



Penalty for the Creation of Pornographic Materials Via the Internet: A Study in Islamic Law

Dr. Yahia Alkhalaieh

Associate Professor of Comparative Jurisprudence, Department of Jurisprudence and Fundamentals,
College of Sharia and Fundamentals of Religion, King Khalid University, Saudi Arabia

ORCID: <https://orcid.org/0009-0001-9780-8238> E-mail: yahya-anas@hotmail.com

Abstract

All praise is due to Allah alone. May peace and blessings be upon our Prophet Muhammad-there is no prophet after him-his family, companions, and those who follow his guidance until the Day of Judgment.

The phenomenon of creating pornographic networks on the internet is a serious issue with dangerous implications. It constitutes a complete crime and has devastating effects on both individuals and communities. This leads to instability in social peace and security. Islamic law considers the creation of pornographic networks on the internet a crime deserving of punishment. However, its punishments are not meant for destruction or revenge. Instead, they aim to deter offenders and prevent crime in society. For this reason, Islamic law has unique aspects in its punishments that no other legal system in the world shares.

In this research, with Allah's help, I aim to clarify the key aspects related to the punishment for creating pornographic content on the internet, as examined in Islamic law.

Keywords: phenomenon, Devastating, destruction

Research Outline:

To explain and clarify the topic of this study, I have divided it into three sections and a conclusion:

- **Section One:** Explanation of key terms used in the research.
- **Section Two:** The legitimacy of punishment and its purpose in Islamic law.
- **Section Three:** The punishment for creating pornographic content in Islamic law.

I ask Allah, the Almighty, for guidance and assistance in completing this study. He alone grants success and has power over all things. All praise is due to Allah, Lord of the worlds.

Keywords: Punishment, Pornography, Internet Network, Laws.

Received: 12 August 2024

Accepted: 21 August 2024

Published: 28 September 2024

Introduction:

Islamic law considers the spread of vice and pornography in society a major crime, deserving of a punishment proportional to its severity. It is one of the most widespread crimes on the internet today. As this technology enables offenders to spread corruption and disrupt the security and values of society.

The crime of creating pornographic content in Islamic law is considered a discretionary punishment (ta'zir), and its offender deserves a deterrent penalty. This is because it relies on using communication tools and information networks to spread vice and pornography in society, making it one of the most widespread crimes on the internet.

One of the greatest objectives for which punishment is prescribed in Islam is the preservation of the nation's system by deterring criminals, preventing chaos and corruption, and protecting sanctities. The

establishment of punishments and discretionary penalties, as defined by the legislator, aims to improve the condition of all humanity.

In this humble research, I aim to clarify the punishment related to the creation of pornographic content on the internet.

The importance of this topic lies in highlighting the ability of Islamic law to address this type of crime, which has become a painful reality troubling society. It emphasizes the dangers of creating pornographic content for future generations and the necessity of finding suitable and effective solutions to deter the criminals promoting it.

The objectives of the research are:

1. To clarify the punishments prescribed by the legislator for creating pornographic websites and to determine the appropriate penalty for the offender based on the severity of the crime.
2. To highlight the role of specialized studies and scientific research in explaining the legal punishments and raising awareness of the dangers of this crime to individuals and society.

The most important previous studies are:

The Electronic Pornography Crime as Regulated by the Jordanian Information Systems Crimes Law by Ahmad Muhammad Al-Lawzi and Muhammad Abdul Majid Al-Dhunaibat, published in Studies Journal, Sharia and Law Sciences, Volume 42, Issue 3, 2015. That study focused on the legal aspect of the topic.

Research Methodology:

1. I will follow the inductive-analytical approach in addressing the research issues and establishing their foundations in Islamic law.
2. I will review and analyze as many relevant sources and references as possible.
3. I will present the research topics clearly, along with the Islamic legal perspective.
4. I will establish the research issues by citing evidence from the Qur'an, Sunnah, scholars' opinions, and other references.

Finally, I ask Allah, the Almighty, for guidance and success in studying this topic. He alone grants success and has power over all things.

