

تطبيقات السياسة الشرعية في باب القضاء

إعداد

أمين حسين أمين يونس

المشرف

الأستاذ الدكتور عبد الله إبراهيم زيد الكيلاني

/

نوقشت هذه الأطروحة (تطبيقات السياسة الشرعية في باب القضاء) وأجيزت بتاريخ

١١ / ٥ / ٢٠٠٦ م

أعضاء لجنة المناقشة:

الدكتور عبد الله إبراهيم زيد الكيلاني (مشرفاً)

استاذ الفقه وأصوله

الدكتور محمد نعيم ياسين (عضواً)

استاذ الفقه والقضاء

الدكتور محمد أحمد القضاة (عضواً)

استاذ الفقه المقارن

الدكتور محمد ركان الدغمي (عضواً)

استاذ مشارك الفقه وأصوله (جامعة آل البيت)

التوقيع

عبد الله زيد الكيلاني

محمد نعيم ياسين

محمد أحمد القضاة

محمد ركان الدغمي

الإهداء

إلى من جعلهما الله سبيلا إلى الجنان

إلى من وقفنا بجانبه بحب وحنان

إلى والدي ووالدتي

إلى من وقفت بجانبه وكللت بالصبر والحب وقوفها

إلى نزوجتي

إلى أولادي الأحباء

إلى إخواني وأخواتي الأعزاء

إلى معلمي الأفاضل وطلاب العلم الكرام

إلى القضاة وأهل الإسلام

أمدي رسالتي هذه

شكر وتقدير

"

"

:

"

"

"

"

"

"

"

()
()
()
()

":

"

()

- -

:() :

:() :

" : " () " :

. : : " ()

" : :

." ()

. ()

: :

:

○
○
○
○
○
○

. (: -) :

- -
:

() "
:

() "
"

:"
() "

() "
:

() "

" " " " " "

()) () :

() ())

()) :

()

()

()

()

()

()
()
()

(:)

() "

() "

() "

() "

()

()
()
()
()
()
()

()

()

..
:
-
-
..

)

()

(

()

()

() () :

() ()

:()

() : :) ()
:) :) ()
() () : :) ()

() (- : :) ()

:)) () () () ()
() () () () () ()
() () () () () ()

()

()

()

()

::

()

()
()
()
()

:
:()

:

:

:

:

:

.()

:

:

:

.()

:

:

:

.()

:

.() "

"

:

.() "

":

-

(: ") "

":

:

()
()

:

.(

()

(:) "

:

":

()

()

()

()

()

:

() "

:

() "

" :

-

() "

" :

() "

" :

() "

" :

() "

" :

:

()

:

" :

-

() "

" :

() "

:

()

:

()

()

()

()

()

()

()

()

: " :
 () " " :
 () " " :
 () " " :

() "

" " " " "

()

() () : ()
 () () : ()

() : ()
 () : ()

- -

-

() "

" :

() "

" :-

()

-

()

-

()

-

" " "

"

() "

" "

(: :) ()

() :

() () ()

() ()

:)

()

" "

" :

()

()

(: :) ()

() :

(:) :

()

() ()

() :

()

()

()

" :

" :

" :

...

(,)

()

()

()

()

- -

()

:

:

:

.

.

:

:

" :

()"

-

" :

() "

-

-

:

(

)

(

(

(

()

()

:

:

() "

" :

()

:

()

:

()

:

() ()

()

()

()

()

):

:

:

()

()

: (

()

):

()

()

: (

-

-

:

:

()

()

()

○
○
○
○
○

()

()

()

()

()

()

()

()

()

()
()
()
()
()
()

() "

() "

" :

()

" :

" :

() "

" :

()"

()
()
()
()
()

() "

:

:

::

" :

() "

" :

() "

()

()

()

()

()

()

()

()

..

:)

())

.(

()
()
()

()

()

()

()

()

()

()

()

()

()

()
()

()
()

()

()

()

)

()

()

:()

()

::

::

() "

" :

::

::

::

"

()

()

()

()

()

()

() "

"

" :

() "

()

() "

" :

() "

" :

() "

::

()

"

::

::

"

()
()
()
()
()
()

()

()

()

()

()

()

()

:

()

:

:

()

:

:

:

:

()

()

()

()

()

()

()

:

:

::

::

:

::

()

()
()

: - -

() "

" :

() "

()

()

()

() "

()

()

()

⊙
⊙
⊙
⊙
⊙
⊙
⊙
⊙
⊙
⊙

()

() "

" :

() "

() "

()
()
()
()

()

()

..

..

()

..

.

..

..

..

