who committed murder intentionally, while also giving the victim's family the choice between carrying out qishash, forgiving without compensation, or accepting diyat. This flexibility shows that the law of qisas in Islam is not merely oriented towards retribution, but also contains values of

compassion, humanity, and social restoration. The legal basis for qishash is also reinforced by ijma', the consensus of Islamic legal scholars from various generations that qishash is a valid law and must be enforced for intentional murder (*al-qatl al-'amd*). The fuqaha agree that qishash can be enforced as long as the conditions are met, such as intent to kill, equality between the perpetrator and the victim, and the absence of certain family relationships that would prevent its implementation. This consensus shows that qishash has been an integral part of the Islamic criminal law system since the early days of the ummah, so its validity is unquestionable in the fiqh tradition.

Overall, the legal basis for qishash not only reflects the strictness of Sharia in protecting human life, but also shows a balance between retributive justice and a humanistic resolution. Through a combination of the Qur'an, the Sunnah of the Prophet, and the legitimacy of ijma', qishash occupies a solid position in the Islamic criminal justice system as a mechanism for maintaining stability, preventing chaos, and reinforcing that human life is a trust that cannot be violated without a valid reason according to sharia (Mubiin et al., 2024)

3. Conditions and Pillars of Qishash

The application of qishash in Islamic law is never done spontaneously or without procedure. It is a very serious punishment because it concerns human life and bodily integrity, so the Sharia law sets very strict conditions before qishash can be imposed. The scholars emphasize that qishash can only be applied if all elements of the crime are fulfilled and there are no elements of doubt that could invalidate the obligation of retribution. Qishash in murder cases, for example, only applies when the act is categorized as intentional murder (*al-qatl al-'amd*), which is an act committed with the intention of taking a life, using a weapon that is generally lethal, or in a manner that is considered by society to be certain to cause death (). This intent is a key element, because if the murder occurred due to negligence or was unplanned, then the qishash punishment cannot be applied and is replaced with diyat or kafarat.

In addition to intent, another requirement relates to the legal status of the perpetrator and the victim. Scholars state that qishash cannot be enforced unless the perpetrator is a person who is legally responsible (*mukallaf*), that is, of sound mind, mature, and conscious when committing the act. Children or the mentally ill cannot be subject to qishash because they are not considered full legal

subjects. On the other hand, the victim must also have a clear status as a party whose blood is protected (*mahqud al-dam*). If the victim carried out a dangerous attack, causing the perpetrator to act in self-defense (*dafa' an al-nafs*), then qishash does not apply because the perpetrator's actions fall under the category of defense that is justified by sharia law. Similarly, if the killing occurs in the context of law enforcement by the authorities, there is no room for qishash.

Qishash can also only be imposed if the identity of the perpetrator has been established with certainty through a process of proof that leaves no room for doubt. In jinayah fiqh, qishash cannot be carried out based on suspicion, prejudice, or weak evidence. There must be a clear confession from the perpetrator, or the testimony of two fair witnesses, or strong evidence that points to the perpetrator without the possibility of confusion. Even the slightest doubt in the evidence process can invalidate the qishash punishment, because the basic principle of Sharia law states that hudud and qishash must be rejected when there is doubt.

Another requirement is that the victim's family has the right to decide whether qishash will be carried out or not. In Islamic law, qishash is not only the right of Allah, but also the right of humans (*haqq al-adami*), so its implementation depends on the decision of the wali ad-dam, namely the heirs who have the right to demand retribution. If the victim's family chooses to forgive, either freely or by accepting diyat, then qishash is automatically void. Their decision has full force in the Islamic legal structure, showing that Sharia law provides ample room for reconciliation and forgiveness as a form of benefit. In addition, if the heirs disagree on the implementation of qishash, then the punishment cannot be carried out until all parties reach an agreement.

Scholars also stipulate that qishash must be carried out by a legitimate authority, not by individuals and not by the victim's family unilaterally. The state or judge plays a role in ensuring that the punishment is carried out in accordance with the requirements of sharia, does not exceed limits, and does not lead to acts of indiscriminate revenge. State authorities are responsible for ensuring that the tools, methods, timing, and procedures for carrying out qishash are measured and do not cause unnecessary suffering. This emphasizes that qishash is not a brutal mechanism, but part of a strictly regulated legal system to uphold justice while maintaining social stability.

Thus, the conditions of qishash in Islamic jurisprudence show that although this punishment is severe, its application is very careful and measured. Sharia law stipulates various layers of caution so that no blood is shed except with perfect truth, where the intention, tools, motive, identity of the perpetrator, status of the victim, and the decision of the victim's family must all be fulfilled. This system demonstrates the commitment of Islamic law to preserving the sanctity of human life, making qishash not merely a retributive punishment, but also a legal mechanism that upholds justice, caution, and respect for life.

