

ISLAMIC LEGAL PRINCIPLES AND NATIONAL REFORM: A STUDY OF THE 2023 INDONESIAN PENAL CODE

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ABSTRACT

This study examine the transformation of the concept of justice in Islamic criminal law as a contribution to the reform of national criminal law. The assess the extent to which the principles of justice in Islamic criminal law, such as proportional justice, victim protection, and the principle of public benefit (maslahah), have been incorporated into the new national criminal law system, particularly within the 2023 Indonesian Penal Code (KUHP). This research employs a doctrinal method through literature analysis, drawing on national legislation, jurisprudence, and both classical and contemporary Islamic legal thought. The findings reveal that although several Islamic legal principles are beginning to be accommodated, such as the application of restorative justice, a more humane sentencing approach, and the acknowledgment of local values, this integration remains partial and does not yet fully reflect the comprehensive framework of Islamic justice. Therefore, transforming the national criminal law system through the values of Islamic legal principles is a strategic step toward building a justice system that is more responsive, substantively fair, and aligned with the Indonesian national identity.

Keywords: Transformation; Concept of Justice; Islamic Criminal Law; Reform; National Criminal Law.

INTRODUCTION

Islam consistently places justice as one of its core teachings, including in the realm of law. Justice is a fundamental principle that has been a central concern throughout Islamic history. In Islam, justice goes beyond retributive punishment to encompass social rehabilitation and restoration, aiming to maintain balance within society. The practice of

justice is believed to foster social harmony, whereas injustice often becomes the root cause of disorder and social conflict¹.

Islam has brought the importance of justice in all aspects of life, including social, economic, political, cultural, and legal spheres. From the Islamic perspective, all human beings are equal before God, with the only distinction being their level of piety. The concept of justice in Islam involves the equitable distribution of rights and responsibilities, thereby creating a secure and harmonious environment for all members of society².

In the context of national criminal law, justice serves as a foundational element for various social institutions, including the legal system. Justice is often associated with legal certainty, wherein the law ensures that every individual receives their rights fairly. The relationship between justice and the rule of law resembles two sides of the same coin, when the rule of law is upheld, justice is achieved; otherwise, justice is compromised³.

Given that the majority of Indonesia's population is Muslim, the national criminal law has gradually adopted several principles from Islamic criminal law, either explicitly or implicitly. This adoption occurs through a contextual and selective approach, aiming to harmonize universal justice values, cultural local wisdom, and the core principles of Islamic law⁴. Within the framework of the Pancasila state that upholds pluralism, justice is not merely seen as a formal legal product, but also as a reflection of internalized substantive values that live within society⁵. Principles such as equality, balance, and moral responsibility, which are also pillars of Islamic law, are expected to guide the reform of national criminal law, so that the legal system does not rely solely on a legalistic approach, but also embraces ethical and social dimensions⁶.

¹ Afifah Rangkuti, "Keadilan Dalam Perspektif Islam," *Journal TAZKIYA* 4, no. 1 (July 25, 2017): 1–21, <https://jurnaltarbiyah.uinsu.ac.id/index.php/tazkiya/article/view/141/121>.

² Sayyid Qutb, *Keadilan Sosial Dalam Islam* (Bandung : Penerbit Pustaka, 1984).

³ Yustinus Suhardi Ruman, "Keadilan Hukum Dan Penerapannya Dalam Pengadilan," *Humaniora* 3, no. 2 (October 31, 2012): 345–53, <https://doi.org/10.21512/humaniora.v3i2.3327>.

⁴ Fauzi Almubarak, "Keadilan Dalam Perspektif Islam," *Journal ISTIGHNA* 1, no. 2 (July 25, 2018): 115–43, <https://core.ac.uk/download/pdf/229112673.pdf>.

⁵ Hafidz Taqiyuddin, "Konsep Islam Tentang Keadilan (Kajian Interdisipliner)," *Aqlania; Jurnal Filsafat Dan Teologi Islam* 10, no. 2 (2019): 167–81, https://www.researchgate.net/profile/Hafidz-Taqiyuddin/publication/337606575_Konsep_Islam_Tentang_Keadilan/links/5e28f8bb4585150ee77b351c/Konsep-Islam-Tentang-Keadilan.pdf?_sg%5B0%5D=started_experiment_milestone&origin=journalDetail&_rtd=e30%3D.

⁶ Putu Karina Putri and I Wayan Bela Siki Layang, "Penegakan Hukum Pidana Berdasarkan Aspek Keadilan Di Indonesia," *Jurnal Kertha Negara* 11, no. 3 (2023): 317–25, <https://ojs.unud.ac.id/index.php/Kerthanegara/article/view/97414>.

