

## PUBLIC DISCLOSURE PUNISHMENT (TASYHIR) BETWEEN THE VIEWS OF ISLAMIC LAW AND CIVIL LAW

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### ABSTRACT

*Takzir punishment is not limited because it depends on the maslahah, even the government, legislature, or judge can impose any law provided it is commensurate with the offense and complies with the general maslahah. One of the types of takzir punishment imposed is the general declaration (al-Tasyhir) which is to make a public declaration of the offense of criminals so that criminals feel ashamed and depressed. This article aims to address the questions that arise on the issue of the problem of public declaration crime between the views of the law and how to overcome the present. The question that arises is how the crime of tasyhir is carried out. Apart from that, the second question raised is what the view is according to the law in Malaysia related to such crimes and the third question is what the implications of the occurrence of tasyhir crime are. Also, the last question is how to overcome the crime of tasyhir that is happening nowadays according to the development of the increasingly sophisticated world. The methodology used is a qualitative study involving library study. In addition, the design used is a content analysis study. References used in this writing are books, journals, and articles. All these references help the author a lot to gather information and be included in this writing. Meanwhile, the objective to be achieved in this study is to explain in-depth related to the crime of tasyhir as well as to know the views of the law in Malaysia in the crime of tasyhir. Study the implications of the occurrence of tasyhir crime and the last is to know how to overcome the current related to it. Next, this study is to see the extent of the development of tasyhir crime, and the implications of tasyhir crime and how to overcome it.*

Keywords: General declarations, legal views, implications.

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### Introduction

Islam is universal, *'alami, rabbani dan syumul* came to fill all areas of human life with its laws and teachings. There is no matter whether it is a religious or worldly affair left alone unless it is explained clearly either through general methods or interpretive *juz' i* law. The rules are higher than any man-made rules and laws. It has policies that are valuable, and sublime compared to other policies.

The nature of Islamic law is that there are also lessons that guarantee the safety of human beings and their happiness. This is what the rules of Islamic law want to establish. It is clearly proven that this *tasyri* ' in this religion requires the preservation of the five *daruriyat* that come with it by all the *Shari'ah* and the heavenly religion, namely preserving religion, preserving the soul, preserving the offspring, preserving the intellect, and preserving property. The *Shari'ah* considers the encroachment on all the above things to be considered as a crime that leads to punishment in this world and the hereafter.

In recent times, criminal cases are becoming more prevalent, and criminal activities have affected the image of the country as well as degrading morals and morals in society, especially among teenagers. There are various types of criminal cases such as abortion, child abuse, gangsterism and vandalism, rape, corruption, drug abuse, and many more.

Nevertheless, there are various speculations related to the dissemination of criminal and criminal information committed to the public. This explains that the dissemination done to some extent will have bad implications for offenders it is widespread without being curbed as the current era of technology without borders is having the capability to spread information around the world.

Therefore, the government should submit new policies to examine the dissemination of information on illegal criminal cases that are widely spread today in the press, social media, and electronic media to ensure the reputation, security, peace of the people in the future.

#### 1.1 Criminal and *Jarimah* Terms

Islam considers crime an offense that must be punished because it violates the rights of Allah SWT and the rights of human beings or other beings. Islam values the glory of religion, life, intellect, property, and dignity. Violation of these five things is a crime that needs to be punished. To make an action considered a crime, it must meet the following elements of the legal element that is the provision which clearly prohibits the criminal act and make it a punishable offense, the action element that is committing the offense, and the qualification element that is looking at age, the capabilities, and responsibilities of the perpetrator (Paizah 2004: 61).

In Islamic law, there are two terms commonly used for the same or almost the same meaning. Both terms are known as "*Jarimah*" and *Jinayah*". In general, these two terms give meaning to evil deeds. This is because some jurists use both terms as synonyms to give the meaning of all evil deeds that are forbidden by Islamic law, whether to life, body, property, or so on. However,

most jurists prefer to use the term "*Jinayah*" to refer to something more specific, which is just an evil act against human life and body. It does not include the same evil deeds to property as defined by the word "*Jarimah*" in their view (Paizah 2004: 61).

