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Żimmī in Islamic Criminal Law: Analysis of *Baḥru al-Mażī* by Sheikh Marbawi and Its Implementation in Contemporary Muslim-Majority States

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ABSTRACT
This article aims to examine the legal position of non-Muslims 'żimmī' as subjects of Islamic criminal law when they voluntarily bring their cases to Islamic judicial institutions. Using a qualitative library research method, the study focuses on the analysis of Sheikh Marbawi's views as articulated in his book Baḥru al-Mażī. The theoretical framework employed is rooted in Islamic legal theory (fiqh), especially the Shafi'i school of thought, and incorporates the theory of al-Iḥsān (legal competence based on marital status) to interpret Ḥadīṡ-based rulings concerning non-Muslim offenders. The study finds that Sheikh Marbawi considers Islamic courts obliged to adjudicate cases involving żimmī when brought before them, and that such cases must be resolved using Islamic law. This view is supported by Ḥadīṡ evidence and aligns with the classical juristic principle that recognizes the legal subjectivity of non-Muslims under certain conditions. The findings contribute to contemporary Islamic legal discourse by reaffirming the inclusiveness of Islamic criminal jurisprudence, emphasizing the importance of legal pluralism within the framework of Dar al-Islam, and highlighting the scholarly contributions of Southeast Asian ulema such as Sheikh Marbawi.

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ABSTRAK
Artikel ini bertujuan untuk mengkaji kedudukan hukum orang non-Muslim '*żimmī*' sebagai subjek hukum pidana Islam ketika mereka dengan sukarela membawa perkaranya ke lembaga peradilan Islam. Dengan menggunakan metode penelitian pustaka kualitatif, penelitian ini berfokus pada analisis pandangan Syaikh Marbawi yang dituangkan dalam bukunya *Baḥru al-Mażī*. Kerangka teori yang digunakan berakar pada teori hukum Islam *(fiqh)*, khususnya Mazhab Syafi'i, dan menggabungkan teori *al-Iḥsān* (kompetensi hukum berdasarkan status perkawinan) untuk menafsirkan putusan berbasis hadis mengenai pelanggar non-Muslim. Penelitian ini menemukan bahwa Syaikh Marbawi menganggap pengadilan Islam berkewajiban untuk mengadili kasus-kasus yang melibatkan *żimmī* ketika diajukan ke hadapan mereka, dan bahwa kasus-kasus tersebut harus diselesaikan dengan menggunakan hukum Islam. Pandangan ini didukung oleh bukti hadis dan sejalan dengan prinsip hukum klasik yang mengakui subjektivitas hukum non-Muslim dalam kondisi tertentu. Temuan-temuan ini berkontribusi pada wacana hukum Islam kontemporer dengan menegaskan kembali inklusivitas yurisprudensi pidana Islam, menekankan pentingnya pluralisme hukum dalam kerangka *Dār al-Islām*, dan menyoroti kontribusi ilmiah ulama Asia Tenggara seperti Syaikh Marbawi.

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A. INTRODUCTION

'Abd al-Qādir 'Audah, in his work *Al-Tasyrī' al-Jinā'ī al-Islāmī*, asserts that Islamic law fundamentally possesses a universal nature ''*ālamiyyah*'.[1] This law is not limited by specific geographical locations or periods. However, in its implementation, Islamic law exhibits a sense of locality '*iqlimiyah*', which depends on the context of life in a particular region. According to 'Audah, this concept reflects that Islamic law is global in theory but territorial in practice, a principle known in Islamic literature as *Dār Al-Islām*. This demonstrates the flexibility of Islamic law in accommodating the needs of diverse communities across various locations and eras. Consequently, Islamic law not only offers universally relevant solutions but also adapts to local dynamics, making it a unique legal framework.[2]

Human life is diverse, encompassing dimensions beyond biology, such as geography, sociology, politics, and theology.[3] Theologically, the Qur'an emphasizes that Islam is the only true religion in the sight of Allah. Nevertheless, in social and cultural contexts, Islam provides room for diversity and accommodates the presence of followers of other religions. One such form of recognition is through the '*aqd żimmah* 'covenant of protection', a special agreement that binds non-Muslims living under Islamic governance. Those bound by this agreement, known as *ahl żimmī*, are granted protection and specific rights. This agreement reflects Islam's balance between theological principles and the social needs of a pluralistic society.[4]

'Audah concludes that legal subjects under Islamic law within *Dār Al-Islām* can be categorized into two main groups. The first group consists of those whose status is determined by faith (Muslims), and the second group comprises non-Muslims who gain security through the covenant of protection ''*aqd żimmah*'.[5] The second category highlights Islam's significant attention to maintaining harmonious relations among diverse communities through fair legal arrangements. Therefore, both Muslims and non-Muslims can become subjects of Islamic law based on their respective status and position.[6]

The next question is: when does a *żimmī* fall under the jurisdiction of Islamic law? Christian Muller, citing Ibn Abdul Barr, explains that Islamic legal jurisdiction over *żimmī* encompasses four main areas.[7] These areas are commercial law, marriage law, inheritance law, and criminal law. This jurisdiction applies when the case involves the principle of connectivity, meaning a *żimmī* is involved in a case with a Muslim or with matters that affect

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[1] Marli Candra, Helga Nurmila Sari, and Marli Candra, "Punishment in Islamic Criminal Law: Between Facts and Ideals of Punishment Pemidanaan," *Al-Jinayah: Jurnal Hukum Pidana Islam All* 10, no. 1 (2024): 48–71, https://doi.org/https://doi.org/.

