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LEGAL CONSIDERATIONS OF UMAR IBN AL-KHATTAB AND THEIR RELEVANCE TO THE APPLICATION OF AMNESTY AND ABOLITION IN CRIMINAL LAW IN INDONESIA

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Abstract

Umar Bin Khattab was the successor Caliph to Abu Bakar Shiddiq. He was known for his numerous and brilliant Ijtihads, and was also recognized as a pioneer of Ahl Ra'yu in Ijtihad among the companions. This research aims to reveal Umar's models of ijtihad in applying Islamic law during his leadership, specifically focusing on his relatively new decisions that were never previously implemented by the Prophet Muhammad or Abu Bakr, considering several logical factors that impacted changes in law enforcement compared to previous eras. This research uses a qualitative research method with a library research or literature review approach. This method aims to explore, analyze, and synthesize various literature relevant to the theme of the history of the development and renewal of Islamic law. The primary data sources used in this research are books, scientific journals, articles, and other documents that discuss aspects of the development of Islamic law during the time of Umar bin Khattab. Additionally, this research also utilizes the works of contemporary Islamic thinkers who offer new perspectives on the reform of Islamic law. This article will describe the transformations made by Umar bin Khattab in the application of Islamic law during his time. In addition to using the Quran and Hadith, Umar also used reason as one of the methods in enforcing Islamic law. This is relevant to the application of law in Indonesia, specifically the implementation of amnesty and abolition for prisoners. The novelty of this article lies in the fact that the policies implemented by Umar bin Khattab during his leadership are relevant to the concepts of amnesty and abolition applied in Indonesian criminal law, thus serving as a comparison for legal academics or readers regarding the patterns of implementing amnesty and abolition in the field of criminal law in Indonesia. It is hoped that this article can provide a more comprehensive overview of understanding law enforcement patterns in Indonesia, by comparing them with some of Umar bin Khattab's policy patterns as a caliph in the past.

Keywords: Consideration, Umar, Relevance, Law, Indonesia

Abstrak

Umar Bin Khattab adalah Khalifah pengganti Abu Bakar Shiddiq, Beliau terkenal dengan Ijtihad yang begitu banyak dan brilian, sehingga beliau juga dikenal sebagai pelopor Ahl Ra'yu dalam berijtihad dari kalangan para sahabat. Penelitian ini bertujuan untuk mengungkapkan model-model ijtihad Umar dalam menerapkan Hukum Islam dimasa kepempinannya, lebih spesifiknya kepada putusan beliau yang tergolong baru, yang tidak pernah diterapkan oleh Rasulullah dan Abu Bakar sebelumnya dengan beberapa pertimbangan logis yang berdampak pada perubahan dalam penegakan hukum dari masa sebelumnya. Penelitian ini menggunakan metode penelitian kualitatif dengan pendekatan library research atau studi kepustakaan. Metode ini bertujuan untuk mengeksplorasi, menganalisis, dan menyintesis berbagai literatur yang relevan dengan tema sejarah perkembangan dan pembaruan hukum Islam. Sumber data utama yang digunakan dalam penelitian ini adalah buku, jurnal ilmiah, artikel, dan dokumen lainnya yang membahas aspek-aspek perkembangan hukum Islam pada masa Umar bin Khattab. Selain itu, penelitian ini juga memanfaatkan karya-karya pemikir Islam kontemporer yang memberikan perspektif baru terhadap pembaruan hukum Islam. Melalui artikel ini akan digambarkan transformasi yang dilakukan oleh Umar bin Khattab pada penerapan Hukum Islam dimasa nya, dimana selain menggunakan Al-Qur'an dan Hadis, Umar juga menjadikan akal sebagai salah satu cara dalam penerapan penegakan Hukum Islam, dan di relevansikan dengan penerapan hukum di Indonesia berupa penerapan amnesti dan abolisi bagi narapidana. Adapun Novelty yang dihasilkan pada artikel ini, menggambarkan bahwasanya kebijakan yang dilakukan oleh Umar bin Khattab dimasa kepemimpinan beliau relevan dengan konsep amnesty dan Abolisi yang diterapkan pada hukum pidana di ndonesia, sehingga dapat menjadi perbandingan bagi para akademisi hukum atau pembaca pada pola penerapan amnesti dan abolisi di ranah Hukum Pidana di Indonesia. Diharapkan artikel ini dapat memberikan gambaran yang lebih komprehensif dalam memahami pola penegakan hukum di Indonesia, dengan di sandingkan dengan beberapa pola kebijakan Umar bin Khattab sebagai khalifah di masa lalu.

Kata kunci: *Pertimbangan, Umar, Relevansi, Hukum, Indonesia*

INTRODUCTION

Talking about Islam today cannot be separated from the history of its birth and growth in the past. The emergence of Islam around the sixth century AD cannot be separated from the social conditions of Arab society at that time, which we know as the era of ignorance. Therefore, we can say that the social conditions of a society or nation will influence the legal products enacted within that society.[1] Therefore, we need to delve into the history of how this sharia began to function and develop within society.

In the history of Islamic law, the theme of the periodization of the development of Islamic law is very important to study. The reason is that we cannot study history without

[1] Pathur Rahman, "Sejarah Perkembangan Dan Pembaharuan Hukum Islam," *Mudabbir* 5, no. No.1 (2025): 48–61, http://jurnal.permapendis-sumut.org/index.php/mudabbir.

looking at the periods of legal development itself, so if this topic is left out, it will raise major questions later when discussing other matters. For example, the initial period when law was established is usually called the compilation period, which is when the Prophet Muhammad (peace be upon him) was still receiving revelation from Allah. Then, the subsequent development after the Prophet Muhammad (peace be upon him) passed away, where the source previously referred to the Prophet, after his death the companions also argued and provided some legal input, until it entered the period of the Tabi'in, from which several famous figures emerged such as Imam Malik, Imam Abu Hanifah, Imam Shafi'i, and Imam Ahmad.[2]

The development of Islamic law during the time of the Prophet Muhammad's companions was marked by the use of ijtihad in establishing laws. During this period, Islamic law scholars began to formulate the outlines of Islamic jurisprudence and various legal theories that are still relevant today. Although there were differences of opinion among the companions, this did not lead to animosity. The companions who had a deep understanding of the direct teachings of the Prophet Muhammad (peace be upon him) engaged in ijtihad as a method for discovering Islamic law. The original sources of Islamic law are the Quran and the Sunnah, but if a ruling is not found in them, ijtihad is used to find it. This entire process demonstrates that ijtihad has been practiced since the beginning of Islam and has continued to develop thru subsequent generations.[3]

Islam is an interesting problem to study, especially from the perspective of its implementation. The forms of government that have been practiced since the time of the Prophet until now are the result of interpretations of normative Islamic teachings. A picture of such government governance can be seen from the established constitution. Therefore, exploring how the Islamic system and form of government can be implemented can be done by examining the constitution that serves as its basic rule. The question that arises is whether Islamic rule in the classical era had a constitution. Does that constitution have similarities to the constitutions understood in modern countries? What if they don't have a written constitution, what serves as a guideline for the administration of state life?[4]

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[2] Rahman.