However, the differences of opinion among the jurists in using the terms "*Jarimah*" and "*Jinayah*" is only in terms of using them alone. It does not necessarily reflect differences of opinion about the concept of the intended wrongdoing itself. Regardless of how these terms are used, they remain collectively meaning a certain form of evil deeds that are forbidden by Islamic law. However, for one group, certain acts are called "*Jarimah*" or "*Jinayah*" without any difference. While for the other group, in general, the mistakes can be called "*Jarimah*" but if it is about human life and body it is mentioned with a more specific term that is "*Jinayah*" (Paizah 2004: 62). But most jurists distinguish between the meaning of "*Jinayah*" and "*Jarimah*". They specialize in the word "*Jarimah*" for various offenses that require retribution of limits and *takzir*. Meanwhile, "*jinayah*" is reserved for various offenses that require the qisas punishment (al-Bakri t.t).

## 2.1 Takzir Punishment

Islamic law divides crime into three main divisions based on the punishment enforced, namely hudud, qisas, and takzir. Takzir is a punishment that is subject to the discretion of the government, legislature, or judge because the punishment for this offense is not mentioned in the Qur'an or Sunnah. The scope of takzir offenses is wide as all forms of offenses that are not subject to the punishment of qisas and hudud punishment are subject to the punishment of takzir. The forms of punishment are varied and subject to the discretion of the government, legislature, or judge (Zaini Nasohah et al. 2010. 4).

### 2.1.1 Takzir punishment in as-Sunnah

Rasulullah s.a.w once sent down takzir to Abu Zar r.a with his words,

"لَا يُجْلَدُ أَحَدٌ فَوْقَ عَشْرَةِ أَسْوَاطٍ إِلَّا فِي حَدٍّ مِنْ حُدُودِ اللَّهِ تَعَالَى"  
(Riwayat Muslim and At-Tirmizi)

"You still have some characteristics of ignorance."

### 2.1.2 Division of Takzir

Takzir is divided into two, namely:

- Offenses that fall into the category of hudud offenses but hudud punishment cannot be implemented because it does not exactly meet the complete requirements of hudud crimes. Syeikul Islam Ibnu Taimiyyah included any form of disobedience as a Tazir offense and listed several examples where there is no legal penalty in Sharia such as the man who kisses a boy or a woman unrelated to him by marriage or a very near kinship, the man who flirts without fornication and the man who steals a thing lying in open or one whose value is unclear.
- Offenses other than the category of hudud and qisas offenses. It covers all forms of error whether the error is mentioned in the Qur'an and Hadith or not. It also covers offenses against the rights of God, against human rights, or the rights of both (Ahmad Muwafi. 1965: 72).

Some of the errors of *takzir* are mentioned in the Qur'an and Sunnah, but the punishment is not stated. The Qur'an mentions some mistakes without mentioning its punishment (Paizah 2004: 165). For example, the offense of eating illegal food such as carcasses, blood, pork, and meat that is not legally slaughtered, does not fulfill a trust or breach of contract and does not impose justice fairly, betrays the property of orphans, cheats in scales, or weights, imposes and consumes usury, hides stolen or evidence, slander, insult or tarnish one's name, commit corruption, gamble, and fortune-telling and so on.

While the punishment of *takzir* for offenses not found in the Qur'an or Sunnah is broader because all forms of violation of the law enforced for public *maslahah* can be punished by *takzir*. The increasingly complex development of human life demands that the Islamic government always be sensitive to the legal requirements to ensure the harmony and happiness of the people. All offenses such as those involving traffic offenses, cybercrime, biotechnology crimes, commercial crimes, offenses involving public places, offenses involving the environment and wildlife, and many more are included in *takzir* offenses.