- -

()

() "

" :

() "

" :

:-

-

:

=

() "

-

-

:

()

::

()

()

()

()

()

()

"

()

()

() "

::
::
::
::
::

()

()
()
()
()

()

:

:

:

"

() "

"

() "

"

() "

:

::

:

:

" :

() "

" :-

()

()

()

()

()

()

()

:

" : () "

() "

" :

() "

(

)

(

(

(

()

: :

()

:

:

:

:

:

:

()

:

()
()
()
()
()
()
()

()

:

() "

" :

:

()

() "

" :

:

:

()

:()

"

"

"

"

"

"

"

"

() ()

"

() ()

:

()

"

()

:

"

"

: () ()

()

"

."

()

:

..

..

..

()

"

"

()

()

()

:

:

()

:

()

()

()

()

()

()

()

() "

:

" :

:

" :

" :

() "

() "

" :

() "

..

" :

() "

:

()

()

()

()

()

()

()

()

()

()

:

:

() =

.

.

()

()

()
()
()
()

(١)

:

(٢)

(٣)

(٤)

(٥) "

(٦) "

(٨)

٣
٣
٤
٣
٣
٣
٣

(٣)

(١)

(٢)

(٤)

:

:

.

.

.

..

..

..

..

(١)
(٢)
(٣)
(٤)

()

)

:

(٧)

(٤)

(٣)

:

() "

:
(١)

:

:

" :

-

:

()

" :

-

() "

:

()

)

()
())

()

(٤)

()

()

()

()

() "

() "

() "

() "

() "

()

()

()

()

()

()

()

()

":

.() "

:() (/ /)

"

"

::

:

::

::

::

::

::

()

()

()

()

() "

:

"

:

" :
() "

" : "

:

()

:

:

:

()

:()

:

:

:

:

:

()

()

()
()
()
()
()

- -

()

()

::

::

::

::

::

::

()

()

()

()

()

()

() "

"

" :

()

:

:

()

:

()

()

()

()

()

()

()

()

()

:

:

:

()

:

" :

() "

:

:

..

:

() "

" :

" :

() "

()

()

()

()

()

()

()

()

()

()

()

()

()

()

-

"

"

:

() "

-

" :-

" :-

:

"

:

-

()

()

()

()

()

()

(:)
()

:()

:

::

:

::

::

::

:

:

()

()

()

()

" :

:()

"

() "

:

:)

)

.(

()

.(

:)

()

.(

:)

.(

()

()

()

()
()
()
()
()

() "

() "

()

() "

()

...

" :

" :

" ..

- -
.

:

()

()

" :
"

() "

()

()

()

()

()
()
()
()
()
()

() () ()

":

()"

":

()"

":

()"

":

()"

()

::

()
()
()
()
()

()

:

..

» ()

» :

» :

» :

» :

» ()

()

()

..()

.() "

" :

" :

()

:

.() "

:

:

:

()
()
()
()

() "

:

()

:

:

:

:

:

() "

" :

-

:

()

() "

" :

-

:

()

()

()

()

()

)

()

-

()

(

١٠٠

(١٠)

() "

() " " : :

" : :

" : ()

" : ()

" () () "

() () () ()

()

()
()

()

()

:

() "

" :

:"

() "

:"

() "

()

()

()

()

()

()

()

()

" :

() "

" :
" :
" :

() "

()

()
()
()
()
()

() "

"

" :

() "

:

() "

" :

-

-

()
()
()

()

- -

::

.

::

:

()

-

:

-

-

"

."

:()

-

"

."

:()

-

"

()

."

:()

-

"

:

-

-

."

" :

() () "

:

:

:

:

:

" :

() () "

()

:

()

:

:

:

:

()
()
()
()
()
()

() ()

:

..

:

.()

:

.()

()
()

()

:

::

()

.

::

::

::

::

()

()

()

()

()

()

:

.

:

:

:

:

:

:

=

() "

"

() "

:

:

:

()

()

()

()

":
() "

()

()

() "

- -

() "

:
()

()

:

" :

::

::

()
()
()
()
()
()

()

- -

()

::

..

..

..

(-)

()
()

()

()

()

()
()
()

:()

()

()
()

()

:()

()

()
()
()

()
()
()

(INTER POOL)

:()

:()

:()

()
()
()

:

()

()

() "

" :

() "

" :

() "

:

:()

)

()

()

(
)
)
)
)
)
)

() "

()

() "

() "

()
()
()
()

()
()

:

:

()

:

()

:

()
()
()

()
()
()
()

()

()

:

:

(.)

(.)

":

.(()) "

.() "

": ()

.(())

:()

::
::
::

○
○
○
○
○
○

":

.() "

()

()

() "

() "

:)

:

:

()

() "

()

() "

" :

:

() "

" :

" :

::

::

()
()
()
()
()
()
()

- -
()

()

" :
() "
" :
() "

::

::

()

()
()
()
()

()

()

()

()
()
()

()

()

()

()

()

() ()

()

()

::

::

::

:

:

:

::

()
()
()
()
()
()

()

()

()

::

::

:"

()" "

:"

()" "

()" "

()

()

()

()
()
()
()
()
()

() "

:

:

:

"

:()

:

:

:

:

:

()

" :

() "

()

()
()

()
()
()
()
()

:

.
()

() "

()

()

:

:

:

:

"

() "

" :

() "

:

:

()

()

()
()
()
()
()
()
()
()

()

()

()

()
()
()

()

()

()

()

()

":

() "

()

()

":

()
()
()
()
()
()
()
()

() "

:

()

()

..

