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A CONSTRUCTIVE CRITIQUE OF THE POLITICS OF ISLAMIC CRIMINAL LAW IN A CONSTITUTIONAL STATE

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Abstract: The tension between Islamic criminal law and the constitutional state has often been framed as a matter of normative compatibility rather than a problem of legal political paradigm. Public discourse tends to represent *jināyah* reductively as merely a symbol of punishment, thereby ignoring its ethical dimensions and protective purposes. This study aims to analyze how Islamic criminal law is positioned within the defensive logic of the constitutional state, while offering a reconstruction from the politics of formalization towards the substantialization of values. The method used is normative legal research with a conceptual and philosophical approach, through an analysis of the theory of the rule of law, legal politics, and the principles of *maqāṣid al-syarī'ah*. The results of the study show that the main problem does not lie in the inherent conflict between *jināyah* and the constitution, but rather in the state's verificative and subordinative approach, as well as in the orientation of normative struggles that are trapped in legislative symbols. The novelty of this research lies in the shift of analysis from formalistic debate to substantive integration based on the values of protection and justice, while offering a dialogical framework that allows Islamic criminal law to transform into a source of public ethics that is constitutional, rational, and relevant to the development of national criminal law.
Keywords: Islamic criminal law, criticism, logic, constitutional state, legal politics

***Abstrak**: Ketegangan antara hukum pidana Islam dan negara konstitusional selama ini lebih sering dibingkai sebagai persoalan kompatibilitas normatif daripada sebagai problem paradigma politik hukum. Diskursus publik cenderung merepresentasikan jināyah secara reduktif sebatas simbol sanksi sehingga mengabaikan dimensi etik dan tujuan perlindungan yang dikandungnya. Penelitian ini bertujuan menganalisis bagaimana hukum pidana Islam diposisikan dalam logika defensif negara konstitusional, sekaligus menawarkan rekonstruksi dari politik formalisasi menuju substansialisasi nilai. Metode yang*

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digunakan adalah penelitian hukum normatif dengan pendekatan konseptual dan filosofis, melalui analisis teori negara hukum, politik hukum, serta prinsip-prinsip maqāṣid al-syarīʻah. Hasil penelitian menunjukkan bahwa problem utama bukan terletak pada konflik inheren antara jināyah dan konstitusi, melainkan pada pendekatan negara yang verifikatif dan subordinatif, serta pada orientasi perjuangan normatif yang terjebak pada simbol legislasi. ebaruan penelitian ini terletak pada pergeseran analisis dari perdebatan formalistik menuju integrasi substantif berbasis nilai perlindungan dan keadilan, sekaligus menawarkan kerangka dialogis yang memungkinkan hukum pidana Islam bertransformasi menjadi sumber etika publik yang konstitusional, rasional, dan relevan dalam pembangunan hukum pidana nasional.
***Kata Kunci**: hukum pidana Islam, kritik, logika, negara konstitusional, politik hukum*

INTRODUCTION

The discourse on the relationship between Islamic criminal law and constitutional states is often framed within a binary opposition between Sharia and the constitution.[1] In many debates, Islamic criminal law is often perceived as a problematic normative entity, while the state is positioned as a neutral actor tasked with limiting and controlling its application. This perspective, although seemingly objective, actually obscures a more fundamental issue, namely the failure of the state's legal policy in responding to Islamic criminal law.[2] Instead of conducting a philosophical and substantive reading of *jināyah* as a system of justice values, the state's legal policy is trapped in a defensive stance that lacks intellectual courage and conceptual reductionism. Islamic criminal law is not treated as a complete normative structure, but is artificially simplified into a mere issue of formalizing *hudūd* sanctions.[3] This narrowing is not merely an academic error, but a legal policy strategy that consciously obscures *maqāṣid al-syarīʻah*, removes the dimension of benefit, and negates the rationality of justice that is at the core of *jināyah*.[4]

[1] Leli Salman Al-Farisi, "Politik Hukum Islam Di Indonesia; Membedah Kerancuan Bukan Negara Agama Dan Bukan Negara Sekuler," *Aspirasi* 11, no. 2 (2021): 20–35, http://aspirasi.unwir.ac.id/index.php/aspirasi/article/view/72.

[2] David Cristian Liyanto, "Kedudukan Partai Oposisi Dalam Mewujudkan Check and Balances Di Politik Hukum Indonesia," *Jurnal Analisis Hukum* 7, no. 2 (2024): 131–42, https://doi.org/10.38043/jah.v7i2.5238.

[3] Jerry Yanto Dwiana Adinda, Alfah Salam, Ardian Ramadhan, Adam Narendra, Masykuri Anasti, "Politik Hukum Dalam Pembaharuan Hukum Pidana Di Indonesia," *Wathan: Jurnal Ilmu Sosial Dan Humaniora* 1, no. 1 (2024): 12–25, https://doi.org/10.71153/wathan.v1i1.16.

[4] Muhsin Aseri, "Politik Hukum Islam Di Indonesia," *Al-Qalam: Journal of Religious and Social Scientific* 9, no. 17 (2016): 143–61, http://dx.doi.org/10.35931/aq.v0i0.57.

State legal policy not only limits the scope for the actualization of Islamic criminal law, but this configuration confirms that the state is not managing Islamic criminal law objectively, but rather controlling and sterilizing it from its normative power.[5] *Jināyah* is not positioned as a source of legal values that can contribute to the formation of national criminal law, but rather as a normative residue that must be monitored, restricted, and tamed so that it does not interfere with the construction of positive law that is considered to be well-established.[6] The main focus of this research is not on the substance of Islamic criminal law, but on the state's legal policy, which fails or is unwilling to recognize the existence of *jināyah* as a justice system worthy of equal dialogue within the framework of a constitutional state.[7] The implication is that the state is more preoccupied with managing political fears and ideological stigma against Islamic criminal law than with exploring its potential for substantive justice.[8]

Contemporary research on Islamic criminal law and its legal politics shows a diverse focus of study, but has not yet directly touched on the dialectical relationship between state legal politics and the construction of Islamic criminal law within a constitutional framework. A bibliometric study conducted by Loso Judijanto and Zulkham Sadat Zuwanda (2025) using Scopus data shows that research on Islamic criminal law has so far focused more on traditional principles such as *hudūd* and *qisas* and the challenges of the relationship between Islamic law and the modern legal framework without systematically examining how the state frames its own Islamic criminal law policy in a constitutional state.[9] Meanwhile, comparative research by Yuni Roslaili and colleagues (2025) has examined the effectiveness of the *Qanun Jināyah* in the Indonesian national legal system, but it is still limited in scope to the regional level and does not conceptually analyze the state's legal policy.[10]

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[5] Rumadi Marzuki Wahid, *Fiqh Madzhab Negara: Kritik Atas Politik Hukum Islam Di Indonesia*, II (Yogyakarta: PT LKiS Printing Cemerlang, 2011), 1–7.

