

CONFLICT AND CONVERGENCE BETWEEN CRIMINAL LAW AND RELIGIOUS LAW (A CRIMINOLOGICAL PERSPECTIVE)

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Abstract

This article discusses the conflict and convergence between criminal law and religious law from a criminological perspective. This conflict often occurs due to differences in principles and norms between the two legal systems, which can include differences in sentencing, views on justice, and the protection of human rights. On the other hand, however, convergence can be found when the ethical and moral principles espoused in religious law support the objectives of secular criminal law, such as in crime prevention and the protection of society. Through criminological analysis, this article explores how these conflicts and convergences affect the implementation of the law, public perceptions of justice, and the formulation of more inclusive and effective criminal policies. The article concludes that by carefully considering the differences and similarities between the two legal systems, areas in need of reform or adjustment can be identified to improve the effectiveness of the justice system and promote social justice.

Keywords: Conflict, Convergence, Criminal Law, Religious Law, Criminology Perspective.

Introduction

Indonesia is a country with a very diverse population, consisting of various ethnicities, languages, and religions. As a country with a majority Muslim population, Indonesia also has a population of other religions such as Christianity, Catholicism, Hinduism and Buddhism. This diversity is reflected in daily life and the legal system. The Indonesian Constitution recognises and respects freedom of religion, and each religion has its own influence on the social and moral life of society. Therefore, in a plural and multi-religious society such as Indonesia, there is a complex dynamic between secular criminal law and spiritual and normative religious law (Ahmad, 2023).

Secular criminal law is the rule of law applied by the state to regulate and control the behaviour of citizens in order to achieve public order, safety, and social welfare. As part of the state's legal system, criminal law focuses on actions that are considered offences against legal norms established by state authorities (Rahman, 2023). The main principle in secular criminal law is the enforcement of objective and universal justice, regardless of the religious beliefs of the perpetrators or victims. This criminal law aims to provide strict sanctions for lawbreakers as well as prevent future crimes. Typically,

secular laws are applied in countries with pluralistic backgrounds where the rule of law is orientated towards equality before the law, rather than specific religious or moral preferences (Jamil, 2023) .

Religious law, on the other hand, is a set of rules based on the doctrines and spiritual teachings of a particular faith. It imposes norms that govern individual and community behaviour in line with religious teachings, focusing on moral and ethical principles that are considered sacred and must be adhered to by adherents. Religious law is normative in nature, as in addition to regulating actions that may result in social or spiritual sanctions, it also demands the fulfilment of moral responsibility and spiritual obedience. An example of religious law is Sharia law in Islam, which not only regulates aspects of ritual and worship but also daily, economic and social behaviour. In this sense, religious law serves as a guide to life for its adherents and is often an integral aspect of their cultural and spiritual identity (Munir, 2023) .

Criminal law aims to maintain public order and regulate behaviour through universally applicable sanctions, while religious law bases its rules on spiritual doctrines and moral teachings that are unique to a particular religious community. Conflicts often arise when these two legal systems intersect in the handling of criminal cases that have a religious dimension, for example in issues such as blasphemy, adultery, or drinking. This clash between secular norms and religious doctrines can lead to debates about justice, legality and human rights (Iskandar, 2022) .

However, despite this conflict, there is also room for convergence between criminal law and religious law. These two legal systems can complement each other in creating a comprehensive system of rules that fulfils the aspirations of justice from all levels of society. From a criminological perspective, a study of the intersection between criminal law and religious law can provide deeper insights into the motivations for criminal behaviour, crime prevention and offender rehabilitation. By understanding how religious and secular norms can integrate within a coherent legal framework, society can move towards a legal system that not only upholds formal justice, but also respects the moral and ethical values that live in society.

Research Methods

The study in this research uses the literature method. Literature research method, or often referred to as literature study, is a research approach conducted by collecting and analysing information from written sources relevant to the research topic. This method involves comprehensive steps such as identification, selection, collection, and evaluation of documents which can be books, journal articles, conference papers, reports, as well as electronic sources (Torraco, 2005) ; (Galvan & Galvan, 2017) . The main purpose of literature research is to understand, criticise, and synthesise existing scientific knowledge, as well as find unfilled research gaps to formulate a strong theoretical basis for further research. In addition, this method also

helps researchers build a conceptual framework, clarify research problems, and ensure that the research does not repeat existing conclusions and make significant new contributions to the field of study (Green et al., 2006).