### 2.1.3 Types of Takzir Punishment

The types of *takzir* punishment are not limited because it depends on the *maslahah*, even the government, legislature or judge can impose any law provided it is commensurate with the offense and complies with the general *maslahah* (Paizah 2004: 166). In the history of Islam, there are some strange punishments imposed by governments and judges. For instance, Sayyidina Umar once blackened the face of the person who made the false testimony and the person was raised on a riding animal in reverse. However, the usual punishments are as follows:

- Advice (al-Wa'z): Advise the person who made a small mistake for the first time so that he does not repeat the mistake in the future
- Warning (al-Tawbikh): An official reprimand made by a judge by issuing speeches or taking certain actions so that the person committing the offense will try to improve himself.
- Threats (al-Tahdid): Threaten the guilty person not to repeat his offense for fear of being punished.
- isolation (al-Hajr): The boycott was imposed on the offender so that he would feel trapped if he continued or repeated his offense because he could not deal with others in the community.
- General declaration (al-Tasyhir): Make a public declaration of criminal offenses so that criminals feel ashamed and pressured.
- Fines and confiscation of property (al-Gharamah wal-Musadarah): Imposing fines in the form of money and so on or confiscating his property.
- Whipping (al-Jald): Imposing whipping on criminals with a certain amount of it.

- ✚ Prison ( al-Habs ): Impose a prison sentence within a certain period according to the current reality.
- ✚ District Removal(PCO): Imposing the punishment of being taken away from the district so that the offender feels depressed, experiencing difficulties, hardships, and being separated from the family.
- ✚ Death Sentence ( al-Ta'zir bil-Qatl ) : Allowed by the syara 'to safeguard the public interest.

So, one of the types of *takzir* punishment is a general declaration. However, this type of punishment has caused various situations to the offender when there is a feeling of shame and depression when it is declared to the public about the offense committed. However, in this way can also provide awareness to all communities that know it (Bultaji 2003: 62). Therefore, the public declaration made should not go beyond the limits by revealing the personal secrets of the offender and the description involving his dignity and that of his family members. This is because it will affect the reputation of the offender and their family in public.

### 3.1 Tasyhir Crime

Literally, *tasyhir* means clarity or advertising. Meanwhile, according to *fiqh*, it is what is found in the words of God that is in their book as well as what is written by some researchers today found there are similarities in the content. Each of the scholars then and now agreed that it remains the same meaning. Revealing a person from deeds or nature and showing shame in front of people. (Abdul Rahman Abdullah. 2011: 46).

The definition of tasyhir in legal terms is the person who is specific to the law mentions some definitions regarding tasyhir and is almost the same as the content of the filling from the linguist custom. These words are different but have the same meaning as wanting to hurt the offender when displayed in public (Abdul Rahman Abdullah. 2011: 49).

#### 3.1.1 Forms of Tasyhir exposure: -

1. Tasyhir- explain what is written to affect the victim's hearing about bad stories related to him. The method is used through the medium of pictures, newspapers, through electronic media, namely radio, television, and so on. (Abdul Rahman Abdullah. 2011: 49).
2. Tasyhir- personal submission of a person in a pamphlet
3. Tasyhir- one's personal submission through writing. The purpose is to hurt and result in tasyhir due to writing or pictures. There are also other ways of tasyhir due to storytelling. This method is common today.

### 3.2 Tasyhir Criminal Law

The criminal law of tasyhir according to Islamic law is haram. This is because the crime of tasyhir is a crime that harms individuals and society with the occurrence of broken relationships with each other and many disputes between individuals (Abdul Rahman Abdullah. 2011: 62). This can be proven when Allah SWT says: -

Meaning: *"Indeed, those who like that immorality should be spread [or publicized] among those who have believed will have a painful punishment in this world and the Hereafter. And Allah knows and you do not know."*

(Surah an-Nur 24:19)

This verse shows very strong evidence of the risk of tasyhir and will cause negative effects in the lives of Muslims.

قوله صلى الله عليه وسلم: (لا ضرر ولا ضرار).

(Riwayat Ibnu Majah)

Rasulullah S.A.W said: *'Do not cause harm or return harm'*

This hadith explains a key principle in Islamic life, which is not to seek harm and cause harm to others. It is a great principle for the well-being of all human beings whether Muslims or non-Muslims (Abdul Rahman Abdullah. 2011: 66).

