

**CRIMINAL LIABILITY FOR ERRORS DURING REMOTE LITIGATION VIA LIVE BROADCASTING****Mohammad Ali G. Zuraib**

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ORCID: <https://orcid.org/0009-0003-0859-2127>**ABSTRACT**

*This research examines the implications of judicial error in verdicts -In the case of remote litigation via live broadcasting as a model.- and the consequences that ensue when such errors result in fatality, or lesser forms of harm such as injuries and damages without loss of life. The study comprises an introduction, two chapters, and a conclusion, as follows:*

*An introductory section defining the research's importance, objectives, and previous studies.*

*The first chapter addressed judicial error leading to fatality, elucidating the concept, manifestations, and the extent of judicial error assurance.*

*Subsequently, the second chapter discussed fatality resulting from punishment and discipline short of death.*

*Finally, the conclusion and findings of the researcher, supplemented with sources and references.*

*Keywords: Assurance - Error - Judge - Fatality*

**INTRODUCTION**

The issues of criminal assurance hold significant importance in jurisprudence due to their connection to safeguarding life and property. Therefore, in this research, I have endeavored to address one of its aspects, particularly related to the judge's diligence when unintended damage arises, especially considering that these issues may have practical implications in some contemporary cases.

In terms of the importance and objectives of the research: These issues are among the subjects that scholars have been concerned with due to the availability of rulings that resemble precedents capable of measurement. However, the significant aspects can be summarized as follows:

- 1- Contributing to balancing the protection of judicial sanctity and the independence of the judge on one hand, and safeguarding human dignity on the other, ensuring that judicial independence and trust bestowed upon judges are limited so as not to compromise human dignity and property.
- 2- Highlighting the precedence of Islamic legislation regarding many principles and regulations established in the present time.
- 3- Examining the precise and profound standards that governed the minds of diligent jurists and shaped their books and opinions.

**RESEARCH METHODOLOGY**

In writing this paper, I relied on the inductive and analytical methods:

The Inductive Method: In gathering the scientific material, I adopted the approach of induction, examining foundational books and extracting relevant content, attributing the texts to their sources. When quoting verbatim, I enclosed the text within quotation marks "...". I referenced hadiths from their reliable sources, attributing them accordingly. If a hadith was from the two Sahihs or either of them, I cited it as such; otherwise, I extracted it from the reliable books, mentioning the page, volume, chapter, and hadith number if numbered, clarifying its authenticity or weakness.

The Analytical Method: I analyzed the collected texts related to the issue, and through this method, the reasons that influenced the matter became apparent.

### LITERATURE REVIEW

In my review of previous studies, I have not found an original study that focused on the aspect of the cause of disagreement in this issue and compiled it in a single framework.

#### First Topic: Judicial Error Resulting in Fatality, with Two Demands:

##### 1- The First Demand: The Concept of Judicial Error and Its Forms:

Here, we will discuss the "Judge's Error," which falls under excusable errors according to the saying of the Prophet Muhammad (peace be upon him): "Indeed, Allah has pardoned my Ummah for their mistakes and forgetfulness." We will explore errors that occur without the judge exceeding or neglecting their duties, without any transgression or oversight, but rather a mere error in judgment of what is most appropriate.

Thus, we will not delve into the judge intentionally violating the ruling, nor into actions resembling intentional violations such as errors resulting from negligence, laxity, or gross misconduct based on unsound reasoning. Both of these situations do not fall under the category of "Judge's Error"; rather, they involve intentional actions or actions closer to intentional misconduct. (Al-Buhuti, M. 2000).

Similarly, we will not address here matters related to punishment and discipline if they escalate and result in harm. This is because it does not fall under the category of the judge's error; rather, the occurrence of harm was due to an external cause, such as coincidence, incidental illness, or weakness in the sentenced individual. Such issues are more appropriately discussed in the second part of this research.

As for the forms of the judge's error - and their rulings will be discussed in the following section - they include:

- If two witnesses testified before the judge regarding intentional murder, and the judge ruled based on their testimony, then it later became evident that one of the witnesses was a slave or someone who is ineligible to testify in cases such as false accusation (qadhf) or other situations where their testimony is not valid.
- If the judge orders the implementation of a punishment less than capital punishment (qisas) or enforces the punishment for theft in a situation where it is possible for the consequences of the punishment to escalate to the point of causing death. This could occur if the effects of the punishment spread and affect the rest of the body, leading to the demise of the punished individual.
- If the judge increases the severity of punishment and discipline, believing it would ensure safety, but his assumption proves wrong, leading to the destruction of the punished individual.

(Al-Haytami, 1995)

##### 2- The Second Demand: Guaranteeing Judicial Error:

The jurists differ regarding the liability for a judge's error when it results from legitimate exertion of effort and there is no negligence or misconduct. There are three opinions on this matter:

**The first opinion:** holds that the judge's error is guaranteed by the public treasury and is not considered a waste. Therefore, compensation is obtained from the state treasury. Their argument is based on the idea that the damage and harm resulting from the error are directly attributed to the judge. As the cause of the harm is his mistake, he is held responsible for it, but the public treasury bears the burden because such errors are likely to occur frequently. Additionally, forcing the judge or his relatives to bear the consequences would be unfair, especially considering that the judge works for the public good rather than personal gain. (Ibn Najim, Z. 2022)

**The second opinion:** asserts that the judge's error is guaranteed against him, but his relatives bear the responsibility for it. Their justification is based on the reported practice of the companions of the Prophet, who

were known to follow this approach. This is supported by the example of the companion Umar ibn al-Khattab, who ruled in a similar manner. (Al-Qarafi, A. I. 1994)

