

## The Principle of Non-Discrimination in Islamic Criminal Law: An Analysis of Qur'anic Verses on Theft

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**Abstract:** This study examines the principle of non-discrimination in Islamic criminal law, specifically through a comprehensive analysis of the wording of Qur'anic verses related to the criminal act of theft (*sariqah*). The main issue of this study stems from the discourse regarding the simultaneous mention of male and female perpetrators, which is intended to represent equality; however, the grammatical structure of the verse prioritizes the mention of the male subject. Therefore, the central research question is whether this textual structure implies gender bias or, conversely, inherently affirms equality before the law. This study employs a qualitative method based on a literature review. Data analysis was conducted by integrating approaches from the sciences of tafsir, *uṣūl al-fiqh*, and *maqāṣid al-syarī'ah*, and was further supported by an examination of empirical data. The results of the study indicate that the verse explicitly underscores the universality of binding criminal liability without distinguishing by gender, in line with the principle of equality before the law. As for the phrasing that prioritizes men, it must be understood contextually based on the empirical reality of perpetrator dominance, biological-psychological predispositions, and socio-economic responsibilities. Thus, the construction of this verse is not discriminatory but rather reflects substantive justice in Islamic law. Theoretically, this finding implies the importance of integrating a linguistic approach (*naṣṣ*) with sociological realities to refute gender-biased narratives. This study recommends a holistic contextual approach for legal scholars and practitioners in interpreting Sharia texts to avoid misconceptions of gender injustice.

**Abstrak:** Penelitian ini mengkaji asas non-diskriminasi dalam hukum pidana Islam, khususnya melalui analisis komprehensif terhadap redaksi ayat Al-Qur'an terkait tindak pidana pencurian (*sariqah*). Permasalahan utama studi ini berakar pada diskursus mengenai penyebutan pelaku laki-laki dan perempuan secara simultan yang merepresentasikan kesetaraan, namun struktur gramatikal ayat tersebut mendahulukan penyebutan subjek laki-laki. Oleh karena itu, pertanyaan utama penelitian ini adalah apakah struktur redaksional tersebut berimplikasi pada adanya bias gender, atau justru secara inheren menegaskan kesetaraan di hadapan hukum. Penelitian ini menggunakan metode kualitatif berbasis studi kepustakaan. Analisis data dilakukan dengan memadukan pendekatan ilmu tafsir, *uṣūl al-fiqh*, dan *maqāṣid al-syarī'ah*, serta turut didukung oleh telaah data empiris. Hasil penelitian menunjukkan bahwa ayat tersebut secara tegas menggarisbawahi universalitas pertanggungjawaban pidana yang mengikat tanpa membedakan gender, sejalan dengan prinsip *equality before the law*. Adapun redaksi yang mendahulukan laki-laki harus dipahami secara kontekstual berdasarkan realitas dominasi empiris pelaku, faktor kecenderungan biologis-psikologis, serta tanggung jawab sosial-ekonomi. Dengan demikian, konstruksi ayat ini tidak bersifat diskriminatif, melainkan mencerminkan keadilan substantif dalam hukum Islam. Secara teoretis, temuan ini berimplikasi pada pentingnya mengintegrasikan pendekatan linguistik (*naṣṣ*) dan realitas sosiologis untuk membantah narasi bias gender.

Penelitian ini merekomendasikan pendekatan kontekstual yang holistik bagi para pembelajar dan praktisi hukum dalam menafsirkan teks-teks syariat guna menghindari miskonsepsi ketidakadilan gender.

**Keywords:** *Equality Before The Law, Islamic Criminal Law, Principle of Non-Discrimination, Theft.*

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## Introduction

Islamic criminal law (*al-jināyāt*) is an important component of the Islamic legal system, aimed at maintaining social order and protecting fundamental human rights, particularly with regard to the protection of property (*hifz al-māl*). One form of crime that receives serious attention in Islamic law is the criminal act of theft (*al-sariqah*), which is explicitly regulated in the Qur'an through the *ḥadd* punishment provision. This provision is contained in Surah Al-Mā'idah, verse 38, which reads:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ عَزِيزٌ حَكِيمٌ

"As for the man or woman who steals, cut off their hands as retribution for what they have done and as a punishment from Allah. Allah is Almighty and All-Wise."