Results and Discussion

Conflict between Criminal Law and Religious Law

Conflicts between secular criminal law and spiritual and normative religious law often occur in societies with religious and cultural diversity. Both have different objectives in their application. Secular criminal law focuses more on maintaining public order and social justice based on rules set by the state, while religious law is applied to safeguard certain teachings and moral principles held by religious communities. These fundamental differences often lead to clashes, especially when the values or rules promoted conflict with each other (Hooker, 2002).

One of the main sources of conflict is the overlap between secular and religious legal rules. For example, in some cases, secular criminal law ignores or even violates rules taught by religious law. An obvious example is in the issue of family law or marriage, where religious law may have specific provisions regarding marriage, divorce, or inheritance that differ from the secular criminal law applied by the state. This situation can lead to dissatisfaction or even resistance from religious communities who feel that their rights and freedoms are being violated (Fitria, 2022).

Concrete cases of conflict between criminal law and religious law can be found in many countries. For example, in some Muslim-majority countries where Sharia law is applied, the rules regarding crimes such as theft or adultery are such that the penalties can be very different from those prescribed by secular criminal law. This has often led to heated debates and polemics within society, particularly when the punishments imposed by religious law are deemed to be inconsistent with the human rights principles upheld by international law (Fadhil, 2022).

This conflict can also be exacerbated by differing views on human rights. Secular law often draws on international human rights standards that emphasise the protection of individuals from punishment deemed inhumane or degrading. On the other hand, religious law may have a theological basis that considers some forms of punishment as legitimate and necessary to maintain moral and religious order. For example, stoning or hand-cutting applied by some countries with Sharia law, which is often criticised by the international community as a violation of human rights (Yulianti, 2022).

Efforts to harmonise these two laws range from adapting secular law to be more sensitive to religious law, to reforming religious law to be more in line with universal legal principles. Some countries choose to accommodate religious law in their legal system through legal dualism, where secular and religious law are given clear space and authority in certain aspects, such as family and civil law. Another step is to conduct inter-

religious and inter-legal dialogue to reach an acceptable common ground (Mulyana, 2007).

Conflicts between criminal law and religious law thus reflect the complex challenges facing multicultural and multireligious societies. Effective resolution requires deep understanding, tolerance and collaborative efforts to create legal harmony that is not only fair and effective but also respectful of diverse beliefs and practices. In such efforts, dialogical approaches and legal reforms may be the most constructive avenues to reduce tensions and strengthen social cohesion amidst differences.

Convergence between Criminal Law and Religious Law

Criminal law and religious law are two different legal systems in many aspects, but there are points of convergence between them that are interesting to discuss. Convergence between criminal law and religious law often occurs in countries that embrace religious principles in their legislation and law enforcement practices. Basically, both criminal law and religious law aim to maintain social order and protect individuals from harmful actions (Indrawati ., 2023)

One obvious example of convergence is in the application of sharia law in several countries, such as Saudi Arabia, Iran, and some parts of Indonesia. Sharia law, which is derived from Islamic teachings, covers various aspects of life, including strict criminal rules. For example, the punishment for theft in sharia law is hand-cutting, while in modern criminal law, the punishment can be imprisonment. Although the methods are different, these two legal systems both aim to prevent crime and sanction the perpetrators (Fikri, 2023).

In addition, rules regarding justice and injustice are also points of convergence between religious law and criminal law. For example, many religions teach that theft, murder and other violent acts are grave sins that must be punished. Modern state criminal laws adopt the same principle by imposing sanctions against such acts. In some countries, the legal system even allows the use of religious references in sentencing, especially in certain cases involving sensitive moral and ethical issues (Malik, 2022).