Section One: Explanation of Key Terms in the Research

This section consists of two subsections:

Subsection One: Definition of punishment in linguistic, terminological, and legal contexts.

Subsection Two: Definition of pornographic networks.

1- Definition of Punishment in Language

Linguistically, punishment ((consequence)) comes from the root "ayn-Qaf-Ba", which refers to the consequence or end of something. The root has two main meanings: one indicates delaying and succession, where something comes after another. The other indicates elevation, intensity, and difficulty (Zayn al-Dīn, 1/213; Ahmad, 1979, 4/78). To (punish) for a wrongdoing means to hold someone accountable for it. The noun is punishment. In the Qur'an: "And if you punish [an enemy], punish with an equivalent of that with which you were harmed." (Surah An-Nahl: 126). Punishment and chastisement: to reward a man for what he did wrong. Punishment, penalty and chastisement: are specific to torment (Muhammad, 2001, 1/183).

Based on the linguistic meanings mentioned above, punishment refers to the consequence that follows a wrongdoing committed by a person in this world.

Definition of Punishment in Terminology

Contemporary scholars define punishment as:

“A penalty prescribed by the legislator to deter individuals from committing what is prohibited and neglecting what is commanded. It is a predetermined material consequence designed to prevent individuals from committing crimes.” (Ahmad, 1958, p.9).

Subsection Two: Definition of Pornographic Networks

1. Definition of Networks: A network is a group of interconnected devices through physical or wireless communication mediums, allowing computers to connect directly with users within the same network and share information (Al-Mawsu'ah al-'Arabīyah, 2019).

2- Definition of pornography: Pornography: is a feminine noun derived from (permissiveness). Pornography: the release from the restrictions of laws and morals (Mu'jam al-Lughah 1/261).

It is said: “A man is (immoral) meaning he is free from any moral restraint and does not hesitate to engage in actions that contradict ethical standards (Mu'jam al-Mughni, 1/1).

Section Two: The Legitimacy of Punishment and Its Purpose in Islamic Law

This section consists of two subsections:

Subsection One: The legitimacy of punishment in Islamic law.

Punishment is considered a right of Allah, aiming to achieve the public good, prevent major corruption, and ensure the security and stability of society. Islamic law includes the legitimacy of punishment, as clarified by the Qur'anic verses, authentic Hadiths, and consensus (ijma').

1. Evidence from the Qur'an:

Allah Almighty says: “O you who have believed, prescribed for you is legal retribution for those murdered – the free for the free, the slave for the slave, and the female for the female...” This verse indicates that there is life in this ruling prescribed by Allah. When a person knows that they will face retaliation if they kill someone, they are deterred from committing murder. This serves as a form of protection for human life, as it discourages hasty actions and ensures the preservation of lives (Sharh Fath al-Qadeer, 1/176).

Allah Almighty says: “And do not kill the soul [i.e., person] which Allāh has forbidden, except by right.[742] And whoever is killed unjustly – We have given his heir authority,[743] but let him not exceed limits in [the matter of] taking life. Indeed, he has been supported [by the law].

Allah Almighty says: “And if you punish [an enemy, O believers], punish with an equivalent of that with which you were harmed. But if you are patient – it is better for those who are patient.”

2. Evidence from the Sunnah:

It was reported from Anas ibn al-Nadr that the Prophet Muhammad (peace be upon him) said: “O Anas, the Book of Allah prescribes retaliation (Qisas).”(Narrated by al-Bukhārī in Ṣaḥīḥ - Chapter on Sulḥ (Reconciliation) in Dīyah, 3/186)

It was reported from Abu Shurayh al-Ka'bi that the Prophet Muhammad (peace be upon him) said: “Indeed, you, O tribe of Khuzā'ah, have killed this man from the tribe of Hudhayl, and I will pay the blood money for him. So, whoever kills someone after my statement, his family will have two options: either to accept the blood money or to demand retaliation.”(Narrated by Abū Dāwūd in Sunan – Chapter on The Wali of Intentional Killing Accepting the Dīyah, 4/292)