[6] Wahbah Al-Zuḥaylī, *Al-Fiqh Al-Islāmī Wa Adillatuh Juz 6* (Damaskus: Dar al-Fikr li al-Toba'ah wa al-Tauzi' wa al-Natsr bi Damsyq, 1984), h. 217-218.

[7] Sri Wahyuni, *Politik Hukum Islam Pasca Orde Baru* (Yogyakarta: Gapura Publishing.com, 2014).

[8] Sirojul Munir, "Pengaruh Hukum Islam Terhadap Politik Hukum Indonesia," *Istinbath: Jurnal Hukum Islam* 13, no. 2 (2014): 127–55, https://media.neliti.com/media/publications/162970-ID-none.pdf.

[9] Zulkham Sadat Zuwanda Loso Judijanto, "Bibliometric Analysis of Islamic Criminal Law Research in the Modern Legal System," *West Science Islamic Studies* 3, no. 1 (2025): 45–52, https://doi.org/10.58812/wsiss.v3i01.1616.

[10] Suparwani Yuni Roslaili, Faisal Fauzan, "Islamic Criminal Law in a Plural Legal Order: A Systematic Literature Review of Qanun Jinayah Effectiveness in Aceh, Indonesia," *El-Hadhanah: Indonesian Journal Of Family Law And Islamic Law* 5, no. 2 (2025): 115–30, https://doi.org/10.22373/hadhanah.v5i2.7885.

Furthermore, the normative literature studied by Zumiyati Sanu Ibrahim and her fellow researchers (2025) underlines the potential of *maqāṣid al-syarīʻah* to reform modern criminal law to be more humane and fair, but without systematically reviewing how the state strategically frames or restrains Islamic criminal law in the formation of its own legal politics.[11] Given this gap, this study offers a sharp analysis of the state's legal policy in constitutionally constructing Islamic criminal law while critiquing the gap between ideal norms and the reality of *jināyah* policy.

The novelty of this research lies in the shift of the locus of analysis from normative debates surrounding the compatibility of Islamic criminal law with the constitution to a critical reading of state legal politics as the main actor that shapes, limits, and directs the construction of *jināyah* in the national legal system. Unlike previous studies that tended to stop at normative aspects, regional implementation, or textual harmonization, this article places legal politics as a field of power that determines how Islamic criminal law is interpreted and positioned in a constitutional state. The contribution of this study is conceptual and theoretical; it offers a framework for constructive criticism that argues that the main problem with Islamic criminal law lies not in its substance, but in the state's legal-political paradigm, which is defensive, reductionist, and lacks an understanding of *maqāṣid al-syarīʻah*.[12] Thus, the purpose of this research is to reveal the character and problems of Islamic criminal law politics in a constitutional state while formulating a direction for constructive criticism that allows for a more meaningful integration of the values of justice, benefit, and constitutionality.

RESEARCH METHODS

This study uses a normative legal research method with a philosophical, political-legal, and conceptual approach aimed at critically examining the relationship between Islamic criminal law and state legal policy within the framework of a constitutional state. The philosophical approach is used to examine the value foundations, rationality, and objectives of justice inherent in *jināyah*, while the legal policy approach is used to reveal the direction of policy, interests, and strategies of the state in framing and constructing Islamic criminal law. The conceptual approach is used to clarify and organize key concepts such as *jināyah*, legal politics, constitutional state, justice, and public interest so that the analysis

[11] Huseyin Okur Zumiyati Sanu Ibrahim, Suud Sarim Karimullah, Andi Istiqlal Assaad, Rina Septiani, "Integration of Maqaṣid Al-Shari'ah in the Criminal Law Reform to Achieve Justice and Human Dignity," *Jurnal Hukum Islam* 23, no. 1 (2025): 105–44, https://doi.org/10.28918/jhi.v23i1.04.

[12] Abū Isḥāq Al-Shāṭibī, *Al-Muwafaqāt Fī Uṣūl Al-Sharīʿah Juz 2* (Al-Qohiroh: Dar al-Hadith, 1388), h.320.

is not trapped in terminological simplification or ideological bias. The research data consists of primary legal materials in the form of relevant legislation, constitutional documents, and criminal law policies, as well as secondary legal materials in the form of reputable journal articles, textbooks, and scientific works discussing Islamic criminal law, legal politics, and constitutionality. Data collection was carried out through a literature study using systematic search techniques of credible scientific sources. Furthermore, the data was analyzed qualitatively using normative-critical analysis techniques, namely interpreting legal norms and state policies through the framework of legal philosophy and legal politics to identify problems, tensions, and the possibility of reconstructing Islamic criminal legal politics oriented towards justice, benefit, and constitutionality.

DISCUSSION/RESULTS AND DISCUSSION

Islamic Criminal Law Policy as a Control Policy

Islamic criminal law policy within the framework of a constitutional state does not operate within an integrative paradigm, but rather within a control paradigm. The reality of state legal policy towards Islamic criminal law more often reveals a controlling nature than a dialogical one, placing it in a space that is limited and suspicious from the outset, rather than as a constructive partner in the development of the national legal system.[13] Islamic criminal law policy in a constitutional state often does not arise from a desire to understand, but from a drive to control, an attitude that transforms normative dialogue into an asymmetrical power relationship.[14] The fundamental problem is not with the justice system itself, but with the way the state interprets and manages it, in a manner that reflects political fear rather than constitutional courage.[15] The state does not explicitly reject Islamic criminal law, but it also does not truly recognize it as an autonomous and equal value system. This can be referred to as normative control politics, a legal strategy that is not openly repressive, but is systematically restrictive.