A believer is forbidden to seek hardship or harm that can befall himself or others. Islam encourages its people to seek harmony in life. Any crime that brings harm either directly or indirectly, sooner or later, little or much is all prohibited.

This crime is a common custom that occurred in the pre-Islamic era to give warning and awareness to the public. However, this prohibition is based on a general declaration that goes beyond the boundaries of humiliating, degrading, and so on to the offender and possibly also to the offender's family members.

### 3.3 Example of Execution of Tasyhir Punishment

According to Hanbali *Mazhab*, there is no obstacle to blacken the face of someone who is under *takzir* punishment and declaring it. Imam Ahmad stated, according to the case of a witness who had given a false statement in a case, Saidina Umar al-Khattab had sentenced his head to be shaved, his face blackened, then he had been exposed to the public and finally he was imprisoned for a long time.

During the Khalifah Umar al-Khattab government, in some cases, Umar passed many *takzir* punishments. *Takzir* is a punishment given for violating a provision with restrictions and rules on how to punish it with certainty. As stated by Ibnu Farhun, does not specify a specific form of action or word, because Rasulullah s.a.w once gave *takzir* by interrogating and isolating the perpetrator. As for the punishment of *takzir* performed by Khalifah Umar in various ways such as by whipping, imprisonment, burning of houses, isolation, intimidation, paying a certain amount of property, and announcing or mocking a crime in public. (Baltaji 2007: 565).

The punishment of *tasyhir* is done by announcing and mocking the crime in front of the people by scratching his face with black paint and hitting his head. This is as he did to the witness who lied before he was imprisoned. Khalifah Umar had put him before the people for a full day and then he said: This is fulan bin fulan.

In one narration it is also narrated that Khalifah Umar had ordered a lying witness to be struck on the head and painted his face black and raised him on a vehicle while lying down. (Baltaji 2007: 565).

What must be considered when passing a sentence, is that the sentence is commensurate with the crime that has been committed. As narrated from Umar al-Khattab to the false witness, then he was ordered to be loaded on the vehicle by way of a hump (upside down) and scratched his face because he had deceived the real incident, then he turned his face and then he made it dark with paint it black (Baltaji 2007: 567).

According to a book entitled Crime and Punishment Under Hanbali Law, Among the words of tasyhir in the punishment of takzir are O adulterers, O criminals, O dogs, O donkeys, O goats, O apostates, O wicked people, O liars, O traitors, O enemies of Allah, O drinkers of wine, and O khunsa. This call is used to call the offender in public so that he is known for the offense he has committed. (Sheikh Ibrahim 1961: 86).

### 3.4 Factors Driving Tasyhir Crime

The main factor in the occurrence of tasyhir crime in contributing to the spread of society is the weakness in religious faith. This shows that the weakness of faith in a person's heart then encourages the occurrence of tasyhir crime and vice versa if a person is having full faith in God then he will always do good deeds and abandon bad deeds (Abdul Rahman Abdullah. 2011: 75). Also, the second factor is jealousy. Prophet Muhammad s.a.w warned his people as in the hadith: -

عن أبي هريرة قال قال رسول الله صلى الله عليه وسلم: " لا تحاسدوا، ولا تناجشوا ولا تباغضوا ولا تدابروا ولا يبع بعضكم على بيع بعض وكونوا عباد الله إخوانا المسلم أخو المسلم لا يظلمه ولا يخذله ولا يحقره التقوى هاهنا ويشير إلى صدره ثلاث مرات بحسب امرئ من الشر أن يحقر أخاه المسلم كل المسلم على المسلم حرام دمه وماله وعرضه".

(Riwayat Muslim)

Meaning: *From Abi Hurairah, he narrated: Rasulallah s.a.w, once said: "Do not be envious of one another; do not artificially inflate prices against one another; do not hate one another; do not shun one another; do not undercut one another in business transactions and be as fellow-brothers and servants of Allah. A Muslim is the brother of a Muslim. He neither oppresses him nor humiliates him nor looks down upon him. Piety is here - and he pointed to his chest three times. It is evil enough for a Muslim to hold his brother Muslim in contempt. All things of a Muslim are inviolable for another Muslim: his blood, his property, and his honor."*

As one ummah, as one brother and united by faith, it is the duty of every Muslim to protect each other and their brothers and sisters from actions that violate the rules, especially the rules that have been made by Allah and His Messenger. But when there are our brothers who act unjustly does not mean they should be avoided and cause the bond of brotherhood to be broken.