[2] Sunarto Sunarto, "Konsep Hukum Pidana Islam Dan Sanksinya Dalam Perspektif Al-Qur'an," *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam* 19, no. 1 (2020): 97–112, https://doi.org/10.15408/kordinat.v19i1.17176.

[3] Hannah Landecker, "Life as Aftermath: Social Theory for an Age of Anthropogenic Biology," *Science Technology and Human Values*, 2024, 1–34, https://doi.org/10.1177/01622439241233946.

[4] Landecker.

[5] Fauzi Fathur Rosi et al., "Politics and Ideology in Qur ' Anic Translation: a Comparative Analysis Between the Indonesian Ministry of Religious Affairs Translation and the Hilali-Khan Translation," *Jurnal Ilmiah Al Mu'ashirah: Media Kajian Al-Qur'an Dan Al-Hadits Multi Perspektif* 22, no. 1 (2025): 2599–2619, https://doi.org/10.3366/jqs.2024.0568.1.

[6] Rojif Mualim, Badrus Zaman, and Anjar Kususiyanah, "Islam , Democracy , and Human Rights : A Critical Approach," in *Proceeding of ICCoLaSS: International Collaboration Conference on Law, Sharia and Society Theme : Toward a Peaceful and Justice Society (The Role of Islam in Humanitarian Law)*, 2024, 26–28.

[7] Fauzan Hadi, "Batasan Toleransi (Inklusifisme Dalam Tafsir Tematik Moderasi Beragama Kementerian Agama RI) Fauzan," *El-Umdah: Jurnal Kajian Ilmu Al-Qur'an Tafsir* 7, no. 2 (2024): 142–96, https://doi.org/10.20414/elumdah.v7i2.9281.

Islamic interests.[8] However, if the case occurs solely among *żimmī*, its resolution is entrusted to the laws applicable within their respective communities.

The existence of intra-community courts for *żimmī* demonstrates that Islam respects the legal autonomy of minority groups.[9] However, if a case involving *żimmī* is brought to an Islamic court, the question arises whether the Islamic court is obligated to accept it. If accepted, on what legal basis should the case be decided? These questions are crucial to understanding how Islamic law interacts with other legal systems within the *Dār Al-Islām* framework. This also highlights the need for an integrative legal perspective to ensure justice for all parties involved.[10]

In this context, Sheikh Marbawi, through his book *Baḥru al-Mażī*, provides answers to these issues. This book serves as an important reference for understanding how *żimmī* can become legal subjects under Islamic law. Sheikh Marbawi's approach is based on jurisprudential (*fiqh*) and *Ḥadīś* literature, offering guidance on resolving cases involving *żimmī*. Thus, the analysis of this book can shed light on the dynamics of implementing Islamic law in a pluralistic society.

To further explore Sheikh Marbawi's proposed solutions, a library research approach is a relevant step. As suggested by Patton this method allows for tracing the origins of the concept of *żimmī* as legal subjects in jurisprudential literature, particularly in the realm of criminal law. Through this study, the perspectives of scholars on the regulation of *żimmī* within Islamic law can be uncovered. This analysis not only enriches the study of *fiqh* but also contributes to the discourse on contemporary Islamic legal studies.

Studies on the position of non-Muslims in Islamic criminal law have been conducted by a number of researchers with various focuses and approaches. Dalimunthe and Siregar examined the application of caning for non-Muslims in the Aceh Sharia Court and found that non-Muslims who were found guilty could choose either the district court or the sharia court to obtain justice, and if they chose sharia, they were required to sign a letter of compliance so that the caning punishment could be applied.[11] Discussed the relevance of Islamic law to non-Muslims in classical *uṣūl fiqh* sources, showing that the debate over whether non-Muslims are subject to Islamic law tends to shift from a practical context to an abstract theoretical debate.[12] Meanwhile, Hastuti compared the application of the *Qānūn Jināyat* to non-Muslims in Aceh and Brunei Darussalam, and concluded that the scope of Islamic criminal law for non-Muslims in Aceh is broader than in Brunei, and emphasized the importance of legal certainty

[8] Zaid Tsabit Kalatini et al., "The Concept of Religious Tolerance in the History of Islamic Civilization," *Jurnal Iman Dan Spiritualitas* 5, no. 1 (2025): 109–18, https://doi.org/http://dx.doi.org/10.15575/jis.v5i1.43066.

[9] Eliza Eliza et al., "Kalam Science and Its Urgency in the Context of Religious Moderation (Islam Wasathiyah)," *IJISH (International Journal of Islamic Studies and Humanities)* 7, no. 1 (2024): 1–19, https://doi.org/10.26555/ijish.v7i1.10121.

[10] Ghorbanali Karimzadeh Gharamaleki, "Religious Moderation in Risalah Islam Berkemajuan : A Perspective f Rom Karl Mannheim' s Sociology of Knowledge," *Journal of Islamic Philosophy and Contemporary Thought* 1, no. 1 (2023): 1–25, https://doi.org/https://doi.org/10.15642/jipct.2023.1.1.1-25.

[11] Dermina Dalimunthe and Sawaluddin Siregar, "Implementation of the Caning Law for Non-Muslims in the Aceh Sharia Court," *Jurnal Hukum Pdana Islam Al-Jinayah* 10, no. 1 (2024): 1–17.

