

The application of common sense in criminal jurisprudence

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Abstract

The purpose of this research is to explain the position and application of the rational construction in Islamic criminal jurisprudence and to explain its capacity in solving some jurisprudential challenges in the contemporary world, because the jurist knows that Islam is a universal religion and its rulings must also be universal, and therefore, he distinguished the rulings that were subject to time, place, and the society ruling at that time from the true rulings of Islam. This further highlights the importance of rational constructions.

In this regard, first the concept of the foundation of rational and various sayings in its authority is explained from the perspective of scholars of the principles of jurisprudence, and then its sphere of influence in the criminal law system is analyzed.

The research findings show that the construction of reason in criminal jurisprudence has several functions, including 1. Its role in understanding and interpreting criminal religious evidence, 2. Its reference as the first principle in cases of lack of specific evidence, and 3. Its function as a preferred factor in conflicting evidence.

Based on the results of this research, utilizing the rational construction in the field of criminal jurisprudence brings it closer to social and rational realities and makes the Islamic penal system more coherent and efficient.

Keywords: Common Sense; Criminal Jurisprudence; authority ;Application; rational understanding.

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