The third factor is taasub which is often understood as holding on to something without looking at the truth behind in it. The last factor is revenge. The effect and nature of revenge in *tasyhir* make a relationship to be fall apart through the way of spreading pictures, a secret that will embarrass people to the general public. The implications of this incident will cause divorce between husband and wife and there will be quarrels between friends as well as will result in destroying the relationship. (Abdul Rahman Abdullah. 2011: 81).

### 3.5 Rules of Tasyhir Crime

The rules of tasyhir crime are divided into three, namely the rules *syar'ie* (شرعي), *madi* (مادي), *ma'nawi* (معنوي). The rules of tasyhir crime as according to *syar'ie* is through the method (لا جريمة ولا عقوبة إلا بنص). The conviction with Islamic law and not accepting explanation (*penta'wilan*) (Abdul Rahman Abdullah. 2011: 85) as Allah SWT says: -:

Meaning: "And never would We punish until We sent a messenger"

(Surah al-Isra' 17:15)

As found in the holy texts of the Qur'an and the Sunnah, explains the great effects of the method (لا جريمة ولا عقوبة إلا بنص) in Islamic criminal law such as hudud, qisas, and diyat. As for the punishment of takzir, the punishing government needs to punish based on the reports seen and implement it fairly and prevent tyranny.

*Madi* rules (مادي) is the proof through the act that it is indeed the offender who commits not the other person who commits. So, the rules of *madi* are achieved if it is true that the perpetrator committed the crime. (Abdul Rahman Abdullah. 2011: 89).

*Ma'nawi* rules (معنوي) it is a determination through intention. The intent of the offense is due to the compulsion or willingness to commit a crime. Therefore, the tasyhir performed is necessary for research in determining the crime committed before being sentenced (Abdul Rahman Abdullah. 2011: 93).

### 3.6 Wasail in Occurrence of Tasyhir Crime

*Wasail* or how the crime of tasyhir is committed is divided into two ways, namely tasyhir through newspapers and tasyhir through electronic media. Tasyhir through the press spread pictures and secrets of offenders without his permission. Besides, the spread of criminal news before the accused being convicted by the judiciary (Abdul Rahman Abdullah. 2011: 108).

Tasyhir through electronic media is spread through the internet, mobile phones (Abdul Rahman Abdullah. 2011: 122). Besides, tasyhir through allegations of malicious intention. This type is strictly forbidden by Islam because it causes harm to the offenders who are accused of malicious intent to spread to the community (Abdul Rahman Abdullah. 2011: 130). While tasyhir through the *minbar* in the mosque. In the time of Rasulallah s.a.w what he once did to the offender was to bring it to the *minbar* of the mosque without criticizing the offender in public to embarrass him. This method is more to show the love of Rasulallah s.a.w is not an insult to the offender so that it has a bad effect such as slander, division, and so on. According to Syeikh Abdul Aziz bin Baz, manhaj Salaf against tasyhir is not to shame the offender and not to mention on the minbar who did and what wrong was

done. However, on the other hand, do not mention the perpetrator and the offense committed because in this way will not pose a threat to him (Abdul Rahman Abdullah. 2011: 139).

### 3.7 The Effects of *Tasyhir* Crime

The Effects of *Tasyhir* Crime. The effect on the criminal is the spread of secrets and shame of a person who will cause him to be embarrassed in public and bring down his dignity. While the effect on society is that this situation can hinder any positive efforts towards peace. Doubt among one another can also arise even after reconciliation. *Tasyhir* has a negative effect that can lead to killing.