The need to revisit the transformation of the concept of justice in Islamic criminal law is becoming increasingly urgent, especially with the resurgence of Islamic values in Indonesian public discourse, particularly in the context of law enforcement. This renewed interest is a response to public dissatisfaction with the national criminal justice system, which is often seen as failing to deliver substantive justice. Many stakeholders hope that the application of Islamic justice principles can serve as either an alternative or a complement to the ongoing national criminal law reform. However, the effort to integrate Islamic values into the national criminal law system has long faced numerous obstacles, including ideological resistance, constitutional challenges, and political contestation. Therefore, this study seeks to critically examine how the transformation of Islamic criminal justice concepts can be constructively articulated to support a more inclusive and just reform of national criminal law⁷.

Previous studies have also explored the concept of justice, whether within the framework of national criminal law⁸ or Islamic legal perspectives⁹. However, such studies often concentrate on particular aspects, such as the comparison between retributive and restorative justice in the two legal systems, without addressing the broader integration. Some scholars tend to view national criminal law and Islamic criminal law as two distinct and incompatible systems due to their differing paradigms, legal sources, and approaches to justice¹⁰. For example, I Wayan Bela Siki Layang Putri emphasizes a positivist national criminal law system without integrating Islamic legal norms. Similarly, Vanny Ritasari examines restorative justice, plea bargaining, and judicial pardon within modern criminal law innovation, with no reference to Islamic legal principles. These approaches tend to marginalize Islamic law from the broader legal reform discourse, implicitly closing the door to the integration of Islamic values into the national criminal law system¹¹.

⁷ Adery Ardhan et al., "Penegakan Keadilan Restoratif Dalam Hukum Pidana Indonesia," *Richie Stephen* 8, no. 2 (2023): 72–81, <https://jurnal.uai.ac.id/index.php/JMIH/article/view/2400/pdf>.

⁸ Vanny Ritasari, "Studi Perbandingan Konsepsi Efektifitas Pencarian Keadilan Dalam Penyelesaian Perkara Pidana Berdasarkan Hukum Acara Pidana : Telaah Konsep Restorative Justice, Plea Bargaining Dan Rechdelijk Pardon," *Verstek* 9, no. 2 (May 6, 2021): 436–44, <https://doi.org/10.20961/jv.v9i2.51103>; Nanda Sahputra Umara and Pathorang Halim, "Membangun Hukum Pidana Nasional Diatas Pondasi Keadilan Pancasila Dalam Wujud Nilai Ke Tuhanan Yang Maha Esa," *Al-Qisth Law Review* 5, no. 1 (August 28, 2021): 171–93, <https://doi.org/10.24853/al-qisth.5.1.171-193>.

⁹ Nurlaila Harun, "Keadilan Dalam Perspektif Hukum Islam," *I'tisham : Journal of Islamic Law and Economics* 1, no. 2 (2021): 156–66, <https://journal.iain-manado.ac.id/index.php/itisham/article/view/1782/1193>.

¹⁰ Rangkuti, "Keadilan Dalam Perspektif Islam."

¹¹ Mahir Amin, "Konsep Keadilan Dalam Perspektif Filsafat Hukum Islam," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 4, no. 02 (October 1, 2015): 322–43, <https://doi.org/10.15642/ad.2014.4.02.322-343>.

Conversely, some scholars advocate for national criminal law reform that is rooted in Islamic justice values. For instance, Nanda Sahputra Umara explicitly discusses building national criminal law upon the foundation of divine values, representing Islamic elements within Pancasila. Likewise, works by Mahir Amin, N. Harun, Rangkuti, and Hafidz Taqiyuddin emphasize the concept of justice in Islam as an ethical and philosophical framework suitable for integration into the national criminal law reform agenda. They propose a normative approach that highlights balance, public welfare, and forgiveness as integral mechanisms of justice principles that align with Indonesia's current criminal law policy direction. By examining both perspectives, this study seeks to present a balanced and critical argument supporting the importance of transforming Islamic justice values within the development of national criminal law.

Therefore, this research aims to address those limitations by conducting a more holistic study that not only compares both legal systems theoretically, but also explores the substantive integration of Islamic criminal justice concepts into the national legal framework. In doing so, the study aspires to offer a meaningful contribution to Indonesia's criminal law reform process, ensuring it better reflects the justice values expected by the wider society.