This verse explicitly affirms the principle of absolute equality before the law by stipulating that perpetrators of theft, whether male or female, are subject to the same prescribed punishment (*ḥadd*) without any gender-based distinction. The punishment of amputation is mandated not only as a form of just retribution for the violation of property rights but also serves as a repressive and preventive deterrent (*nakālan minallāh*) to prevent the recurrence of similar crimes in the future. Normatively, this provision indicates that Islamic law possesses a firm, rational, and structured system of sanctions in response to criminal acts that have the potential to undermine social order. The strictness of these sanctions is, in essence, consistent with the primary objective of Islamic law – the protection of property (*hifz al-māl*) – to ensure a sense of security and stability in social life. (Candra et al., 2024)

In classical exegetical studies, the primary focus of exegetes has often been on the legal aspects and conditions for the application of *ḥadd*, such as the minimum value of the stolen goods (*niṣāb*), the security of the storage location (*ḥirz*), and the presence of intent. However, the linguistic aspects of the verse's wording – particularly the mention of "men and women" (السَّارِقُ وَالسَّارِقَةُ), do not always form the primary focus of analysis, despite having significant implications for understanding the legal framework of Islam. (Muthahhari et al., 2025) Some exegetes, such as al-Qurtubī, explain that the mention of men first is due to the predominance of men in acts of theft, as well as their stronger inclination toward material possessions.

On the other hand, developments in contemporary Islamic legal studies indicate a shift in approach from a purely textual one toward a contextual approach and the objectives of Islamic law (*maqāṣid al-syarī'ah*). In this approach, the text of the Qur'an is not only understood literally but is also analyzed based on the objectives and values that Sharia seeks to achieve, such as justice (*al-'adl*), public interest (*al-maṣlahah*), and the protection of human rights. Therefore, the simultaneous mention of men and women in Surah Al-Mā'idah, verse 38, can be understood as an affirmation of the principle of the universality of law and the equality of legal subjects in Islam. (Rismilda, 2023)

Based on a review of the existing literature, most studies still focus on the normative aspects of the law of amputation as a form of *ḥadd*, as well as debates regarding its relevance and application in a modern context. However, studies that specifically link the structural wording of the verse, empirical factors regarding the dominance of perpetrators, and the principle of legal equality from the perspective of *maqāṣid al-syarī'ah* remain relatively limited. In other words, there is a research gap in understanding how the Qur'anic text not only establishes legal rulings but also embodies principles of justice that are both universal and contextual.

Therefore, this study aims to comprehensively analyze the meaning of the references to men and women in Surah Al-Mā'idah, verse 38, by integrating the approaches of tafsir, *uṣūl al-fiqh*, and *maqāṣid al-syarī'ah*. In addition, this study also aims to examine the empirical factors that influence male dominance in theft offenses, as well as how this can be understood without compromising the principle of legal equality in Islam. Thus, it is hoped that this study can contribute to enriching the body of Islamic legal scholarship, particularly in fostering a more contextual, just, and relevant understanding of contemporary social dynamics.

## Methods

This study is a qualitative study in the form of library research. The approach used in this study is multidisciplinary, combining a normative approach through the disciplines of tafsir, *uṣūl al-fiqh*, and *maqāṣid al-syarī'ah*, and supported comparatively by a sociological-empirical approach. Since this research is purely literature-based, the subject and locus of the study do not rely on field observations but are focused on the analysis of authoritative texts and scholarly literature relevant to the issues under examination.