In addition, the effect on the economy is that when *tasyhir* is rampant without restraint then the economic sector will also be affected because there are easy disputes and split among each other. This will also result in the economic system declining due to disputes that can not be controlled by a country and foreign investors do not dare to take risks when reading such news, whereas it is not true at all, and the effect of security is that the spread of this *tasyhir* will invite very great negative effects especially harm. *Tasyhir* caused suffering to many and possibly triggered a war resulting in dozens of deaths. Therefore, Muslims need to take a lesson from the adverse effects that occur from this crime.

### 4.1 Views According to the Law in Malaysia

Islamic criminal law and civil criminal law have their own differences. Islamic criminal law has its own advantages over civil criminal law which mostly comes from Western countries. In Malaysia, for example, criminal law is mostly provided for in the Penal Code (Act 574) taken from the Indian Penal Code. This Indian Penal Code is derived from the rules of Common Law England collected and written in the form of an act or Penal Code. In addition to the Penal Code, criminal law is also found in certain acts such as the Dangerous Drugs Act, Customs Act 1967, Anti-Corruption Act 1997, Internal Security Act 1957, Official Secrets Act 1983, and so on. While the criminal procedure is provided in the Criminal Procedure Code (NMB. Bab 6), Evidence Act, and court-related acts.

In Malaysia, the concept of freedom of speech is recognized as one of the fundamental human rights and it is practiced prudently. Article 10 clause (1)(a) The Federal Constitution clarifies in relation to this right, that all Malaysians have the right to freely speak and express their opinions (Abdul Basir bin Mohamad. t.t.). Even so, it is not absolute freedom. In fact, it is subject to clause (2), (3), and (4). Article 10(2) (a) allows Parliament to impose:

on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality, and restrictions designed to protect the privileges of Parliament or any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offense.

Thus, the right to freedom of expression granted by the Federal Constitution is as long as the right to freedom is not abused, such as an expression that is not slander, an expression that is not incitement, and an expression that does not violate the privileges of Parliament and the State Assembly. Thus, it can be understood from the above statement that one of the restrictions imposed on freedom of expression is law enforcement related to defamation. Generally, defamation laws are enacted to provide for certain sections to protect a person's reputation from being humiliated (Abdul Basir bin Mohamad. t.t.).

Almost every day we read various cases quoted by the source from the court. Sometimes, the case filed is very interesting to follow let alone if it involves dignitaries, famous personalities, or giant companies. Cases of lawsuits involving total claims of tens or hundreds of millions of ringgits have also been on the rise recently. Among those often filed are defamation suitcases. The laws related to defamation in Malaysia are much influenced by 'English Common Law' but has adapted to the current situation. (Khairul Anwar Rahmat 2010). The basic principle of this law is to protect the good name, dignity, and reputation of an individual or an organization. There are two types of defamation, which are permanent and clear, such as the publication of writings, e-mails, or modified photos. Section 3, Defamation Act 1957 also defines the broadcast of statements via radio as also considered a permanent publication. Therefore, legal action can be taken if there is a defamatory communication broadcast that affects the reputation of a person or an organization (Khairul Anwar Rahmat 2010). Another form of defamation occurs in the temporary form. It may be done orally in front of some people Those who feel they have been slandered must prove in court that their dignity and reputation have been damaged as a result of the words spoken. The 'damage' of the reputation must be related to financially measurable losses. In other words, the loss of friendship due to defamation should not be considered as damage to reputation because it can not be measured financially. (Khairul Anwar Rahmat 2010).

On the other hand, the loss of a source of income or the opportunity to do business can be measured financially and can be considered as damage to reputation. Defamation suit action should be taken if there is any publication of writings that lead to efforts to tarnish the reputation of one party to another. In other words, as a result of publishing such news, articles, or papers, the victim becomes a target of shame and might be isolated by society. (Khairul Anwar Rahmat 2010).

The most common lawsuits in Malaysia are the lawsuits of professionals such as ministers, lawyers, doctors, and many more. For instance, the former State Minister of Perak, Nizar Jamaluddin, has filed RM100 million suit against *Utusan* dan *TV3* claiming that the media had accused him of stating that DYMM King of Johor using citizens' money to buy WWW1 registration numbers a little while ago. Apart from that, Azmin Ali's action sued *Utusan Malaysia* while claiming damages amounting to RM100 million, and the action of his party leader Datuk Seri Anwar Ibrahim who demanded damages amounting to RM50 million from the same newspaper (Salleh Buang 2012).