[3] Fahmi Hamdi Rasyid Rizani, Jalaludin, Fathurrahman Azhari, "Istinbath Hukum Islam Masa Kenabian Dan Sahabat : Sejarah, Karakteristik, Dan Metode Ijtihad Dalam Membentuk Hukum Islam," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 2 (June, 3034) (2024): 619–44, https://shariajournal.com/index.php/IJIJEL/.

[4] Anwar M. Radiamoda Ali Sodiqin, "The Dynamics of Islamic Constitution : From the Khil ā Fah Period to the Nation-State Dinamika Konstitusi Islam : Dari Periode Kekhilafahan Hingga Nation-State," *Journal of Islamic Law* 2, no. 2 (2021): 138–67, https://doi.org/10.24260/jil.v2i2.241.

The Sahabi school, which means the opinions of the companions, is one of the references for Islamic law that originated from the time of the Tabi'in (followers of the companions). This opinion refers to the opinion of a companion that spread to other companions without any of them opposing it. The Shafi'i school of thot has become a source of recent news and a subject of debate, influencing its application in the economy and transactions. In the Indonesian context, the Shahabi School has significant implications for the regulation of Islamic law. For example, in the Ijtihad of Umar Bin Khattab, such as the determination of dowry, marriage contracts, mut'ah marriage, and marriage between Muslims and non-Muslims. In this study, we will focus on a literature review closely related to the development of the Sahabi School in the Islamic world.[5] By doing so, we will be able to see how the companions in the past also used policies that were said to be a new breakthrough in the form of ijtihad, which led to the welfare of the community and justice for every society.

The discourse on the relationship between Islam and the state has been a topic of interest throughout history. This is due to differing opinions on the state's position in Islamic teachings: is it an integral part, a symbolic representation, or separate? This debate led to diversity in the definition and concept of an Islamic state among Muslim intellectuals. They are divided into two schools of thot regarding the definition of an Islamic state: the formalist and the substantive. For the formalist group, an Islamic state is one that formally mentions Islam as its foundation and implements Islamic law as state law. The state is both a religious and a political institution. Substantive groups place more emphasis on the implementation of Islamic teachings within the state system. Religion and the state have a symbiotic relationship because religion needs the state as a place to develop, while the state needs religion as a moral foundation.[6]

Constitutional interpretation is fundamental to the functioning of constitutional democracy, bridging the gap between abstract principles and their practical application in resolving legal disputes. This interpretation process is crucial in jurisdictions where the constitution is considered a "living document," requiring adaptability to the ever-evolving social, political, and economic context. Constitutional interpretation methodology remains a controversial subject in jurisprudence, with competing approaches such as textualism,

[5] Muhammad Ainurrifqy, "Konsep Mazhab Sahabi Dalam Peraturan Di Indonesia: Sebuah Tinjauan Ijtihad Umar Bin Khattab," *Journal of Scientech Research and Development* 6, no. 2 (2024): 1–11.

[6] Zakia Yuzaini et al., "The Development of Ideas for Reform and Transformation of Islamic Family Law Becoming Legislation in Islamic Countries," *Samara: Journal of Islamic Law and Family Studies* 2, no. 2 (2024): 67–74, https://ojs.stai-bls.ac.id/index.php/sajilfas/index%0AThe.

purposivism, and living constitutionalism offering different frameworks. Analytical jurisprudence provides a philosophical lens for examining the underlying principles of interpretation, authority, and the pursuit of truth in law. This exploration extends to understanding legal justification, which often includes the implicit consequences of political morality that supports legal institutions. Jurisprudence debates emphasize normative and meta-theoretical considerations, framing law as an instrument of interpretation and a framework for articulating reasoned judgments.[7]

In the historical constructivist approach, there are two views regarding the relationship between religion and the state. First, the static view argues that state institutions determine the behavior of religious organizations. Second, the community-centered approach believes that the state is a reflection of societal values, and conversely, a society with high religious adherence will influence the state's political institutions. From Indonesian history, Jeremy Menchik states that the broad outlines of religion and politics are fluid and evolve together over time. Therefore, there is an area of overlap between the state and religious communities, as well as the scope of state and religious (Islamic) community autonomy. Thus, a clear line cannot be drawn between the state and society (religion).[8] In political jurisprudence, amnesty is often referred to as the remission of punishment. In Islamic jurisprudence, forgiveness is known by the terms al-'afwu and asy-syafa'at. The word al-'afwu is a noun-like word marked by the presence of the word al at the beginning of the sentence, or it can be equated with the masdar form, which is 'afwun, which linguistically means to disappear, be erased, give with full willingness and forgiveness.[9] Meanwhile, according to the term as defined by Abu al-Husain Ahmad bin Faris bin Zakariyya al-razy, al-'afwu is any sinner (criminal) whose punishment is erased because they have been forgiven.[10].

Essentially, all Islamic laws aim to achieve human well-being, as reflected in the comprehensive framework of al-maslahah. The theory of public interest has been at the heart of Islamic legal thot from the classical period to the present day. Early fundamental contributions include al-Ghazālī's elaboration on maslahah in al-Mustaṣfā, ʿIzz al-Dīn ibn ʿAbd al-Salām's emphasis on jalb al-manāfiʿ wa dafʿ al-mafāsid (gaining benefits and

[7] Sindung Tjahyadi Artha Debora Silalahi, Rizal Mustansyir, "Rethinking Constitutional Interpretation through Joseph Raz ' s Analytical Jurisprudence," *Constitutional Review* 11, no. 1 (2025): 233–68, https://doi.org/10.31078/consrev1118.

[8] Muchamad Ali, "The Roles of the Indonesian Constitutional Court in Determining State-Religion Relations," *Constitutional Review* 8, no. 1 (2022): 113–50, https://doi.org/10.31078/consrev815.

[9] Ibn Al-Mandhur, *Lisan Al-'arabi* (Kairo: Daarul Ma'arif, n.d.).

