



Adultery Criminalization Spirit in Islamic Criminal Law: Alternatives in Indonesia's Positive Legal System Reform

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Abstract: This study aims to provide new ideas in the criminal law reform discourse in Indonesia, especially concerning the adultery issue, by employing a socio-legal approach and Islamic criminal law. The socio-legal approach was performed by combining normative analysis and non-legal scientific tactics in observing the applicable law. Meanwhile, the Islamic criminal law was used to assess and contribute new ideas to the Indonesian legal system in the future, presuming criminal law reforms are implemented. The results indicated fundamental weaknesses in Article 284 of the Criminal Code (KUHP) in terms of defining adultery and the prescribed sanctions. Hence, the community's need for efforts to reform the adultery penalty following the national culture is inevitable. The best solution is that the spirit of adultery sanctions in Islamic criminal is expected to be an alternative to renew Indonesia's criminal law system in the future. Although some elements of the nation may not expect the form of adultery sanction in Islamic penalties, the spirit in it aims to have strong legal certainty and maintain human life.

Keywords: Adultery criminalization, Islamic criminal law and positive legal system reform.

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Abstrak: Penelitian ini bertujuan untuk memberikan gagasan baru dalam wacana pembaharuan hukum pidana di Indonesia terutama yang menyangkut persoalan zina dengan menggunakan pendekatan sosio-legal dan hukum pidana Islam. Pendekatan sosio-legal yaitu mendekati suatu permasalahan melalui penggabungan antara analisa normatif dan pendekatan ilmu non-hukum dalam mengamati hukum yang berlaku. Sedangkan pendekatan hukum pidana Islam yaitu untuk menilai dan memberikan sumbangsih pemikiran hukum baru dalam sistem hukum Indonesia ke depannya jika dilakukan pembaharuan hukum pidana. Hasil penelitian mengindikasikan bahwa pasal 284 Kitab Undang-Undang Hukum Pidana (KUHP) memiliki kelemahan yang mendasar dari sisi pendefinisian zina dan sanksi yang ditentukan. Kebutuhan masyarakat terhadap upaya pembaruan hukuman zina yang sesuai dengan kultur bangsa menjadi tidak terelakkan lagi. Solusi terbaiknya, ruh dan spirit sanksi zina dalam pidana Islam menjadi sebuah alternatif dalam rangka memperbaharui sistem hukum pidana Indonesia ke depannya. Bentuk sanksi zina dalam pidana Islam bisa saja tidak diharapkan oleh sebagian elemen bangsa, tetapi spirit di dalamnya yang bertujuan memiliki kepastian hukum yang kuat dan menjaga keberlangsungan hidup manusia.

Kata Kunci: Pidana zina, hukum pidana Islam dan sistem hukum positif.

Introduction

Adultery (*Zina*) is a despicable act that damages the morale of individuals and society.¹ Simply put, adultery is an act of having sexual relations without any marital ties, and it does not only damage the perpetrators but has an immense influence on public order regarding other impacts that could arise.

In Indonesia, adultery is a serious problem because of the population diversity, and the reality is that the majority of its citizens adhere to Islamic teachings that uphold honor in all aspects. Likewise, the constitution, Pancasila, is the basis for the state to condemn these immoral acts.² Adultery is associated with Eastern traditions that uphold local cultural values and has its penalties in several regions in Indonesia, according to local customary laws.³

This act is increasingly rampant both for individuals that are unofficially and officially married, when, in fact, marriage should be the last bastion to prevent

¹Anis Widyawati, "Criminal Policy of Adultery in Indonesia," *Journal of Indonesian Legal Studies* 5, no. 1 (2020), p. 171–83, <https://doi.org/https://doi.org/10.15294/jils.v5i1.36786>.

²Islamul Haq, "Pengaruh Perbedaan Keterangan Saksi Jarimah Zina (Perpektif Hukum Positif Dan Hukum Pidana Islam)," *Al-Ahkam: Jurnal Ilmu Syari'ah Dan Hukum* 5, no. 1 (2020), p. 1-14, <https://doi.org/10.22515/al-ahkam.v5i1.2129>.