The primary data source in this study is the text of the Qur'an, specifically Surah Al-Mā'idah, verse 38, which addresses the criminal offense of theft (*sariqah*), along with the *asbāb al-nuzūl* narratives that provide its background. Secondary data sources were gathered from various scholarly literature, including exegetical works (such as *Tafsir al-Qurtubi*, *Tafsir al-Thabari*, *Tafsir al-Munir*, and *Tafsir al-Misbah*), literature on Islamic criminal law (*jināyāt*), as well as contemporary empirical supporting data, including crime statistics reports from the National Criminal Information Center (Pusiknas) of the Indonesian National Police for the year 2022, medical journals regarding biological composition, and social-psychological literature reviews. Data collection was conducted through documentation, specifically by tracking, compiling, and cataloging documents or literature related to the principles of non-discrimination, equality before the law, and criminal offenses in Islam.

Data validity was ensured through source triangulation and theoretical triangulation. Source triangulation was conducted by comparing the views of various exegetes (such as al-Qurthubi, al-Thabari, and Quraish Shihab) and juxtaposing normative texts with crime statistics. Meanwhile, theoretical triangulation was applied by integrating analytical tools from exegesis, *uṣūl al-fiqh*, *maqāṣid al-syarī'ah*, and sociological-biological perspectives to prevent single-interpretation bias.

The data analysis technique used is *content analysis*, presented in a descriptive-analytical manner. The analysis process was conducted through three systematic stages. First, the stage of normative-linguistic analysis (*uṣūl al-Qur'ān*) and *uṣūl al-fiqh* of the wording of Qur'anic Surah Al-Mā'idah, verse 38, to extract the principles of *ta'mīm al-hukm* (generalization of legal rulings) and *raf' al-iḥtimāl* (elimination of potential interpretive bias). Second, the sociological-empirical analysis stage, which examines the rationale for prioritizing the mention of the male subject by analyzing empirical criminological data, anatomical and psychological differences (such as muscle mass and the corpus callosum), as well as the burden of responsibility for providing for the family. Third, the philosophical synthesis stage uses the *maqāṣid al-syarī'ah* approach to conclude that this legal construction substantively reflects universal justice (*al-'adālah al-kulliyah*) and is consistent with the principle of equality before the law without gender discrimination.

## Results and Discussion

Islamic criminal law stipulates that the punishment (*hadd*) for thieves is amputation of the hand. This punishment has existed since the pre-Islamic era; the first person from that era to have his hand amputated for theft was Walid bin Mughirah. Subsequently, Allah Swt. commanded Muslims to amputate the hands of thieves. The first male thief to have his hand amputated by the

Prophet Muhammad Saw. after this divine law came into effect was Khiyar bin Adi bin Naufal bin Abd Manaf, while the first female thief was Murrah bint Sufyan bin Abd al-Asad of the Bani Makhzum tribe. (Qurtubī, 1999) It is this story of Murrah that served as the *asbāb al-nuzūl* for Qur'anic verse Al-Ma'idah [5]: 38.

وَالسَّارِقِ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

"As for the man or woman who steals, cut off both their hands as retribution for what they have done and as a punishment from Allah. Allah is Almighty and All-Wise."

There are two accounts regarding the *asbāb al-nuzūl* (reasons for revelation) of this verse. The first account is a story narrated by Imam Ahmad from 'Abdullah ibn 'Amr, in which a woman stole during the time of the Prophet Muhammad Saw. Her right hand was then cut off, and she asked the Prophet, "Can I still repent, O Messenger of Allah?" Then Allah Swt, the Exalted, revealed the verse in Surah al-Ma'idah that follows this one, (Al-Suyuthi, 2015)

فَمَنْ تَابَ مِن بَعْدِ ظُلْمِهِ وَأَصْلَحَ فَإِنَّ اللَّهَ يَتُوبُ عَلَيْهِ إِنَّ اللَّهَ عَفُورٌ رَّحِيمٌ

"So whoever repents after committing an injustice and makes amends – indeed, Allah accepts his repentance. Indeed, Allah is Forgiving and Merciful." (Q.S. Al-Ma'idah [5]: 39)