[12] A M R Osman, "The Relevance of Islamic Law to Non-Muslims in Muslim Juridical Sources," *Islamic Studies* 60, no. 1 (2021): 9–30.

in procedural mechanisms for non-Muslims.[13] Furthermore, Imam and Murtadha review the differences in classical views regarding non-Muslim testimony in cases involving Muslims in Nigeria and highlight how this principle can be adapted to the context of a modern pluralistic society.[14] Djawas et al. emphasize that many non-Muslims in Aceh voluntarily choose the sharia legal path because they consider it more efficient, cheaper, and faster in resolving cases, as well as non-discriminatory.[15] Finally, Saputra et al. review the principle of voluntary surrender for non-Muslims in the Aceh *Qānūn Jināyat*, and state that this mechanism is in line with the values of justice, Pancasila, and rahmatan lil alamin, although it still raises pros and cons in society.[16]

This paper differs from these studies because it specifically examines the thoughts of Shaykh Marbawi in the book *Baḥru al-Mażī*, a work of fiqh by Indonesian scholars that is rarely used as the main reference in discussions of Islamic criminal law against *żimmī* (protected non-Muslims). While previous studies generally focused on contemporary qanun practices or classical fiqh debates in the Middle Eastern Islamic world.

The novelty of this paper lies in the effort to raise and deeply examine the thoughts of Shaykh Marbawi as a contribution of Nusantara scholars in the discourse of Islamic criminal law related to *żimmī*. This approach enriches the treasury of Southeast Asian Islamic law and shows how local thought can contribute to building an inclusive and responsive Islamic criminal law system for a pluralistic society. Thus, this article aims to analyze the legal position of non-Muslims '*żimmī*' in Islamic criminal law based on the thoughts of Shaykh Marbawi in the book *Baḥru al-Mażī* and to show the contribution of the thoughts of Nusantara scholars in the development of Islamic law that is just, inclusive, and in accordance with the dynamics of a pluralistic society.

B. METHODS

This study adopts a qualitative research design with library research, focusing on legal analysis of Islamic law regarding the resolution of cases involving non-Muslims '*żimmīs*' in Islamic courts.[17] The research aims to investigate the perspectives of Islamic scholars, particularly Sheikh Marbawi, on the status of non-Muslims as subjects of Islamic criminal law and their legal standing when seeking justice in Islamic courts. By analyzing classical Islamic texts and legal theory, the study will explore how Islamic law addresses the issues of jurisdiction and the application of Islamic principles to non-Muslim cases.

Data collection will primarily involve secondary data obtained through library research.[18] The main sources of data will include classical Islamic jurisprudence texts, such as Sheikh

[13] Luthfiyah Trini Hastuti, "Navigating Legal Boundaries : A Cross-Jurisdictional Comparison of Qanun Jinayat on Non-Muslims in Aceh and Brunei Darussalam," *Diktum Jurnal Syariah Dan Hukum* 21, no. 2 (2023): 147–58.

[14] Aliyu Imam and Ahmad Olusola Murtadha, "Admissibility of Non-Muslims Evidence in Cases Involving Muslim Parties in Nigeria Court: A Cursory Examination Of Qur'An," *Jurnal Syariah* 30, no. 3 (2022): 272–91.

[15] Mursyid Djawas, Andi Sugirman, and Bukhari Ali, "The Position of Non-Muslims in the Implementation of Islamic Law in Aceh , Indonesia," *Ahkam* 23, no. 1 (2023): 95–120.

[16] Jummaidi Saputra et al., "The Principle of Non-Muslim Submission in Committing Crimes (Islamic Sharia) Together with Muslims in Aceh-Indonesia," 2025.

[17] He In Cheong et al., "Secondary Qualitative Research Methodology Using Online Data within the Context of Social Sciences," *International Journal of Qualitative Methods* 22 (2023): 1–19, https://doi.org/10.1177/16094069231180160.

[18] Cheong et al.

Marbawi's *Baḥru al-Mażī* and other scholarly works on Islamic law, as well as *Ḥadīṡ*s and relevant Islamic legal literature discussing the concept of *al-Iḥsān*, *żimmī*s, and the application of Islamic law in non-Muslim cases. The researcher will also consult academic journals, books, and articles that examine the intersection of Islamic criminal law and the legal status of non-Muslims in Islamic societies. These sources will be gathered and analyzed to provide a comprehensive understanding of the legal framework under discussion.

The data analysis will utilize a content analysis approach, focusing on key themes such as the concept of *al-Iḥsān*, the relationship between Muslims and non-Muslims in legal contexts, and the application of Islamic law to *żimmī*s. The researcher will examine Sheikh Marbawi's interpretation of Islamic law as outlined in *Baḥru al-Mażī* and cross-reference it with other relevant Islamic texts to assess the consistency of the proposed solution. The findings will be analyzed by comparing various scholars' viewpoints on the matter and evaluating how they align with or diverge from Sheikh Marbawi's stance. This will result in a critical understanding of how Islamic law addresses non-Muslims seeking legal redress in Islamic courts and the implications of these rulings for the broader understanding of Islamic jurisprudence.[19]

C. RESULTS AND DISCUSSION

1. Brief Profile of Sheikh Marbawi

Sheikh Marbawi's full name is Muḥammad Idrīs ibn Raūf ibn Ja'far ibn Idrīs Al-Marbawi Al-Azhari. The title "Al-Marbawi" refers to his hometown, Lubuk Merbau, located in the state of Perak, Malaysia. He was born on May 12, 1896 (28th Dhu al-Qidah 1313 AH) in Misfallah, Mecca. At the age of four, Muhammad Idris was brought by his parents, Abdul Rauf bin Ja'far and Asma binti Abdul Karim, back to Lubuk Merbau. His early and teenage education was completed in Perak, Kedah, and Kelantan, studying under various scholars in these regions. Later, Muhammad Idris pursued higher education at Al-Azhar University in Egypt, from which he earned the title "Al-Azhari." He passed away on October 13, 1989, at the age of 93 in Ipoh General Hospital, Perak.