RESEARCH METHOD

This study employs a doctrinal approach¹² aimed at analyzing the transformation of Islamic criminal justice concepts within the context of national criminal law reform in Indonesia. The research is library-based,¹³ relying on both classical and contemporary literature. Classical Islamic legal texts are utilized to trace the normative and philosophical foundations of justice in Islamic criminal law, including primary sources such as the Qur'an, Hadith, and the works of renowned Islamic jurists. In parallel, modern and contemporary literature, comprising journal articles, legislative interpretations, and empirical legal studies, is incorporated to assess the application, adaptation, and relevance of Islamic justice principles in modern legal systems, particularly in the Indonesian context.

¹² Sugiyono, *Metode Penelitian Pendidikan, Pendekatan Kuantitatif, Kualitatif Dan R&D* (Bandung : Alfabeta, 2017).

¹³ Endah Marendah Ratnaningtyas et al., *Metodelogi Penelitian Kualitatif*, ed. Nanda Saputra (Pidie: Yayasan Muhammad Zaini, 2023).

The sources analyzed include national criminal law documents such as the Criminal Procedure Code (KUHP) and Supreme Court regulations, alongside contemporary studies on Islamic criminal justice reform and restorative justice frameworks. Data were collected through a comprehensive review and critical examination of academic books, peer-reviewed journal articles, national legal instruments, and fatwas relevant to Islamic criminal law.

A qualitative analysis was conducted by categorizing legal materials into primary and secondary sources, identifying thematic patterns related to justice, legal principles, and institutional practices, and interpreting them within Indonesia's sociocultural context. This integrative methodology allows the study to bridge normative Islamic jurisprudence with the practical challenges and opportunities within the agenda of national criminal justice reform, offering nuanced and contextually grounded proposals for transformative legal development.

RESEARCH OUTCOME AND DISCUSSION

1. The Concept of Justice in Islamic Law

Justice in Islam occupies a central position in every legal discourse. Islamic law embodies deeply rooted and integral principles of justice in its application. Several core aspects of justice in Islamic law include:

a. Divine Justice (Tawhid)

Justice is regarded as a divine command from Allah SWT. Every act of law enforcement must reflect the justice mandated by God, encompassing honesty, balance, and equality¹⁴. Ibn Miskawayh explains divine justice as a spiritual relationship between humans and the Creator, transcending the relationships among humans or between humans and other beings¹⁵.

b. Distributive Justice

This form of justice ensures that the rights of every individual and group within society are fulfilled equitably. It includes the fair distribution of wealth, opportunities, and legal protection. Every Muslim is entitled to receive appropriate

¹⁴ Kun Budianto, "Hukum Pidana Islam: Perspektif Keadilan," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 13, no. 1 (2013): 37–46, <https://jurnal.radenfatah.ac.id/index.php/Nurani/article/view/115>.

¹⁵ Agus Romdlon Saputra, "Konsep Keadilan Menurut Al- Qur'an Dan Para Filosof," *Dialogia* 10, no. 12 (2012): 185–200, <https://doi.org/https://doi.org/10.21154/dialogia.v10i2.310>.

rights and responsibilities based on the inherent equality of all human beings before God, where the only distinction lies in their faith and piety¹⁶.

c. Retributive Justice (Qisas)

In Islamic law, this refers to proportional punishment for specific offenses, such as murder. However, Islamic law does not entirely preclude leniency; instead, it encourages forgiveness and compensation (diyyah)¹⁷. Qisas embodies justice through several key principles:

- 1) The principle of forgiveness, allowing the victim or their family to pardon the offender in exchange for compensation.
- 2) The principle of religious norms, derived from the Qur'an and Sunnah, providing a strong foundation of legality imbued with theological and spiritual meaning¹⁸.
- 3) The principle of protecting offenders, to prevent arbitrary or unjust legal enforcement. In Islamic criminal law, protection of the offender is not intended to limit state authority, but to uphold genuine law enforcement¹⁹.
- 4) The principle of victim protection, ensuring victims are safeguarded from harm and suffering caused by criminal acts, and receive fair compensation²⁰.

d. Procedural Justice

Just law enforcement must be conducted through transparent procedures, free from bias, and respectful of the rights of both the accused and the victim²¹.

The essence of justice in Islam is to treat everything according to its reality, or in other words, to balance and equalize attitudes, rights, and responsibilities among individuals or social groups. Justice is a fundamental tenet in Islam, deeply reflected in the Islamic intellectual tradition. In Islamic law, justice is considered the ultimate goal of legal systems, applied across all areas of life, including the judiciary, politics, and

¹⁶ Budianto, "Hukum Pidana Islam: Perspektif Keadilan."