³Elon Suparlan, "Pelaksanaan Sanksi Adat Bagi Pelaku Zina di Kecamatan Seluma Utara Kabupaten Seluma Perspektif Hukum Islam," *Qiyas* 3, no. 2 (2018), p. 166–79, <https://core.ac.uk/download/pdf/229572863.pdf>.
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it from being widespread.⁴ Although legal, moral, and religious principles function to prohibit committing adultery, the legal method prohibits these acts by formulating them in the criminal law. This law signifies that there are other people appointed by legal regulations to apply certain coercive measures against the perpetrators of adultery.⁵

Indonesians who are predominantly Muslim must apply the surah al-Isrā' verse 32 of the Qur'an.⁶ This verse explains that adultery is a violation of religious and moral norms and its sanction in Islamic law is stipulated by the Qur'an. However, these sanctions have a transcendental character, as they are not formulated by the community but are determined by religious principles.

Harmonization between religious values and local Indonesian traditions is expected to create a better law to regulate adultery as the need for new laws concerning legal firmness to this act is currently a priority.⁷ The regulation of this criminal act in the Indonesian legal system has several elements that are incompatible with the meaning of adultery in the living societal law.⁸ Therefore, it creates various interpretations about the numerous articles concerning this act, as terms, such as an affair, cannot be interpreted as adultery. However, all forms of illegal sexual relations in Islamic teachings are considered adultery.

The handling of adultery cases in Aceh is quite effective because it is able to change the public's perspective that adultery is a deviant act.⁹ In Islamic criminal law, the substance of adultery is a deviant act. The Indonesian government can consider these reasons to be used as an alternative as a preventive measure against immoral crimes.

In the Qanun, seclusion is an act that leads to adultery between two people of the opposite sex with non-mahram status and without marital ties, which is carried out in a closed or hidden place on the basis of the willingness of both

⁴Desak Putu Eka Nilakusmawati and I Gusti Ayu Made Srinadi, "Adultery and Divorce; Studi of Women Perception," *Jurnal Studi Jender SRIKANDI* 6, no. 1 (2012), <https://ojs.unud.ac.id/index.php/srikandi/article/view/2883>.

⁵Ishaq Ishaq, "Kontribusi Konsep Jarimah Zina Dalam Pembaharuan Hukum Pidana Indonesia," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 14, no. 1 (2014), p. 81, <https://doi.org/10.18326/ijtihad.v14i1.81-100>.

⁶Meaning: "Do not go near adultery. It is truly a shameful deed and an evil way"

⁷Laras Astuti and Trisno Raharjo, "Harmonization of Adultery Regulations in Indonesian Criminal Code with Islamic Law," in *4 International Conference the Community Development in ASEAN*, 2017, 416–426.

⁸Sahran Hadziq, "Pengaturan Tindak Pidana Zina Dalam KUHP Dikaji Dari Perspektif Living Law," *Lex Renaissance* 4, no. 1 (2019), p. 25–45.

⁹Rahmat Satria Kurniawan, "Efektifitas Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat Terhadap Tindak Pidana Zina (Studi Wilayahul Hisbah Banda Aceh)" (Universitas Muhammadiyah Sumatera Utara, 2019).

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parties.¹⁰ The law in Aceh absolutely and in text provides an opportunity to create new sanctions, which do not refer to the KUHP and the KUHP.¹¹

Sexual harassment is a very troubling issue. For example, there are cases of sexual harassment experienced by employees of the Indonesian Broadcasting Commission or KPI that spread to the public. A similar case, sexual harassment that occurred in college. A Riau University student reported the sexual harassment she received from an unscrupulous lecturer while conducting thesis guidance.¹²

Not many people realize that the actions that the perpetrator or the victim feels fall into the category of sexual harassment.¹³ There are many kinds of sexual crimes that fall into the harassment category, namely rape, sexual harassment, sexual exploitation, sexual torture, sexual slavery, intimidation, threats and attempted rape, forced prostitution, and many more.¹⁴

Other problems arise along with technological developments, such as the easily accessible viewing of adultery in cyberspace.¹⁵ Internet media can provide positive things if used for good and negative if it leads to sin, including adultery,¹⁶ as the implications of technological advances if misused, can create other crimes that lead to this act

This is qualitative research with a socio-legal and Islamic criminal law approach. The socio-legal approach was performed by tackling the problem through a combination of normative analysis and non-legal scientific tactics in observing the applicable law. Meanwhile, the Islamic criminal law was used to assess and contribute new legal ideas to the Indonesian legal system, should criminal reforms be performed in the future. With this approach, research can understand the changes and developments in the philosophy underlying the rule of law, especially regarding the adultery issue.