Sheikh Muhammad Idris ibn Rauf al-Marbawi al-Azhari (1896–1989) was a great cleric from Malaysia who lived in a period of great transition in the Islamic world, especially in the Malay region, between the end of the 19th century and the end of the 20th century. He is widely known for his works in the fields of tafsir, *Ḥadīṡ*, fiqh, and Islamic education, especially *Baḥru al-Mażī*, a syarah or *Ḥadīṡ* commentary on *Mukhtaṣar Saḥīḥ Tirmiżī* written in Malay-Jawi.

His lifetime was marked by various major challenges, both from a social, religious, political and economic perspective. In the Malay world, including Malaysia and Indonesia, this period was the era of British and Dutch colonialism. The traditional Islamic education system faced great pressure due to colonial secularization policies which weakened the authority of ulama and narrowed the space for teaching classical books. Meanwhile, a current of Islamic modernist thought also emerged which promoted renewal and often challenged local ulama traditions rooted in the classical school of jurisprudence and *Ḥadīṡ* science.

In the context of religion, many Muslims in the Nusantara region began to be exposed to doubts about the authority of traditional books and the teaching methods of *pesantren/surau*.

[19] I Gusti Ayu Agung Omika DEWI, "Understanding Data Collection Methods in Qualitative Research: The Perspective Of Interpretive Accounting Research," *Journal of Tourism Economics and Policy* 1, no. 1 (2022): 23–34, https://doi.org/10.38142/jtep.v1i1.105.

On the other hand, challenges to the plurality of society were increasingly prominent, along with increasing contact between Muslims and non-Muslims under colonial administration, especially regarding legal issues, marriage, trade, and crime. In this condition, Muslims needed a strong legal basis, based on evidence and authoritative but understandable in local languages.

Politically, Marbawi lived in a turbulent world: the fall of the Ottoman Caliphate (1924), the growth of nationalism in the Muslim world, and the rise of the spirit of independence in Southeast Asia. Economically, the majority of Muslims were poor and structurally oppressed under the colonial capitalist system, which kept them away from access to formal education and legal justice.

This background prompted Sheikh Marbawi to compose the monumental work *Baḥru al-Mażī Syarh Mukhtaṣar Saḥīḥ Tirmiżī*. As indicated by the title, this book is a *Ḥadīṡ* commentary (syarah)—or explanatory text—based on abridged (mukhtashar) *Ḥadīṡ*s. In compiling this work, Sheikh Marbawi transcribed the *Ḥadīṡ* texts from *Jāmi' Ṣaḥīḥ al-Tirmiżī* without including the full chain of transmission *(sanad).* He then translated the texts into Malay using Jawi/Arabic-Malay script and provided explanatory notes *(syarah)* on the *Ḥadīṡ*s. The primary references for his commentary on *Sunan Tirmiżī* were *Kitāb al-Umm* by Imam Shafi'i and *Āriḍah al-Aḥwazī fī Syarḥ al-Tirmiżī* by Abu Bakr Muhammad bin Abdullah As-Syibli, also known as Ibn al-Arabi al-Maliki.

Hence, it is unsurprising that the approaches employed in *Baḥru al-Mażī* heavily reflect fiqh methodology, particularly of the Shafi'i school, even though the content also incorporates comparative jurisprudence *(muqāranah)*. This is understandable, considering that Sheikh Marbawi was a follower of the Shafi'i madhhab. *Baḥru al-Mażī* consists of 11/12 volumes divided into 22 sections (*juz*), containing a total of 2,781 *Ḥadīṡ*s and 8,282 chapters (*fasal*). The book was first published in 1933 by *Maktabah wa Mathba'ah al-Babi Halabi wa Awladuhu*. For his dedication in various fields, Sheikh Marbawi was awarded an Honorary Doctorate by the National University of Malaysia (UKM) in 1980. Additionally, an educational institution in Ipoh, Perak, bears his name, *Kolej Idris Marbawi Al-Islami*.

Furthermore, this book is not just a commentary on *Ḥadīṡ*, but rather a major effort to provide a systematic, authoritative, and easily accessible scientific reference for Malay society that does not have full access to Arabic. This writing also reflects his determination to strengthen the authority of local scholars in answering legal problems, including in the field of jinayah fiqh, in a pluralistic society. In *Baḥru al-Mażī*, it is clear how Shaykh Marbawi attempts to reaffirm the position of Shafi'i fiqh and the integration between *Ḥadīṡ* texts and the realities of society, including how Muslims should respond to the law against non-Muslims (*żimmī*) in the context of Islamic justice. Thus, this work is not only a reflection of the breadth of his knowledge, but also a strategic response to the current situation that demands clarity of law and the stability of Islamic identity amidst modernization and legal plurality.

2. Discourse on *Żimmī* in the Book *Baḥru al-Mażī*

As previously mentioned that the subject of Islamic law (*mukallaf*) in certain aspects, particularly in the field of *muāmalah*, is not limited to Muslims but also includes non-Muslims. This field of *muāmalah* is equivalent to what is known today as public law. Additionally, non-Muslims become subjects of Islamic law through the principle of connectivity, which applies when their cases or issues are related to Muslims or the general interests of Islam. In this

context, Islamic law requires a *żimmī* to comply with its provisions. According to Anver Emon, this can be understood because *Dār al-Islām* (the territory of Islam) operates under the supremacy of Islamic law (*Rule of Law*), rather than theological subjugation. Therefore, this legal adjustment aims to uphold the supremacy of Islamic law in the public sphere.