Apart from that, another example of a defamation suitcase that occurred in Malaysia is on 2 January 2001 Badrul Zaman has filed a summons amounting to RM400 million against Radio dan Televisyen Malaysia (RTM), Former Director-General of the Immigration Department, Datuk Aseh Che Mat, Malaysia government and TV3 on charges of defaming him. In addition, on February 2, 2001, he also took action to sue nine local newspaper companies and three other defendants to claim damages amounting to RM1.3 billion for defamation. (Zulkifli Jalil 2001).

However, if there is a crime of public declaration that is a declaration made by humiliating the offender and his family members or by disseminating false or untrue information. So according to the legal view, those who do so will still be subject to legal action. If the spread is done on the internet, then it will be punished through cybercriminal law.

All users who are directly or indirectly involved in the activity of disseminating false information and leading to defamatory elements in social media and short message service (SMS) can be jailed for a maximum of two years.

Through Strategic Communications of the Malaysian Communications and Multimedia Commission (MCMC), social media and SMS users are asked to be careful especially when responding to any such display because they are worried, they could get involved in cybercrime. According to the Criminal Law, he said, under Section 500 of the Penal Code, those involved could be jailed for two years or fined or both if convicted. According to that, people are advised not to easily respond to every display by simply press the like or dislike button, be calm, do not be too emotional when reading, act wisely, and do not put full trust in every news content or status on social media.

### 5.1 Ways to Overcome Tasyhir Crime

In this age of social media, information is only at your fingertips. In fact, not only information but also defamatory material does not take long to spread just by pressing a button or keyboard. The sophistication of various information technology equipment such as smartphones with the help of modern software such as Facebook, Twitter, Flickr, Instagram, blogs, websites, and many more also helps one piece of information to reach with just using a finger without the need for power, money or the consume of time.

It may be true what the Prophet s.a.w said that the ummah is now in a time of great slander so that it was bequeathed many times in many hadiths for the ummah to remain firm in adhering to the principles of the Qur'an and the Sunnah. One of the important principles embedded in the Qur'an for believers in facing the slander like today is *tabayyun* (Asyraf Wajdi Dasuki 2014). *Tabayyun* is the principles and morals of believers that refer to the practice of researching and investigating news, do not rush to draw conclusions before ensuring the validity of the news.

This principle is emphasized by Allah SWT in the Quran: -

Meaning: *"O you who have believed, if there comes to you a disobedient one with information, investigate, lest you harm a people out of ignorance and become, over what you have done, regretful."*

(Surah al-Hujurat 49:6)

**Firstly:** Write or say something that proves its authenticity. Any issue that is just a rumor without clear evidence should be avoided. Imagine if the negative effects of the rumor spread to our own face or family members. The words of Rasulullah s.a.w as narrated by Muslim Rahimahullah from Abu Hurairah r.a:

"آيَةُ الْمُنَافِقِ ثَلَاثٌ إِذَا حَدَّثَ كَذَبَ وَإِذَا وَعَدَ أَخْلَفَ وَإِذَا أُؤْتِيَ خَانَ"

(Riwayat Muslim)

Meaning: *"There are three signs of a hypocrite: When he speaks, he lies; when he makes a promise, he breaks it; and when he is trusted, he betrays his trust."*

Research on the validity of the news and do a thorough study. Everyone who claims to be a believer should always investigate the news that comes so as not to fall into acts or actions that cause sin to cause regret due to unfair decisions or harm to others. In addition, do not rush to conclude the news before making a thorough study that will validate the information (Asyraf Wajdi Dasuki 2014).

This is in line with the words of the Prophet s.a.w.: *"Contentment comes from Allah SWT, while hastiness comes from shaytan"* (Musnad Abu Ya'la, validated by al-Albani).