[10] Abu al-Husain Ahmad bin Faris bin Zakariyya Al-Razy, *Mujmal Al-Lughah* (Beirut: Daar al-Fikr, n.d.).

avoiding harms), and al-Shāṭibī's integrative and systematic approach in al-Muwāfaqāt. Building upon this classical heritage, contemporary Muslim thinkers such as Ibn ʿĀshūr, ʿAbd al-Majīd al-Najjār, Jamāl al-Dīn ʿAṭiyyah, and Jasser Auda have further developed this theory to suit the complexities of the modern era, introducing new interpretive frameworks that emphasize the dynamic and context-sensitive nature of maqāṣid al-sharīʿah. The evolving dynamics of Islamic legal methodology, particularly regarding the theory of al-maslahah, highlight its transformation into a central component of maqāṣid al-sharīʿah in contemporary discourse.[11]

Research on the leadership of Umar bin Khattab has been conducted extensively by previous researchers, such as the article written by Yayang Sadtifa and Alimir, "Islamic Religious Character Education Values in the Biography of Umar bin Khattab by Prof. Dr. Ali Muhammad Ash-Shallabi," which shows that there are religious character education values in the biography of Umar bin Khattab by Prof. Dr. Ali Muhhammad Ash-Shallabi. The religious character education values that the author found in the biography of Umar bin Khattab by Prof. Dr. Ali Muhammad Ash-Shallabi are five, including: Obedience to Allah, Self-confidence, Creativity, Love of knowledge, and Honesty.[12] Qadriani Arifudidin, in his article, discusses the collaboration of a wise and firm leader. Umar's intellectual attitude made other companions refer to him on various religious and socio-political issues.[13] Muhammad Yusron in his article also discussed that the results of Umar ibn al-Khattab's ijtihad in resolving inheritance cases were based on rational reasoning and oriented toward the public good. This can be proven by the allocation of 1/3 of the remainder to the mother in the case of gharawain, the unification of inheritance shares between full siblings and half-siblings in the case of musytarakah, and other inheritance cases such as 'aul, radd, and the inheritance of grandparents. Umar always prioritized rational reasoning and the common good in his interactions with naṣh. For him, a law is very much tied to the context of when and where it

[11] Khalilullah Zahrul Mubarrak, Imran Abu Bakar, Muslem Hamdani, Musrizal, "The Urgency of the Islamic Law and Contemporary Societal Challenges: The Flexibility of Al-Maslahah in Determining the Hierarchy of Maqāṣid Al- Sharīʿah," *El-Usrah: Jurnal Hukum Keluarga* 8, no. 1 (2025): 344–65, https://doi.org/10.22373/pxydd884.

[12] Alimir Yayang Sadtifa, "Nilai - Nilai Pendidikan Karakter Religius Islam Dalam Buku Biografi Umar Bin Khattab Karya Prof. Dr. Ali Muhammad Ash-Shallabi," *Jurnal Ilmu Pendidikan Dan Kearifan Lokal (JIPKL)* 4, no. 6 (2024): 889–98.

[13] Qadriani Arifuddin, "Ijtihad Umar Bin Khattab Dan Relevansinya Terhadap Hukum Islam Kontemporer," *Jurnal JISH* 3 (2017): 69–83.

is established. Differences in time and place in the establishment of law affect the results of ijtihad.[14]

This paper has similarities with previous research, namely, both discuss the ijtihad of Umar bin Khattab, which became a new color in the application and enforcement of Islamic law. However, what distinguishes this paper from previous articles is that this research focuses on the legal considerations applied by Umar in judging a legal case in his time and relates it to the application of law in Indonesia, such as granting amnesty and abolition, where there are legal considerations in determining a punishment to produce a firm and just decision, and prioritizing human values. As given by President Prabowo Subianto to corruption convicts some time ago.

METHOD

This research uses a qualitative research method with a library research or literature study approach. This method aims to explore, analyze, and synthesize various literature relevant to the theme of the history of the development and renewal of Islamic law. The primary data sources used in this study are books, scientific journals, articles, and other documents that discuss aspects of the development of Islamic law during the reign of Umar bin Khattab. Additionally, this research also utilizes the works of contemporary Islamic thinkers who offer new perspectives on the reform of Islamic law.

The data collection process was carried out thru a systematic review of published literature. The collected data was analyzed using content analysis methods to identify patterns, themes, and key ideas related to the development of Islamic law. This analysis includes an evaluation of the dynamics of Islamic law during various periods of Umar Ibn Al-Khattab.

The results of this research are expected to contribute to understanding the development of Islamic law as an intellectual product that is dynamic and adaptable to changing times. By using the library research method, this study can provide a strong theoretical foundation to describe how Islamic law has evolved in terms of epistemology, methodology, and application. This research also aims to explore the relevance of Islamic law reform during the time of Umar Ibn Al-Khattab in addressing the challenges of modernity, while simultaneously preserving the fundamental values that are at the core of Islamic law.

[14] Muhammad Yusron, "Penalaran Rasional Dan Maslahah: Ijtihad Umar Ibn Al- Khattab Pada Kasus-Kasus Kewarisan Islam," *Journal Islamic Law* 2, no. 2 (2021): 197–223, https://doi.org/10.24260/jil.v2i2.327.

RESULTS AND DISCUSSION

A. Biography of Umar Ibn Al-Khattab

His full name is Umar ibn Khattab ibn Nufail ibn Abdil Uzza ibn Ribaah ibn Qarth ibn Razaah ibn Ady bin Ka'b. He belonged to the Adi tribe, one of the most respected, noble, and high-ranking tribes among the Arabs. This tribe was still part of the Quraysh lineage. His mother's name was Hantamah bint Hashim ibn Mughirah ibn Abdullah ibn Umar ibn Makhzum. Umar was born in the year 13 after the Year of the Elephant. He was commonly called Abu Hafsh and was nicknamed Al-Faruq, because he revealed Islam while in Mecca, so Allah separated between disbelief and faith with Umar.[15]

Before converting to Islam, Umar was among the most feared of the Quraysh disbelievers by those who had already converted to Islam. He was the most fierce and cruel enemy and opponent of the Prophet Muhammad (peace be upon him), and he even had a great desire to kill the Prophet Muhammad (peace be upon him) and his followers. He often spread slander and accused Prophet Muhammad (PBUH) of being a soothsayer and poet. After Umar converted to Islam, in the month of Dhu al-Hijjah six years after the Prophet Muhammad's prophethood, his personality was completely different from what it was before. He transformed into one of the most zealous and loyal defenders of the Islamic religion. In fact, he was among the most prominent and closest companions of the Prophet Muhammad (peace be upon him).[16]

The Story of Umar's Conversion to Islam. "O Allah, glorify Islam with one of these two men: Umar bin Khattab or Umar Ibn Hisyam Abu Jahal." This was a portion of the Prophet's prayer at one point. At the time Islam emerged, when the Prophet announced his prophetic mission, Umar was one of the most staunch opponents of the Prophet. He considered Islam to be heresy and madness that contradicted their ancestors' religious beliefs. Therefore, he was very hostile toward Prophet Muhammad. In various ways, Umar opposed the teachings brought by the Messenger of Allah. Once, Umar told the people that he would kill the Messenger of Allah. He then left his house with a sharp, drawn sword and headed toward the Messenger of Allah's residence. Halfway there, he met his sister, Fatimah, sitting under a tree holding a copy of the Quran and reciting some verses (Surah Taha).[17] He asked his sister, "What have you been reading?" With great fear, Fatima replied, "Verses from the Quran." Then Umar asked her and

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[15] Nasruddin, "Kekahlifahan Umar Ib Khattab," *Jurnal Rihlah* 5, no. 2 (2017): 137–51.