On the other hand, Islamic law grants *żimmī* communities the freedom to resolve their issues internally, reflecting a legal policy that supports pluralism (legal pluralism). However, if the *żimmī* community chooses to resolve their cases through Islamic courts (*maḥkamah syarī'ah*), Islam provides an avenue for this. In such cases, *żimmī*s become subjects of Islamic law either through direct obligation (*taklīf*) in public law or through their personal choice. The question arises as to how judges or Islamic judicial institutions should handle cases between *żimmī*s brought before them. In the book *Baḥru al-Mażī*, volume V, juz 10, pages 163–164, Sheikh Marbawi elaborates on the jurisprudential views regarding the *ahl żimmī* and their relation to Islamic criminal law (*fiqh jināyah*), Syaikh Marbawi writes:

> This Ḥadīṡ serves as evidence for the obligation of lashing (*ḥadd*) for adultery committed by non-Muslims. It also affirms the validity of their marriage because stoning (*rajm*) is only obligatory for someone who is *muḥṣan* (legally married and consummated the marriage). If the marriage of non-Muslims, such as the Jews stoned by the Prophet, were not valid, then the status of *muḥṣan* would not be established, and stoning would not be applicable.

The *Ḥadīṡ* he referred to is the one narrated by Imām *Tirmiżī*, *Ḥadīṡ* Number 1356, in his compilation *Jāmi' al-Ṣaḥīḥ* (this collection of *Ḥadīṡ* is more commonly known as *Sunan Tirmiżī)*, which states:

> Ishaq bin Musa Al-Anshari narrated to us, Ma'n narrated to us, Malik bin Anas narrated to us from Nafi' from Ibn 'Umar, that the Messenger of Allah (peace be upon him) once stoned a Jewish man and woman [to death].

In the book *Sunan Tirmiżī*, this chapter is titled *Ma Ja'a Fi Rajmi Ahli Kitab* (Chapter on Stoning for the People of the Book). Imam *Tirmiżī* included two *Ḥadīṡ*s in this chapter. The first is the previously mentioned *Ḥadīṡ* (*Ḥadīṡ* No. 1346), and the second is *Ḥadīṡ* No. 1347. The texts (*matan*) of both *Ḥadīṡ*s are identical, differing only in their chains of transmission (*sanad*). The chain for *Ḥadīṡ* No. 1347 follows the route: Jabir bin Samrah—Simak bin Harb—Syarik bin Abdullah—Hannad bin Sary. Meanwhile, the chain for the above-mentioned *Ḥadīṡ* from Ibn Umar follows the route: Abdullah bin Umar—Nafi' Mawla Umar—Malik bin Anas—Ma'in bin Isa—Ishaq bin Musa. Both *Ḥadīṡ*s are classified as *Hasan* (authentic). Upon examining *Sunan Tirmiżī*, we find Imam *Tirmiżī*'s commentary on this chapter, stating that similar *Ḥadīṡ*s—aside from those narrated by Ibn Umar and Jabir bin Samrah—are also reported by Al-Bara', Ibn Abi Awfa, Abdullah bin Harith, and Ibn Abbas.

As for Sheikh Marbawi, in his *Syarḥ Mukhtaṣar Ṣaḥīḥ Tirmiżī*, he only includes one *Ḥadīṡ*, specifically the narration of Ibn Umar, using the *Mu'allaq* method (*mu'allaq Ḥadīṡ*). The *Mu'allaq* method involves truncating the *Ḥadīṡ* chain, leaving only the last narrator. For instance, in the *Ḥadīṡ* above, only Ibn Umar is mentioned (*'an Ibn 'Umar*), while the other narrators—Nafi', Malik bin Anas, Ma'in bin Isa, and Ishaq bin Musa—are omitted. Thus, Shaykh Marbawi not only summarizes the chain of transmission using the *Mu'allaq* method but also reduces the number of *Ḥadīṡ*s from two to just one.

Further investigation of this *Ḥadīṡ* leads to the book *Subulu al-Salām Syarḥ Bulūgh al-Marām* by As-Shan'ani. In this book, As-Shan'ani (also known as Al-Amir) comments on the *Ḥadīṡ* narrated by Jābir ibn 'Abdullah. He explains that this *Ḥadīṡ* serves as evidence for the application of *hadd* punishment to non-Muslims if they commit adultery. He also notes that this opinion (*qawl*) represents the view of the majority of scholars. Another piece of information found in this book is that this *Ḥadīṡ* can be found in *Ṣaḥīḥ Muslim*, *Ḥadīṡ* No. 3213/1701. Upon referring to *Ṣaḥīḥ Muslim*, we find this *Ḥadīṡ* with its complete chain of transmission as follows:

> Narrated to me by Hārūn ibn Abdullah, who narrated to us from Hajjaj bin Muhammad. He said: Ibn Juraij reported that Abu Az-Zubair informed him that he heard Jabir bin Abdullah say: "The Prophet (peace and blessings be upon him) once stoned a Jewish man and woman who had committed adultery."

From the investigation of *Ṣaḥīḥ* Muslim, we not only find the *Ḥadīṡ* narrated by Jabir above, but also the *Ḥadīṡ* narrated by Ibn Umar regarding the same case, with additional and more detailed information. This *Ḥadīṡ* is narrated through the chain of Abdullah bin Umar—Nafi' mawla Umar—Ubaidullah bin Umar—Syu'aib bin Ishaq—Al-Hakam bin Musa. The text of this *Ḥadīṡ* is as follows:

> Abdullah bin Umar narrated from Nafi' that a man and a woman were brought before the Messenger of Allah because they were accused of committing adultery. The Prophet then went to the Jews and asked them, "What do you know in the Torah about the punishment for those who commit adultery?" They replied, "We smear their faces with soot, then we make them ride animals facing each other and parade them around the city." The Prophet said, "If you are telling the truth, show me your Torah." They brought the Torah and began reading it in his presence. When they reached the verse about stoning, the young man covered his hand over the verse to hide it until they reached the next verse. However, Abdullah bin Salam, who was accompanying the Prophet, said, "O Messenger of Allah, command him to lift his hand." When the young man lifted his hand, the verse of stoning was revealed beneath it. The Prophet then ordered that both of them be stoned, and so they were stoned. Abdullah bin Umar said, "I participated in stoning them, and I saw the man trying to shield the woman with his body from the stones being thrown".