¹⁷ Budianto.

¹⁸ Budianto.

¹⁹ Moh Khasan, "Prinsip-Prinsip Keadilan Hukum Dalam Asas Legalitas Hukum Pidana Islam," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (May 29, 2017): 21–36, <https://doi.org/10.33331/rechtsvinding.v6i1.133>.

²⁰ Virdinda La Ode Achmad, "Konsep Keadilan Hukum Islam Dalam Tindak Pidana Lingkungan Hidup (Kajian Hukum Pidana Islam Atas Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja)" (UIN Syarif Hidayatullah, 2022), <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/62186/1/VIRDINIA%20LA%20ODE%20ACHMAD%20-%20FSH.pdf>.

²¹ H. Saeful Anwar, "Konsep Keadilan Dalam Al-Qur'an: Analisis Tafsir Maudhu'i," *Al-Qalam*, 2002, 1–21, https://www.academia.edu/91287581/Konsep_Keadilan_Dalam_Al_QurAn.

governance. In contrast, national criminal law derives justice from general legal principles grounded in the constitution. While justice is considered an important legal objective, it is not held as supreme as in Islamic law²².

Although the desired outcomes may be similar, the objectives differ. The goal of justice in Islamic law is to achieve public welfare and balanced justice in all areas of life²³. Justice is regarded as the justification for the existence of all institutions and state apparatuses. In contrast, the goals of justice in national criminal law include external security, internal order, justice, public welfare, and freedom—which the state seeks to realize through the legal framework²⁴.

Justice in Islamic law can be seen as a harmonization between legal certainty and proportionality. Justice becomes the foundation and primary element in the formulation and implementation of laws in Islam. Meanwhile, in national criminal law, justice is one of several principles in shaping criminal law—it does not occupy the same position as in Islamic law. This is due to the fact that national criminal law must incorporate multiple principles, even though the definition of justice in both systems may appear similar.

2. The Concept of Justice in National Criminal Law

Indonesia's national criminal law system is currently undergoing a significant transformation, particularly following the ratification of the new Criminal Code (KUHP) on January 2, 2023, which will come into effect on January 2, 2026. This reform does not merely address the substance of criminal law but also brings changes to the mechanisms of criminal justice, including the reinforcement of justice principles that are more adaptive to the needs of contemporary society. In this context, justice is no longer viewed merely as procedural formality, such as the right to defense, impartial trial, and guarantees of legal fairness—but has shifted toward a more inclusive and humanistic approach. The rights of both victims and offenders are now framed within a vision of social restoration, giving space to community roles, mediation, and resolution based on local values and wisdom²⁵.

²² Lysa Angrayni, "Hukum Pidana Dalam Perspektif Islam Dan Perbandingannya Dengan Hukum Pidana Di Indonesia," *Hukum Islam* 15, no. 1 (2015): 46–60, <https://ejournal.uin-suska.ac.id/index.php/hukumislam/article/view/1154>.

²³ Harun, "Keadilan Dalam Perspektif Hukum Islam."

²⁴ Rangkuti, "Keadilan Dalam Perspektif Islam."

²⁵ Parningotan Malau, "Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 1 (June 13, 2023): 837–44, <https://doi.org/10.37680/almanhaj.v5i1.2815>.

This transformation opens the door to the application of restorative justice as an increasingly recognized alternative paradigm in the Indonesian justice system. Through regulations such as those issued by the Indonesian National Police and other legal instruments, the restorative justice approach is being implemented from the investigation stage to court proceedings, especially in cases with limited social impact or involving vulnerable offenders. This approach expands the notion of justice from merely punishment to reconciliation among offenders, victims, and the community²⁶. In this view, criminal law no longer functions solely as a means of retribution but also as a tool to restore social relationships damaged by criminal acts. This model aligns with the principles of justice in Islamic criminal law, which emphasize *maqāṣid al-sharī'ah* (the objectives of Islamic law), including the protection of life, dignity, and social welfare.

Restorative justice is a frequently invoked concept when discussing justice, especially within national criminal law. It emphasizes repairing the harm caused by legal violations and restoring disrupted relationships among offenders, victims, and society. This approach actively involves the offender in restorative processes such as apology, reparation, and reconciliation. The goal is to restore the losses suffered by victims and communities and repair relationships damaged by crime. The distribution of resources, wealth, and benefits also falls under distributive justice within national criminal justice, as it addresses the fair allocation of societal burdens or resources. This involves questions about how these should be fairly distributed among individuals or groups to prevent partiality in communities²⁷.