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The pillars of qishash are the main foundation that determines the validity of the application of qishash punishment in Islamic criminal law. If the conditions of qishash are elements that must be fulfilled before the punishment is imposed, then the pillars of qishash are the main elements that form the core of qishash itself. Scholars emphasize that without the fulfillment of these pillars, the implementation of qishash cannot be considered valid because each pillar reflects the fundamental aspects of justice, legal certainty, and protection of life, which are the main objectives of the Sharia in establishing this law. Among the pillars that must be present are :

- **The Perpetrator of the Crime (*al-Jānī*)**

The perpetrator must be an individual whose identity is clear and who has been proven to have committed intentional murder. He must be of sound mind, of legal age, and have legal capacity so that he can be held accountable. Without the existence of a perpetrator who is legally valid, qishash cannot be imposed (Audah, 1997).

- **Victim (*al-Majnū 'Alayh*)**

The victim is an individual whose life has been taken or whose body has been injured by the perpetrator. The identity of the victim must be clear, and the crime committed against them must be proven to have been intentional. The clarity of the victim's status is the main basis for the legitimacy of qishash (Audah, 1997).

- **Criminal Act (*al-Fi'l al-Mujrim*)**

The perpetrator's actions must fall under the category of intentional murder (*qatl 'amd*) or intentional abuse. The elements of intent, lethal weapons, or methods that generally cause death must be strongly proven. If the action was unintentional, qishash does not apply (Audah, 1997).

- **Wali Ad-Dam (Heirs of the Victim)**

The wali ad-dam is the party who has full rights to demand qishash, forgive, or accept diyat. Without a valid wali ad-dam or if they disagree, qishash cannot be carried out. This pillar emphasizes that qishash is the right of the victim's family, not solely the authority of the state (Audah, 1997).

- **Judgment of the Judge or Legitimate Authority (*al-Hukm*)**

Qishash can only be carried out after a legal ruling from a competent judge. The judge ensures that all pillars and conditions are met, the evidence is strong, there is no doubt, and the implementation of qishash is in accordance with sharia law. Without an official ruling, qishash

cannot be carried out to avoid vigilante justice (Audah, 1997).

This series of qishash pillars forms a complete and balanced legal structure. It not only ensures that qishash is applied fairly, but also guarantees that the implementation of this punishment is not carried out without caution. Each pillar has a different ethical and legal function, but they all converge on one major goal: to preserve the dignity of the human soul, uphold balanced justice, and prevent vigilante justice. When all these pillars are fulfilled, qishash is not merely a punishment, but a mechanism for restoring social balance within the framework of sharia law.

4. Types of Qishash

The types of qishash in Islamic law are basically related to the types of crimes that violate basic human rights, particularly life, limbs, and physical honor (Audah, 1997).

- **Qishash in Murder (*Qishāsh fī al-Qatl*)**

This type of qishash is applied in cases of intentional murder (*qatl al-'amd*). Retribution is carried out by taking the life of the perpetrator as a form of equal punishment for the life that was lost. In this case, there are two opposing views on the method of execution: some scholars, such as Imam al-Shami, assert that the ideal method of execution is by sword, while Imam Malik argues that the method of execution should follow the method used by the perpetrator to kill the victim. Qishash for murder is the most severe form of punishment in Islamic criminal law, as it touches on the aspect of protecting life as the highest law in maqashid syariah (Audah, 1997).

- **Qishash for Assault (*Qishāsh fī al-Jurūh wa al-Idārār*)**

Qishash does not only apply to murder, but also to acts of severe abuse that result in the loss of limbs or permanent damage. In this case, the perpetrator is subject to the same punishment as the damage he has caused, such as cutting off the same limb or injuring the same part of the body. Scholars discuss the details of the equivalence of injuries, including their shape, size, location, and degree of damage, so that the retribution is not excessive. If it is difficult to precisely match the injury and there is concern that it will exceed the limits, some scholars replace qishash with diyat to avoid injustice (Audah, 1997).

- **Qishash for Minor Injuries That Can Still Be Equated**

Classical fiqh explains that there are minor to moderate injuries that can still be subject to qishash because they can be accurately equated, such as cuts, certain bruises, or injuries whose size and depth can still be measured. In these cases, qishash is still possible as long as the judge ensures equality and there is no risk of injury beyond the specified limits (Audah, 1997).