The Prophet Muhammad (peace be upon him) said: “Whoever has a relative killed, they have the best of two options: either they are granted retaliation (Qisas), or they are offered compensation (blood money).”(Narrated by al-Bukhārī in Ṣaḥīḥ - Chapter on Whoever is Killed for Another, His Wali Receives the Dīyah, 9/5, also narrated by Abū Dāwūd in Sunan – Chapter on The Wali of Intentional Killing Accepting the Dīyah, 6/557)

The Prophet Muhammad (peace be upon him) said: “It is not lawful for the blood of a Muslim who bears witness that there is no god but Allah and that I am the Messenger of Allah to be spilled except in one of

three cases: the soul for the soul, the married adulterer, and the one who leaves the religion and separates from the community.” (Narrated by al-Bukhārī in *Ṣaḥīḥ* - Chapter on The Statement of Allah (The Almighty) that the Soul is for the Soul, 9/5).

3. Evidence from Consensus (Ijma’):

Scholars have agreed on the obligation of punishment for intentional murder, stating that anyone who strikes a person with a sword, knife, or spear must face Qisas (retaliation). (Al-Ijmā’, p.120; Al-Mughni 9/321)

Subsection Two: The Purpose of Punishment in Islamic Law

Punishments in Islamic law are established to preserve the five essential necessities: the protection of religion, life, intellect, lineage, and wealth. Due to their critical importance and the severe harm caused by their violation, specific and prescribed punishments have been set to safeguard these values.

Thus, Qisas (retaliation) was prescribed for assaults on the soul and lesser offenses, the Hudud for theft to protect wealth, the Hadd of apostasy for offenses against religion, the Hadd for alcohol consumption for attacks on the intellect, and the Hadd for adultery and false accusation to protect lineage and honor. Additionally, the punishment of Hadd for Hirabah was established to safeguard all these aspects together. (Jamal Zaid, 2014, p. 109).

These five necessities, which are universally recognized as fundamental human needs, are agreed upon by all people. The preservation of these necessities through the imposition of punishments for violations is a self-evident matter, one that does not differ among minds or religions (Al-Jarīmah wa al-‘Uqūbah fī al-Fiqh al-Islāmī, p.35).

Punishment plays an important role in achieving justice, and justice is most clearly evident in both the establishment and application of punishment. As for justice in the establishment of punishment, it is evident in Qisas (retaliation), which dictates that the offender should face the same consequence they inflicted on the victim (Kitab al-Jinayat fī al-Fiqh al-Islami, p. 33). This is the highest form of justice: Allah says “So whoever has assaulted you, then assault him in the same way that he has assaulted you.”

Another goal of punishment is deterrence. The purpose of punishment, aside from preserving the societal order that affects the entire community, is to deter the offender from repeating the crime, change their behavior, and prevent them from succumbing to desires. It also serves to discourage others from considering committing similar crimes. Deterrence is acting as a warning to the community about the consequences and harm of criminal actions when committed by any of its members (Abdullah, 2020, p. 7). The enactment and enforcement of punishments is something required for the welfare of individuals and communities. All people, whether strong or weak, noble or humble, agree on the necessity of these measures. As they protect against the spread of corruption and close the doors to harm. The establishment of punishments brings benefits and prevents harm (Jamal Zaid, 2014, p. 111).

The consequences of unjust murder are immeasurable and cannot be fully contained. It leads to the loss of a life, and this may be followed by the loss of more lives, the destruction of families, and the collapse of security and stability (Hassan Al-Shadhili, p.29).

One of the goals of punishment is the reform of the offender. Punishment is established and legislated not for revenge or retaliation, but to correct and refine the criminal. When the offender feels the pain and experiences it, he will come to realize the extent of the harm he has caused others. This awareness may lead to a state of awakening and a conscience check within himself, prompting him to reconsider his actions, ultimately leading to the cessation of criminal behavior (Abdullah, 2020, p. 9).

It was wise to legislate these punishments to cut off the root of corruption and deter its commission. This ensures that the world remains in a state of order and uprightness. Without the establishment of deterrents, society would drift into deviation and disorder, leading to widespread corruption that is evident to any reasonable and perceptive individual (Hassan Al-Shadhili, p. 31).