Meanwhile, justice concerning appropriate and proportional punishment for every legal violation is referred to as retributive justice. This type of justice involves the principle of "an eye for an eye," wherein each offender must receive a punishment commensurate with the wrongdoing committed. Retributive justice also considers the principle of proportionality in sentencing²⁸, which is essential in criminal law because it

²⁶ Daniel Hasudungan Nainggolan and Ade Adhari, "Perkembangan Aturan Peralihan Dari Kitab Undang-Undang Hukum Pidana Lama Ke Kitab Undang-Undang Hukum Pidana Nasional Baru Sebagai Wujud Pembaharuan," *UNES Law Review* 6, no. 2 (2023): 5240–50, <https://review-unes.com/index.php/law/article/view/1337/1073>.

²⁷ Gani Hamaminata, "Perkembangan Sistem Peradilan Pidana Di Indonesia," *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL* 2, no. 4 (August 3, 2023): 52–64, <https://doi.org/10.55606/jhpis.v2i4.2334>.

²⁸ Gani Hamaminata.

aligns with legal principles such as *lex certa*, *lex stricta*, and *lex scripta*²⁹. The goal is to ensure that punishment is fair and justly deserved.

Regarding the restorative justice approach, it is also crucial to understand the fundamental procedural differences between national criminal law and Islamic criminal law, as well as the potential for these systems to complement one another. In national criminal law, the processes of investigation, detention, and adjudication follow the Criminal Procedure Code (KUHP) and technical regulations from the Supreme Court, which emphasize formal and legalistic procedures. In contrast, Islamic criminal law traditions are more flexible and stress resolution through consultation, reconciliation, and the restoration of social relationships. Therefore, procedural principles in Islamic criminal law, such as family involvement, community leaders, and the essential role of honest witnesses, can enrich national legal procedures, particularly in minor cases or those better suited for non-punitive resolution. Such integration demands regulatory reform, including recognition of the roles of customary and religious institutions in dispute resolution and adjustment of evidence procedures, handling of exhibits, and decision-making processes that fully consider restorative justice. Consequently, the synergy between these two systems is not only possible but also responsive to the needs for justice rooted in the social and religious values of Indonesian society.

3. The Contribution of Islamic Criminal Law to National Criminal Law Reform

Islamic criminal law does not solely emphasize punishment but also focuses on restoration and social equilibrium. This is reflected in the concepts of *jawābir* (atonement of sins) and *zawājir* (deterrence), which position punishment not merely as retribution for wrongdoing but also as a means to rehabilitate the offender and protect society³⁰. This perspective offers a fresh paradigm for the development of national criminal law, which is now transitioning from a retributive approach to a more humanistic and rehabilitative model. In this context, Islamic criminal law provides a strong moral and spiritual foundation for interpreting criminal justice in a more comprehensive, socially beneficial manner.

²⁹ Nanda Nugraha Ziar, "Prinsip Proporsionalitas Dalam Kebijakan Formatif Tindak Pidana Pencemaran Nama Baik Di Media Sosial," *Jurnal Lex Renaissance* 7, no. 3 (July 1, 2022): 462–75, <https://doi.org/10.20885/JLR.vol7.iss3.art2>.

³⁰ Anta Rini Utami, Khairil Akbar, and Nursiti, "Saksi Tindakan Kebiri Perspektif Teori Pemidanaan Islam (Telaah Kritis Terhadap Peppu Nomor 1 Tahun 2016)," *Saksi Tindakan Kebiri Perspektif Teori Pemidanaan Islam (Telaah Kritis Terhadap Peppu Nomor 1 Tahun 2016)*, 5, no. 2 (2023): 120–26, <https://jurnal.ensiklopediaiku.org/ojs-2.4.8-3/index.php/ensiklopedia/article/view/1471/pdf>.

The transformative approach proposed by Islamic criminal law can be adopted in various aspects of national criminal law reform. One such aspect is through the integration of restorative justice principles long known in Islamic law, such as *diyāt* (compensation), *‘afw* (forgiveness), and *ṣulḥ* (reconciliation). Penal mediation in Islamic criminal law illustrates how victims, offenders, and communities can be actively involved in resolving criminal cases to reach equitable agreements³¹. Additionally, Islamic criminal law emphasizes the importance of empowering families and communities as part of conflict resolution mechanisms, rather than solely relying on the state. Within this framework, the roles of community leaders, religious institutions, and traditional councils can be strengthened as agents of justice that drive value transformation and behavioral reform, not merely through the formal apparatus of law enforcement.