¹⁰ Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat.

¹¹ Ridwan Nurdin and Muhammad Ridwansyah, "Aceh, Qanun and National Law: Study on Legal Development Orientation," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 4, no. 1 (2020), p. 107–31, <http://dx.doi.org/10.22373/sjhc.v4i1.6416>.

¹² Hendrik Khoirul Muhid, "Survei INFID 2020, Pelaku Pelecehan Seksual Patut Dipenjara 10-15 Tahun," *Tempo.Co*, November 15, 2021, <https://nasional.tempo.co/read/1528738/survei-infid-2020-pelaku-pelecehan-seksual-patut-dipenjara-10-15-tahun/full&view=ok>.

¹³ Shawn Meghan Burn, "The Psychology of Sexual Harassment," *Teaching of Psychology* 46, no. 1 (2019), p. 96–103, <https://doi.org/10.1177/0098628318816183>.

¹⁴ Istiadah et. al., "Strategies for Combating Sexual Harassment in Islamic Higher Education," *Ahkam: Jurnal Ilmu Syariah* 20, no. 2 (2020), p. 257–80.

¹⁵ Andreas Vossler, "Internet Infidelity 10 Years On: A Critical Review of the Literature," *The Family Journal* 24, no. 4 (2016), p. 359–66, <https://doi.org/10.1177/1066480716663191>.

¹⁶ Md. Tarequl Islam, "The Impact of Social Media on Muslim Society: From Islamic Perspective," *International Journal of Social and Humanities Sciences* 3, no. 3 (2019), p. 95–114. <http://jurnal.arraniry.ac.id/index.php/samarah>

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Primary data sources were obtained from interviews with criminal law experts, including interviews with academics through lecturers and students. This study also interviewed legal practitioners, such as judges, prosecutors, and parties that can make contributions. Other sources were obtained from relevant previous studies and elaborated with strong critical analysis. This research also conducted a classification inventory of articles in the Criminal Code generally relating to morality.

Articles Against Adultery in the Indonesian Criminal Code (KUHP)

Indonesia has an ideological foundation called Pancasila.¹⁷ Meanwhile, the country applies the Western legal system, customary, and Islamic laws,¹⁸ alongside the laws of other religions.¹⁹ This legal system recognizes two divisions, namely public law, which includes legal regulations governing the power and authority of the ruler or state, as well as the relations between society and the state. The second division is the private law, which comprises legal regulations concerning the relationship between individuals in fulfilling their needs.

Subsequently, the morality issue regarding adultery can violate public and private laws.²⁰ However, the essence of adultery contained in the Criminal Code is too narrow and therefore implies a light punishment. Adultery is regulated in Article 284 of the Indonesian Criminal Code,²¹ and the following table holds more details of adultery articles in the Code:

¹⁷ Agustya Catur Mahendra, "Ambiguity of Adultery Concept (Zina) in Criminal and Justice System (A Comparison between Indonesia, Pakistan, and Turkey)," *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 1 (2019), p. 93–106, <https://doi.org/10.15294/ijcls.v4i1.19614>.

¹⁸ Ishak, "Analisis Hukum Islam Tentang Perbuatan Zina Dalam Pasal 284 Kitab Undang-Undang Hukum Pidana Dalam Pembaharuan Hukum Pidana," *Kanun : Jurnal Ilmu Hukum* 14, no. 1 (2012), p. 165–78, <https://doi.org/10.24815/kanun.v14i1.6205>.

¹⁹ Fajar Nurhardianto, "Sistem Hukum Dan Posisi Hukum Indonesia," *Jurnal Teropong Aspirasi Politik Islam* 11, no. 1 (2015), p. 34–45. <https://doi.org/10.24042/tps.v11i1.840>.

²⁰ Abdul Syatar and Achmad Abubakar, *Filosofi 'Uqubah Islamiyah Versi Ramadhan Al-Buti; Relevansi Dengan Pemidanaan Dalam Sistem Hukum Indonesia*, Gowa: Alauddin University Press, 2020. p. 56.