Section Three: The Punishment for Creating Materials Related to Pornographic Networks in Islamic Law.

Islamic law is keen on ensuring the security and stability of society, both religiously and morally. It aims to protect the essential, necessary, and enhancement needs of its members while preventing any forms of harm to the values, religion, and ethics of the community. This includes the creation of pornographic websites aimed at promoting vice and corruption, as well as other immoral acts. Harsh discretionary punishments are prescribed to deter and eradicate the corruption of those who disrupt the religion and values of society. Those involved in such corrupt actions are considered to be at war with Allah and His Messenger.

Allah, the Exalted, says: “Indeed, the penalty for those who wage war against Allāh and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world; and for them in the Hereafter is a great punishment”. The verse indicates that those who spread corruption on earth by obstructing people’s paths, robbing their wealth or honor, killing them, or mutilating their limbs are to be punished by execution, crucifixion, amputation of their hands and feet on opposite sides, or exile from the land. Given the severity of this crime, it becomes clear that purging the land of corrupt individuals and ensuring the safety of roads and pathways—protecting people from murder, theft, and fear—is among the greatest acts of righteousness and obedience. It is a form of reform on earth, just as its opposite is considered corruption (Abdul Rahman, 1420 H, 1/229).

The crimes of corruption and waging war against society are two sides of the same sin. Therefore, spreading corruption on earth is a grave sin that warrants the punishment for waging war (*ḥirābah*) (Al-Durr al-Manthūr fī al-Tafsīr bi al-Ma’thūr, 3/70). The crime of child sexual exploitation falls under the category of spreading vice and corruption among the youth, making it a form of modern-day *ḥirābah*. Islamic law prohibits all forms of corruption (Atef, Najwan, 2022, p. 20).

In Islamic law, the crime of creating materials related to pornographic networks and the sexual exploitation of children is classified based on its reality. It falls under the ruling of modern-day *ḥirābah*. Therefore, the offender deserves the punishment prescribed for *ḥirābah* by Islamic law to eliminate their harm and corruption against individuals and society. This crime is classified as a form of spreading corruption on earth and is considered a contemporary manifestation of *ḥirābah*, making it one of the *ḥudūd* offenses (Atef, Najwan, 2022, p. 24).

Imam Ibn al-‘Arabi classified assaults on honor under the ruling of *ḥirābah*. He expressed great astonishment at those jurists who limit the ruling of *ḥirābah* to attacks on lives and wealth while excluding assaults on honor. He considered honor to be more sacred than wealth in terms of its inviolability and the severity of its violation. He stated that *ḥirābah* involving sexual assault is more heinous than *ḥirābah* involving wealth. People would rather lose their wealth and be deprived of it than have their wives and daughters violated. If there were a punishment beyond what Allah has prescribed, it would be for those who violate honor. The greatest affliction is the company of the ignorant, especially in issuing fatwas and judicial rulings (Muhammad, 1424AH, 2/77).

Therefore, honor is just as inviolable as life and wealth. Anyone who promotes vice and leads people to adultery and immoral acts by creating materials related to pornographic networks deserves a severe discretionary punishment (*ta’zīr*) from the ruler. This ensures they cease their actions and people are protected from their harm. It is reported that ‘Uthmān (may Allah be pleased with him) said: “Indeed, Allah deters through authority what He does not deter through the Qur’an.” (Wahbah, 1418AH, 18/182).

Al-Ḥāfiẓ Ibn Kathīr said: “This means that authority prevents people from committing immoral acts and sins in a way that many do not refrain from despite the Qur’an, with its firm warnings and severe threats. And this is the reality.” (Ismā’il bin ‘Umar, 1419AH, 4/485)

The scholars have agreed on the legitimacy of *ta’zīr* through exile, which is carried out by the imam or ruler when the benefit of exile is perceived. Exile is understood as imprisonment or confinement, according to

the Hanafis, Shafi'is, and a group of Hanbalis, as well as Ibn al-'Arabi from the Malikis, since total exile from all land is impossible (Al-Mawsu'ah al-Fiqhiyah al-Kuwaitiyah, 1/123). In my humble opinion, exile is the appropriate punishment for those who disseminate materials related to pornographic networks.