[16] Nasruddin.

[17] Yusron, "Penalaran Rasional Dan Maslahah: Ijtihad Umar Ibn Al- Khattab Pada Kasus-Kasus Kewarisan Islam."

said, "You are truly the one I should kill first." "If the truth is among us, what will you do?" Fatima retorted. "Give me the paper." After Umar read it, after he realized the verses he was reading were very relevant to him. His heart melted, his heart trembled upon hearing such beautiful poetry, and then he ran to the Prophet's house and declared that he had converted to Islam.[18] He converted to Islam in the month of Dhu al-Hijjah in the sixth year of prophethood and is recorded as the 40th person to convert to Islam. Umar died on Wednesday, the 25th of Dzulhijjah 23H / 644 AD. He was killed by a Persian slave named Abu Lu'luah or Feroz while leading the dawn prayer. This assassination is said to have been motivated by Feroz's personal vendetta against Umar, as he felt hurt by the defeat of Persia, which was a superpower at the time.[19]

Umar bin Khattab (may Allah be pleased with him) was appointed and chosen personally by Abu Bakr (may Allah be pleased with him) to succeed him in the caliphate. According to Abdul Wahhab an-Nujjar, this method of appointment is called thariqul ahad, meaning a leader who chooses their successor themselves after hearing the opinions of others, and then they are publicly sworn in.[20]

During the reign of Abu Bakar r.a, the caliph was called the caliph of the Messenger of Allah. However, during the reign of Umar bin Khattab r.a, they were called Amirulmu'minin. This title was given to him by the people themselves. One reason for this replacement is simply the meaning of the language, because if Abu Bakr (may Allah be pleased with him) is called the caliph of the Messenger of Allah (the successor of the Messenger of Allah), then automatically his successor means the caliph of the caliph of the Messenger of Allah (the successor of the successor of the Messenger of Allah), and so on, at least according to Haikal. Furthermore, because the territory of Islamic rule had expanded to areas that were not Arab regions, which naturally required a detailed system of governance, and since he did not find a

[18] Imaad Aqil Umar Al-Farug, Mutiara Az-Zahra, Mentari Fathiyah R.F, "Pengaruh Perbedaan Pendapat Ulama Tehadap Tasyri'," *Jurnal Kajian Agama Dan Dakwah* 4, no. 3 (2024): 1–7, https://www.scribd.com/document/787334186/19696.

[19] Abidin Latua Desta Faudu Fitriani, Al Anisa Nasahwa Arisni, Bintang Maharani, Jesika Margaretta, "Biografi Umar Bin Khattab," *Jurnal Psikolosial Dan Pendidikan* 1, no. 1 (2025): 81–86, https://publisherqu.com/index.php/psikosospen/ Vol.

[20] Terdapat perbedaan dalam proses pengangkatan Abu Bakar dan Umar, bila Abu Bakar dipilih oleh beberapa wakil kalangan elit masyarakat, Umar dipilih dan ditunjuk langsung oleh Abu Bakar untuk menggantikannya.

detailed system of governance in the Noble Quran and the Prophet's Sunnah, he refused to be called Khalifatullah and Khalifah Rasulullah.[21]

There are several factors that may have greatly influenced Abu Bakar's direct appointment, namely:

1. Most likely, Abu Bakr was concerned about a split within the Muslim community if the election was left to the people, as almost happened to him.
2. In any case, Umar was Abu Bakr's successor in being elected Caliph.
3. While some other opinions state that Abu Bakr's concern about Ali bin Abi Talib being elected motivated him to directly choose his successor.[22]

Rapid progress occurred during the reign of Umar bin Khattab, including the expansion of Islamic territory, which no longer encompassed the Arabian Peninsula but extended beyond its borders, reaching Yemen, Egypt, Syria, Persia, Damascus, Azerbaijan, and other areas.

B. Ijtihad Umar Ibn Al-Khattab terkait penegakan Hukum Islam

In the stage of Islamic history, Umar Ibn al-Khattàb is known as an intelligent, firm, and courageous thinker. During his tenure as the second caliph in the era of the Rightly Guided Caliphs, he produced many creative ideas. It is not uncommon for these thinkers' ideas to differ textually, even 'contradicting' established and well-accepted normative provisions within society. Therefore, this controversial thinking often sparked debate among the companions and Muslim scholars of that time. Some of them could understand and accept Umar's innovative thinking, but others found it difficult to accept and strongly rejected his ideas.[23] At the time, the expansion of the Islamic state was full of glory in some places. That's why there are many policy changes here and there due to the emergence of new interests and changes in old customs. Therefore, it's not surprising that the above changes will also result in changes to the laws and fatwas that have been in place since the time of the Prophet Muhammad and Caliph Abu Bakr al-Siddiq. Not only that, but contextual interpretations of the time often changed, as if they had strayed from the original text.[24]

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[21] Desta Faudu Fitriani, Al Anisa Nasahwa Arisni, Bintang Maharani, Jesika Margaretta, "Biografi Umar Bin Khattab."

[22] Desta Faudu Fitriani, Al Anisa Nasahwa Arisni, Bintang Maharani, Jesika Margaretta.

[23] Fahmi Assulthoni, "Progresivitas Pemikiran Hukum Umar Ibn Khattab," *Ulumuna* 1, no. 1 (2015): 98–108.

[24] M. Zaidi Abdad, "Ijtihad Umar Ibn Al–Khattàb: Telaah Sosio–Historis Atas Pemikiran Hukum Islam," *Istibath, Jurnal Hukum Islam* 13, no. 1 (2014): 37–50.