- **Qishash that is Waived and Replaced with Diyat (*Qishāsh Mu'allaq*)**

Although not included in qishash in the sense of direct implementation, fiqh recognizes situations where qishash *basically applies but is waived due to certain conditions*, such as doubtful evidence, forgiveness by the guardian of ad-dam, or injuries that cannot be equated. In such circumstances, diyat becomes the mandatory substitute. This category demonstrates the flexibility of Islamic law in upholding justice and avoiding actions that could potentially oppress the perpetrator of the crime (Audah, 1997).

The Views of Ibn Abidin al-Shami and Imam Malik on the Method of Executing Qishash Punishment

The views of Ibn Abidin al-Shami and Imam Malik on the method of executing qishash punishment reveal fundamental differences in understanding the principle of *al-mumathalah* (equality in retribution) and the purpose of sharia in upholding justice. Ibn Abidin al-Shami, a great Hanafi scholar, emphasized that qishash execution must be carried out in the lightest, quickest, and least painful manner, namely by using a sword. For him, the use of a sword is not merely a tradition, but reflects the principle of protecting human dignity even if the person is a criminal. This approach is based on the rule that Sharia law does not aim to increase a person's suffering beyond the crime they have committed, but only to restore the victim's rights proportionally. Thus, according to al-Shami, the chosen method of execution must ensure a quick death, without torture, and without violating the limits of humanity. This principle leads to the understanding that justice in qishash does not have to be physically identical to the perpetrator's actions, but must be equal in the end result: the loss of life, not the similarity of the method. He explains this in his book *Roddul Mukhtar Ala Ad-Durrul Mukhtar*:

"In the book Addarar, quoted from the book al-Kafi, what is meant by a sword is a weapon. The author says: the meaning of a sword and a weapon needs to be explained further because the isim (numbers) of custom do not preclude others with it (it has no effect), just as when we associate a spear with a machete (knife) with a sword. Based

on the words of the Prophet, if the murder was committed using a stone, and if he found it in a well, killing with a stone or that type of weapon is more severe, therefore it is sufficient that the meaning is with a weapon" (Abidin, 2003)

Ibn Abidin al-Shami's view on the method of qishash execution is one of the most mature representations of the Hanafi school of thought in maintaining a balance between the principles of justice (*al-'adalah*) and mercy, as well as preventing torture in the implementation of punishment. In *Radd al-Muhtar*, when discussing the instruments or methods of carrying out qishash, Ibn Abidin quotes a number of leading authorities in his school of thought, namely *al-Durr al-Mukhtar* and *Kitab al-Kafi*. The quotation essentially explains that the term "sword" (*al-saif*) used by the fuqaha is not a term that limits a specific type of tool, but a representative term to indicate a category of weapons that are quick to kill and do not cause prolonged suffering.

In the narrative described by Ibn Abidin, it is stated: *"In Kitab al-Darar, quoted from Kitab al-Kafi, it is stated that what is meant by sword is al-silah (weapon). The author said: the meaning of 'sword' and 'weapon' needs to be further clarified because isim adat (naming based on custom) does not preclude anything else. The same applies if we associate spears, machetes, or knives with swords."* (Abidin, 2003)

The phrase " " is an important principle of *usul al-fiqh* emphasized by Hanafi scholars: when a legal text or book of *fiqh* mentions one name, it does not mean that the legal meaning is limited to that name, as long as the context indicates a broader meaning. This means that the mention of a sword is merely a linguistic convention of the society at that time to express a common tool used for execution. However, the legal meaning is "any tool that causes quick and immediate death," not a physical sword (Abidin, 2003).

Therefore, in Ibn Abidin's perspective, other tools that have similar functions and effects—such as spears, large knives, sharp daggers, or other cutting tools—are included in the legal category of "sword." This explanation shows that the main objective of Sharia in determining the method of qishash is not to imitate the form of the tool, but to ensure a quick, effective death that does not add to the suffering of the perpetrator.

Furthermore, Ibn Abidin details the reasons why the Hanafi school of thought does not follow an execution model that is identical to the method of murder used by the perpetrator. He quotes the Prophet's words mentioning cases of murder by stoning, drowning, or other more cruel

methods. However, according to Ibn Abidin, the hadith is not a command that qishash must be carried out in exactly the same way, but only mentions the facts of how the perpetrator committed the murder. He explains: *"If the murder was committed with stones, or if he drowned him in a well, or killed him in a more severe manner, then it is not obligatory for qishash to be carried out in exactly the same way. It is sufficient for the execution to be carried out with a weapon."* (Abidin, 2003)

The statement "with a weapon is sufficient" has significant legal implications. This means that even if the perpetrator used a very cruel method—such as torturing the victim with fire, stoning them to death, burning them, drowning them, or killing them slowly—the qishash execution still cannot use a method that causes similar suffering. The Hanafi school of thought rejects all forms of execution that prolong the perpetrator's pain because it is considered contrary to the general principle of Sharia: *"la 'iqābah 'ala wajhin akthar min fi'lihi"*, meaning that the punishment must not be more painful than the perpetrator's actions (Abidin, 2003).