First, reductive conceptual representation. Michel Foucault's theory of power-knowledge states, "Whoever controls the discourse will

[13] Ayumi Kartika Sari, "Pengaruh Politik Hukum Dalam Penegakan Hukum Di Indonesia," *Dalihan Na Tolu: Jurnal Hukum, Politik Dan Komunikasi Indonesia* 2, no. 1 (2023): 51–58, https://doi.org/10.58471/dalihannatolu.v2i02.241.

[14] Dodi Irawan, "Jinayah Dan Siyasah Dalam Konsep Pendidikan Islam," *Pengertian: Jurnal Pendidikan Islam* 3, no. 1 (2025): 1–14, https://doi.org/10.61930/pjpi.v3i1.1009.

[15] Adzanah Mariska Salsabila, "Reform of State Administrative Law from the Perspective of Fiqh Siyasah on Public Services to Achieve Good Governance in Indonesia," *Siyasah Wa Qanuniyah: Jurnal Ilmiah Ma'had Aly Raudhatul Ma'arif* 3, no. 2 (2025): 135–51, https://doi.org/10.61842/swq/v3i2.51.

determine what is considered true and valid in the public sphere."[16] When *jināyah* is narrowly represented only as a system of *hudūd* and *qiṣāṣ*, the state is actually forming a regime of truth about Islamic criminal law.[17] *Maqāṣid al-syarī'ah*, which is the objective of Islamic law, always emphasizes the protection of religion, life, reason, property, and honor, which are marginalized from the discourse. Surah al-Baqarah verse 179 emphasizes,[18]

وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ

"*There is security of life for you in the law of retaliation, O people of reason, so that you may become mindful of Allah.*" (QS. al-Baqarah [2]; 179)

This verse normatively indicates a protective and preventive orientation, rather than a destructive one. This reduction in meaning is in line with what Pierre Bourdieu refers to as *symbolic power*, namely power that works through the establishment of social categories and classifications.[19] The state does not need to explicitly reject *jināyah*; simply framing it as a problematic system of harsh punishment already has implications for its slowly weakening social legitimacy. Thus, control over Islamic criminal law has begun at the conceptualization stage, not at the implementation stage.

Second, selective legislation and policy. Legal policy should function as a concrete instrument that reflects the configuration of power and the ideological orientation of the state. Legal policy, in Mahfud MD's perspective, is a basic state policy regarding laws that will or will not be enforced in order to achieve the state's objectives.[20] This means that the formation of laws is never neutral; it should always be selective and ideological. In the context of Islamic criminal law, normative selection is often asymmetrical; *jināyah* norms must undergo a more rigorous constitutional and political screening process than criminal norms derived

[16] Younes Poorghorban, "On Michel Foucault: Power/Knowledge, Discourse, and Subjectivity," *Okara: Jurnal Bahasa Dan Sastra* 17, no. 2 (2023): 318–28, https://doi.org/10.19105/ojbs.v17i2.9749.

[17] Mahbub Setiawan, *Islamisasi Nusantara: Dari Episteme Ke Rezim Kebenaran* (Jawa Timur: Academia Publication, 2023), 526.

[18] Muhammad Alviano Fachrul Mubaraq, Ferdi Hasayangan Dalimunthe, "Keadilan, Diyat Dan Pemaafan Dalam Ayat Qiṣāṣ: Kajian Etis Terhadap Surah Al-Baqarah," *Sujud: Jurnal Agama, Sosial Dan Budaya* 2, no. 1 (2026): 908–14, https://doi.org/10.63822/kxfx2g24.

[19] P. Bourdieu, "Symbolic Power," *Sage Journals Critique of Anthropology* 4, no. 13–14 (1979): 77, https://doi.org/10.1177/0308275X7900401307.

[20] Syahriza Alkohir Anggoro, "Politik Hukum: Mencari Sejumlah Penjelasan," *Jurnal Cakrawala Hukum* 10, no. 1 (2019): 77–86, https://doi.org/10.26905/idjch.v10i1.2871.

from Western-modern traditions.[21] Here we see the relevance of Roberto Mangabeira Unger's theory, which states that law is a product of political choices that reflect a particular vision of society.[22] Meanwhile, Allah's words in Surah an-Nisa' [4] verse 58 command that the establishment of law be carried out fairly, without discrimination based on the source of values.

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۚ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۗ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

"*Indeed, Allah commands you to return trusts to their rightful owners; and when you judge between people, judge with fairness. What a noble commandment from Allah to you! Surely Allah is All-Hearing, All-Seeing*." (QS. an-Nisa' [4]: 58)

However, in practice, *maqāṣid* values are rarely positioned as an equal source of legitimacy in the formation of national law. Legislation becomes an arena for ideological filtration, not a space for normative integration.[23] In other words, control over Islamic criminal law takes place through legal-formal mechanisms that are procedurally valid but substantively problematic.

Third, judicial practice and constitutional interpretation. The constitution is a basic norm (*grundnorm*) that is the source of validity for the entire legal system, as affirmed in the theory of modern constitutionalism developed by Hans Kelsen.[24] However, in its development, as explained by Ronald Dworkin, the constitution also contains moral principles that must be interpreted integratively, not merely textually.[25] The problem arises when the constitutional interpretation of Islamic criminal law is carried out defensively, so that *jināyah* is always positioned as a norm that must adapt, rather than as a source of values that can enrich the constitutional interpretation itself.

[21] Maslihati Nur Hidayati Ery Pamungkas, "Instrumentalisasi Hukum Dan Ketahanan Demokrasi," *Tasyri': Journal of Islamic Law* 4, no. 1 (2025): 609–34, https://doi.org/10.53038/tsyr.v4i1.420.

[22] Roberto Mangabeira Unger, *Politics: A Work in Constructive Social Theory*, I (New York: Cambridge University Press, 1987), 1.

[23] Abu al-Hasan bin Muhammad bin Habib Al-Mawardi, *Al-Aḥkām Al-Sulṭāniyyah Wa Al-Wilāyāt Al-Dīniyyah* (Kuwait: Jami'ah Kuwait - Qism al-'Ulum al-Siyasah, 1058), h. 54-56.