As Islam spread further and more nations converted to Islam, the issues that arose became increasingly complex and required answers. Sometimes, the answers to these issues could not be found in the Quran or the Sunnah.[25] Or it is in the Quran and Sunnah, but the answer is not relevant to the situation and conditions of the problem that arises. To solve these problems, Umar bin Khattab sought help from his companions. To help his companions concentrate on the emerging issues, Umar issued policies including:

1. The companions were forbidden from leaving the city of Medina, as they were the figures tasked with advising Umar, except for a few companions like Ammar bin Yasir, Abdullah bin Mas'ud, and other companions who were specifically sent to be governors or judges in various regions.
2. The companions were forbidden from narrating too many hadiths, while the public was allowed to concentrate more on studying the Quran.
3. Umar bin Khattab was very cautious in accepting a hadith. When the hadith was not well-known among the companions, Umar thoroughly investigated its authenticity. And to strengthen it, Umar stipulated the presence of witnesses. For example, when a friend came to Umar to complain that Zaid bin Tsabit had issued a fatwa stating that if two genitals meet, bathing is obligatory even if sperm does not come out. When asked, Zaid bin Tsabit explained that he had received the hadith from his uncle (Rafa'ah bin Rafi'), but Zaid himself admitted that he did not act upon it. Then Umar asked Rafa'ah, and next Umar gathered the Muhajirin and Ansar in a meeting to discuss this issue. There was a companion who said, "We don't know, and no one knows better except the Messenger of Allah and his wives." Then Umar asked Hafsah, but Hafsah didn't know about the matter either. Then Umar sent someone to ask Aisha, and Aisha replied that: "When the two circumcised parts meet, then bathing is obligatory." [26]

Umar's ijtihad is based on an integrated and comprehensive understanding of the existing texts to achieve the welfare of the community. Umar paid close attention to the aspects of social and cultural changes that were developing at that time. Patriarchal culture as a social system prevalent in society is also an aspect of concern, particularly in issues related to

[25] Jufriadi Ramli and Ibnor Azli Ibrahim, "Perkahwinan Dengan Wanita Ahli Kitab Menurut Ijitihad ' Umar Bin Al-Khattab [Marriage with a Woman of Ahli Kitab According to Ijitihad ' Umar Bin Al-Khattab]," *BITARA International Journal of Civilizational Studies and Human Sciences Volume* 5, no. 2 (2022): 11–22.

[26] Yayan Sopyan, *Tarikh Tasyri' Sejarah Pembentukan Hukum Islam*, ed. Yayan Sopyan, 1st ed. (Depok: PT Raja Grafindo Petsada, 2018).

inheritance. Although Umar's ijtihad sometimes seemed to contradict the apparent meaning of the texts, such as his ijtihad on the issue of spoils of war, divorce, the punishment of cutting off the hand for thieves, the punishment for adultery for a virgin, and the issue of giving zakat to converts, in reality, Umar was applying the values contained in those texts and focusing more on the public interest, which is the very purpose of the Sharia.[27]

Umar also said that if a husband divorces his wife with three divorces at once, the divorce is valid. Yusuf Al-Qaradawi stated that triple divorce is a form of divorce considered permissible in some circumstances but generally considered impermissible. Triple divorce is permissible in some circumstances, such as in the case of Umar ibn Al-Khattab's ijtihad, where the divorce can be pronounced simultaneously. According to Yusuf Al-Qaradawi, Umar's ijtihad classifies triple divorce as ba'in kubra, although it is not considered permanent law. Umar's ijtihad is a type of ta'zir punishment delegated to the imam. Ta'zir is a type of punishment that is entirely within the authority of the ruler (imam). The goal is to educate the perpetrators and prevent them from committing similar violations.[28]

In the field of justice, Umar bin Khattab reformed the judicial system and made it the forefront of its development. Among Umar bin Khattab's policies in this area of development are:

1. The judiciary is already organized with the appointment of qadis and the payment of judges and officials. And the delegation of judicial executive authority from the caliph to the qadis. (Abu Darda in Medina, Shuraih ibn Haris in Kufa, Abu Musa in Basra, and Uthman bin Qaish in Egypt.) There was also a division of authority, civil matters, and for minor issues, they were usually handled by the qadis, while major issues were handled by Umar himself as the Caliph.
2. Umar created procedural law, as outlined in the records of Qada Umar bin Khattab.
3. Umar paid the Qadis a fixed salary.[29]

Among the several changes resulting from his ijtihad are those concerning the following issues:

1. Dropping the Had Punishment for Adultery

[27] Yusron, "Penalaran Rasional Dan Maslahah: Ijtihad Umar Ibn Al- Khattab Pada Kasus-Kasus Kewarisan Islam."

[28] Yuhasnibar Yuhasnibar; Risna Wati, "The Law on the Tripple Talaq at Once in the View of Yusuf Al Qaradawi's in Contemporary Context: Analysis of Sadd Al-Żarī'ah Theory Yuhasnibar," *El-Usrah: Jurnal Hukum Keluarga* 6, no. 2 (2023): 381–98, https://jurnal.ar-raniry.ac.id/index.php/usrah/index.

[29] Sopyan, *Tarikh Tasyri' Sejarah Pembentukan Hukum Islam*.

Regarding the hadd for adultery, the Prophet Muhammad (peace be upon him) clearly explained the punishment for the perpetrator. For unmarried men and women who commit adultery, the punishment is one hundred lashes and banishment for a year.

Among the legal bases found in the Quran, Surah An-Nur, verse 2 :

ٱلزَّانِيَةُ وَٱلزَّانِى فَٱجْلِدُواْ كُلَّ وَٰحِدٍ مِّنْهُمَا مِاْئَةَ جَلْدَةٍ ۖ وَلَا تَأْخُذْكُم بِهِمَا رَأْفَةٌ فِى دِينِ ٱللَّهِ إِن كُنتُمْ تُؤْمِنُونَ بِٱللَّهِ وَٱلْيَوْمِ ٱلْـَٔاخِرِ ۖ وَلْيَشْهَدْ عَذَابَهُمَا طَآئِفَةٌ مِّنَ ٱلْمُؤْمِنِينَ

Meaning: "The adulteress and the adulterer, flog each of them a hundred times, and let not compassion for them prevent you from (executing) the religion (law) of Allah if you believe in Allah and the Last Day. And let their punishment be witnessed by some of the believers."[30]

The Prophet (peace be upon him) once said:

خُذُوا عَنِّي خُذُوا عَنِّي قَدْ جَعَلَ اللَّهُ لَهُنَّ سَبِيلًا الْبِكْرُ بِالْبِكْرِ جَلْدُ مِائَةٍ وَنَفْيُ سَنَةٍ وَالثَّيِّبُ بِالثَّيِّبِ جَلْدُ مِائَةٍ وَالرَّجْمُ

Meaning: Take from me, take from me. Indeed, Allah has provided them with another way: for those who are unmarried (commit adultery) with the unmarried, the punishment is 100 lashes and exile for a year. As for those who are married (commit adultery) with the married, the punishment is 100 lashes and stoning.