The implementation of Islamic criminal law principles into the national criminal law system can be carried out progressively through harmonization and contextualization of sharia values within the national legal framework. The formulation of criminal law policies that accommodate principles of mediation, restorative justice, and forgiveness can enhance the legitimacy of the law in the eyes of Indonesia's Muslim-majority population. Furthermore, regulations that provide space for community-based justice practices would reflect acknowledgment of the living legal systems within society. In this way, national criminal law will not only be grounded in formal legalistic principles but will also absorb the substantive values of Islamic law that are universal in nature and contribute to the development of a fair, inclusive, and spiritually grounded legal system for the Indonesian people³².

Justice in Islamic criminal law has, in fact, already been partially implemented in the national criminal law system. This implementation is reflected through the enforcement of fair and balanced legal practices. Justice is regarded as one of the key objectives of law, essential to achieving national security and public order³³. In line with this, Islamic law also implements justice through the upholding of the rule of law and the establishment of a judicial system that functions fairly³⁴.

³¹ Moh Khasan, "Perspektif Islam Dan Psikologi Tentang Pemaafan," *Jurnal At-Taqqaddum* 9, no. 1 (2017): 69–94, file:///C:/Users/USER%20DK/Downloads/attaqaddum2023,+1788-5540-1-ED%20(1).pdf.

³² Rika Afrida Yanti, "Implementasi Hukum Pidana Islam Di Indonesia: Sebuah Upaya Politik Konstitusionalisme," *Jurnal AS-SAID* 2, no. 1 (2022): 47–56, <https://e-journal.institutabdullahsaid.ac.id/index.php/AS-SAID/article/view/63>.

³³ Harun, "Keadilan Dalam Perspektif Hukum Islam."

³⁴ Rangkuti, "Keadilan Dalam Perspektif Islam."

Despite this, there are clear and significant differences in the way punishments are administered between the two legal systems. Islamic criminal law derives its legal determinations from the Sharia, as outlined in the Qur'an and Hadith, and emphasizes the protection of human rights. Islamic criminal law ensures justice in the handling of complaints by granting victims the opportunity to influence the punishment imposed on perpetrators³⁵. Justice in Islam extends to both the rights of God and the rights of the community. The rights of God refer to punishments prescribed by divine law, while the rights of society refer to penalties enforced for the benefit of the public³⁶. This dual consideration ensures that punishments are rooted in values of justice and harmony.

The formulation of national criminal law, by contrast, is based on statutory laws and regulations applicable in general. Its primary references are the 1945 Constitution and various other legal instruments. National criminal law leans more toward positive law and is founded on a concept of justice regarded as more universal in nature³⁷.

The types of punishments imposed also differ significantly. In Islam, punishments for jarimah hudud, such as adultery, theft, and robbery, are not pardonable, whereas jarimah qishash, such as murder and assault, may be pardoned with the consent of the victim or their family³⁸. In national criminal law, punishments include imprisonment, fines, confinement, and others, with pardons granted through established legal procedures, such as appeals or executive clemency³⁹.

A comparative explanation of the concept of justice in Islamic and national criminal law reveals that although they originate from different historical legal traditions—Indonesian national criminal law is heavily influenced by Dutch law rooted in continental European legal traditions and Christian values, while Islamic criminal law derives from the Qur'an, Hadith, and scholarly interpretations—there are notable similarities in the principles of justice they uphold. These similarities do not imply that national criminal law directly adopts Islamic law, but rather highlight the convergence of certain universal

³⁵ Budianto, "Hukum Pidana Islam: Perspektif Keadilan."

³⁶ Sunarto Sunarto, "Konsep Hukum Pidana Islam Dan Sanksinya Dalam Perspektif Al-Qur'an," *Kordinat: Jurnal Komunikasi Antar Perguruan Tinggi Agama Islam* 19, no. 1 (April 4, 2020): 97–112, <https://doi.org/10.15408/kordinat.v19i1.17176>.

³⁷ Achmad Thorik et al., "Perbandingan Konsep Restorative Justice Dalam Hukum Pidana Islam Dengan Hukum Pidana Indonesia," *Nomos; Jurnal Penelitian Ilmu Hukum* 4, no. 3 (2024): 12–20, <https://doi.org/https://doi.org/10.56393/nomos.v4i1.2100>.

³⁸ Massadi Massadi, "Peluang Dan Tantangan Pelaksanaan Pidana Islam Di Indonesia," *Al-Bayyinah* 3, no. 2 (December 2, 2019): 252–68, <https://doi.org/10.35673/al-bayyinah.v3i2.473>.