[24] Mohammad Alvi Pratama Syahrul Fauzan Putra Rinaldi, Lyestie Marlya Anggrainy, Cindy Livia Malva, Tiara Desita Sari, "Hukum Positivisme: Analisis Pemikiran Hans Kelsen Tentang Grundnorm," *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora* 3, no. 1 (2025): 1–25, https://journal.forikami.com/index.php/nusantara/article/view/961.

[25] Ronald Dworkin, *Freedom's Law: The Moral Reading of the American Constitution* (New York: Oxford University Press, 1996), 1–9.

Long before modern criminal law emerged, Islamic criminal law emphasized the principle of universal justice.[26] Allah says,

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ ۖ وَلَا يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا ۚ اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ ۖ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

"*O believers! Stand firm for Allah and bear true testimony. Do not let the hatred of a people lead you to injustice. Be just! That is closer to righteousness. And be mindful of Allah. Surely Allah is All-Aware of what you do*." (QS. al-Mā'idah [5]:8)[27]

This principle shows that justice is a transcendent moral value that can synergize with the constitution.[28] However, if judicial interpretation is more oriented towards restriction than dialogue, then the constitution functions as an instrument of normative control. At this point, the relationship between the state and *jināyah* becomes subordinate, not deliberative.

Fourth, the state's criminal policy orientation. Modern criminal theory is heavily influenced by the thinking of Cesare Beccaria and Jeremy Bentham, who emphasized utilitarian rationality and prevention through the calculation of benefits.[29] Criminal law in this paradigm is seen as an instrument of social efficiency. Meanwhile, the *maqāṣid* approach in Islamic law has a more comprehensive moral-spiritual dimension, as explained by Abi Ishq al-Syatibi, that the purpose of sharia is to protect the five basic principles of life (*al-dharuriyyat al-khams*).[30] The word of Allah in Surah al-Anbiyā' verse 107 confirms the mission of *rahmatan lil-'ālamīn*, indicating that Islamic legal policy aims to create universal benefits.

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

[26] Mohamad Syahreza Pahlevi Adzanah Mariska Salsabila, Enceng Arif Faizal, Deden Najmudin, "Islamic Criminal Law Criticism of Article 5 of the Universal Declaration of Human Rights on the Application of Qishash Punishment," *Jurnal Hukum Islam* 25, no. 2 (2025), http://dx.doi.org/10.24014/hi.v25i2.38792.

[27] Puji Wage Astuti Fauzi Fathur Rosi, "Konsep Keadilan Dalam QS. Al-Maidah Ayat 8 Dan Ayat 42 (Studi Komparatif Tafsir Al-Manar Dan Tafsir Al-Azhar)," *Ma Had Aly Journal of Islamic Studies* 4, no. 1 (2025): 49–57, https://doi.org/10.63398/xn8q1z97.

[28] ʿAbd Al-Qādirʿ Audah, *At-Tasyri' Al-Jinā'ī Al-Islāmī Muqāranan Bi Al-Qānūn Al-Waḍ'ī Juz 2* (Beirut: Mu'assasah ar-Risalah, 1992).

[29] Philip Schofield, "The First Steps Rightly Directed in the Track of Legislation: Jeremy Bentham on Cesare Beccaria's Essay on Crimes and Punishments," *Diciottesimo Secolo* 4, no. 1 (2019): 65–74, https://doi.org/10.13128/ds-25439.

[30] Muhammad Syahrul Deen Ahmad Rosli Faezy Adenan, Nurul Hanani Fadzil, Al-Aswa Ab Latif, Muhammad Hamizan Ab Hamid, Mohd Izzat AmsyarMohd Arif, "Dharuriyat Al-Khams and Its Relation to the Protection of the Environment," *Al-Qanatir* 30, no. 2 (2023): 38–47, https://al-qanatir.com/aq/article/view/669.

"We have sent you ˹O Prophet˺ only as a mercy for the whole world." (QS. al-Anbiyā' [21]:107)

However, in modern state criminal policy, the utilitarian paradigm is often used as the sole standard of rationality. In line with Jürgen Habermas' criticism, when instrumental rationality dominates the public sphere, communicative and moral normative values tend to be marginalized.[31] This is where control takes place paradigmatically, not through violation, but through the establishment of a single model of rationality as the sole measure.

Fifth, epistemological control and knowledge production. Antonio Gramsci, in his theory of hegemony, reveals the fact that domination does not always work through coercive power, but rather through intellectual consensus built through educational and cultural institutions.[32] The structure of the law curriculum, primary literature, and research methodology often places modern criminal law as a progressive scientific standard, while Islamic criminal law is reduced to a traditional normative system. Allah says in Surah az-Zumar,

أَمَّنْ هُوَ قَانِتٌ آنَاءَ اللَّيْلِ سَاجِدًا وَقَائِمًا يَحْذَرُ الْآخِرَةَ وَيَرْجُو رَحْمَةَ رَبِّهِ ۗ قُلْ هَلْ يَسْتَوِي الَّذِينَ يَعْلَمُونَ وَالَّذِينَ لَا يَعْلَمُونَ ۗ إِنَّمَا يَتَذَكَّرُ أُولُو الْأَلْبَابِ

"*Are they better or those who worship their Lord devoutly in the hours of the night, prostrating and standing, fearing the Hereafter and hoping for the mercy of their Lord? Say, O Prophet, "Are those who know equal to those who do not know?" None will be mindful of this except people of reason*." (QS. az-Zumar [39]:9)

This creates systemic intellectual subordination, as Allah's words in Surah az-Zumar verse 9 emphasize the importance of the authority of knowledge, "*Are those who know equal to those who do not know?*" When the epistemology of *jināyah* is not given equal space in the production of legal knowledge, control takes place through the formation of collective consciousness. At this stage, legal politics is no longer seen as formal policy, but rather as the formation of a paradigm of thinking that determines the direction of national legal development.

Thus, Islamic criminal law politics as a politics of control is not merely a matter of technical legislation or differences in normative interpretation, but rather a reflection of the configuration of power that

[31] Jürgen Habermas, *Autonomy and Solidarity: Interviews with Jürgen Habermas* (London: British Library Cataloguing, 1986), 10.