Creating materials related to pornographic networks is considered the spread of immorality and vice among the believers, promoting moral corruption and dissolution in society. Those who disseminate these images fall under the warning of Allah, as He says: "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 Allāh knows and you do not know". Allah has warned these corrupt individuals that their punishment will not be limited to the Hereafter but will also affect them in this world. The spread of immorality in a society encourages people to commit such acts and makes them more likely to engage in them, which is one of the greatest forms of corruption. The verse indicates that merely desiring the spread of immorality is enough to bring about punishment. Those who actively spread it are even more guilty, sinful, and deserving of punishment.

Allah has also threatened to multiply the sins of those who spread such materials because the one who guides others to evil is like the one who commits the act. They will bear their own sins, as well as the sins of those who are misled by them, without diminishing the sins of those who follow. Allah, the Almighty, says: "That they may bear their own burdens [i.e., sins] in full on the Day of Resurrection and some of the burdens of those whom they misguide without [i.e., by lack of] knowledge. Unquestionably, evil is that which they bear". Ibn Kathir said: "This means that they will bear the sin of their own misguidance and the sin of leading others astray, as well as the consequence of those who follow their example." Mujahid said: "They will bear their own burdens of sins, along with the sins of those who obey them, and nothing will be alleviated from the punishment of those who obey them."

In summary, the punishment for creating materials related to pornographic networks in Islamic law is a discretionary (ta'zīr) punishment. The offender deserves a penalty that matches the severity of the crime committed. As it involves the use of communication tools and information networks to spread immorality and vice in society. These websites give the criminal the opportunity to harm the morals, religion, and honor of others.

Conclusion

This section includes the most important findings and recommendations from the research, which are as follows:

1. The creation of materials related to pornographic networks undermines religion and public order. It is one of the great trials and significant evils that leads to the loss of the five necessities that Islamic law has commanded to protect.
2. Pornographic websites are considered a major cause of the increased crime rate in the society where they are present, opening the door for the spread of crime and criminals.
3. The punishment for creating materials related to pornographic networks in Islamic law is deterrent and proportional to the severity of the crime committed.
4. Anyone who promotes vice and leads people to adultery and immorality by creating materials related to pornographic networks deserves a severe discretionary punishment (ta'zīr) from the ruler.
5. Islamic law has prescribed deterrent punishments for creating materials related to pornographic networks, considering it one of the crimes of spreading corruption on earth.
6. The researcher recommends the need to raise awareness in communities about the dangers of pornographic websites and their destructive effects on all members of society, as well as organizing the legislative aspect.

These are the main findings and recommendations I have reached through this research. If I am correct, it is solely from Allah, and if I am mistaken, it is from myself and Satan.

Acknowledgment:

The authors extend their appreciation to the Deanship of Research and Graduate Studies at King Khalid University for funding this work through General Research|

Project under grant number

GRP/63/45

References:

1. Zayn al-Dīn Abu Abd Allah Muhammad bin Abi Bakr bin Abd al-Qadir al-Hanafi al-Razi. Mukhtār al-Ṣaḥāḥ. Edited by: Yusuf al-Sheikh Muhammad. Published by: Al-Maktabah al-'Asriyah, Al-Dār al-Namūdhaḥīyah, Beirut – Sidon.
2. Ahmad bin Faris bin Zakariya al-Qazwini al-Razi. (1979). Mu'jam Maqāyīs al-Lughah. Dar al-Fikr.
3. Muhammad bin Ahmad bin al-Azhari al-Harawi, Abu Mansur (2001) Tahdhib al-Lughah, Edited by: Muhammad Awad Mur'ab. Published by: Dar Ihya' al-Turath al-Arabi, Beirut. 1st Edition.
4. Ahmad Fathi Bihnasi (1958). Al-'Uqūbah fī al-Fiqh al-Islāmī. Published by: Dar al-Kitab al-'Arabi, Cairo.
5. Al-Mawsu'ah al-'Arabīyah al-Shāmilah – Definition of Networks and Their Types, October 25, 2019.
6. Mu'jam al-Lughah al-'Arabīyah al-Mu'āṣirah – Dr. Ahmed Mukhtar Abd al-Hamid Omar. Published by: 'Ālam al-Kutub.
7. Mu'jam al-Mughni – Abd al-Ghani Abu al-'Azm. Source: Al-Shāmilah al-Dhahabīyah
8. Sharh Fath al-Qadeer – Imam Kamal al-Din Muhammad bin Abdul Wahid. Dar al-Fikr, Beirut, Vol. 1/176.
9. Al-Ijma'– Authored by Muhammad bin Ibrahim bin al-Mundhir al-Nisaburi. Edited and Studied by: Dr. Fouad Abdul Moneim Ahmed
10. Jamal Zaid al-Kilani (2014). Al-Maqāsid al-'Uqūbah fī al-Sharī'ah al-Islāmīyah, An-Najah University Journal for Research (Humanities), Volume 28, Issue 1
11. Al-Jarīmah wa al-'Uqūbah fī al-Fiqh al-Islāmī – Sheikh Imam Abu Zahra. Published by: Dar al-Fikr al-'Arabī, Cairo.
12. Kitab al-Jinayat fī al-Fiqh al-Islami: Dirasah Muqaranah Bayn al-Fiqh al-Islami wa al-Qanun – Hassan Ali al-Shadhili. Published by: Dar al-Kitab al-Jamī'i. 2nd Edition.
13. Abdullah Qasim Al-Tamimi (2020), Punishment and Its Role in Regulating Society in the Islamic Perspective, International Journal for Research and Studies, Vol. 2, Issue 13.
14. Hassan Ali Al-Shadhili. The Book of Crimes in Islamic Jurisprudence: A Comparative Study between Islamic Jurisprudence and Law.
15. Al-Durr al-Manthūr fī al-Tafsīr bi al-Ma'thūr – Abdul Rahman bin Abu Bakr, Jalal al-Din al-Suyuti. Published by: Dar al-Fikr, Beirut.
16. Atef Muhammad Abu Harbīd, Najwan Nabil. (2022). The Crime of Sexual Exploitation of Children via the Internet: A Jurisprudential Study Compared with Positive Law. The Islamic University Journal of Shari'ah and Legal Studies. Issue 30.
17. Abdul Rahman bin Nasir al-Sa'di, (1420 AH). Taysir al-Karīm al-Raḥmān fī Tafsīr Kalām al-Mannān. Maktabat al-Risālah – 1st Edition.
18. Muhammad bin Abdullah Abu Bakr al-'Arabī, (1424 AH). Aḥkām al-Qur'ān. Dār al-Kutub al-'Ilmiyyah, Beirut - 3rd Edition.
19. Wahbah bin Mustafa al-Zuhaylī, (1418 AH). Al-Tafsir al-Munīr fī al-'Aqidah wa al-Sharī'ah wa al-Manhaj. Dār al-Fikr al-Mu'āsir, Damascus – 2nd Edition.
20. Ismā'il bin 'Umar bin Kathīr, (1419 AH). Tafsir al-Qur'ān al-'Azīm, Dār al-Kutub al-'Ilmiyyah., 1st Edition.
21. Al-Mawsu'ah al-Fiqhiyah al-Kuwaitīyah – Ministry of Awqaf and Islamic Affairs, Kuwait. 2nd Edition, Dar al-Salasil, Kuwait.
22. Sunan Abi Dawood – Suleiman bin Ash'ath Abu Dawood al-Sijistani al-Azdi. Published by: Dar al-Fikr.
23. Al-Mughni – Imam Muwaffaq al-Din Abu Muhammad Abdullah bin Ahmad bin Qudamah. Published by: Dar al-Fikr for Printing, Publishing, and Distribution, Beirut, 1984.