In Ibn Abidin's view, imitating the perpetrator's method of killing opens up the potential for torture, which is prohibited by Sharia law. The function of qishash is not to repay pain with pain, but to restore the victim's rights—namely, life or limbs—proportionally without exceeding limits. Thus, the principle of equality in qishash according to Ibn Abidin is equality in the result (*al-mumāthalah fil-natijah*), not equality in form (*al-mumāthalah fil-shurah*). What is required in qishash is the loss of life as compensation for life, not imitating the way the perpetrator killed (Abidin, 2003).

This opinion is also in line with the *maqashid al-syariah* in protecting life (*hifz al-nafs*) and closing the door to torture. The use of a sword or sharp weapon is considered the most ideal method because it provides an instant effect, minimizes pain, and does not cause treatment that degrades human dignity. Even though the perpetrator has committed a serious murder, Sharia law still does not allow law enforcement to treat them cruelly (Al-Sharkhashi, 1991).

Thus, Ibn Abidin al-Shami's view leads to the conclusion that Islamic law regulates qishash execution not based on revenge or emotional retribution, but based on high standards of justice and the principles of humanity inherent in Islamic law. According to him, qishash is a mechanism of justice that is fair, measured, and maintains the dignity of both the victim and the perpetrator.

This opinion contrasts with Imam Malik's approach, which requires the same method of execution, so that a comparison of the two shows a profound epistemological difference in understanding the principles of *al-'umum*, *al-matsalah*, and *al-mumathalah* in Islamic criminal law.

Based on the arguments and analysis of Ibn Abidin al-Shami, in the implementation of punishment for intentional murderers, the type of weapon used to take a life is not the main criterion in determining qishash retribution. According to him, even if the perpetrator uses a different tool, the execution is still carried out using a sharp weapon. This shows that the main focus is on the consequence of the loss of a person's life, not on the manner or process of death (). Thus, the concept of justice emphasized by Ibn Abidin lies in the equality of the end result, namely the loss of life, and not in the similarity of the method or mechanism that caused the victim's death.

In contrast, Imam Malik emphasized that qishash must be carried out using the exact same method used by the perpetrator when killing the victim. This view is based on a literal understanding of the concept of *al-mumathalah* and on accounts that show the application of qishash in an identical manner in the early days of Islam. For Imam Malik, true justice lies in the equality of the form of retribution, so that if the perpetrator kills with a stone, then he is also executed with a stone; if he kills by drowning, then he is also executed in a similar manner; if he uses fire or a certain tool, then that method is applied as retribution. According to Maliki, this similarity in methods is actually the most effective form of deterrent, causing a person to think twice before committing a cruel murder, because they realize that whatever they do will come back to them in an identical form. Imam Malik explains this more clearly in the book *al-Mudawwanah al-Kubra*:

"If someone is found to have killed using a stone, say to him: have you ever seen someone killed with a stone? With what shall I kill him (qishash)? He said: kill him with a stone. I asked, if I kill him with wood, he said: Malik said: was he killed by wood?" (Anas, 1994).

Imam Malik's view on the method of qishash execution as recorded in *al-Mudawwanah al-Kubro* shows a firm position that qishash punishment must be carried out in accordance with the *method* used by the perpetrator when committing the murder. The quote describes a very important fiqh dialogue between a questioner and Imam Malik. When

someone asked about a case of murder with a stone, Imam Malik replied: "*Kill him with a stone.*" This answer is not only technical in nature, but also reflects the ushul principle he adheres to: that *al-mumathalah fil-fi'l* (equality in the form of action) is an integral part of the concept of justice in qishash (Anas, 1994).

In the text, the questioner also asked, "What if someone kills with wood?" Imam Malik responded with a very characteristic rhetorical question: "*Was he (the victim) killed by wood?*" This question was not merely a clarification, but Malik's mechanism for emphasizing that the tool used by the perpetrator must be identical to the tool that caused the victim's death. If the victim died from being struck by wood, then the perpetrator would be punished with wood. If the victim died from being struck by a stone, then the perpetrator would be punished with a stone. Imam Malik deliberately returned to this question to emphasize a fundamental principle: the tool that caused the death is the basis for the method of qishash.