³⁹ Angrayni, "Hukum Pidana Dalam Perspektif Islam Dan Perbandingannya Dengan Hukum Pidana Di Indonesia."

values such as the principle of legality, the presumption of innocence, the non-retroactivity of laws, and the principle of equality before the law. These principles are recognized in both modern legal systems and classical Islamic legal traditions. As such, these convergences offer a potential ethical and philosophical foundation for dialogue and integration within the broader agenda of national criminal law reform⁴⁰.

Although there are several meeting points between the justice principles in national and Islamic criminal law, such as the importance of the offender's remorse in granting pardons, the proportional application of sanctions, and the protection of victims' rights⁴¹ these similarities do not mean that both systems are identical or exempt from further development. Rather, the divergent paradigms, philosophical underpinnings, and sociocultural approaches of each legal system underscore the necessity of this study. The intended transformation goes beyond mere integration; it aims to evaluate and enrich the national criminal justice system with substantive principles from Islamic criminal law, which emphasizes a holistic form of justice, one that balances spiritual, moral, social, and legal dimensions. In this context, this study offers a new perspective for reforming the national criminal law system to become more responsive to the justice needs of Indonesia's predominantly Muslim society.

4. Integrating the Principles of Justice in Islamic Criminal Law into the National Criminal Law System

Integrating the principles of justice in Islamic criminal law into the national criminal law system cannot be separated from the fundamental differences in the concept of justice upheld by both systems. Islamic criminal law bases its concept of justice on Sharia principles derived from the Qur'an, Hadith, *ijma'*, and *qiyas*, emphasizing the balance between individual rights, societal interests, and the rights of God⁴². In contrast, the national criminal law system, which originates from the Continental European legal tradition, emphasizes legal positivism, with secular legal norms that prioritize legal formalism over religious morality. Some Islamic legal principles—such as punishments for theft and murder—have been accommodated in national criminal law, but often within a more lenient framework, and without incorporating elements such as *qishash* or *diyat*

⁴⁰ Angrayni.

⁴¹ A.Rachmat Wirawan and Avelyn Pingkan Komuna, "Pengampunan Pidana Dalam Mewujudkan Keadilan, Kepastian, Dan Kemanfaatan," *Jurnal Humaya: Jurnal Hukum, Humaniora, Masyarakat, Dan Budaya* 1, no. 1 (June 30, 2021): 10–15, <https://doi.org/10.33830/humaya.v1i1.1863.2021>.

⁴² Amin, "Konsep Keadilan Dalam Perspektif Filsafat Hukum Islam."

as prescribed in Islamic law⁴³. Other Islamic concepts such as hudud, including punishments for adultery and alcohol consumption, cannot be fully accommodated due to conflicts with the human rights principles upheld in the national legal system.

The inability of national criminal law to accommodate certain Islamic criminal law principles highlights fundamental issues arising from the differing legal foundations. Islamic law views justice not only as a human construct but also as divinely mandated, integrating preventive (zawajir) and moral reform (jawabir) functions into its penal enforcement⁴⁴. Conversely, national criminal law, developed in a secular context, prioritizes legality and proportionality in sentencing, often neglecting the spiritual and moral dimensions emphasized in Islamic justice. As a result, although some Islamic legal principles have been incorporated into national law, their application is often distorted to conform with secular legal standards⁴⁵. On the other hand, the national criminal law system's failure to integrate broader Islamic legal principles risks creating dissatisfaction among the Muslim majority who seek stronger representation of Islamic justice values within the legal system.

In this regard, the urgency of establishing a criminal justice system rooted in Islamic teachings becomes increasingly relevant, especially given Indonesia's Muslim-majority population whose lives are closely tied to Sharia values. Should national criminal law reform remain unable to incorporate key Islamic legal principles, then the idea of establishing a special Islamic criminal court for Muslim citizens may be considered a viable alternative. This concept is not novel, as several countries with significant Muslim populations have implemented Sharia-based judicial systems that coexist alongside national legal frameworks⁴⁶. In its implementation, an Islamic-based criminal court could be developed while still respecting the national constitution and principles of legal pluralism, thereby avoiding exclusivity that could threaten social harmony. Thus, the formation of a more inclusive criminal justice system that aligns with Islamic values could offer a solution to accommodate the aspirations of Muslim communities, without disregarding the principles of national unity and diversity that define Indonesia.

⁴³ Umara and Halim, "Membangun Hukum Pidana Nasional Diatas Pondasi Keadilan Pancasila Dalam Wujud Nilai Ke Tuhanan Yang Maha Esa."