As for the second account, it is the story of Thu'mah bin Ubairiq, who stole a shield belonging to his neighbor, Qatadah bin al-Nu'man. When he stole the shield, Thu'mah hid it inside a sack of flour, which caused the sack to tear. He then entrusted the shield to a Jew named Zaid bin Samin. (Al-Zuhaili, 2013)

On the way from Qatadah bin al-Nu'man's house to Zaid bin Samin's house, the flour he was carrying in the sack (where he had hidden the shield) spilled all along the road. When Qatadah realized that his shield was missing, he went to Thu'mah's house but did not find it there. Thu'mah had also sworn that he had not taken the shield and knew nothing about its disappearance. Then people noticed the scattered flour on the road and followed the trail of flour all the way to Zaid bin Samin's house. Since Qatadah's shield was found at Zaid's house, Zaid defended himself by saying that he had not stolen the shield, but that Thu'mah had entrusted it to him.

At first, the Messenger of Allah Swt. had intended to defend Thu'mah because the shield had indeed been found elsewhere. Then the following verse was revealed, (Al-Zuhaili, 2013)

وَلَا تُجَادِلْ عَنِ الَّذِينَ يَخْتَانُونَ أَنفُسَهُمْ إِنَّ اللَّهَ لَا يُحِبُّ مَن كَانَ خَوَّانًا أَتِيمًا

"Do not argue on behalf of those who betray themselves. Indeed, Allah does not love those who are treacherous and sinful." (Q.S. Al-Nisa` [4]: 107)

Based on the two accounts above, the story of Thu'mah bin Ubairiq is the stronger candidate for the *asbāb al-nuzūl* of Surah al-Ma'idah, verse 38, whereas the account from Imam Ahmad, narrated by Abdullah bin Amru, regarding the story of Murrah bint Sufyan is more closely associated with the *asbāb al-nuzūl* of Surah al-Ma'idah, verse 39.

The argument put forth by exegetes stating that the primary reason for mentioning male thieves before female thieves is that men are more prone to attachment to wealth than women, as explained by Imam al-Qurtubī in his exegesis. (Qurtubī, 1999) However, upon closer examination, there are other reasons for the prioritization of male thieves over female thieves in Surah Al-Ma'idah [5]: 38, these reasons are as follows:

- a. The higher number of male thieves compared to female thieves

According to data from the National Criminal Information Center (Pusiknas) of the Indonesian National Police (Polri), there were 321,662 criminal cases throughout 2022. Muggings, which fall under the category of robbery with violence (*curas*), totaled 4,184 cases. Muggings were actually the least common type of crime occurring in 2022. Meanwhile, aggravated theft (*curat*) was recorded as the most common type of crime, with 36,184 cases. Motorcycle theft (*curanmor*) was recorded at 13,607 cases. Overall, these crimes were predominantly committed by male.

“Begal” is a form of deviant behavior classified as a crime. Deviant behavior refers to any action taken by an individual or group that is typically organized and contrary to the values and norms prevailing in society. The term “begal” is unique to Indonesian society; it derives from a verb and is synonymous with “bandit”, while “pembegalan” refers to any method, process, or act aimed at robbing or seizing property. (Hisyam et al., 2023)

According to the Kamus Besar Bahasa Indonesia (KBBI), “begal” means “robber.” Terminologically, “begal” or “pembegalan” refers to a form of street crime that occurs at night, involving the robbery or seizure of motorized vehicles or cars, where the perpetrators also intend to injure the victims using sharp weapons while riding motorcycles. Clearly, these begal acts severely disrupt public security and even threaten human security. The victims of these crimes are diverse, regardless of gender or social status, ranging from civilians to government officials. The reason mugging has become entrenched in Indonesian culture is that, according to Professor Muhammad Mustofa, a criminologist, mugging has actually existed since the era of the Chinese Empire and also during the era of kingdoms in Indonesia; today, mugging is often committed by teenage boys influenced by their peer groups. (Hisyam et al., 2023)

Similarly, with the rise of technology, crimes that unlawfully deprive others of their rights have become increasingly diverse in their methods, particularly through social media. One method of digital fraud that exploits users’ digital literacy is phishing. Phishing is a manipulative technique that tricks users into revealing their personal data with the intent of accessing that data or stealing the victim’s identity. Phishing attempts are typically sent via email purporting to come from a trusted source, such as a bank or a specific company.