While the punishment for widows and widowers (who have been married) is stoning. Additionally, this law is also reinforced by the Prophet's practice toward adulterers. However, in some cases, Umar, as the successor to Abu Bakr, dropped the hadd punishment for zina. There are at least the following five cases: First, Abu Yusuf narrated from al-Najaz bin Sibrah, "While we were in Myna with Umar, suddenly a Dāhamah woman on a donkey was crying. The people around him almost killed him, saying: He has committed adultery, he has committed adultery. When he reached Umar, Umar asked: What's your problem? The woman replied: Indeed, I am a woman whom Allah has blessed with the provision of praying Qiyam al-Layl, so I prayed and then went back to sleep. By God, I didn't wake up until there was a

[30] In the Tahlily Interpretation, it is explained that this surah contains definite legal provisions, one of which is the law of adultery. To female adulterers who have never been married, and likewise to male adulterers who have never been married, flog each of them one hundred times if their adultery is proven according to its conditions, and let not compassion for them prevent you from carrying out the religion and laws of Allah, if you believe in Allah and the Hereafter. One consequence of faith is to obey God's law. And let their punishment be witnessed by some of the believers, at least three or four people, so that the punishment may be a lesson for those who see and hear it.

man having sex with me. Then I saw him, but I didn't recognize who he was. Then Umar said: If this woman had been killed, I would have feared for the two al-akhshabaini of Hell. Finally, Umar wrote a letter to the leaders of the Ansar, instructing them not to execute the woman.

Second, the narration of al-Bukhari states that a slave was forced to commit adultery. So Umar flogged the person who forced him, but did not flog the slave because he was under duress.[31]

Third, the narration of Ibn Qayyim, a woman who was very thirsty was presented to Umar. She approached a shepherd to ask for water to drink. However, the shepherd refused to give her water unless she was willing to commit adultery with him. So he did it. Regarding this incident, the companions consulted on the law of stoning for him. Then Ali said, "This was done under duress, so I don't see any punishment for it, just as Allah says in Surah al-Baqarah: 173." Therefore, Umar exempted him from the had punishment.[32]

If examined more closely, from the five cases above, it can be said that Umar did not enforce the hadd law for adultery because of one of two important things. The first is compulsion (ikrāh), and the second is ignorance (jahl) regarding the prohibition of adultery. Regarding the first cause, or ikrāh, this applies to the first, second, and third cases, namely falling asleep, coercion, and having an extremely urgent need to preserve life.

The second reason is jahl, or ignorance of the law of adultery, as narrated by Ibn Qayyim in the fourth case and Ibn Hazm in the fifth case. Both appear to be the same case regarding foreign women who do not understand religion, although in the narration of Ibn Qayyim, who said about her ignorance, it was Ali, while in the narration of Ibn Hazm, it was Uthman. This is further reinforced by his direct admission, which demonstrates ignorance of the law. Conversely, if it is said that the direct answer is a strategy to avoid the had punishment because they know that ignorance can nullify the had, then the matter falls into the category of subhat. And hudud can be nullified due to the presence of subhat, as explained in the previous discussion.

2. Not cutting off the hands of theft perpetrators.

The punishment or sentence threatened for theft under Islamic law is the hadd punishment (hand amputation). This view is based on the Quranic verse Al-Maidah: 38, which states, "As for the thief, whether male or female, cut off their hands."

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[31] Amir Sahidin, "Telaah Atas Ijtihad Umar Bin Kha Ṭṭ Ab Perspektif Maq Āṣ Id Al-Syar ī ' Ah," *Jurnal Penelitian Medan Agama*, no. August (2023), https://doi.org/10.58836/jpma.v14i1.16553.

[32] Sahidin.

Beside the Quran, it is also based on the evidence of the Prophet's verbal (qauli) and practical (fi'li) Sunnah. However, Umar Ibn Khattàb once canceled that punishment in a year when a famine occurred. Another argument is that the sentence was overturned because the theft was committed by someone desperate for food. This means that when determining legal sanctions, Umar always considered the underlying issues. This means it is based on emergency reasons, reasons of interest, and reasons for saving people's lives. This line of reasoning is followed by the consensus of the scholars of jurisprudence.

C. Relevance to Criminal Law in Indonesia

a. Amnesty from the President

Amnesty is one of the prerogatives held by the President in the judicial field, as stipulated by the 1945 Constitution of the Republic of Indonesia. It encompasses several other rights, namely abolition, clemency, and rehabilitation. The President granted amnesty to a convict based on his status as head of state, not head of government. This means that this authority can only be granted by the President as the highest representative of a country, and only for the sake of the country's interests and integrity.[33]

Beside Indonesia, many countries implement this amnesty as a consideration in law enforcement in their countries. Even Thailand, despite being a kingdom, still applies amnesty as a general royal pardon in criminal cases. This is also a concern for academics to research and delve into more deeply, as written by Jintana Plodpai et al. in their article:

กฎหมายว่าด้วยการอภัยโทษในประเทศไทยมีประวัติศาสตร์ยาวนานมาตั้งแต่สมัยอดีตจ นถึงปัจจุบันโดยมีรัฐธรรมนูญแห่งราชอาณาจักรไทย พุทธศักราช 2560 **ในมาตรา** 179 **ประกอบมาตรา** 175 **และประมวล กฎหมายวิธีพิจารณาความอาญา ในมาตรา** 261 **ทวิ เป็นแม่บทหลักในการตราถึงอ านาจนั้น รวมไปถึงการกาหนดหลักเกณฑ์และคุณสมบัติในตัวบทกฎหมายย่อยตามพระราชกฤษฎีกาโดย วัตถุประสงค์ของกฎหมายว่าด้วยการอภัยโทษมีเพื่อให้ผู้กระทาผิดได้รับโอกาสกลับคืนสู่สังคม ผ่านกระบวนการยุติธรรมอันมีกรมราชทัณฑ์คณะรัฐมนตรีและกระทรวงยุติธรรมเป็นองค์กรฝ่ายบ ริหารคอยทาหน้าที่พิจารณากลั่นกรองในส่วนนั้น รวมถึง พระราชอ านาจของพระมหากษัตริย์ในฐานะประมุขแห่งรัฐ อย่างไรก็ดี**

[33] Sinta Kartika Putri Mutiara Fahmi, Azmil Umur, "Amnesti: Hak Prerogatif Presiden Dalam Perspektif Fiqh Siyasah," *Legitimasi : Jurnal Hukum Pidana Dan Politik Hukum* 11, no. 2 (2022): 266–88, https://doi.org/10.23373/legitimasi.v11i2.15218.