[32] Joseph Femia, "Hegemony and Consciousness in the Thought of Antonio Gramsci," *Sage Journals Political Studies* 23, no. 1 (1975), https://doi.org/10.1111/j.1467-9248.1975.tb00044.x.

works through the production of meaning, selection of values, paradigm domination, and the formation of legal consciousness. When the state prefers to manage *jināyah* within a framework of suspicion rather than dialogue, what occurs is not constitutional integration, but rather a systemic subordinate relationship. In fact, both in constitutionalism theory, which places justice as public morality, and in theory oriented towards universal benefit, there is a meeting point that allows for a rational and civilized normative synthesis. Therefore, the transformation of legal politics from a logic of control to a logic of deliberation is an urgent agenda, so that Islamic criminal law is no longer positioned as an object of supervision, but rather as a source of ethics that can enrich the national legal system within the framework of an inclusive and just constitutional state.

Islamic Criminal Law in the Logic of Defensive Politics of a Constitutional State

Islamic criminal law is not positioned as a normative entity inherent in the construction of national law, but rather as a value system that must always be tested for compatibility with the constitutional framework. This position gives rise to a defensive legal policy tendency, namely the state's tendency to anticipate the potential for problematization of Islamic criminal law before conducting a substantive reading of its ethical content and rationality.[33] In other words, the relationship that is built is not a dialogical one, but rather a verificative one, in which the state acts as the authority that determines the limits of legitimacy, while *jināyah* is in a position where it must prove its suitability.

Hans Kelsen has put forward a theory of hierarchical norms, which positions the constitution as the basic norm (*grundorm*) that is the source of validity for all legislation. The implication and consequence of this construction is that every norm outside the state system must obtain formal legitimacy through constitutional mechanisms. Problems arise when Islamic criminal law is understood not as a source of public ethics that can contribute to the formation of national law, but as an external normative system whose validity depends entirely on state recognition. This kind of relationship creates an epistemological imbalance; the state becomes the center of legitimacy production, while Islamic criminal law is placed in a subordinate orbit that is always derivative in nature.[34]

[33] Nurus Syarifah Ahmad Zainal Mustofa, "Politik Ofensif Amerika Serikat Terhadap Sikap Defensif Iran: Dari Perang Proksi Hingga Dominasi," *Indonesian Journal of International Relations* 5, no. 2 (2021): 118–39, https://doi.org/10.32787/ijir.v5i2.203.

[34] Dora Mulyawan, Fitra, Yulinda, Kiki, Tiara, "Politik Hukum Dalam Bidang Hukum Keluarga Islam," *Ensiklopedia of Journal* 3, no. 2 (2021): 11–122, https://repo.unespadang.ac.id/id/eprint/350%0A.

This defensive tendency is even stronger in the context of liberal-democratic states that prioritize the principle of neutrality towards comprehensive doctrines. In John Rawls' theory of public reason, arguments that are acceptable in the public sphere are those that can be rationally understood by all citizens without relying on specific theological premises.[35] In legal political practice, this standard is often applied reductively to Islamic criminal law, as if the entire structure of *jināyah* relies solely on particular doctrines that lack universal rationality. In fact, the principles of protecting life, property, and honor in Islamic criminal law have a rational dimension that can be translated into the language of modern public justice. The problem is not the impossibility of such a translation, but rather the initial assumption that places *jināyah* in a category that must be viewed with suspicion.

Normatively, the Qur'an contains fundamental principles that are in line with the principles of the modern constitutional state. Surah al-An'am verse 164 affirms the principle of individual responsibility that a person does not bear the sins of others, which is substantially in line with the principle of personal liability in contemporary criminal law.[36] Similarly, Surah an-Nisa' verse 135 commands the enforcement of impartial justice, even against oneself or one's closest group. These two principles show that Islamic criminal law is not based on discrimination or collectivism, but rather on the foundations of individual responsibility and universal justice.[37] However, in the construction of the state's legal politics, this kind of substantive compatibility is rarely used as a starting point for normative dialogue; instead, attention is focused more on the potential for symbolic tension that may arise.

The state's defensive logic is driven not only by internal constitutional considerations, but also by global dynamics.[38] The globalization of law and the dominance of international human rights discourse have shaped normative standards that are often treated as the sole parameter for assessing religion-based legal systems. Within the framework of Alan Watson's theory of legal transplants, the adoption of

[35] John Rawls, "The Idea of Public Reason Revisited," *The University of Chicago Law Review* 64, no. 3 (1997): 765–807, https://doi.org/10.2307/1600311.

[36] Muhammad Isan Titit Fridawati, Khairol Gunawan, Reza Andika, Muhammad Rafi, Rafsanjadi Ramadhan, "Perkembangan Teori Pertanggungjawaban Pidana Di Indonesia: Kajian Pustaka Terhadap Literatur Hukum Pidana," *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 3 (2024): 317–28, https://doi.org/10.71153/jimmi.v1i3.149.

[37] Yansa Alif Mulya El Syafira Saragih, "Melihat Persepsi Korupsi Masyarakat: Analisis Kolektivisme Dan Gaya Pengambilan Keputusan," *JPFI: Jurnal Psikologi Forensik Indonesia* 4, no. 1 (2024), https://doi.org/10.71088/jpfi.v4i1.46.

[38] Juniawan Priyono, "Uji Falsifikasi Konsepsi Ketahanan Nasional Sebagai Geostrategi Indonesia," *Jurnal Perthanan Dan Bela Negara* 7, no. 2 (2017): 115–31, https://doi.org/10.33172/jpbh.v7i2.182.

global norms often takes place through a process of imitation that does not always take into account the local cultural and historical context.[39] As a result, the state tends to take a safe position by minimizing the space for expression of Islamic criminal law, in order to avoid potential external pressure. This attitude reinforces the defensive character of the state and further distances the possibility of substantive integration. Furthermore, this defensive logic has implications for the formation of an asymmetrical relationship between the state and Islamic criminal law. The state acts as the guardian of constitutionality, while *jināyah* is treated as an object of normative supervision. This kind of relationship is not only a matter of technical legislation, but also concerns the politics of knowledge. When Islamic criminal law is continuously positioned as a norm that must be restricted, a social construct is formed that it is inherently problematic. In fact, this problematization often arises from a partial reading that does not take into account the methodological developments of contemporary *fiqh*.