However, with the increasing availability of internet access and the widespread use of social media, phishing scams have evolved significantly. While phishing scams traditionally relied on fake emails attempting to impersonate specific financial institutions, attackers can now exploit PDF files and malicious applications (APKs) infected with malware via social media platforms, such as WhatsApp. This malware serves as the attacker’s weapon to breach the victim’s system or device. Malware is harmful software or code designed for specific purposes, such as stealing or damaging data—often to test a system’s security. Attackers can use malware to steal victims’ personal data, such as passwords or credit card numbers, when victims inadvertently activate the malware via a link or install an infected application. (Ma’ady et al., 2023)

In addition to the aforementioned crimes of unlawfully depriving others of their rights, there is also the crime of unlawfully depriving others of their rights on a large scale: corruption. Based on monitoring results, ICW identified 579 corruption cases handled by law enforcement agencies throughout 2022. Furthermore, 1,396 individuals from various professional backgrounds were named as suspects. Of the 579 cases that were successfully uncovered, when calculated on a monthly average, there were 48 cases and 116 suspects handled by law enforcement agencies. Thus, on average, each law enforcement agency investigated 16 cases, with 39 of those individuals designated as suspects each month. Corruption occurs in nearly all sectors of government—including the executive, legislative, and judicial branches. Neither the central government nor local governments are immune to the grip of corruption cases. Furthermore, the majority of those committing these corruption crimes are men. (Anandya & Easter, 2023)

Conceptually, corruption is more accurately classified as *ghulūl* (abuse of authority) or *khiyānah* (breach of trust). Meanwhile, phishing—although it substantively involves the covert extraction of funds from the digital vaults of banking systems (*m-banking*)—also incorporates an element of psychological manipulation (*khid’ah* or deception) that tricks victims into handing over their access credentials. The absence of

a pure breach of the conditions for the theft of a place of safekeeping (*hirz*) places phishing under the jurisdiction of *ta'zīr*, rather than *sariqah*, which carries the implications of *hadd* punishment. Therefore, the comparison of corruption and phishing cases in this study is presented solely as an empirical expansion of the act of “unlawfully depriving others of their rights” in the modern era. This aims to analyze patterns of male gender dominance in property crimes, without intending to conflate the normative classifications of criminal sanctions.

b. Men’s physical and mental attributes are superior to those of women

Men’s physical build is clearly very different from women’s. Among these differences are muscle mass and brain structure, which make men more focused in their thinking than women. And this is what makes men more competent at stealing from women.

Muscles are active movers; body movement can only occur when muscles contract (shorten). Muscles are the largest single tissue in the human body, accounting for about 25 percent of body mass at birth, more than 40 percent in young adults, and slightly less than 30 percent in older adults. Muscles play a major role in protein metabolism throughout the body and are key to preventing various pathological conditions and chronic diseases. A study conducted in the United States by Janssen reported that men have larger appendicular muscle mass than women, as measured using Dual-Energy X-ray Absorptiometry (DEXA) and CT scans. Their findings indicate that gender differences influence both regional and total body muscle mass. On average, men’s muscle mass is 36 percent greater than women’s. (Yuliasih & Nurdin, 2020) Thus, it is not surprising that men are generally stronger than women due to these differences in muscle mass.