**Third opinion:** That the judge's error in such a case is entirely exempt and not guaranteed against anyone. They argue the following:

1. The judge issued his judgment based on valid legal reasoning (ijtihad), and therefore, the judge in this case does not bear any liability, as the error is excused from a religious perspective.
2. In the judiciary, the judge does not act on his own behalf but for others, and his judgment is that of a trustee; hence, legal responsibility does not attach to him. (Ibn Abidin, 1992)

However, the prevailing opinion, in my view, aligns with the stance taken by the proponents of the first opinion, which holds the judge accountable for his error, with the public treasury (general funds) bearing the responsibility on his behalf. This is because Sharia seeks to provide necessary guarantees and immunity that enable judges to engage in independent reasoning and seek the truth. The first opinion is also motivated by the concern that absolving the judge of his error might lead to a lack of qualified individuals willing to serve in the judiciary, impacting the community's need for effective judicial work. Considering that the second opinion, which completely absolves the judge, may neglect the rights of those affected by the error, the first opinion stands as a balanced and just position.

**Second Topic: Fatality as a Result of Disciplinary Punishment Below Capital Punishment, with Two Demands:**

**1- The First Demand: Definition of Disciplinary Punishment and Its Significance:**

The term 'disciplinary action' is referred to in language as the 'ta'zir,' and its linguistic origin relates to several meanings, with prevention being one of the most prominent. From this, the legal meaning is derived, as 'ta'zir' in a legal context involves prevention measures aimed at deterring the repetition of the offense for which the disciplinary action is imposed.

In the jurisprudential terminology, it refers to an unspecified legal penalty (left to the discretion of the judge) imposed for a crime or act of disobedience that does not have a specified punishment or expiation. (Al-Buhuti, M. 2000).

The significance of ta'zir is not to be overlooked, considering it as one of the forms of disciplinary measures that serve as a deterrent and preventive action against transgressions perceived by the ruler. It becomes particularly important in addressing offenses and violations not explicitly stipulated with prescribed punishments in the Quran or Sunnah. Therefore, the presence of regulated ta'zir, authorized by the ruler, is deemed wise as it aligns with what is deemed beneficial and preventive of harm. (Al-Haytami, 1995)

**2- The Second Demand: Explanation of Jurisprudential Views Regarding Disciplinary Punishment When Fatality Arises from It:**

If a ruler or judge disciplines a person who has erred with a disciplinary punishment that does not lead to death, based on what they perceive as a deterrent and reasonably safe punishment, but the person dies as a result, jurists have differing opinions on this matter, and there are two main perspectives:

**The first opinion:** is that there is no guarantee on the ruler, and the death of the punished person is not deserving of assessment. They argue this based on the following:

- Discipline and punishment are considered legitimate penalties for deterrence and reprimand; however, they do not guarantee immunity from harm, measured in comparison to the legally prescribed punishments as defined by explicit legal texts (limits). Each of them serves as a means of deterrence and reprimand, and each may lead to the demise of the offender. However, one is determined by explicit legal texts, while the other is left to the discretion of the judge's interpretation. (Al-Qarafi, A. I. 1994)

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- That the ruler and the judge are obligated to exercise discipline and punishment, so how do we make them bear fines merely for complying with the order and doing what is required.

**The second opinion:** The necessity of bearing the fine if the effects of the punishment escalate to the point of fatality. It is imperative to ensure not waste compensation for the damage, They supported this by the following:

- What the companions reported in this regard, as Ali ibn Abi Talib, for example, ruled similarly.
- They also argued that punishment is conditional upon a safe outcome, considering that the intent is discipline, not destruction. If destruction occurs, it becomes evident that it has exceeded the permissible limit. (Ibn Abidin, 1992)

The preferred opinion, as it appears to me, is the first opinion that most jurists have leaned towards, due to the strength of their evidence. If we were to assert that the judge bears the fine, this would lead to dissuasion from this required action, which is a reason for the hesitation of judges in issuing disciplinary judgments with a deterrent effect.

### **RESULTS:**

After researching the preceding issues and examining the discourse of the jurists regarding them, we can extract from this study a number of observations and findings, among the most prominent of which are the following:

- The accuracy of the Islamic legal system and its fairness in distinguishing between judicial errors and violations of customary legal boundaries is evident. Sharia law establishes a just system by safeguarding individuals' lives and properties from aggression, even from those in authority, without compromising the judiciary's independence. Judicial immunity must be circumscribed by respecting human dignity and property rights.
- Sharia emphasizes an equitable system that protects individuals and their property from aggression, even by those in authority, without compromising judicial independence. Judicial immunity must be limited and governed by principles that uphold human dignity and property rights.
- There is a necessity to preserve the heritage of criminal jurisprudence and to train scholars in the methodology of addressing legal issues, thus enhancing their jurisprudential skills.
- Judicial applications play a crucial role in jurisprudential development and highlight the richness of legal compendiums, which can be a valuable resource for addressing contemporary challenges.

### **RECOMMENDATIONS:**

In light of the findings of the current research, the researchers conclude with several recommendations:

1. Emphasizing the importance of studying judicial errors in a detailed and comprehensive manner, with the necessity of comparing them to precedents and real-life applications.
2. Conduct deeper studies to define jurisprudence and knowledge in Islamic jurisprudence, specifying the concepts and terminologies used according to foundational, linguistic, and jurisprudential perspectives.
3. Undertake more research and studies on the role of the legal procedures and regulatory provisions governing judicial errors, their compatibility with Islamic Sharia needs to be thoroughly examined.
4. Analyze further evidence and texts related to Sharia and foundational principles especially those related to criminal and judicial matters.

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