By examining the *Ḥadīṡ* collections, we find that the information regarding the stoning punishment that the Prophet imposed on the Jews is scattered across many texts, some with detailed reports and others more general. Therefore, the documentation of the fact that the Prophet decreed the stoning punishment for non-Muslims is indeed valid. As recorded in *Sunan Tirmiżī*, which was later summarized and commented on by Sheikh Marbawi in Malay/Indonesian.

Now, we will analyze the next excerpt from *Baḥru al-Mażī* from a *fiqh* perspective. The first excerpt discussed above, which has been thoroughly analyzed in terms of the validity of its textual evidence *(dalalah wurud)*, will also complement the second excerpt. Syaikh Marbawi writes: "*And in this Ḥadīṡ, it shows that all non-Muslims, when they come to seek judgment from a Muslim, will be judged by the qadhi according to our Sharia law".* This quotation reinforces what was previously mentioned, that "this *Ḥadīṡ* is evidence for the obligation of the punishment (had) of zina on non-Muslims." According to Sheikh Marbawi, this *Ḥadīṡ*—*Ḥadīṡ* No. 1356 from Ibn Umar in Sunan *Tirmiżī*—serves as evidence that a *żimmī* (non-Muslim under Islamic rule) is a legal subject of Islamic law. Therefore, the punishment of

the Jewish man and woman for committing zina sets a precedent for subjecting the *żimmī* to Islamic law.The evidence for subjecting *żimmī* to Islamic criminal law (*fiqh jināyat*) based on the event of the punishment of the Jewish couple above is not only found in *Baḥru al-Mażī*, but also in *Jami' Shahih Tirmiżī*, *Subulussalam*, and *Syarah Shahih Muslim* by Imam Nawawi.

In *Sunan Tirmiżī*, as quoted by Sheikh Marbawi, "(Abu Isa At-*Tirmiżī* said) and the practice of this *Ḥadīṡ* has been followed by most of the scholars, they said that when the People of the Book *(Ahl al-Kitāb)* engage in a legal dispute and seek judgment from the Islamic judges, they will be judged according to the Quran, Sunnah, and Islamic laws. This is the opinion of Ahmad and Ishaq. Some scholars have said that there is no punishment for zina in this case. However, the first opinion is considered more correct."

In the same event, but with a different *Ḥadīṡ*, both As-Shan'ani and Imam Nawawi argue similarly. Imam Shan'ani, based on the *Ḥadīṡ* narrated by Jabir, stated that "this *Ḥadīṡ* serves as evidence for the implementation of *had* on non-Muslims (*żimmī*) when they commit zina, and this is the legal opinion of the majority of scholars." Imam Nawawi, based on the *Ḥadīṡ* from *Ṣaḥīḥ Muslim* narrated by Ibn Umar (*Ṣaḥīḥ* Muslim No. 1699), also stated that the *Ḥadīṡ* from Ibn Umar serves as evidence for the obligation of *ḥad* for *zinā* on non-Muslims.

From this, it can be concluded that the scholars agree with the fact that the Prophet punished *rajm* (stoning) for the case of *zinā* among the Jews. However, there are differing opinions regarding the legal reasoning behind this event. One opinion states that the Prophet made this ruling based on the law that existed among the Jews, while another opinion holds that the Prophet made the ruling based on Islamic law. The first view can be called the *'Aqd Żimmah* theory, while the second can be called the *al-Iḥsān* theory (with a *sad*). The status of *al-Iḥsān* refers to those who are called *muḥṣan* (someone who is married or in a stable, honorable relationship).

These difficulties arise because, in both the Torah and Islamic law, the punishment for *zinā* is *rajm*. The difference lies in the status of the offender: under Islamic law, only those who are *muḥṣan* are sentenced to *rajm*, while in the Torah, both *muḥṣan* and unmarried individuals (*bikr*) are both sentenced to *rajm*. The issue with the event recorded in the above *Ḥadīṡ* is that the offenders were of *muḥṣan* status, so whether the decision was based on the Torah or Islamic law, the ruling in this case would be the same—*rajm*.

As a leading figure of the Shafi'i school, Sheikh Marbawi based the legal status of *żimmī* in criminal cases on the *al-Iḥsān* theory. This is reflected in the first quotation: "This *Ḥadīṡ* serves as evidence for the obligation of the punishment (had) of zina on non-Muslims. And that their marriage is valid because the punishment of *rajm* is only required for those who are *muḥṣan*. If the marriage of non-Muslims, like the Jews whom the Prophet stoned, were not valid, then the *muḥṣan* status would not apply, and they would not be subject to *rajm*."

This *al-Iḥsān* theory is built upon two premises. First, the prophethood of Prophet Muhammad abrogated all the laws of previous religions. According to this premise, because the mission of Prophet Muhammad annulled the laws of the previous prophets—or in theological terms, *nasakh*—it would not make sense for the Prophet to base his ruling on the law of the Jews (the Torah) that had already been abrogated by his prophethood. If the Prophet were to rule according to Jewish law, then in this case, the Prophet would be considered a *muqallid* (follower) of the law of the previous prophet, not a bearer of a new law. However, as per Sunni theological doctrine, the prophethood of Prophet Muhammad abrogates the laws of previous prophets.