The brain structures of men and women also differ, specifically in the corpus callosum. The corpus callosum is a tract of white matter composed of fibers that connect the white matter of the two cerebral hemispheres. Its primary function is to facilitate coordination, communication, and the exchange of information between the left and right hemispheres. Sandra F. Witelson, a professor of neuroscience at McMaster University, found in her research that the corpus callosum in women is approximately 30 percent thicker than in men. This thickness is predominantly found in areas associated with linguistic skills (the isthmus and splenium). This condition causes each part of a man’s brain to function independently, allowing him to concentrate and focus more quickly on the task at hand; however, at the same time, his hearing may unconsciously diminish. In contrast, for women, this thicker structure allows the brain to work simultaneously, enabling them to multitask – that is, to perform two or more completely unrelated tasks at the same time. (Amin, 2018)

In terms of mental fortitude or courage, men generally possess greater courage than women when it comes to undertaking activities that could endanger themselves. Women tend to opt for lower-risk options that do not put them in harm’s way. In contrast, men tend to prefer challenges, so they are willing to accept significant risks as long as they achieve their goals or obtain what they desire. M. Quraish Shihab also stated that male thieves are more common than female thieves because men are braver than women when it comes to stealing. (Shihab, 2017)

Thus, based on the explanation of the physical and psychological differences between men and women, it can be concluded that men are indeed more likely (capable) of committing theft. With a strong physique, a high level of focus when thinking through how to solve a problem, and great courage, it is easy for men to commit theft because their physical capabilities make them well-suited for such acts. Therefore, it is only natural that the majority of thieves are men.

c. Men as the Financial Providers of the Family

Islam teaches that men are the leaders of the family. This is not without reason, as men have indeed been given certain advantages to bear this responsibility, as Allah Swt. states,

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ

"Men (husbands) are responsible for women (wives) because Allah has favored some of them (men) over others (women)" (Q.S. Al-Nisa` [4]: 34)

Men are responsible for ensuring that women's (wives') rights are fulfilled; thus, Islam regulates the rights and obligations between men (husbands) and women (wives). A husband's obligations toward his wife are divided into two categories: material obligations and non-material obligations. (Netti, 2023)

The first material obligation is the dowry (mahar). According to Mustafa Diibul Bigha, the dowry is property that a man must give to a woman (wife or prospective wife) as a result of marriage. The second material obligation is financial support (nafkah). As for the husband's non-material obligations toward his wife: *First*, to treat his wife kindly and appropriately. *Second*, to protect her from anything that causes her hardship or danger. *Third*, to guide his wife in her religious life so that she is kept away from anything that might incur the wrath of Allah Swt. *Fourth*, to protect his wife from sin and transgression. *Fifth*, to show love and affection toward his wife. (Netti, 2023)

As mentioned above, one of a husband's obligations toward his wife is to provide for her. The basis for a husband's obligation to provide for his wife is mentioned in the Qur'an, among other places,

وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا ۗ

"It is the father's duty to provide for their sustenance and clothing in a proper manner. No one is burdened beyond their capacity." (Q.S. Al-Baqarah [2]: 233)

The word "nafkah" comes from the Arabic (نَفَقَة), which is the root of the verb (-أنفق) (ينفق-إنفاق) which is the root of the verb (نَفَقَات). (Yunus, 1973) Linguistically, it refers to what a person spends on those under their care. In the Kamus Besar Bahasa Indonesia (Great Dictionary of the Indonesian Language), the definition of nafkah is "expenses for living".

In the Encyclopedia of Islamic Law, nafkah is defined as an expenditure that a person typically uses for a good cause or spends on those under his responsibility. According to al-Sayyid Sabiq, nafkah means providing for the needs of food, housing, domestic help, and medical treatment for one's wife, if he is wealthy. Nafkah can also refer to the basic necessities required by those in need. As for the term in Islamic law (*syara'*), nafkah refers to providing for the needs of those under one's care in the form of food, clothing, and shelter. Thus, nafkah is a provision that a husband is obligated to provide for his wife as long as they remain married.

