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Jurisprudential Criticism of the Crimes Enshrined in the Islamic Penal Code of 1392, Considering the Principle of Individualization of Punishments

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Abstract

Based on the principle of individualization of punishments, the authorized judge, on behalf of the ruler, pays attention to the characteristics, conditions, and circumstances of the offender in the matter of punishment. This research examines the inclusion of prescribed Islamic crimes in the principle of judicial individualization of punishment and a jurisprudential critique of the exclusion of mitigating aspects in prescribed Islamic crimes in the Islamic Penal Code. The research method is library and analysis of legal articles. The necessity of the discussion is to apply the legal issue of the principle of judicial individualization and the jurisprudential rule of expiation to the ruler's guidance in relation to the critique of Note 2 of Article 115 of the Islamic Penal Code approved in 1392, in order to show the mitigation of prescribed Islamic crimes. And from the findings of the research, it can be concluded that, based on the rule of ta'zir according to the judge's guidance, prescribed religious crimes are subject to the principle of judicial exclusivity. Based on the aforementioned jurisprudential rule and the differences in the amounts of prescribed religious punishment in narrations and their examples among jurists, excluding prescribed ta'zir crimes from mitigating aspects in the Islamic Penal Code approved in 1392 is not in accordance with jurisprudence, and accordingly, there are problems with the legislator.

Keywords: amnesty of the ruler; crimes stipulated by Sharia law; criticism of the penal code; principle of individual punishment; reduction of punishment.

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