แม้กฎหมายดังกล่าวจะมีความถูกต้องตามกระบวนการทางกฎหมายแต่หากนาทัศนะแนวคิดเชิงนิติปรัชญามาพิจารณาประกอบจะเห็นได้ว่าการพระราชทานอภัยโทษยังมีข้อพิจารณาในส่วนของความชอบธรรมและความเหมาะสม[34]

Meaning: "Amnesty laws in Thailand have a long history, spanning from ancient times to the present day. The 2017 Constitution of the Kingdom of Thailand, Section 179, along with Section 175, and the Criminal Procedure Code, Section 261 bis, serve as the primary framework for exercising this power. This includes determining criteria and qualifications in the sub-regulations as stipulated by Royal Decree. The purpose of the amnesty law is to give offenders the opportunity to reintegrate into society thru the justice system, with the Department of Corrections, the Cabinet, and the Ministry of Justice serving as the executive bodies responsible for reviewing and researching this issue. This also includes the King's power as Head of State. However, regardless of the legal validity of this law, a philosophical approach to law reveals that granting a royal amnesty still involves considerations of legitimacy and appropriateness. "

This article explains to us that amnesty and abolition are applied in many countries, including Thailand, which is a kingdom where the king, as the ruler, naturally plays a very significant role in establishing a law. However, Thailand's neighbor, Indonesia, also applies amnesty and abolition in its law enforcement.

In the perspective of Islamic political jurisprudence (fiqh siyasah), there is no statement that directly explains amnesty. However, the term "pardon" is often referred to as "al-syafa'at" and "al-'afwu." The words "al-'afwu" and "al-syafa'at" are the sole right of the victim or the victim's family. In practice, the word "al-'afwu" is used in the form of withdrawing legal claims against the convict, while according to al-Mawardi, the word "al-syafa'at" means the cancelation or pardon. However, from both definitions, they have the same meaning and purpose, which is the resolution of criminal cases involving the victim and the perpetrator.[35]

As for the President's rights and authority in granting amnesty, they are contained in the following regulations:

1. Article 14 paragraph (2) of the 1945 Constitution of the Republic of Indonesia: "The President grants amnesty and abolition, taking into consideration the advice of the House of Representatives."

[34] Jintana Plodpai et al., "**ของการพระราชทานอภ ัยโทษเป ็นการท ัว่ วไปของประเทศไทย ในกรณ ีนายสมค ิด พ ุง่ มพวง ผ ่านแนวค ิดเช ิงน ิต ิปร ัชญาของชาว ิญญ ีว่ และเบนแธม** Analyzing the Legitimacy and Appropriateness of Thailand ' s General Royal Pardon Through the Case of Somkid Pu," *Nitiparitat Journal* 4, no. 3 (2024): 1–13, https://so06.tci-thaijo.org/index.php/NitiPariJ/article/view/275749.

[35] Mutiara Fahmi, Azmil Umur, "Amnesti: Hak Prerogatif Presiden Dalam Perspektif Fiqh Siyasah."

2. Emergency Law number 11 of 1954 Article 1: "The President, in the interest of the State, may grant amnesty and abolition to persons who have committed a criminal act. The President grants this amnesty and abolition after receiving written advice from the Supreme Court, which provides the advice at the request of the Minister of Justice."
3. Law number 19 of 1964 concerning Basic Provisions on Judicial Power Article 19: "In the interest of the revolution, the honor of the State and Nation, or very urgent public interest, the President may participate or intervene in court matters."

b. Judicial Forgiveness for Criminal Offenses

The inclusion of the Judge's Pardon policy in the latest Criminal Code (KUHP) can be viewed historically, as the relationship between punishment and pardon has existed for a long time in other countries, and Indonesia aims to incorporate it into positive law. Sociologically, criminal law is a reflection of a nation's cultural values, namely the values of Pancasila. Philosophically, the background for the existence of Judicial Pardon is to resolve problems without harming the parties, or it can be said to be a problem-solving method, namely by using the win-win solution method for case resolution, as seen from other countries that have been explained in the discussion on urgency.[36]

Since 1960, crime rates have continued to rise in various countries, especially European nations. This crime rate will be directly proportional to the number of perpetrators, the number of proven and imprisoned perpetrators, which leads to significant financial costs due to the large number of inmates, resulting in criminal inefficiency. In 1960, many academics and practitioners opposed imprisonment, especially for "short prison sentences." According to academics, if someone is only sentenced for a minor crime, after serving their sentence "they will become criminals for serious crimes." This view is not without the stigma or label from society that says prison is a school for criminal activity.[37]

The application of forgiveness by judges in criminal cases is rooted in the fundamental concept of criminal law, which demands a balance between legal certainty and justice. In practice, the Indonesian criminal justice system often emphasizes human values and social

[36] Marlina Universitas Anza Ronaza Bangun, Edi Yunara, M. Eka Putra, "Rechterlijk Pardon (Pemaafan Hakim) Dalam Kitab Undang-Undang Hukum Pidana Di Sistem Pemidanaan Indonesia," *Al-Furqan : Jurnal Agama, Sosial, Dan Budaya* 183, no. 2 (2023): 153–64, https://publisherqu.com/index.php/Al-Furqan.

[37] Aulia Rizka Estiningtyas, Ulfatul Hasanah, and Rusmilawati Windari, "Comparison of the Legal Regulation of the Rechterlijk Pardon in Indonesia and The Netherlands," *Jurnal Suara Hukum* 6, no. 1 (2024): 162–86, https://doi.org/10.26740/jsh.v6n1.p162-186.

aspects when handing down decisions. Therefore, judicial forgiveness should not be interpreted solely as a reduction in punishment, but rather as a means of creating substantive justice that considers the defendant's background, socio-economic conditions, and the impact of their actions. This principle aligns with the idea of restorative justice, which views punishment not only as a means of retribution but also as an effort to restore, rehabilitate, and reintegrate offenders into society.[38]

Among the many problems with legislation are its rigidity, its inability to meet all legal requirements or events, and its tendency to create what is known as a legal vacuum or rechstvacuum. Instead of a legal vacuum, what might be acceptable is a gap in the legislation. Therefore, judges must understand legal findings due to weaknesses in the limitations of this law, although in some circumstances these legal findings are limited for the sake of justice. If law is the only source of law, then legal vacuums are very likely to occur. Judges are needed for more than just enforcing the law.[39]

One of the underlying principles behind judicial forgiveness is the desire to avoid absolutism in sentencing. Rigid legal systems often fail to accommodate specific contexts and circumstances that drive someone to commit a crime. It's not uncommon for legal violations to occur not out of pure malicious intent, but due to external factors, urgent circumstances, or coercion. In cases like these, judicial forgiveness provides a more humane alternative, by assessing the actions based on the defendant's social, economic, and psychological context, so that the justice provided is not mechanical, but more substantive.

In the context of minor offenses or actions committed without clear malicious intent, judicial pardon serves to uphold human values while also upholding social justice. The application of criminal law should not stop at mere punishment, but should also strive for social rehabilitation and protection for the accused so that they can function again in society. With the authority to grant pardons, judges can assess whether severe punishment is truly beneficial or if it would worsen the situation. Thus, pardons allow judges to make more comprehensive decisions, considering moral and societal aspects, as well as the long-term impact on all parties.[40]

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[38] Fitri Ayuningtiyas et al., "Implementasi Pemaafan Hakim Dalam Kitab Undang- Undang Hukum Pidana Dan Hukum Pidana Islam," *AMNESI Jurnal Hukum* 7, no. 1 (2025): 181–94.

