

PRINCIPLES OF ISLAMIC LAW IN CRIMINAL LAW REFORM IN INDONESIA

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Abstract

This article discusses the application of Islamic Law principles in criminal law reform in Indonesia, focusing on efforts to integrate Islamic norms into the pluralistic national legal system. Using the literature research method, it explores the principles of justice ('adl), balance (tawazun), public good (maslahah), and crime prevention (saddu al-dhara'i) as the foundation for criminal law reform. The results show that despite the challenges in harmonising Islamic law with secular national law, the application of these principles can enrich the Indonesian criminal law system with strong moral and ethical values. In addition, wise and comprehensive integration can optimise the effectiveness of law enforcement and improve the sense of justice in society. This study recommends the need for continuous dialogue between stakeholders to reach consensus and ensure that the resulting laws are inclusive and adaptive to the diversity of Indonesian society. In the long run, criminal law reform that considers the principles of Islamic Law has the potential to strengthen the foundation of national law and improve social welfare.

Keywords: principles of Islamic law, criminal law reform, justice, inclusiveness, Indonesia, legal norms.

Introduction

Criminal law is a branch of law that regulates criminal offences, penalties, and rules that determine what actions are prohibited by the state and what sanctions can be imposed on criminals. The main objectives of criminal law are to protect the public interest, maintain social order, provide a deterrent effect to the perpetrator, and provide a sense of justice for victims (Zaidan Ar-Rumi, 2019). Criminal law covers various aspects, ranging from the types of criminal offences, law enforcement procedures, to aspects related to human rights and protection of suspects (Ahmad Hanafi, 2021).

Criminal law in Indonesia has developed and changed along with the social, political, and cultural dynamics that accompany it. Criminal law reform policy becomes very important to answer the needs of the times and the challenges faced by modern society. In the midst of this renewal effort, there is a need to consider the values and principles of law rooted in existing legal traditions, including Islamic law (Ahmad Rofiq, 1999).

Islamic law, often referred to as sharia, is a legal system based on the teachings of the Islamic religion, derived from the Qur'an and Hadith, and supplemented by ijma' (consensus of scholars) and qiyas (analogy). Islamic law covers various aspects of life,

including worship, muamalah (social and economic interaction), marriage, inheritance, and criminal law. Its purpose is to uphold justice, maintain order and morality, and direct Muslims in living their lives in accordance with Islamic values. Sharia does not only function as a set of legal rules, but also as ethical and moral guidelines that direct Muslims in their daily lives (Nur Syam, 1993).

Indonesia as a country with a majority Muslim population has a long history in the application of Islamic law. As an important part of cultural and religious heritage, Islamic law has influenced various aspects of legal life in Indonesia. This is reflected in various areas of law, including family law, sharia economic law, and criminal law. The principles of Islamic law such as justice (al-'is), legal certainty (al-yaqîn), benefit (al-maslahah), and proportionality (at-ta'adul) are some of the fundamental and relevant principles in the constellation of criminal law (Qanun Jinayat ., 2002)

Islamic law has played an important role in the history and development of law in Indonesia since the arrival of Islam in the archipelago in the 13th century. In the period of Islamic kingdoms, such as the Sultanates of Aceh, Demak, and Mataram, Islamic law became the main foundation in the regulation of law and social life. The sultans adopted sharia as the applicable law, especially in family matters, inheritance and some aspects of trade. Along with the spread of Islam, Islamic law was increasingly rooted in the traditions of the community so that it became an integral part of the local legal culture (Budiono Kusumohamidjojo ., 2004)

During the Dutch colonial period, Islamic law was still recognised in the form of adat law, which was accommodated by the colonial government. Post-independence, the influence of Islamic law is still evident in the Indonesian legal system. The Marriage Law, the Compilation of Islamic Law, as well as regulations on zakat and waqf show the application of Islamic law in national regulations. In addition, religious courts that handle family and inheritance matters for Muslims play an important role in Indonesia's judicial structure. Thus, Islamic law continues to play a significant role both from a historical aspect and in the development of law in Indonesia until today (M. Hasbi Ash-Shiddieqy ., 1995)

However, the integration of Islamic law principles into the national criminal law system is not without its challenges. There are different views on how best to implement these principles within a positive legal framework. Different interpretations and approaches in understanding Islamic law often lead to debates among academics, legal practitioners, and policy makers.

Thus, in this context, it is important to conduct an in-depth study of the principles of Islamic law and how they can contribute to the reform of criminal law in Indonesia. This research aims to identify and analyse the relevant principles of Islamic law, as well as explore the opportunities and challenges in integrating these principles into the national criminal law. Through this approach, it is hoped that a more just, humane, and

in accordance with universal and local values adopted by Indonesian society can be found.

Research Methods

The study in this research uses the literature method. The literature research method, or literature review, is a research approach that uses written sources and documents as the primary basis for gathering information and analysing a particular topic. This research involves a critical review of books, journal articles, research reports, conference papers, and other documents relevant to the research subject (Fink, 2019) ; (Alvesson & Sandberg, 2013) . The main purpose of the literature research method is to understand the development of theories, find gaps in previous research, support arguments with existing evidence, and identify trends and patterns in the related literature. The researcher summarises, evaluates, and synthesises information from various sources to form a strong theoretical basis and make new contributions to the field of study. (Knopf, 2006) .