This explanation shows that Imam Malik did not interpret qishash merely as the taking of a life in retaliation, but as *retaliation that is identical* to the perpetrator's actions. According to him, the equality between the perpetrator and the victim is not only in the result ("both die"), but also in the way the perpetrator causes death. In other words, for Imam Malik, qishash justice is *symmetrical*, where the execution of the punishment must reflect the way the perpetrator took the victim's life (Anas, 1994).

The dialogue in *al-Mudawwanah* shows how Imam Malik used the *tatsabbut* (verification of cause of death) approach. He asked again whether it was true that the tool was the direct cause of death, because if the death was not caused by the tool, then qishash would not use the tool. This shows Malik's thoroughness in ensuring factual equivalence of methods. Thus, not all wooden blows result in qishash with wood, but only if the wood is proven to be the cause of death (Anas, 1994).

Imam Malik's approach also reflects the character of the Maliki school of thought, which is closely tied to the practices of the people of Medina ('amal ahl al-Madinah), which during the time of the Prophet was considered a living representation of Sharia tradition. Many accounts indicate that the practice of qishash in the era of the companions and tabi'in was often carried out according to the method of killing the perpetrator so Malik saw it as a standard of justice inherited from the early generations of Islam.

On the other hand, Imam Malik's view shows a very strong *deterrent effect*. If someone knows that killing in a cruel manner—such as drowning, burning, or stoning will be returned to them in qishash, then they will think twice before committing such a sadistic crime. Thus, identical methods are not merely retribution, but also prevention of criminal acts through specific painful techniques. Imam Malik's opinion also reflects a literal understanding of the verse on qishash: "*And for you in qishash there is life.*" For him, the life referred to is social life created by the strictness of the law, which makes perpetrators reluctant to commit extreme violence because they are aware of the risk of identical retaliation.

Thus, the quote from *al-Mudawwanah al-Kubro* shows the distinctive character of the Maliki school of thought: justice must *be equal in form*, not just equal in impact. This principle distinguishes Malik from the Hanafiyah (such as Ibn Abidin), who emphasizes quick and painless execution, while Imam Malik emphasizes equality of method as the essence of qishash. The difference between these two scholars basically reflects two epistemological approaches in fiqh: a humanistic-utilitarian approach that emphasizes convenience and minimization of harm, as in the opinion of Ibn Abidin al-Shami, and a literal-retributive approach that emphasizes equality of action as a form of substantive justice, as developed by Imam Malik. Al-Shami's view shows a preference for the humanitarian aspect of the execution process, while Imam Malik's view displays the strictness of the law as a reflection of the precision of the Sharia in upholding justice. This difference is not merely a technical difference in the method of execution, but a difference in perspective on the relationship between the perpetrator, the victim, and the objectives of Sharia in the enforcement of Islamic criminal law. Thus, a study of these two opinions opens up a broader understanding of how Islamic law maintains a balance between justice, humanity, and crime prevention

A Comparison of the Epistemology of Imam Ibn Abidin al-Shami and Imam Malik on the Method of Execution of Qishash Punishment

The comparison of the epistemology of fiqh between Imam Malik and Ibn Abidin al-Shami not only reveals two different legal opinions, but also unveils fundamental differences in the way two Islamic scholarly traditions understand texts, assess reality, construct rules, and interpret justice in Sharia. On the one hand, Imam Malik stood before the

tradition of *ahl al-Madīnah*, a community believed by classical scholars to be the most authentic inheritors of the practices of the Prophet and his companions. Malikiyah epistemology was shaped by the belief that sunnah was not only the text of hadith, but also the collective actions of the people of Medina that had been passed down from generation to generation. Consequently, Malik positioned *the deeds of the people of Medina* as evidence that had epistemological weight equal to or even stronger than ahad hadith. This shows that Malik's epistemology was empirical and historical in nature: legal truth was not only contained in texts, but also in the practices of the community that preserved the traditions of the Prophet.

In the context of qishash, this way of thinking manifests itself as a tendency to uphold justice based on *al-mumāthalah* (equality of treatment). For Imam Malik, executing the perpetrator using the same method he used to kill is not an act of revenge, but the most appropriate way to uphold substantive justice—justice that considers the degree of pain, the degree of cruelty, and the psychological impact of the perpetrator's actions. This approach shows that Malik's epistemology is not only textually oriented, but also value-based: every criminal act carries a moral burden that must be responded to with a commensurate response, not merely killing the perpetrator. Thus, Malik interprets qishash as a moral-social balancing instrument that demands concrete equality in the field.