The second premise is based on the established law of *rajm* for the punishment of *zinā*. The punishment of *rajm* itself is not specified in the Qur'anic text. Surah An-Nūr only mentions the punishment of *jild* (flogging) for the offender. According to Ruyani's explanation, the initial punishment for zina was neither *rajm* nor *jild*, but confinement in a house (house arrest) as mentioned in Surah An-Nisā', verse 15. This punishment was later replaced by *jild*, without distinction between married and unmarried individuals (see Surah An-Nūr, verse 2). Finally, the punishment was escalated to *rajm* for those who had been married or were *muḥṣan*.

With these two premises, the legal logic for the status of *żimmī* in criminal cases is constructed: Islamic law mandates the punishment of *rajm* for *muḥṣan* offenders. Furthermore, Islamic law acknowledges the validity of the marriage of non-Muslims (both *żimmī* and *ḥarbi*). Since their marriage is valid, the individuals are considered *muḥṣan*. *Muḥṣan* offenders are subject to *rajm*. As *rajm* is part of Islamic law, the Prophet made this decision based on Islamic law. Therefore, anyone from the *żimmī* community who brings a case to the Islamic court will be subject to Islamic law as a legal subject (*mukalaf*).

For this reason, among the Shafi'i scholars, Islam is not a requirement for *al-Iḥsān*. Sheikh Marbawi himself stated that the conditions for *al-Iḥsān* according to the Shafi'i school are three: freedom, maturity, and lawful conjugal relations (*wathi'*) in a valid marriage.

For the Maliki school and some Hanafi scholars, *al-Iḥsān* only applies to those who are Muslim. Therefore, for them, the description of *muḥsin* (or *muḥṣan*) is Islam—along with freedom, maturity, sound mind, and *wathi'* (conjugal relations).

Thus, according to this legal view, non-Muslims are not considered *muḥṣan*. Since they are not *muḥṣan*, and the Prophet Muhammad imposed the punishment of *rajm* on them—where *rajm* in Islam is only applicable to *muḥṣan* —the punishment of *rajm* decided by the Prophet was based on the law in force among the *żimmī*. In other words, according to this school of thought, non-Muslims (*żimmī*) are not part of the subjects of Islamic criminal law. However, the Prophet's ruling based on the law in force among the *żimmī* does not negate the abrogation of the laws of previous nations. Instead, the Prophet Muhammad upheld the '*aqd al-żimmah* (covenant of protection) between the Muslims and the *żimmī*. In short, the Prophet acted as their judge because of the agreement with the *żimmī*. This is similar to the Hudaybiyyah treaty, where the Prophet adhered to the terms of the agreement, not because of *taqlīd* (following the practice) of the polytheists of Mecca, but because he was committed to the terms of the contract between the leaders of Medina and Mecca.

This '*aqd al-żimmah* school also argues based on the Qur'an Surah Al-Māidah, verse 43. *How is it that they make you their judge, while they have the Torah, which is the judgment of Allah? Then they turn away, after that; and those are not the believers.* In this verse, Allah still refers to the Torah as His law, indicating that this law remains in effect among the Jews. This means that when a matter among the People of the Book is judged by the Torah or the Gospel, it is still considered to be judging by the law of Allah. This is also consistent with the narration in the *Ḥadīṡ* of Ibn Umar, as found in *Ṣaḥīḥ* Muslim, where the Prophet Muhammad once instructed a Jew to read the Torah in his presence. The Prophet then decided to apply the punishment of stoning for the offender.

However, proponents of the *Al-Iḥsān* school argue that this verse must be read together with verse 42. In Surah Al-Māidah, verse 42, Allah says: *"If they come to you (Prophet Muhammad to seek judgment), then judge between them or turn away from them. If you turn*

away, they will not harm you in the least. But if you decide (their case), then judge between them with justice. Indeed, Allah loves those who act justly." Fakhruddin Ar-Rāzi, in his tafsir, *Miftahul Ghaib* (Tafsir Al-Kabir), states that the phrase "with justice" (*bilqisth*) means to judge with balance and caution (*bil 'adli wal ihthiyath*). Meanwhile, Imam Syafi'i explains that *al-qisth* in this verse means Islamic law. The choice (takhyir) in this verse—between rejecting judgment or accepting it—is a case in the context of *ahl muwada'ah*, not *ahl żimmah*. This is because there is a difference in how they are subjected to Islamic law. In the case of *ahl dzimmah*, if they bring their case to an Islamic court, the judge must decide according to Islamic law.

In this matter, Imam Syafi'i clearly states that Allah will never allow anyone to judge by other than Islamic law. Indeed, we will be held accountable for the legal decisions we make for them. We are not held accountable for what they do, what is forbidden for them, nor what is imposed upon them. From the perspective of a Syafi'iyun, based on Islamic law in deciding cases among non-Muslims, there is an eschatological dimension, because as stated by Imam Syafi'i, "Indeed, the Islamic judges will be held accountable for what they decide in these cases," not the plaintiff or defendant who will answer to Allah.