Al-Imam Hasan al-Basri said: "A believer is careful until the matter is clear"

A believer is careful until the matter is clear. Sometimes scholars are also easily trapped in the arena of conflict and slander if they are not careful.

**Secondly:** Always refer to everything to its experts, especially the problems that can not be confirmed about its truth. If this attitude is practiced, all misleading beliefs and practices can be avoided.

**Thirdly:** The authorities or the government must ensure that the communication media complies with laws and acts in related matters such as the Defamation Ordinance 1957, Printing Press Act 1948 (amended 1974), Internal Security Act 1960, Sedition Act 1948 (amended 1972), Printed Materials Entry Control Act 1958 (amended 1972) Official Secrets Act 1972. In this case, some Islamic methods can be a guide for the dissemination of information that can be applied by the government in forming certain rules or acts that aim to preserve the maqasid al-Syar'iyah in the national context (Aminudin et al 2009: 77). Among it is the method such as:

- ✓ *Dar'u mafsadah muqaddam 'ala jalb al-maslahah*, that is rejecting the bad is more important than bringing good ;
- ✓ *La dharar wa la dhirar*, that is cannot cause harm or return harm;
- ✓ *al-Dharar yuzal*, that is, harm can / must be eliminated;

- ✓ *Iza ta 'arad mafsadataini ru'ya a'zomahuma dhararan*, that is, when there are two harms then the greater harm is given priority (the greater harm should be given priority and attention over the minor harm to take any action for resolution);
- ✓ *al-Dharar udfa 'biqadri al-imkan*, that is, the harm should be rejected as much as possible;
- ✓ *al-Dharurat tu bihu al-mahzurat*, that is darurat allows something that is forbidden
- ✓ *al-Dharurat tuqaddar bi qadariha*, is darurat measured according to the appropriate rate;
- ✓ *Yukhtar ahwanu al-syarrain*, that is, between the two bad things then it is necessary to choose the lightest effect.

The government also needs to create a panel of advisors or monitors comprised of scholars in various fields to help the communication media strengthen the direction and content of messages or information so that it can be presented in a more moral, cultural and in the form that does not against the Islamic Teaching and walks in line with the development policy of the community and the country as planned by the government (Aminudin et al 2009: 78).

**Fourthly:** Practicing respect, fairness, responsibility and trust even in the face of enemies. Word of Allah SWT:-

Meaning: “O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do.”

(Surah al- Maidah 5:8)

**Fifth:** The guilty must also be humble, tolerant, and forgiving of all slander and accusations leveled against him. This is also an effect of the crimes committed. However, the community out there should also not arbitrarily reveal the secrets and confidential matters of criminals in public. Therefore, this is the attitude of Rasulullah s.a.w that we should take as an example. Word of Allah SWT: -

(Surah al-Aaraf 7:199)

Meaning: “Take what is given freely, enjoin what is good, and turn away from the ignorant.”.

## Conclusion

Islam as a religion that brings blessings should be the main reference in dealing with criminal problems following the characteristics of Islam itself which brings comprehensive changes whether from a social, economic and so on Islam obligates all Muslims to respect one another, maintains the dignity of himself and his friend, his good name, sincerity. It is the great hope of the country with the existence of transparency and sincerity in this cyber age then the society will be more peaceful and prosperous. There are no more elements that can damage and destroy the integrity of society such as the dissemination of information through virtual networks that will be accessed by all human beings. Therefore, society needs to examine the validity of the information that has been spread in relation to the information of the person disseminated because if it is inaccurate then it will surely cause shame and slander and bring down the dignity of the innocent person. Instead, it is necessary to fully investigate before it is disseminated to the general public about the crimes committed whether they are right or wrong. This is because the criminal law of *tasyhir* is haram and prohibited by Islamic law. In this regard, to avoid or reduce the negative effects and destroy the positive values of our religion and culture and ensure the positive values of society, all parties from various levels must play a role in strengthening the religious, moral, and ethical values of our society, especially for young generations to avoid worsening negative effects. Negative effects are difficult to be eliminated, but what can be done is to increase the positive effects and reduce the negative ones.

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