Significantly different, Ibn Abidin al-Shami stood in the Hanafi tradition developed in Kufah—an intellectual environment marked by social problems that were far more complex than those in Madinah. From the outset, the Hanafi school developed a highly rational and causalistic legal epistemology, giving great importance to *qiyās*, *ta'līl*, and systematic illat construction. In this tradition, hadith texts are not always understood literally, but are analyzed through a process of reasoning to capture the universal principles behind the wording. Therefore, when Ibn Abidin interpreted the term "sword" as an instrument of qishash execution, he did not limit it to the physical form of a sword, but interpreted it as *the instrument that kills most quickly and causes the least pain*. This interpretation reflects the Hanafi epistemology, which emphasizes methodological values and the objectives of sharia (*maqasid al-'uqubat*) rather than physical equivalence as in the Maliki approach.

From a critical perspective, Ibn Abidin's approach actually rejects qishash that adds to physical suffering or is brutal in nature, as it is

considered contrary to the principle of *ihṣān*, which is "doing the best even in the process of killing." The legal rationality adopted by Ibn Abidin positions qishash execution as a legal action that must be carried out effectively, quickly, and humanely. Thus, his difference of opinion with Imam Malik lies not only in the means of execution, but more profoundly in the concept of justice itself. Malik sees justice as equality of act, while Ibn Abidin sees justice as equality of outcome: the perpetrator must be put to death, but the method must be efficient and not torturous.

When analyzed further, this difference reflects two epistemologies of Islamic law that represent two major orientations in fiqh. The Maliki school tends to be realistic-empirical, rooted in society, and builds law from living traditions; while the Hanafi school is more rational-normative, building legal consistency through general reasoning and abstraction of illat. This epistemological difference makes Malik closer to the concrete experience of society in determining the severity of punishment, while Ibn Abidin is closer to the universal principles of sharia that are oriented towards effectiveness and humanity.

At this point, it can be said that the difference in the method of execution of qishash is not merely a technical difference between "the sword" and "the same method of killing," but is a manifestation of two frameworks of thinking: one that departs from socio-historical authenticity, and the other that departs from normative rationality. Both are valid, but they provide a very clear picture that Islamic law is not only built on texts, but also on the epistemology used by a scholar to understand the text itself.

Analysis of the Opinions of Imam Ibn Abidin al-Shami and Imam Malik

The assessment of the strength of the text and chain of transmission must be the starting point. The argument for qishash has a clear Qur'anic basis—the verse that regulates qishash and a number of hadiths that record the practices of the predecessors. Imam Malik emphasized *the practices of the people of Medina* and a number of early practices which, according to him, showed that retribution was carried out in accordance with the perpetrator's actions. Maliki's argument was based on a literal reading of the historical impressions of the practices of the companions and tabi'in; he placed the practices of Medina as a very strong normative source. In contrast, Ibn

Abidin (as a Hanafi exegete in the realm of classical *usul* and *fiqh*) read the text with a causal-scientific approach: he accepted the text of qishash but interpreted the term "sword" generically (a quick lethal weapon), and rejected the implication of obligatory imitation of the method of killing if that method caused prolonged suffering. In terms of *nash*, both views can be said to have a basis: Malik emphasizes the practical and literal dimensions; Ibn Abidin emphasizes the aspect of purpose (*ta'līl*) and the meaning of terms. There is no explicit *nash* that absolutely compels only one interpretation; therefore, the aspects of *usul* and *maqashid* become the determining factors for *tarjih*.

In the realm of *usul* principles, Ibn Abidin uses a number of strong principles that support his position: the principle of minimizing harm (*la dharar wa la dhirar*), the principle of *ihṣān* in punishment, and the principle that *isim adat* (the use of certain words) does not limit the legal meaning if the *illat* is broader. This approach is characteristic of the Hanafi method, which is rational, teleological, and takes into account *maslahat* and *illat*. Imam Malik, on the other hand, prioritizes inherited practices (*amal*) as living proof of the implementation of sharia; in terms of *usul*, he affirms the authoritative value of the practices of the Madinah community, which in the Maliki tradition are often considered a strong expression of the Sunnah. The Malikiyah method tends to be textually-historical and normatively *t* in the context of socio-religious tradition. Both have *usul* legitimacy recognized in classical literature; thus *tarjih* depends on how we view the priority of *maqashid* and the real impact of implementation.

Shifting the analysis to the realm of *maqasid* is crucial. The core *maqashid* related to qishash include *hifz al-nafs* (protection of life), *al-'adl* (justice), *al-maslahah/raf' al-mafṣadah* (realizing benefits/rejecting harm), *al-zajr* (deterrence/prevention), and *karamah insaniyyah* (respect for human dignity). We must consider the extent to which each opinion fulfills and harmonizes these objectives.