Results and Discussion

Theoretical Aspects of Islamic Legal Principles

The theoretical aspects of Islamic legal principles are the basic concepts and principles that form the basis for the acceptance, interpretation and application of Islamic law, or sharia. As a legal system derived from revelation and tradition, Islamic law is rooted in Islamic religious doctrine that covers various dimensions of human life, whether ritual, social, economic, or political.

The main theoretical aspect underlying the principles of Islamic law:

First, the main source of Islamic law is the Qur'an, the holy book which is believed to be a direct revelation from Allah SWT to the Prophet Muhammad SAW. The Qur'an provides basic guidelines in all aspects of life. In addition, the Hadith, which is a collection of sayings, actions, and approvals of the Prophet Muhammad, is also an important source that provides detailed explanations and context to the verses of the Qur'an. These two sources are complemented by *ijma'* (consensus of scholars) and *qiyas* (analogy or rational thinking) which are used to resolve legal issues that are not explicitly explained in the Qur'an or Hadith (Zuliansyah ., 2023)

Second, the concept of *maqashid sharia* or the objectives of sharia is a key aspect of Islamic legal theory. It emphasises that the application of Islamic law must achieve five main objectives: protecting religion (*hifz al-din*), the soul (*hifz al-nafs*), the intellect (*hifz al-'aql*), offspring (*hifz al-nasl*), and property (*hifz al-mal*). This principle emphasises that Islamic law aims to create welfare and prevent damage, ensuring that the rule of law meets basic human needs and maintains justice (Coulson, 2022) .

Third, *Ijtihad* is a process of independent reasoning by scholars to solve new legal problems faced by Muslims. Through *ijtihad*, Islamic law demonstrates flexibility and the

ability to adapt to the times. Even so, the practice of *ijtihad* is conducted with caution, based on rigorous methodology and in-depth knowledge of the sources of Islamic law in order to remain within the framework of *sharia*. This allows Islamic law to be relevant in the contemporary context as well as respond to new challenges that arise (Rahmi & Yanto, 2022).

Fourth, in Islamic legal theory, there is the principle of universality, which means that Islamic law is comprehensive and applies to all human beings regardless of geographical, racial or cultural differences. However, in practice, Islamic law also recognises contingency or flexibility, allowing for adjustments to local contexts and specific situations faced by Muslim communities in different parts of the world. This is demonstrated in the application of customary law in harmony with *sharia* principles (Vikør., 2023).

Fifth, the theoretical aspect of Islamic law emphasises the importance of the balance between individual rights and obligations. In Islamic law, every right is always followed by an obligation. For example, the right to ownership of goods is followed by the obligation to use such wealth in a manner that complies with ethical constraints and Islamic law. This principle ensures that individual freedom does not conflict with or harm social interests and general welfare (Johansen, 2023).

Sixth, Justice is one of the most fundamental principles in Islamic law. Justice includes not only legal, but also moral, social, and economic aspects. Islamic law asserts that every individual must be treated fairly without discrimination. Equality before the law, including respecting the rights of women and the poor, is a concrete implementation of this principle. Thus, the application of Islamic law always leads to the achievement of a harmonious, just, and prosperous society (Peters, 2022).

As such, the principles of Islamic law are built upon complex and profound principles, which not only serve as legal guidelines, but also reflect the ethical, moral and spiritual values upon which Muslims base their lives.

The Influence of Islamic Law on Indonesian Criminal Law

The influence of Islamic Law on Indonesian Criminal Law can be seen from various aspects, both historical and syncretic. Historically, Islamic Law has had a significant influence in the formation of social norms and rules in Indonesia since the arrival of Islam in the archipelago. The population's attachment to Islamic teachings, especially in Muslim-majority areas, created a foundation where several religious laws were integrated into daily life, including in the customary justice system. This influence lasted until the colonial period where the Dutch tried to apply western law but most people still adhered to Islamic law in resolving disputes and offences (Skovgaard-Petersen, 2023).

Along with the times, when Indonesia became independent on 17 August 1945, the idea emerged to accommodate the values of Islamic Law in the national legal

system. Islamic law is seen as able to contribute, especially in the field of morals and ethics that are relevant to Indonesian society. The consensus among the founders of the nation gave birth to Pancasila and the 1945 Constitution as the basis of the state while still opening space for religious values, including Islam, to enter various aspects of the law (Wardhana & Dewi, 2022).

One of the tangible manifestations of the influence of Islamic Law is the existence of the Religious Courts Law which was enacted in 1989. The institution of Religious Courts is devoted to handling certain civil cases such as marriage, inheritance, wills, grants, waqf, zakat and infaq involving Muslims. This makes it easier to implement the rules of Islamic Law that have long existed in society (Esposito, 2022).