²¹ Agustya Catur Mahendra. "Ambiguity of Adultery Concept (Zina) in Criminal and Justice System (A Comparison between Indonesia, Pakistan, and Turkey)." *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 1 (2019): 93–106. <https://doi.org/10.15294/ijcls.v4i1.19614>. <http://jurnal.arraniry.ac.id/index.php/samarah>

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Table 1:
Several articles on laws against indecency in the Indonesian Criminal Code (KUHP)

Article in the KUHP	Qualification	The Elements	Criminal Threats
Article 281	Breaking morality	Deliberate, in public, undermine decency, and in front of other people whose presence is not his will	2 years 8 months' maximum imprisonment or a maximum fine of IDR 4,500
Article 284	Adultery (<i>Zina</i>)	Participation of men and women, where one or both of them are married, in adultery	9 months maximum in prison
Article 285	Rape	With violence or threats, forcing a woman, having intercourse outside of marriage	12 years maximum in prison
Article 286	Intercourse outside of marriage with women in unconscious or helpless conditions	Intercourse without marriage with a woman he knows is unconscious or helpless	Maximum 9 years in prison
Article 287	Having intercourse with a woman under 15 years when it is not time to marry	Unmarried intercourse with a woman he knows is not yet 15 years old and has not married yet	Maximum 9 years in prison
Article 288	Having intercourse when married with a woman	Whoever has intercourse in marriage with a	Paragraphs (1), (2), and (3) demand a maximum of 4,

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	not yet ready for marriage, which results in severe injury or death of a person	woman who is under married age Paragraph (1) causes injury, (2) causes serious injuries, and (3) results in death	8, and years in prison, respectively
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Data Source: Mahkamah Agung, 2008.²²

Adultery in the Islamic Criminal Law System

In Islamic criminal law, adultery is one of the crimes punishable by hudud.²³ The formulation of hudud which is identical with other forms of punishment (*al-'uqūbāt al-muqaddara*) is the ijtihad of the jurists on the prophetic tradition, namely the sunnah. As a result of ijtihad, the existing hudud formulation is a scientific space that is open to criticism.²⁴

Al-Būṭī stated that Islamic criminal law is a product of past laws that have remained relevant to the times. According to this researcher, not all modern things are better than those that came from the past, as some modern events are a source of calamity, while the ancient ones are a source of life.²⁵ According to 'Abd al-Qadīr 'Audah, the purpose of Islamic criminal law is not limited to providing a deterrent effect and efforts to prevent crime but extends to maintaining the integrity of people's lives and public order. It also aims to provide education about the importance of the law living in society.²⁶

In Islamic criminal law, referring to the Qur'an and hadith, adultery is classified into two, namely adultery for already or previously married (*muḥṣan*) and for those who have never been married (*gair muḥṣan*). The classification affects the different punishments between the two.

²² Mahkamah Agung, *Kualifikasi Tindak Pidana*, Jakarta: Mahkamah Agung, 2008, p. 19-22.

²³ Dedy Sumardi, "Hudūd dan HAM: Artikulasi Penggolongan Hudūd Abdullahi Ahmed an-Na'im," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 35, no. 2 (2011), p. 372–90, <https://doi.org/10.30821/miqot.v35i2.149>.

²⁴ Junaidi Abdillāh, "Diskursus Hudūd Dalam Studi Hukum Islam (Melacak Evolusi Rumusan Hudūd)," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial* 13, no. 2 (2018), <https://doi.org/10.19105/al-lhkam.v13i2.1881>.

²⁵ Muhammad Sa'id Ramadhan Al-Buti, *Al-'Uqubat Al-Islamiyah; Wa 'Uqdah Al-Tanaqud Bainaha Wa Baina Ma Yusamma Bi Thabi'ih Al-'Ashr*, Damaskus: Dar al-Fikr, 1999, p. 6.

²⁶ 'Abdul Qadir 'Audah, *Al-Tasyri' Al-Jina'i Al-Islami; Muqaranan Bi Al-Qanun Al-Wadh'i, Jil. II*, Kairo: Maktabah al-Taufiqiyah, 2013, p. 201. <http://jurnal.arraniry.ac.id/index.php/samarah>

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First, the punishment for adulterers who have never been married is 100 lashes, follows the instructions of the Qur'an in Surah al-Nūr verse 2.