Scholarly interpretations of the phrase (بالمعروف) vary widely. According to Imam al-Thabari, the phrase (بالمعروف) in this verse means "appropriately," as commanded, because Allah Swt. knows the circumstances of His servants, whether they are wealthy or poor. Therefore, Allah commands that maintenance be provided according to each person's means, as stated in the verse, (Al-Thabari, 2013)

لِيُنْفِقَ ذُو سَعَةٍ مِّنْ سَعَتِهِ ۗ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ ۗ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا

"Let those who are well-off spend according to their means, and let those whose means are limited spend from what Allah has bestowed upon them. Allah does not burden a person beyond what He has bestowed upon them." (Q.S. Al-Thalaq [65]: 7)

Meanwhile, according to Imam al-Qurthubi, the phrase (بالمعروف) here means "in a reasonable manner according to religious principles, without excess." (Qurṭubī, 1999) However, Wahbah al-Zuhaili interprets the phrase as meaning "only to the extent of one's ability." (Al-Zuhaili, 2013) The verse above does not provide clear and definitive

guidelines regarding the amount of a husband's financial support for his wife, whether in terms of a maximum or minimum limit.

The absence of a provision specifying the exact amount of maintenance actually demonstrates how flexible Islam is in establishing maintenance rules. Imam al-Qurṭubī opines that Allah's command (فلينفق) means that a man should provide for his wife and young children according to his means, to the extent that he can provide for them comfortably, if he is financially well-off. However, if he is poor, then he must provide only what is reasonable. Thus, the amount of maintenance is adjusted according to the circumstances of the husband as the provider and the needs of those receiving maintenance (his wife and children). This adjustment is made by taking into account the local standard of living. As for the meaning of the verse (لا يكلف الله نفسا الا ما اتتها), it is that the poor are not burdened with providing for their families in the same way that the wealthy are required to do so. (Qurṭubī, 1999)

However, this does not always work as it should; as there are also some women (wives) who demand financial support beyond their husbands' means; they may pressure their husbands to earn even more money – regardless of where it comes from – to meet what they consider essential living expenses, or even a child who incurs high living costs due to associating with friends whose economic status exceeds that of their family, resulting in the father's inability to meet the child's needs. This clearly violates Allah Swt's legal provisions regarding the provision of financial support and will have adverse consequences for the man (as a husband or father) in his efforts to provide for his family due to the immense pressure of the family's living expenses that he must bear.

As explained by Imam al-Ghazali in his book *Ihya' 'Ulumuddin*: There will come a time when the ruin caused by overwhelming pressure – which may even lead to a man's death – lies in the hands of his wife, his parents, and his children. They blame him for their poverty and force him to work beyond his capacity. Ultimately, due to this pressure, he takes on multiple jobs or engages in any work – even work that could cause him to abandon his faith. Thus, he will be ruined mentally, spiritually, and even physically (through death). (Al Ghazali, 2014) Therefore, if a man commits theft, it is highly likely that the reason for his action stems from the pressure of meeting the living expenses of the family he is responsible for.

The simultaneous mention of men and women in Surah Al-Mā'idah, verse 38 – specifically through the phrasing *al-sāriq wa al-sāriqah* – cannot be understood merely as a linguistic descriptive form but rather contains a strong normative dimension within the construction of Islamic law. In linguistic analysis (*uslūb al-Qur'ān*), the combination of two legal subjects of different genders within a single imperative structure indicates the principle of *ta'mīm al-ḥukm* (legal generalization), meaning that legal provisions apply universally without gender-based exceptions. Therefore, this verse implicitly affirms that the criminal act of theft is positioned as a legal offense subject to equal punishment for both men and women, without any normative differentiation regarding criminal liability.