[39] Gatot Sugiharto et al., "Analysis Of Legal Discovery Methods By Judges In Rechterlijk Pardon's Perspective to Solve Criminal Cases," *Jurnal Jurisprudence* 14, no. 1 (2024): 1–22, https://doi.org/10.23917/jurisprudence.v14i1.4397.

[40] Ayuningtiyas et al., "Implementasi Pemaafan Hakim Dalam Kitab Undang- Undang Hukum Pidana Dan Hukum Pidana Islam."

Respect for broader and more humanistic principles of justice. Justice is not only measured by the severity of the punishment imposed, but also by the extent to which legal decisions are able to benefit society. Granting forgiveness to perpetrators of minor offenses, especially those who show remorse or have made efforts to make amends, can prevent excessive social and psychological burdens. In this way, the justice system not only maintains public order but also protects human dignity and prevents disproportionate criminalization.[41]

This concept of judicial forgiveness aims to eliminate the execution of a criminal sentence if its execution would lead to injustice. What is meant by judicial pardon or judge's forgiveness can be broadly understood as an act of pardoning actions that are contrary to the law, based on justice in society. Therefore, although the law must be enforced in principle, for certain cases, judicial leniency can be granted by setting aside the law itself, which primarily has two main objectives: to correct the strict application of the principle of legality and to serve as an alternative to short-term imprisonment.[42]

In his article, Lukman Hakim writes that if we look further, according to Mardjono Reksodiputro, the desire to include the concept of "Judicial Pardon" in the Criminal Code Bill came from Roeslan Saleh. Beside the concept of forgiveness, Roeslan Saleh also proposed a clause of justice. In essence, if the judge feels there is a conflict between legal certainty and justice, then the judge must lean toward justice. Mardjono suspects Bismar spoke up because the concept Roeslan Saleh put forward aligns with Bismar's view of including provisions regarding judicial forgiveness in the Criminal Code.[43]

The panel of judges, when deciding a case according to the Criminal Procedure Code, only allows for 3 (three) possibilities:

1. Sentencing or imposing a penalty; (conviction to any sanction);
2. Acquittal (vrij spraak);
3. Decision of acquittal from all legal claims (onslag van recht vervolging)[44]

A not guilty verdict means the defendant is acquitted or found not guilty of the charges. Based on Article 191 paragraph (1) of the Criminal Procedure Code, an acquittal is handed

[41] Ayuningtiyas et al.

[42] Muhammad Hazwi Yarus, "Konsep Rechterlijk Pardon Dan Faktor- Faktor Yang Mempengaruhi Penerapannya Di Indonesia," *Jurnal Ilmiah Penelitian Mahasiswa* 3, no. 4 (2025): 191–96.

[43] Lukman Hakim, "Penerapan Konsep 'Pemaafan Hakim' Sebagai Alternatif Dalam Menurunkan Tingkat Kriminalitas Di Indonesia," *Jurnal Keamanan Nasional* V, no. 2 (2019): 185–202.

[44] Nefa Claudia Meliala, "Jurnal IUS Kajian Hukum Dan Keadilan Rechterlijk Pardon (Pemaafan Hakim) : Suatu Upaya Menuju Sistem Peradilan Pidana Dengan Paradigma Keadilan Restoratif RECHTERLIJK PARDON : (JUDICIAL PARDON) : AN EFFORT TOWARD CRIMINAL JUSTICE SYSTEM WITH RESTORATI," *Jurnal IUS Kajian Hukum Dan Keadilan* 8, no. 30 (2020).

down if the court believes that based on the results of the examination in court, the defendant's guilt for the act he is accused of has not been proven legally and convincingly. Therefore, an acquittal is at least based on not meeting the principle of proof according to the law negatively and/or not meeting the principle of the minimum threshold of proof.[45]

Meanwhile, a verdict of acquittal is handed down according to the Criminal Procedure Code "if the court finds that the act charged against the defendant is proven, but that act does not constitute a criminal offense, then the defendant is acquitted of all legal charges." Therefore, what was charged against the defendant in the acquittal verdict was sufficiently proven legally and convincingly, but the act charged against the defendant was not wrongful (intentional/negligent) or was not unlawful or there was an excuse (feit d'excuse)[46].

For example, the case of Grandpa Samirin in Simalungun, as presented by Fitri Ayuningtyas et al. in their article, is a concrete illustration of the need for judicial forgiveness in judicial practice. The elderly defendant was sentenced to prison for stealing leftover rubber sap with a very small loss value of Rp17,480. This decision drew criticism for being perceived as not reflecting substantive justice. If Article 54 of the Criminal Code Bill is already in effect, the judge can declare the defendant guilty without having to impose a sentence, considering their age, economic condition, and the minor nature of the act. In this context, judicial forgiveness becomes a corrective instrument against legal rigidity, as well as a means of upholding more humane justice.[47]

CONCLUSION

Umar Bin Khattab was among many of the Prophet's Companions who engaged in Ijtihad because of his long reign of 13 years. This necessitated him issuing his own Ijtihad when issues arose among the Muslim community that were not found in the Quran or the Prophet's Sunnah. Among Umar Bin Khattab's Ijtihad are: Not applying the hand-cutting punishment to theft perpetrators on the grounds of emergency circumstances (famine season) that forced them to commit the theft. Secondly, dropping the Had of Zina: with several considerations: First is coercion (ikrāh), and second is ignorance (jahl) regarding the prohibition of Zina.

[45] Adery Ardhan Saputro, "Konsepsi Rechterlijk Pardon Atau Pemaafan Hakim Dalam Rancangan KUHP," *Mimbar Hukum* 28, no. No. 1 (2016): 61–76.

[46] Saputro.

[47] Ayuningtiyas et al., "Implementasi Pemaafan Hakim Dalam Kitab Undang- Undang Hukum Pidana Dan Hukum Pidana Islam."

As for the implementation of decisions in criminal cases in Indonesia, there are also several considerations for mitigating or even eliminating criminal sentences, such as Amnesty from the Ruler (President) in the form of Abolition, Clemency, and Rehabilitation. A concrete example, as previously implemented by President Prabowo Subianto, is the granting of amnesty to Hasto Kristyanto and abolition to Tom Lembong in August 2025.

Emergency situations or other conditions should be considered by judges when delivering legal rulings, in order to produce just decisions that prioritize human values. Of course, it cannot be done haphazardly, so this legal consideration becomes an abuse in law enforcement.

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