First, from the perspective of *hifz al-nafs*, both aim to protect the victim's life and prevent repeat killings. However, they differ in their sub-dimensions: Malik emphasizes moral and retributive restitution—that equality of methods sends a strong moral message about commensurate punishment, thereby protecting life through symbolic prevention; Ibn Abidin emphasizes *hifz al-nafs* in two ways—protecting victims through the certainty of the death penalty, but also protecting perpetrators from

unjustified additional suffering. Within the modern maqashid framework, which places human dignity as an important value, Ibn Abidin's position carries significant weight because it restrains practices that have the potential to prolong suffering and violate the prohibition of torture.

Second, regarding al-'adl, Imam Malik could claim that justice is achieved most literally when the form of punishment mimics the perpetrator's actions: justice here is equality of action. However, justice in maqashid also has a dimension of proportionality, not preoccupied with emotional retribution. Ibn Abidin emphasizes proportionality in the sense of restoring rights without adding harm. This argument is strong if we place *substantive justice* above *symbolic justice*. Because justice that is fair in law should not mean adding to injustice; therefore, from a broad maqashid perspective, Ibn Abidin's interpretation tends to be more consistent with the principle of not increasing harm.

Third, al-maslahah and raf' al-mafsadah lead us to assess the actual consequences: does imitating the method of killing produce greater benefit or does it cause harm? Imam Malik would assess that the deterrent effect and the equality of the action produce social benefit (zajr and moral restitution). However, maqashidi criticism of this position emphasizes that brutal methods (e.g., drowning, slow burning, beating until limp) have the potential to give rise to new mafsadah: fostering violence, causing public trauma, legitimizing cruel acts, and conflicting with humanitarian norms that are also part of maqashid. Ibn Abidin showed sensitivity to this kind of mafsadah and chose methods that eliminated the repetition of suffering. In the era of human rights and modern criminal law, the argument for avoiding additional mafsadah has become very strong.

Fourth, the aspect of deterrence needs to be tested empirically. Is qishash bil-fi'li (same method) clearly more effective in preventing murder than qishash with a sword? Theoretically, Maliki's argument states that the threat of identical retaliation makes the perpetrator think twice. However, from an empirical-sociological perspective (which needs to be examined with data), the effectiveness of deterrence does not solely depend on the identity of the method but on the certainty and speed of the judicial process, the quality of law enforcement, and the social structure that prevents crime. If the threat of certain and swift punishment can be realized without causing torture, then Ibn Abidin's model

(swift execution with minimal suffering) is likely to provide the same or greater deterrence while reducing the risk of human rights violations. From the maqashid angle, deterrence is not the only benchmark; it must be in line with maintaining dignity (karamah) and preventing mafsadah.

Fifth, karamah insaniyyah (human dignity) sets limits: Sharia generally refrains from degrading treatment, even towards criminals. Ibn Abidin's opinion is more in line with the principle of karamah because it rejects degrading and protracted methods. Malik's opinion prioritizes equality of action, but has the potential to conflict with the principle of dignity if the perpetrator's methods are extremely cruel. In the contemporary maqashid scale, maintaining dignity is a core value, so maqashid support leans toward positions that minimize humiliation and torture.

After considering the dimensions of maqashid above, it is necessary to conduct a critical analysis of the practical-legal aspects. First, the application of qishash bil-fi'li faces technical problems: verification of the method, exact replication of the injury or method of , the risk of incorrect replication resulting in new injuries, and the possibility of procedural variations that reduce legal certainty. The practices of drowning, burning, or beating to death have variables of time (length of process), intensity of torture, and technical complexity that make procedural guarantees difficult. Second, execution by sword or other quick-killing instruments is relatively more standardized in technical aspects, easier to ensure quick death, and has fewer variables that cause differences in implementation between cases. From the perspective of modern law and procedural standards, this increases certainty, reduces arbitrariness, and lowers the likelihood of human rights violations. Third, the existence of the right of wali al-dam (the victim's family's decision) provides a pluralistic dimension: the practice can give families the opportunity to choose qishash, diyat, or forgiveness; however, the family's decision must not eliminate the broader principles of maqashid—the state is obliged to ensure that the implementation remains within the corridor of humanitarian law. Therefore, Maliki's argument emphasizing identical choices must be read alongside the state's protection against practices that violate the principles of maqashid.