As a conclusion to this discussion, let us consider an interesting comment from Ibn Al-Arabi Al-Maliki when he explained the above *Ḥadīṡ* from *Tirmiżī*. Abu Bakr Ibn Al-Arabi Al-Maliki outlined five important points indicated by this *Ḥadīṡ*. First, the coming of the Jews to the Prophet to resolve this case of adultery had two purposes: one, to resolve the matter, and two, to test whether Muhammad was truly a messenger of Allah. Second, because of the first reason, the majority of Maliki scholars opine that if such a case were brought before a Muslim judge—except for the Prophet—it should be referred back to the rabbi/religious leader of the *żimmī* community. Even though the Maliki scholars permitted arbitration (tahkim). Third, the Prophet's ruling on the case reveals the hidden intentions of the Jewish group and exposes their deviation from the teachings of the Torah. Fourth, through the revelation of Allah, the position of the Prophet was strengthened, and the truth he brought was clarified. Finally, there are three resolutions for this case offered by scholars: 1) to decide the case according to Islamic law, 2) to decide according to the Torah or the law of the *żimmī* community, and 3) the case is special and was resolved by the ijtihad of the Prophet—since the hudud verses had not yet been revealed to the Prophet. However, in the conclusion of this explanation of the *Ḥadīṡ*, citing Ibn Al-Arabi, Abu Bakr Muhammad As-Syibli stated that the Prophet did not rule on this case except with Islamic law.

3. The Implementation of the Concept of *Żimmī* in Contemporary Muslim-Majority States: The Case of Indonesia

Finally The concept of *żimmī* as explained by Sheikh Marbawi in *Baḥru al-Mażī* is a form of The concept of *żimmī* as explained by Shaykh Marbawi in *Baḥru al-Mażī* is a form of recognition of the existence of non-Muslims as legal subjects in the Islamic justice system, especially if they voluntarily submit cases to the sharia court. In the context of a modern Muslim country or a country with a Muslim majority population such as Indonesia, this concept has practical and normative implications that are interesting to study. Indonesia is not constitutionally an Islamic country, but the majority of its population is Muslim and Islamic law is applied in a limited way in the national legal system, especially in the civil field through the Compilation of Islamic Law and religious courts. However, religious courts in Indonesia are only authorized to handle cases involving Muslim parties, in accordance with

Article 49 paragraph (1) of Law Number 3 of 2006 concerning Amendments to Law Number 7 of 1989 concerning Religious Courts. Thus, unlike the position of *żimmī* in *Baḥru al-Mażī* who can become a subject of sharia law based on his own will, the Indonesian legal system limits the jurisdiction of religious courts based on the Islamic status of the parties, not on the basis of involvement or connection as developed by Sheikh Marbawi.

However, the inclusive nature of Islamic law in *Baḥru al-Mażī*, such as the requirement for Muslim judges to decide cases based on Islamic law against non-Muslims who come voluntarily, remains relevant in the discourse of legal pluralism. In practice, a number of regions in Indonesia that apply Islamic law partially, such as Aceh Province through Aceh Qanun No. 6 of 2014 concerning Jinayat Law, provide legal space for non-Muslims to choose to submit to *Qānun Jināyat* in certain criminal cases such as adultery, *maisīr* (gambling), or *khalwat*. Article 7 paragraph (2) of the *Qānun* states that "Every non-Muslim who commits a crime can choose to be resolved based on this *Qānun* as long as he wishes."[20]

Furthermore, the concept of *żimmī* can also be actualized through an alternative approach to dispute resolution based on religious communities involving Islamic and non-Islamic religious institutions. In some cases, such as civil conflicts between religious communities, mediation based on faith or religion is often carried out, and shows the relevance of inclusive muamalah fiqh principles. A report from the Research, Development and Training Agency of the Indonesian Ministry of Religion in 2020 noted that a mediation model based on local wisdom and religion succeeded in reducing inheritance conflicts between Muslim and non-Muslim families in the East Nusa Tenggara region.

At an ideal level, the idea of *żimmī* from Sheikh Marbawi opens up space for responsive, inclusive, and fair Islamic justice, not exclusively for Muslims alone. This model can inspire the formulation of legal policies in Muslim-majority countries, including Indonesia, to be more open to a legal approach based on the principle of voluntarism and protection of citizens' legal rights, without distinguishing between religions.

D. CONCLUSION

From the discussion above, two conclusions can be drawn. First, Sheikh Marbawi offers a solution for non-Muslims who submit their cases to the Islamic judicial system, stating that the court is obligated to accept the case. Second, cases involving fellow *żimmī*s must be resolved based on Islamic law. This opinion is not merely Sheikh Marbawi's personal view but can be traced back to Imam Shafi'i—the legal opinion in the Shafi'i school of thought. The theory underlying this opinion can be traced back to the textual evidence from the Quran and *Ḥadīś*, and the interpretation of both. The legal reasoning behind this theory can be referred to as the theory of *Al-Iḥsān*. The results of this study open up space for further development in three main areas: academic, practical, and policy. From an academic perspective, further, broader and comparative research is needed on the application of Islamic criminal law to non-Muslim communities in various Muslim-majority countries. Such studies will enrich the literature on Islamic criminal law in the context of legal pluralism and emphasize the contribution of Nusantara scholars, such as Sheikh Marbawi, to contemporary Islamic legal discourse. Practically, the results of this study can be a reference for Islamic judicial institutions in formulating procedures for handling cases involving non-Muslim parties,

[20] Gubernur Aceh, *Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat*, 2014.

especially in legal systems in countries that adopt legal dualism between positive law and Islamic law. The approach based on the theory of *Al-Iḥsān* and the principle of connectivity as explained in *Baḥru al-Mażī* needs to be studied further to be applied contextually, prioritizing the principles of justice and protection of citizens' rights. In the realm of policy, there needs to be a more inclusive legal policy from sharia authorities and national legislation, to ensure that every citizen, including non-Muslims, has equal access to justice without neglecting the principles of Islamic law. This regulation needs to be designed in a participatory manner, involving Islamic legal experts, representatives of minority religious communities, and relevant state institutions. Such an approach will strengthen the integration between Islamic law and human rights principles within the framework of a pluralistic state of law.

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