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَلَيْشَهِدَ عِدَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ

Meaning:

*“As for female and male fornicators, give each of them one hundred lashes, and do not let pity for them make you lenient in ‘enforcing’ the law of Allah, if you ‘truly’ believe in Allah and the Last Day. And let several believers witness their punishment”*²⁷

Second, the punishment for adulterers who are or have been married is stoning, according to the textual hadith of the Prophet Muhammad:

البكر بالبكر جلد مائة ونفي سنة والتيب بالتيب ، جلد مائة والرجم

Meaning:

*“Virgin males and females, if they commit adultery, are flogged 100 times and exiled a year. Widows and widowers, if they commit adultery, are flogged 100 times and stoned”*²⁸

From the two arguments, the very severe punishment for the perpetrator who is proven to have committed a criminal act of adultery is due to a violation of the obligations and rights of others to maintain their honor and chastity.²⁹

Punishment for adultery can be done through evidence with: a). The confession made by the perpetrator is a strong piece of evidence in determining the hadd of adultery, as did the Messenger of Allah. never set a law against adultery committed by Ma'is and al-Ghamidiyah women. b). Testimony, the adultery committed by the perpetrator must be witnessed by at least four male witnesses with their own eyes, the witness must be fair; c). Pregnancy, is supporting evidence of a person being punished for committing adultery.³⁰

So the purpose of criminal law in cases adultery is to maintain human honor and dignity while at the same time maintaining the sanctity of religion. This

²⁷ Kementerian Agama RI, *Al-Qur'an Dan Terjemahannya*.

²⁸ Abū al-Husain Muslim bin al-Ḥajjāj bin Muslim, *Ṣaḥīḥ Muslim*, IV, Kairo: Dār Iḥyā al-Turāṣ al-'Arabī, 2010, p. 488.

²⁹ Hamzah Hasan, “Implementasi Nilai-Nilai Kewajiban Asasi Manusia (Telaah Hukum Pidana Islam),” *Mazahibuna; Jurnal Perbandingan Mazhab* 2, no. 1 (2019), p. 92–119, <https://doi.org/10.24252/mh.v1i2.11650>.

³⁰ Sayid Sabiq, *Fiqh al-Sunnah*, Juz II, Beirut: Dar al-Fikr, 1983, p. 352-356. <http://jurnal.arraniry.ac.id/index.php/samarah>

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goal is clearly in accordance with the objectives of Islamic law or *maqashid al-sharia*, namely maintaining religion and protecting offspring.

Criticism of the Adultery Article in the Criminal Code

In terms of existence, there are articles in the Criminal Code, especially regarding the punishment for adultery, which can be said to no longer follow the times. The current Criminal Code is a legacy product of Dutch colonialism and is considered to no longer correspond with the reform spirit, which upholds freedom, justice, independence, human rights, and democratic values.

Adultery in the Criminal Code in Article 284 has a point where a person is said to be an adulterer if one or both of them are bound by marriage.³¹ Therefore, it is one of the reasons that it is less effective in suppressing the adultery spread.

According to Andi Ramdan as judge, the articles in the Indonesian Criminal Code relating to adultery are ineffective due to the complaint offense.³² However, the ineffectiveness is not because it is not useful, as the very mild punishment in the adultery articles can be a lesson for others.

Conversely, according to a practitioner and prosecutor, Fadhil,³³ many adultery cases in Indonesia do not enter the realm of law because they are not reported by their partners. However, the article is at least able to suppress infidelity and maintain domestic harmony. Many couples do not have the heart to report their partners because they are always able to apologize. The adultery articles in the Criminal Code are sufficient to accommodate the interests of providing a sense of justice and legal certainty for couples, especially women, and the solution to making it more effective requires legal knowledge. It should be part of the provisions before marriage to ensure the parties understand that there is protection for the status of a wife or husband if one of them commits adultery. The understanding of some people so far is that adultery will only be an excuse for divorce and cannot be punished.

A weakness in the Indonesian positive law related to adultery is that unmarried individuals cannot be penalized. Therefore, there should be changes in these laws and regulations. Although there is a Draft Law on the prohibition of cohabiting, it is still only a draft that has not been passed.

Article 284 of the Criminal Code regarding adultery is currently irrelevant and considered unideal as a legal product that guarantees the upholding of security and order in people's lives as the aspired legal goals. The substance of

³¹ Solahuddin, *Kitab Undang-Undang; Hukum Pidana, Acara Pidana Dan Perdata*, II, Jakarta: Visimedia, 2008.

³² Interview with Andi Ramdan Saputra, Judge, on February 11, 2021.

³³ Interview with Fadhil, Judge, on February 12, 2021.