In considering maqashid integrally—hifz al-nafs, al-'adl, raf' al-mafsadah, al-zajr, and karamah—tarjih leans toward a position that

prioritizes the principles of minimizing harm and maintaining dignity, without sacrificing the certainty of punishment and the deterrent effect. In other words, Ibn Abidin al-Shami has a stronger maqashidi argument for rejecting the copy-paste method of execution if it tends to torture or humiliate, and for advocating the use of quick-killing tools as an effort to realize substantive justice by minimizing additional harm. However, this is not a total rejection of Malik's intuition; the elements of symbolic justice and deterrence promoted by Malik remain relevant in certain contexts—for example, in societies or legal systems that place strong emphasis on symbolic restitution and where the method of execution does not involve prolonged torture.

From a modern and comprehensive maqashid shariah perspective, Ibn Abidin al-Shami's opinion is superior because it is consistent with the principles of minimizing harm, preserving human dignity, and increasing procedural certainty in executions. Imam Malik's opinion still has argumentative strength in the realm of retributive justice and symbolic deterrent effects, but it faces maqashidi weaknesses when the method of killing itself constitutes torture or causes additional mafsadah. Therefore, in scientific *tarjih*, Ibn Abidin's position is stronger overall according to maqashid, especially in the context of contemporary law that places respect for dignity and the avoidance of torture as primary values.

For this *tarjih* to be useful in practice, several recommendatory implications can be formulated. First, if an Islamic legal system considers applying qishash, it should prioritize the use of methods that minimize suffering (quick-killing tools) unless the perpetrator's method is equally non-torturous and can be replicated with safe procedures. Second, the final decision still gives room to the *wali al-dam* in accordance with sharia, but the state must establish procedural guidelines that ensure implementation does not exceed the limits of maqashid (e.g., technical standards, medical supervision, and legal guarantees). Third, cultural and empirical studies are needed: the effectiveness of deterrence should be tested sociologically so that decisions on the trade-off between symbolism and humanity are not based solely on normative assumptions. Fourth, the integration of maqashid in modern Islamic criminal legislation is important to bridge classical fiqh with the demands of human rights and modern criminal law.

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This study concludes that the difference in opinion between Imam Malik and Ibn Abidin al-Shami regarding the method of qishash execution is not merely a technical difference in the equipment used for punishment, but rather the result of two different epistemological approaches to fiqh that differ philosophically, methodologically, and in terms of maqashidi. Imam Malik places the equivalence of methods of killing as an instrument of substantive justice that must reflect the form of the perpetrator's actions; for him, a commensurate retribution is not only a textual command, but also a mechanism for restoring moral order in society. Conversely, Ibn Abidin understood qishash as an obligation to restore the rights of the victim without adding to the perpetrator's suffering; therefore, the use of the sword as the standard method of execution () was considered more in line with the principle of *ihsan*, avoiding torture and preserving human dignity within the limits of sharia.

From the perspective of maqashid sharia, both opinions have a basis of legitimacy. Imam Malik's opinion is stronger in terms of *al-'adl al-mujāzi* (equitable justice), symbolic deterrent effects, and restoring the dignity of the victim in the eyes of the family and society. Meanwhile, Ibn Abidin's opinion is superior in maintaining *hifz al-nafs* from the anti-torture dimension, ensuring procedural justice, maintaining legal consistency, and minimizing new mafsadah that could arise from brutal executions or those that are difficult to replicate safely. In the context of modern law, the advantages of Ibn Abidin's approach are increasingly apparent because it is more compatible with humanitarian demands, procedural standards, and the need for a stable judicial system.

Overall, the results of the study show that the greatest argumentative strength in maqashid al-shariah lies in an approach that is capable of delivering justice without producing new *mudarat*. Imam Malik's opinion remains theoretically relevant, especially in the context of societies that interpret justice through equality of action; however, its application depends on the state's ability to guarantee an execution process that is not excessive and does not deviate from the principle of *ihsan*. Conversely, Ibn Abidin's opinion offers a model of qishash that is more universal, safer, more humane, and more stable in the long term. Taking into account the principles of *raf' al-mafsadah*, *karāmah insaniyyah*, and the needs of the contemporary legal system, this study concludes that Ibn Abidin's approach is

more in line with the maqashid shariah in general, while Imam Malik's principle of proportionality can be positioned as a supporting value in certain cases as long as it does not conflict with the principles of avoiding harm and protecting human dignity.

Thus, this study emphasizes that qishash is not merely a mechanism of retribution, but a system of Sharia justice that must be in harmony with broader legal objectives. The differences between the two scholars actually enrich the wealth of fiqh and provide space for Muslims to develop a more proportional, contextual, and maqashidi model of qishash implementation, in accordance with the needs of the times and the capabilities of law enforcement institutions.

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