Criticism of this defensive logic is not intended to negate the supremacy of the constitution or the principle of human rights. On the contrary, this criticism emphasizes the need for a paradigm shift. A constitutional state should not view Islamic criminal law as a threat to the integrity of the national legal system. The constitution can be understood as a shared ethical space that is open to contributions from various sources of values, including religion, as long as these contributions can be communicated rationally and inclusively. With this approach, the supremacy of the constitution is maintained, but without closing the possibility of integrating *jināyah* values into national criminal policy.

Constructive Criticism: From Formalization to Substantialization in Politics *Jināyah*

The relationship between Islamic criminal law and the constitutional state has tended to move within the realm of symbolic debate. Public discourse has focused more on the question of whether *jināyah* needs to be formalized into a positive legal system, rather than on the more fundamental question of what values it actually seeks to uphold.[40] As a result, Islamic criminal law is often reduced to a matter of normative nomenclature and the form of sanctions, rather than as an ethical system with a rational purpose. It is at this point that constructive criticism becomes relevant. The main issue is not whether or not there should be formalization, but rather the failure to distinguish between legal symbols and the substance of justice.

[39] Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Georgia: University of Georgia Press, 1993).

[40] Muḥammad Abū Zahrah, *Al-Jarīmah Wa Al-'Uqūbah Fī Al-Fiqh Al-Islāmī* (Damaskus: Dar al-Fikr, 1984).

The politics of formalization is based on the assumption that the existence of law is synonymous with textual recognition in legislation.[41] This orientation tends to place legislation at the pinnacle of normative struggle. However, this approach ignores the fact that law is not merely text, but a social practice that lives within the structure, culture, and collective consciousness of society. In Lawrence M. Friedman's legal system theory, effective law requires the integration of structure, substance, and culture.[42] Formalization without the readiness of legal values and culture has the potential to result in distortion and even social resistance. Formalization in the context of *jināyah* that is not preceded by the internalization of values can actually reinforce stigma and widen the gap in dialogue with the state.

Deconstructing the politics of formalization requires a shift in focus from form to purpose. The essence of Islamic criminal law does not lie in the rigidity of sanctions, but in its orientation toward the protection of life, honor, and social order. This principle has universal relevance that transcends symbolic boundaries. Allah says,[43]

مِنْ أَجْلِ ذٰلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا ۖ وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا ۚ وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِنْهُمْ بَعْدَ ذٰلِكَ فِي الْأَرْضِ لَمُسْرِفُونَ

"*That is why We ordained for the Children of Israel that whoever takes a life unless as a punishment for murder or mischief in the land it will be as if they killed all of humanity; and whoever saves a life, it will be as if they saved all of humanity. Although Our messengers already came to them with clear proofs, many of them still transgressed afterwards through the land*." (QS. al-Mā'idah [5]:32)

Surah al-Mā'idah verse 32 emphasizes that protecting one human life is equivalent to protecting all of humanity. This verse shows that the main orientation of the law is the protection of life. Thus, the ethical dimension of *jināyah* is actually in line with the principle of protecting the right to life, which is also the foundation of a constitutional state.

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[41] Mahathir Muhammad Iqbal, "Dinamika Wacana Formalisasi Syariat Dalam Politik: Ikhtiar Menemukan Relevansi Relasi Agama Dan Negara Perspektif Indonesia," *Walisongo: Jurnal Penelitian Sosial Keagamaan* 22, no. 1 (2017): 83–104, https://doi.org/10.21580/ws.22.1.260.

[42] Lawrence M. Friedman, *The Legal System: Social Science Perspective*, II (Bandung: Penerbit Nusa Media, 2019).

[43] Mushliati Eko Saputra, Ahmad Fathoni, "Hak Asasi Manusia Dalam Pandangan Ibnu 'Asyur: Analisis Q.S Al-Maidah: 32 Tafsir Al-Tahrir Wa Al-Tanwir," *Islamic Insights Journal* 5, no. 2 (2023): 65–73, https://islamicinsights.ub.ac.id/index.php/insights/article/view/107.

The reconstruction of the paradigm towards substantialization means placing the values of *jināyah* as normative inspiration in national criminal policy, without having to be trapped in its historical form. Substantialization opens up space for contextual reinterpretation, so that the values of protection, prevention, and justice can be realized through modern legal instruments. This approach is also in line with Satjipto Rahardjo's progressive legal ideas, which emphasize that the law must serve humanity and the goal of justice, rather than stopping at procedural compliance.[44] The approach of substantialization also has normative legitimacy in Islamic teachings themselves. Surah al-Ḥujurāt verse 9 emphasizes the importance of reconciliation and the proportional enforcement of justice when conflicts arise. This reconciliatory dimension shows that Islamic law is not merely repressive, but also restorative. In modern criminal policy, this spirit can be realized through the strengthening of restorative justice mechanisms, victim protection, and social-based prevention.

The substantialization approach also has normative legitimacy in Islamic teachings. Surah al-Ḥujurāt verse 9 emphasizes the importance of reconciliation and proportional enforcement of justice when conflicts arise.[45] This reconciliatory dimension shows that Islamic law is not merely repressive, but also restorative. In modern criminal policy, this spirit can be realized through the strengthening of restorative justice mechanisms, victim protection, and social-based prevention. Thus, *jināyah* does not exist as a symbol of coercive power, but rather as an ethic of community protection. Ultimately, this constructive criticism affirms that the future of *jināyah* in a constitutional state is not determined by the intensity of demands for formalization, but rather by the depth of its substantive articulation. Symbol-oriented legal politics will continue to produce polarization, while value-oriented legal politics opens up the possibility of integration. Substantialization does not mean eliminating the normative identity of Islamic criminal law, but rather actualizing its ethical goals in the context of the modern state. With this approach, *jināyah* is no longer in a defensive position, but is transformed into a part of a broader and more meaningful discourse on public justice.