-

-

-

..

..

..

()

()

()

()

:()

" :

:() "

" :

:() "

:()

()

:()

:()

()

()

/

()
()
()
()
()
()

"

" :

()

" :

()

() "

() "

" :

" :

() "

()

()

()

()

()

()

()

()

.. () "

.. () "

:

" :

" :

..

" ..

" ..

() "

() "

..

..

..

..

..

()
()
()
()

.()

.()

.()

.()

.()

.()

.()

) .()

.(

.()

.()

.()

.()

.()

) .()

.(

	.()	-
	.	
	.()	-
	.	-
)	.	-
	.()	-
)	.()	-
	.	
	.()	-
	.()	-
	.	
	.()	-
	.	
	.()	-
)	.	-
	.()	-
)	()	-
	.	
)	.()	-
	.	
	.()	-
	.	
	.()	-

.() -

.() -
) -

.() .() -
. () -

.() -

.() -

) .() -

.() -

.()) -

.() -

.() -

.() -

.() -

.() -

.() -

- -

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

)

-

.()

.(

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

-

.()

-

.()

-

.()

-

.()

.()

-

.()

-

.()

-

()

-

()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

- -

.()

-

.()

-

.()

-

) .()

-

.(

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

.()

.()

.()

.()

.()

.()

.()

).()

.(

.()

.()

.()

.()

-

.()

-

.()

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

.()

-

- -

.()

-

.()

-

()

-

.()

-

.()

-

-

.()

-

.()

-

- -

:

.()

-

.()

-

.()

.()

-

.()

.()

-

.()

:

- <http://www.umn.edu/humanrts/arabic.html>

- <http://www.jordan.jo>

			...	
			...	
			...	
			...	
			...	

			...	
			...	

- -

**THE APPLICATIONS OF LEGAL (SHARI'A) POLICIES IN
THE JURISDICTION PART**

By

Ameen Hussein Ameen Younis

Supervisor

Dr. Abdullah Ibraheem Zeid Al Keelani, Prof.

Abstract

This study addressed the subject of The Applications of legal (Shari`a) Policies in the Jurisdiction Part aiming to state the role of the legislation policy in treating the recent events in the study subject. The study adopted the inductive method of the Jordanian law texts and the learned men(of Islamic Fiqh) points of view towards the posed issues and the evidences they depend on in stating the judgments and analyzing the texts, points of view and the evidences ,discussing them and finding the compatibility the legal judgments with the Islamic Shari`a texts ,total rules and general principles and the attitude of the Shari`a policy in approving or rejecting some judgments, to come up with conclusions showing the Shari`a judgments in the posed issues and the extent of the Shari`a policy intervention in treating them.

The preliminary chapter addressed the Shari`a policy definition ,its tools and the conditions of its application in the jurisdiction part and the effect of its application on the Islamic Shari`a rules and their stability.

Then, the preliminary chapter was followed by three parts: the first handled the applications of the Shari`a policy in the field of the jurisdiction work regulations concerning its concepts, divisions, and importance ,some contemporary regulations such as rationing the Shari`a rules , the jurisdiction procedures , the variety of suing degrees ,the jurisdiction specialty , the pre-requisites for the jurisdiction authorized individuals and the judge's immunity. This study proved the legality of these regulations and their being subjected to the Shari`a policy rule except a small portion which the Shari`a policy cannot intervene as stated.

The second Part addressed the applications of the Shari`a policy in the field of the proof methods, where it handled some of the recent issues in the part of testimony (Al Shahadah) , the acknowledgement through presumptions , modern proof methods and the attitude of the legislation policy towards them.

The third Part dealt with the applications of the Shari`a policy in two fields :the first is in arresting the accused and delivering them. In this field ,some new methods were discussed such as : asking the assistance of secret agents , inspection ,advertising about the accused in media various means. the international cooperation in the fields of arresting the accused and handing

them, putting the accused in prison for investigation. The second field is executing the judgments concerning punishments (Hudoud), requital punishment (Al Quasas), the disciplinary punishment (Al Ta`zeer), the financial rights and the attitude of the legislation policy towards these judgments and their execution methods.

The study came up with results and recommendations. One of the most prominent ones is the legislation policy undertaking the treatment of a lot of new jurisdiction issues achieving, by that, the benefits of people (the slaves of Allah) in accordance with the Islamic Shari`a rules, total principles without violating a detailing text.

The people legal governors have to depend on the Shari`a policy in stating the Shari`a judgments in the fields that have no certain text, and to apply the judgments that match the Islamic Shari`a and derive the judgments and laws from them.