⁴⁴ Utami, Akbar, and Nursiti, "Saksi Tindakan Kebiri Perspektif Teori Pemidanaan Islam (Telaah Kritis Terhadap Peppu Nomor 1 Tahun 2016)."

⁴⁵ Khasan, "Prinsip-Prinsip Keadilan Hukum Dalam Asas Legalitas Hukum Pidana Islam."

⁴⁶ Seyed Hossein Serajzadeh, "Islam And Crime The Moral Community of Muslims," *Journal of Arabic and Islamic Studies* 4 (2001): 112–31, https://ncys.ksu.edu.sa/sites/ncys.ksu.edu.sa/files/crime%2026_5.pdf.

In the national criminal justice system, the mindset of judges and the implementation of an independent judiciary are key elements in dissecting the practice of justice within national criminal law and how it can be compared to the principles of justice in Islamic law. In the national legal system, judicial independence is often associated with neutrality against political pressures and external interests, as well as strict adherence to the application of positive law. Meanwhile, in Islamic criminal law, judicial reasoning is not only based on normative texts but also involves moral, ethical, and *maslahah* (public interest) considerations, with *maqāṣid al-syarī'ah* serving as the foundation in interpreting and deciding cases. This means that although both systems emphasize independence, the epistemology of justice in Islam contains a stronger spiritual dimension, encouraging judges to be not only procedurally just but also substantively and transcendentally just. Therefore, reforming the national criminal justice system must consider an integrative judicial model, one that upholds the independence of judgment while also being oriented toward divine and humanitarian values, as emphasized in Islamic law.

Regarding the integration of justice principles, an example can be found in the Islamic criminal justice system in Aceh Province, which is a manifestation of Aceh's special autonomy as stipulated in Law Number 11 of 2006 concerning the Governance of Aceh. This law grants the region the authority to implement public life based on Islamic Sharia principles. The ideological foundation for establishing Aceh's Islamic criminal justice system is inseparable from the long-standing historical struggle of the Acehnese people to preserve their religious identity. In this context, Islam functions not only as a moral compass but also as a living legal system deeply embedded within Acehnese society, with strong sociological and historical legitimacy.

Over nearly two decades of its implementation, Aceh's Islamic criminal justice system has handled various cases related to violations of *jināyat* law, such as *khamar* (alcohol), *maisir* (gambling), *khalwat* (seclusion), *ikhtilāṭ* (unlawful intermingling), *zinā* (adultery/fornication), and others. This judicial mechanism is administered through the *Mahkamah Syariah* as the formal court institution, supported by the *Wilāyat al-Ḥisbah* as its enforcement body. In practice, the Islamic court in Aceh offers an approach that emphasizes substantive justice, public acknowledgment of wrongdoing, repentance, and social restoration through punishments such as caning and moral admonition. However, the effectiveness of this system in realizing justice has not yet reached its full potential,

as it still faces several challenges such as disparities in implementation, limited understanding among law enforcement officers, and political or social pressures that lead to inconsistencies in legal application⁴⁷.

Compared to the national criminal justice system, the Islamic judicial system in Aceh still shows advantages in aligning legal norms with the cultural and religious values of the local community, as well as in creating a deterrent effect with moral and social impact. Nonetheless, in terms of judicial governance and human rights protection, further improvements are needed so that the principles of Islamic justice can be translated proportionally—not only in the sentencing phase but also throughout the law enforcement process that upholds the principle of due process of law. Therefore, Aceh's experience can serve as a vital legal laboratory to examine the potential for integrating Islamic criminal law values into the national criminal law system, especially in the pursuit of justice that aligns with religious values and the public civility of Indonesian society.

CONCLUSION

The transformation of Islamic criminal justice concepts in the context of national criminal law reform is a necessity arising from the contextual needs of Indonesian society, which is predominantly Muslim and aspires to a more just, moral, and humane legal system. Reform efforts must not merely focus on normative integration but require a deep understanding of substantive justice principles in Islamic law, such as restorative justice, penal mediation, and community empowerment as agents of justice. Although there are fundamental differences between the national criminal law system, rooted in European legal traditions and Islamic criminal law sourced from Sharia, an inclusive and adaptive transformation approach allows both systems to complement each other within a framework of just legal reform. The Islamic criminal justice experience in Aceh provides a concrete example of how such a system can be implemented in Indonesia, albeit requiring improvement in its execution and regulatory support. Hence, building a national criminal law system based on Islamic values is not only a realistic step but also a strategic one in order to realize holistic and contextual justice for the Indonesian nation.

⁴⁷ Massadi, "Peluang Dan Tantangan Pelaksanaan Pidana Islam Di Indonesia."

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