As a solution to the dynamics described above, it is necessary to develop an integrative paradigm that places Islamic criminal law and the constitutional state in a dialogical relationship, rather than a subordinate

[44] Satjipto Rahardjo, "Hukum Progresif: Hukum Yang Membebaskan," *Jurnal Hukum Progresif* 1, no. 1 (2005): 1–24.

[45] Iffatul Bayyinah Lukman Nul Hakim, "Etika Sosial Perspektif Mufassir Nusantara: Kajian QS. Al-Hujurat Ayat 9-13 Dalam Tafsir Al-Ibriz," *Al-Shameila: Journal of Quranic and Hadith Studies* 1, no. 1 (2023): 70–86, https://doi.org/10.61994/alshamela.v1i1.33.

or confrontational one. The state needs to shift from a defensive approach to a deliberative approach by opening up space for objective academic study, proportional constitutional testing, and the formulation of criminal policies based on the values of protection, justice, and benefit. At the same time, the development of Islamic criminal law must also emphasize rational, contextual articulation that is compatible with constitutional principles, so that the values of *maqāṣid al-syarī'ah* can be translated into inclusive public legal language. Thus, integration is not achieved through rigid normative symbolism, but through the internalization of its ethical substance in national criminal policy, thereby creating a legal system that is not only constitutionally valid, but also morally and socially meaningful.

CONCLUSION

The dynamics of the relationship between Islamic criminal law and the constitutional state show that the tensions that arise stem more from the political paradigm of law than from inherent normative conflicts. The first discussion shows that Islamic criminal law is often placed within the defensive logic of the state, which makes it the subject of continuous constitutional verification, resulting in an asymmetrical relationship. The second discussion emphasizes that an orientation toward formalization that overemphasizes legislative symbols actually narrows the space for substantive dialogue and has the potential to give rise to social resistance. Meanwhile, the third discussion offers a shift toward the substantialization of *jināyah* as an integrative path, emphasizing the internalization of the values of protection of life, justice, and public interest in national criminal policy without being trapped in its historical form. However, this study still has limitations, mainly because it relies on a normative-conceptual approach and is not supported by in-depth empirical studies on legislative practices and implementation in the field. Therefore, further research is recommended to comparatively examine the application of *jināyah* values in various legal systems, as well as to conduct empirical analysis of the responses of judicial institutions and society, in order to obtain a more comprehensive picture of the possibilities for constitutional and contextual integration.

BIBLIOGRAPHY

Adzanah Mariska Salsabila, Enceng Arif Faizal, Deden Najmudin, Mohamad Syahreza Pahlevi. "Islamic Criminal Law Criticism of Article 5 of the Universal Declaration of Human Rights on the Application of Qishash Punishment." *Jurnal Hukum Islam* 25, no. 2 (2025). http://dx.doi.org/10.24014/hi.v25i2.38792.

Ahmad Zainal Mustofa, Nurus Syarifah. "Politik Ofensif Amerika Serikat Terhadap Sikap Defensif Iran: Dari Perang Proksi Hingga Dominasi." *Indonesian Journal of International Relations* 5, no. 2 (2021): 118–39. https://doi.org/10.32787/ijir.v5i2.203.

Al-Farisi, Leli Salman. "Politik Hukum Islam Di Indonesia; Membedah Kerancuan Bukan Negara Agama Dan Bukan Negara Sekuler." *Aspirasi* 11, no. 2 (2021): 20–35. http://aspirasi.unwir.ac.id/index.php/aspirasi/article/view/72.

Al-Mawardi, Abu al-Hasan bin Muhammad bin Habib. *Al-Aḥkām Al-Sulṭāniyyah Wa Al-Wilāyāt Al-Dīniyyah*. Kuwait: Jami'ah Kuwait - Qism al-'Ulum al-Siyasah, 1058.

Al-Qādirʿ Audah, ʿAbd. *At-Tasyri' Al-Jinā'ī Al-Islāmī Muqāranan Bi Al-Qānūn Al-Waḍ'ī Juz 2*. Beirut: Mu'assasah ar-Risalah, 1992.

Al-Shāṭibī, Abū Isḥāq. *Al-Muwafaqāt Fī Uṣūl Al-Sharīʿah Juz 2*. Al-Qohiroh: Dar al-Hadith, 1388.

Al-Zuḥaylī, Wahbah. *Al-Fiqh Al-Islāmī Wa Adillatuh Juz 6*. Damaskus: Dar al-Fikr li al-Toba'ah wa al-Tauzi' wa al-Natsr bi Damsyq, 1984.

Anggoro, Syahriza Alkohir. "Politik Hukum: Mencari Sejumlah Penjelasan." *Jurnal Cakrawala Hukum* 10, no. 1 (2019): 77–86. https://doi.org/10.26905/idjch.v10i1.2871.

Aseri, Muhsin. "Politik Hukum Islam Di Indonesia." *Al-Qalam: Journal of Religious and Social Scientific* 9, no. 17 (2016): 143–61. http://dx.doi.org/10.35931/aq.v0i0.57.

Bourdieu, P. "Symbolic Power." *Sage Journals Critique of Anthropology* 4, no. 13–14 (1979): 77. https://doi.org/10.1177/0308275X7900401307.

Dwiana Adinda, Alfah Salam, Ardian Ramadhan, Adam Narendra, Masykuri Anasti, Jerry Yanto. "Politik Hukum Dalam Pembaharuan Hukum Pidana Di Indonesia." *Wathan: Jurnal Ilmu Sosial Dan Humaniora* 1, no. 1 (2024): 12–25. https://doi.org/10.71153/wathan.v1i1.16.

Dworkin, Ronald. *Freedom's Law: The Moral Reading of the American Constitution*. New York: Oxford University Press, 1996.

Eko Saputra, Ahmad Fathoni, Mushliati. "Hak Asasi Manusia Dalam Pandangan Ibnu 'Asyur: Analisis Q.S Al-Maidah: 32 Tafsir Al-Tahrir Wa Al-Tanwir." *Islamic Insights Journal* 5, no. 2 (2023): 65–73. https://islamicinsights.ub.ac.id/index.php/insights/article/view/107.