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this article is unable to reflect and accommodate legal values of customary and religious law in society. However, the positive side of this article is that it acts as the last bastion in handling cases of complaint offenses related to adultery.

Spirit of Adultery Punishment in Islam as a Solution to Reform Indonesian Criminal Law

In Islamic criminal law, there are determined (*muqaddarah*) and undetermined (*gair muqaddarah*) sanctions.³⁴ Determined punishments are closely related to the sentence of *had*, which cannot be changed in form and size, while undetermined penalties are returned to the country's government authorities, commonly known as *takzir*.

The *had* punishment for adultery and accusing others of this act (*al-qazf*) aims to guarantee and protect one's reproductive rights (*hifz al-nasl*).³⁵ This *had shari'a* stipulates that there is wisdom in the punishment of 100 lashes for unmarried people and stoning for married, which is to maintain the lineage (*nasab*) and descent clarity, as well as show the honor of a Muslim.

Adultery is the act of a rational man who inserts his genitals in either the front or back of a woman without a marital relationship. Meanwhile, Abu Hanifah understands adultery to be limited to the front only. In Islamic law, it covers every illegitimate sexual relationship, including when one of the adulterous couples is not married, or both are married, based on mutual willingness or not. If the act is proven, it will be subject to *zina had*, and this punishment is the consistency of sanctions in Islamic penalties.

The source of Islamic criminal law from the Qur'an and hadith have clear legal certainties to ensure community life and maintain public order (*hifz al-jamā'ah*).³⁶ Although the power of this law lies in revelation, which is the source, thereby creating unquestionable legal products, the life of the nation and state has, in reality, received criticism and castigation from the contra group.

Some anti-enforcing groups, specifically Islamic criminals, think that it is a phenomenon of decline and backwardness. These circles particularly saw that several criminal laws were determined to be cruel and barbaric and no longer corresponded with the current modern and civilized conditions.³⁷ Some contemporary Muslim thinkers understand sharia as a developing and innovative concept, within the scope of the sharia objectives, as well as benefit boundaries that should be maintained and prioritized.

³⁴ Al-Buti, *Al-'Uqubat Al-Islamiyah; Wa 'Uqdah Al-Tanaqud Bainaha Wa Baina Ma Yusamma Bi Thabi'ih Al-'Ashr.*, p. 16.

³⁵ M. Nurul Irfan, *Hukum Pidana Islam*, Jakarta: Amzah, 2016, p. 56.

³⁶ 'Audah, *Al-Tasyri' Al-Jina'i Al-Islami; Muqaranan Bi Al-Qanun Al-Wadh'i, Jil. II*.

³⁷ Ahmad Al-Risuni, *Al-Ijtihad: Al-Nash, Al-Waqi, Al-Mashlahah*, Damaskus: Dar al-Fikr, 2000.

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Generally, five elements should be prioritized under any circumstances in Islam, which are guarding religion (*hifz al-dīn*), the soul (*hifz al-nafs*), descent (*hifz al-nasl*), reason (*hifz al-'aql*), and property (*hifz al-māl*).³⁸ Heavy sanctions for adultery are performed for the sake of maintaining the descent and are not mixed with any decency violations.

Criticism of Article 284 of the Criminal Code in Islam, which views adultery as an act committed by a man or woman who has been married, exists. This element is less supported because it opens up a very wide space and opportunity for the spread of this crime in various forms and variations. Other considerations will be mixed with *nasab*, the transmission of venereal diseases, disturbing household harmony, causing tyranny to the child, whose neglect will cause disturbance to the state. Therefore, the mild sanction in article 284 of the Criminal Code, namely a maximum of nine (9) months in prison, is ignored by some people, as it violates legal, religious norms, and Indonesian cultural norms.