However, there are also significant differences between the two that need to be noted. For example, modern criminal law is more secular in nature and tends to prioritise the principles of rationality and human rights. This is reflected in the application of a clean and fair legal process, such as the right to a lawyer, the presumption of innocence, and the prohibition against inhumane punishment. Meanwhile, religious law may prioritise the principles of religious doctrine which can sometimes clash with international human rights principles (Mulyana, 2007).

Another example is in a country like Indonesia, which has a diverse population with various religious beliefs. Criminal law in Indonesia applies generally to all citizens regardless of their religion, but there are also some customary and religious laws that are recognised and can be implemented in certain communities. This shows that the

state tries to integrate the national criminal law with the principles and norms of religion that apply in its society (Dini, 2022).

Ultimately, the convergence between criminal law and religious law is a complex but important phenomenon to understand in the current context of globalisation and legal pluralism. Understanding the relationship between these two legal systems can help in formulating legal policies that are more balanced and respectful of the diversity of perspectives in society. It can also open up discussion on how the law can be more responsive to the moral and ethical values embraced by society without ignoring the principles of justice and universal human rights.

Implications of Conflict and Convergence between Criminal Law and Religious Law

The conflict and convergence between criminal law and religious law reflects the diversity of legal systems that exist in different countries. Some countries adopt religious law as an integral part of their national legal systems, whereas others strictly separate secular and religious law. This situation can lead to discrepancies in the application of the law when conflicting principles are confronted with the same issue (Harahap, 2022)

Conflicts between criminal law and religious law often arise when provisions of religious law are perceived to violate internationally recognised human rights principles. For example, harsh punishments or discriminatory treatment of certain groups can clash with more universal human rights standards. However, countries that adopt religious law argue that the implementation of religious law is part of their freedom of religion (Anshari ., 1997)

Another implication of this conflict is how the state protects the rights of minorities who may have different beliefs or practices from the majority group, especially in jurisdictions where religious law is dominant. This raises the challenge of striking a balance between respecting religious law and ensuring that all citizens are treated fairly and without discrimination (The badge ., 2005)

On the other hand, there is also convergence where criminal law and religious law can complement each other and make a positive contribution to the justice system. This convergence often occurs through the process of law reform, where the principles of both systems are integrated to ensure that the law is fairer and more appropriate to the times (Muladi, 1995).

The importance of training and education on both legal systems cannot be overlooked. Parties involved in the judicial process need to have a deep understanding of how religious law and criminal law can interact and be implemented coherently. This awareness and understanding can assist in reducing potential conflicts and increasing convergence at a practical level (Marwan, 2023).

The development of public policies that touch on these two areas of law also requires extensive consultation with communities affected by religious law. By involving

various stakeholders in the decision-making process, the state can identify and address potential conflicts and promote more harmonious co-operation between the various legal systems (Hartono, 2022) .

Overall, while the conflict between criminal law and religious law can be challenging, the process of convergence and legal reform and dialogue on diversity can be a pathway to a more inclusive and just legal system for all.

Conclusion

From a criminological perspective, conflicts between criminal law and religious law mainly arise when religious norms demand the application of harsher or different punishments than those provided for in secular criminal law. These conflicts are often fuelled by differing views on justice, appropriate punishment, and human rights. Criminology can utilise this analysis to understand the social impact of the application of religious law in criminal contexts, including how this affects people's perceptions of legal authority and justice.

Convergence can occur when both legal systems reinforce each other to achieve the same goals, such as crime prevention and community protection. In some cases, ethical and moral principles from religious law can be adapted into the criminal law framework to achieve more comprehensive and effective outcomes. Through institutional dialogue and legal reform, this potential convergence can be harnessed to strengthen law enforcement and increase public confidence in the justice system.

The implications of this conflict and convergence for criminal and social policy are significant. Policymakers need to be mindful of the balance between maintaining the diversity of legal practice and ensuring the protection of individual rights. A criminological perspective can help identify areas where adjustments or reforms are needed to improve the effectiveness of the legal system, while promoting social justice and community cohesion. By taking into account the views of various parties, more inclusive and responsive policies can be shaped to address issues that arise at the intersection of criminal law and religion.

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