In addition, the principles of Islamic criminal law have influenced various forms of regulation. For example, in the case of acts that are punishable as serious criminal offences, such as corruption, which has received special attention in Indonesia. The values of Islamic Law that emphasise justice and deterrent effects contribute to the development of criminal laws related to the eradication of corruption that are strict and just (Andriansyah ., 2023)

However, the implementation of Islamic Law values in criminal law in Indonesia is not necessarily fully implemented as in countries that adhere to the sharia legal system. In Indonesia, the existence of legal pluralism and religious diversity makes criminal law policy must consider aspects of diversity and human rights. Therefore, the approach used is adaptive and integrative, choosing principles that are in line with universal values and national needs (Masud, 2023).

Overall, the influence of Islamic Law in criminal law in Indonesia reflects a hybrid legal culture, where Islamic values shape, but are harmonised with other legal norms that apply nationally. This balance aims to achieve a legal system that is fair and in accordance with the pluralistic identity of the Indonesian nation, making criminal law not only a means of enforcing justice but also a moral and ethical guide for society.

Challenges and Opportunities for the Integration of Islamic Law into Indonesian Criminal Law

The integration of Islamic Law into Indonesian Criminal Law presents various challenges that need to be addressed wisely. The first challenge is the diversity of cultures and religions in Indonesia, which makes the application of Islamic law must consider the principle of pluralism. With a society that embraces various religions and beliefs, criminal law must be structured in an inclusive manner so as not to cause discrimination and be able to uphold human rights. Differences in views and interpretations of the law among community groups can also be a challenge in achieving unity of vision and mission in law enforcement (Hallaq, 2022).

Furthermore, challenges come from the harmonisation between Islamic law and the secular national legal system. This integration requires adjustments to legal norms

to be in line with the constitution and prevailing laws and regulations. This harmonisation process requires constructive dialogue between jurists, religious leaders and policy makers, ensuring that Islamic values can be applied without contradicting the basic principles of the state (Weiss, 2023).

In terms of opportunities, the integration of Islamic Law has the potential to enrich the Indonesian criminal law system with strong moral and ethical values. Islamic teachings that emphasise social justice, public good, and effective crime eradication can be the basis for the formulation of more equitable criminal law policies. Islamic law also offers a rehabilitative perspective rather than just retributive, with the aim of rehabilitating criminals while providing protection to victims (Zaman, 2022).

In the context of combating corruption, for example, the values of Islamic Law against injustice and fraud can serve as a strong moral foundation to encourage the implementation of stricter and more effective anti-corruption policies. The harmony between formal law and the religious values of most Indonesians will help to increase compliance and lend legitimacy to the law enforcement process. (Ahmad Rofiq., 1999)

Another opportunity is the increased influence of religious courts, which could accelerate the resolution of civil cases involving Muslims. Through expanded powers and administrative support, these institutions can function as complements to the national justice system, while improving public access to justice (Ahmad Hanafi, 2021).

Finally, with effective integration, Islamic Law can help create a criminal justice system that is more responsive to the needs of Indonesia's diverse society. Utilising the values of Islamic Law, when done appropriately, can strengthen the nation's legal and moral order and improve social welfare while respecting the diversity that exists in Indonesia.

Thus, the integration of Islamic Law into Indonesian Criminal Law has its own challenges and opportunities. The main challenges include cultural and religious diversity that must be carefully considered to create an inclusive and fair legal system, as well as harmonisation of Islamic legal norms with the secular national legal system. On the other hand, opportunities include the enrichment of the legal system with strong moral values, effectiveness in combating corruption, and increased access to justice through religious courts.

If challenges can be overcome through constructive dialogue and cooperation between relevant parties, and opportunities can be optimised, then the integration of Islamic Law can contribute significantly to improving justice, legal compliance and social welfare in Indonesia. This requires a thoughtful and comprehensive approach so that the resulting legal system not only conforms to religious values, but also respects diversity and the fundamental principles of the state.

Conclusion

The reform of criminal law in Indonesia through the principles of Islamic Law involves consideration of principles embedded in Islamic norms, such as justice ('adl), balance (tawazun), public good (maslahah), and crime prevention (saddu al-dhara'i). These principles provide a moral and ethical basis for the legal system, offering another perspective in resolving criminal law issues facing Indonesian society. The existence of these principles highlights the need for harmonisation with existing norms and laws to achieve a comprehensive and inclusive approach.

However, in the process of such reform, a key challenge is to ensure that the integration of the principles of Islamic Law can create a legal system that is not only fair, but also acceptable to a plural society. Indonesia, with its religiously and culturally diverse population, requires a sensitive and inclusive approach so that each element of society feels represented and protected by the law. Therefore, it is important for lawmakers to engage in dialogue and consultation with various stakeholders to gain consensus that will ensure the law is in line with the public's sense of justice.

Finally, the opportunities arising from this integration can present a criminal law system that is more effective in enforcing the law and improving the quality of life of the community. By emphasising preventive and reconstructive aspects of punishment, Indonesia can build a legal system that not only punishes criminals but also prevents future crimes. Thus, criminal law reform through the principles of Islamic Law has the potential to enrich and strengthen the foundation of national law, while still adhering to the constitutional principles of the state.

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