Likewise, in the Criminal Code (KUHP), sexual relations between men and women which are made consensual and without marriage ties are not a violation of the law. The criminal code prohibits actions if one or both of them are married, this can also be dealt with if one of the partners complains to the legal apparatus. on the other hand, if there is no complaint, it means that there is no violation of the law. In contrast to Islamic criminal law, the husband and wife relationship between those that are not based on the marriage bond, even though it is realized by mutual desire, is clearly an act of violation and the law is *haram*.³⁹

The form of accommodation of Islamic law into national criminal law has actually been running since the sultanate era, the Dutch colonial era, the independence era, the old order era, until the current reform era. Thus, this is based on the assumption that with the enactment of Islamic criminal law, criminal acts which are increasing day by day in society can be reduced little by little. The accommodation of Islamic criminal law in the reform era has entered a new era, namely, as an example of the Jinayat Law (*Qanun Jinayat*) imposed in Aceh. Therefore, the Draft Criminal Law (RKUHP) that is being fought for is a part of the legislative political struggle by members of the DPR of the Republic of Indonesia.⁴⁰

In relation to the Qanun Jinayat (criminal) denfan in Aceh in 2014, in the midst of discussions about the RKUHP. As part of the region Indonesia, the uniqueness of Aceh's Jinayat Qanun can be used as inspiration in development of

³⁸ Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syari'ah, Juz II*, Kairo: Maktabah al-Taufiqiyah, 2003, p. 11.

³⁹ Lysa Angrayni, "Hukum Pidana dalam Perspektif Islam dan Perbandingannya dengan Hukum Pidana di Indonesia," *Jurnal Hukum Islam* 15, no. 1 (2015), p. 46-60.

⁴⁰ Mara Sutan Rambe, Proses Akomodasi Hukum Islam kedalam Hukum Pidana Nasional, *Jurnal Cita Hukum* 3, No. 2 (2015), p. 225-246. DOI: 10.15408/jch.v2i1.1846. <http://jurnal.arraniry.ac.id/index.php/samarah>

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criminal law in Indonesia. At the same time, criminal reorientation in Aceh can become an integral part and even strengthen the Indonesian legal system.⁴¹

An expert in the field of Islamic law,⁴² severe sanctions in Islamic legal penalties related to adultery protect human rights and also provide priorities to ensure human obligations are prioritized. This means that every human should have an obligation to maintain public order.

The penalty for adultery in Islam is not always 100 strokes of the cane or stoning. These sanctions are decided by the judge of the judicial procession, provided the proof has fulfilled the elements, such as having four male witnesses in court. However, if the elements are not fulfilled, the adulterer can be charged with *takzir*, which is returned by the government judge authority in a country.

From the study above, if it refers to the concept of Islamic criminal law, especially concerning the law of adulterers, basically it can be used as material for consideration and input for the development of national law. Therefore, serious cooperation is needed from various parties, both executive, legislative, judicial and academic to make it a national criminal law in harmony with the religious, customary and social values of the Indonesian nation.⁴³

The beneficial considerations contained in Islamic criminal law can be used as recommendations in the reform of positive criminal law with its legal material. Subsequently, the main point to consider seriously is the spirit contained in law even if it is not possible to fully enforce it. This is an urgent need (*darūri*) in human life and society, which if disturbed, can endanger the continuity of human life as a whole.

Conclusion

The Criminal Code regarding adultery (*zina*) has fundamental weaknesses regarding the definition of adultery and the prescribed sanctions. Since *zina*, according to the article, may become an offense in a complaint, it is not universal in defining adultery. Also, the community's need for efforts to reform the adultery penalty according to the national culture is inevitable. Islamic criminal law

⁴¹ Ridwan Nurdin, "Kedudukan Qanun Jinayat Aceh Dalam Sistem Hukum Pidana Nasional Indonesia," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 42,, No. 2 (2018), p. 356-378. <http://dx.doi.org/10.30821/miqot.v42i2.542>.

⁴² Islamul Haq, "Prison in Review of Islamic Criminal Law; Between Human and Deterrent Effects," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, no. 1 (2020), p. 132–150. DOI: <http://dx.doi.org/10.22373/sjhc.v4i1.6683>.

⁴³ Hamid Farihi, "Zina, Qadzaf, dan Minuman Keras dalam Perpektif Hukum Pidana Islam," *Mizan: Jurnal Ilmu Syariah* 2, no. 1 (2014), p. 83-96. Anis Farida, Esensi Hukum Pidana Islam dan Sistem Hukum Nasional Indonesia, *al-Jinâyah: Jurnal Hukum Pidana Islam* 5, No. 2 (2019), p. 425-456.

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considers broad social aspects, which correspond with the Indonesian culture. Hence, the best solution for the spirit of adultery sanctions is an alternative in the framework of reforming the Indonesian criminal law system in the future. Although the form of adultery sanction in Islamic criminal law may not be expected by some elements of the nation, the spirit in it is aimed at having strong legal certainty and maintaining human survive.

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