The *maqāṣid al-syarī'ah* approach provides a more comprehensive framework for understanding the dimension of equality contained in Surah Al-Mā'idah, verse 38. This verse reflects the value of universal justice (*al-'adālah al-kulliyah*), which is one of the primary objectives of sharia. The explicit mention of both men and women in the same text indicates that *hudūd* laws are not based on social bias or patriarchal constructs, but rather on the principle of objective and universally applicable justice. Thus, the equality in this verse is not merely textual but also substantive, as it reflects Sharia's commitment to upholding social justice (*ḥifẓ al-nizām al-ijtimā'ī*) through the application of non-discriminatory laws. (Muthahhari et al., 2025)

This argument is reinforced by the understanding that the fundamental principles of Islamic law recognize the equality of men and women in terms of legal rights and obligations, including

in the aspect of criminal liability. In this context, the wording of Quranic Surah Al-Mā'idah, verse 38, can be understood as a concrete manifestation of the principle of equality before the law, whereby every individual, regardless of gender, holds an equal standing before the law. This simultaneously affirms that Islamic law is not discriminatory toward women; rather, it demonstrates inclusivity and justice through the application of equal norms for all legal subjects. (Candra et al., 2024)

Furthermore, when considered in light of the theory of *uṣūl al-fiqh*, the mention of both genders in a single legal text also serves as *raf' al-iḥtimāl* (eliminating the possibility of a narrow interpretation). Without an explicit mention of women, there is a risk that the law might be perceived as applying only to men, given the largely patriarchal context of classical Arab society. Therefore, the mention of "*al-sāriqah*" after "*al-sāriq*" serves as a normative affirmation that women are also autonomous legal subjects and are fully responsible for their actions. From this perspective, the verse not only establishes criminal law but also corrects a social structure that is potentially gender-biased.

Furthermore, within the context of modern legal discourse, the principle contained in this verse aligns with the concepts of the rule of law and the principle of non-discrimination, which form the foundation of contemporary legal systems. (Lee, 2022) Equality before the law is one of the key indicators of justice within a legal system, (Acemoglu & Wolitzky, 2021) and this has been enshrined in the text of the Qur'an from the very beginning. Thus, Surah Al-Mā'idah, verse 38, is not only relevant within the normative context of Islam but also holds universal significance that can be contextualized within modern legal discourse.

## Conclusion

This study demonstrates that the provision regarding the punishment of amputation in Surah Al-Mā'idah, verse 38, not only has a strong historical and normative foundation in the tradition of Islamic criminal law but also embodies the principles of universality and equality of legal subjects. The simultaneous mention of men and women in this verse affirms that criminal liability in Islam is not based on gender differences but rather on the acts committed. Another important finding is that the prioritization of the mention of men can be understood contextually – whether from the perspective of the empirical dominance of male offenders, biological and psychological factors, or men's socioeconomic responsibility as the family's breadwinners. Thus, the verse's wording does not indicate normative bias but rather reflects social realities that remain within the framework of equitable legal justice.

The contribution of this study lies in strengthening an integrative perspective between exegesis, *uṣūl al-fiqh*, and *maqāṣid al-sharī'ah* in interpreting the Qur'anic text in a more contextual manner and in a way that is relevant to the development of modern law. This study also provides a theoretical foundation demonstrating that the principles of equality before the law and non-discrimination are inherent in Islamic law, thereby serving as a common ground between Islamic law and contemporary legal systems. Furthermore, the analysis of social, biological, and economic factors enriches our understanding of the reasons behind the wording of the verses, ensuring the study does not rely solely on a textual approach but also opens the door to a multidisciplinary approach.

However, this study has limitations, particularly regarding the use of empirical data that remains general in nature and is not yet fully grounded in comprehensive statistical analysis or in-depth case studies. Furthermore, the approach employed is still dominated by normative and literature-based analysis, thus failing to fully accommodate broader sociological and criminological perspectives within a contemporary context. Therefore, future research is encouraged to expand upon this study through a stronger empirical approach, such as a comparative cross-national analysis of gender-based criminal data, or an interdisciplinary study that integrates Islamic law with modern criminology, psychology, and gender studies. Such

developments are expected to provide a more comprehensive understanding and strengthen the relevance of Islamic law in addressing contemporary social challenges.

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