Ery Pamungkas, Maslihati Nur Hidayati. "Instrumentalisasi Hukum Dan Ketahanan Demokrasi." *Tasyri': Journal of Islamic Law* 4, no. 1 (2025): 609–34. https://doi.org/10.53038/tsyr.v4i1.420.

Fachrul Mubaraq, Ferdi Hasayangan Dalimunthe, Muhammad Alviano. "Keadilan, Diyat Dan Pemaafan Dalam Ayat Qiṣāṣ: Kajian Etis Terhadap Surah Al-Baqarah." *Sujud: Jurnal Agama, Sosial Dan*

Budaya 2, no. 1 (2026): 908–14. https://doi.org/10.63822/kxfx2g24.

Faezy Adenan, Nurul Hanani Fadzil, Al-Aswa Ab Latif, Muhammad Hamizan Ab Hamid, Mohd Izzat AmsyarMohd Arif, Muhammad Syahrul Deen Ahmad Rosli. "Dharuriyat Al-Khams and Its Relation to the Protection of the Environment." *Al-Qanatir* 30, no. 2 (2023): 38–47. https://al-qanatir.com/aq/article/view/669.

Fauzi Fathur Rosi, Puji Wage Astuti. "Konsep Keadilan Dalam QS. Al-Maidah Ayat 8 Dan Ayat 42 (Studi Komparatif Tafsir Al-Manar Dan Tafsir Al-Azhar)." *Ma Had Aly Journal of Islamic Studies* 4, no. 1 (2025): 49–57. https://doi.org/10.63398/xn8q1z97.

Femia, Joseph. "Hegemony and Consciousness in the Thought of Antonio Gramsci." *Sage Journals Political Studies* 23, no. 1 (1975). https://doi.org/10.1111/j.1467-9248.1975.tb00044.x.

Friedman, Lawrence M. *The Legal System: Social Science Perspective*. II. Bandung: Penerbit Nusa Media, 2019.

Habermas, Jürgen. *Autonomy and Solidarity: Interviews with Jürgen Habermas*. London: British Library Cataloguing, 1986.

Iqbal, Mahathir Muhammad. "Dinamika Wacana Formalisasi Syariat Dalam Politik: Ikhtiar Menemukan Relevansi Relasi Agama Dan Negara Perspektif Indonesia." *Walisongo: Jurnal Penelitian Sosial Keagamaan* 22, no. 1 (2017): 83–104. https://doi.org/10.21580/ws.22.1.260.

Irawan, Dodi. "Jinayah Dan Siyasah Dalam Konsep Pendidikan Islam." *Pengertian: Jurnal Pendidikan Islam* 3, no. 1 (2025): 1–14. https://doi.org/10.61930/pjpi.v3i1.1009.

Liyanto, David Cristian. "Kedudukan Partai Oposisi Dalam Mewujudkan Check and Balances Di Politik Hukum Indonesia." *Jurnal Analisis Hukum* 7, no. 2 (2024): 131–42. https://doi.org/10.38043/jah.v7i2.5238.

Loso Judijanto, Zulkham Sadat Zuwanda. "Bibliometric Analysis of Islamic Criminal Law Research in the Modern Legal System." *West Science Islamic Studies* 3, no. 1 (2025): 45–52. https://doi.org/10.58812/wsiss.v3i01.1616.

Lukman Nul Hakim, Iffatul Bayyinah. "Etika Sosial Perspektif Mufassir Nusantara: Kajian QS. Al-Hujurat Ayat 9-13 Dalam Tafsir Al-Ibriz." *Al-Shameila: Journal of Quranic and Hadith Studies* 1, no. 1 (2023): 70–86. https://doi.org/10.61994/alshamela.v1i1.33.

Marzuki Wahid, Rumadi. *Fiqh Madzhab Negara: Kritik Atas Politik Hukum Islam Di Indonesia*. II. Yogyakarta: PT LKiS Printing Cemerlang, 2011.

Mulyawan, Fitra, Yulinda, Kiki, Tiara, Dora. "Politik Hukum Dalam Bidang Hukum Keluarga Islam." *Ensiklopedia of Journal* 3, no. 2 (2021): 11–122. https://repo.unespadang.ac.id/id/eprint/350%0A.

Munir, Sirojul. "Pengaruh Hukum Islam Terhadap Politik Hukum Indonesia." *Istinbath: Jurnal Hukum Islam* 13, no. 2 (2014): 127–55. https://media.neliti.com/media/publications/162970-ID-none.pdf.

Poorghorban, Younes. "On Michel Foucault: Power/Knowledge, Discourse, and Subjectivity." *Okara: Jurnal Bahasa Dan Sastra* 17, no. 2 (2023): 318–28. https://doi.org/10.19105/ojbs.v17i2.9749.

Priyono, Juniawan. "Uji Falsifikasi Konsepsi Ketahanan Nasional Sebagai Geostrategi Indonesia." *Jurnal Perthanan Dan Bela Negara* 7, no. 2 (2017): 115–31. https://doi.org/10.33172/jpbh.v7i2.182.

Rahardjo, Satjipto. "Hukum Progresif: Hukum Yang Membebaskan." *Jurnal Hukum Progresif* 1, no. 1 (2005): 1–24.

Rawls, John. "The Idea of Public Reason Revisited." *The University of Chicago Law Review* 64, no. 3 (1997): 765–807. https://doi.org/10.2307/1600311.

Salsabila, Adzanah Mariska. "Reform of State Administrative Law from the Perspective of Fiqh Siyasah on Public Services to Achieve Good Governance in Indonesia." *Siyasah Wa Qanuniyah: Jurnal Ilmiah Ma'had Aly Raudhatul Ma'arif* 3, no. 2 (2025): 135–51. https://doi.org/10.61842/swq/v3i2.51.

Sari, Ayumi Kartika. "Pengaruh Politik Hukum Dalam Penegakan Hukum Di Indonesia." *Dalihan Na Tolu: Jurnal Hukum, Politik Dan Komunikasi Indonesia* 2, no. 1 (2023): 51–58. https://doi.org/10.58471/dalihannatolu.v2i02.241.

Schofield, Philip. "The First Steps Rightly Directed in the Track of Legislation: Jeremy Bentham on Cesare Beccaria's Essay on Crimes and Punishments." *Diciottesimo Secolo* 4, no. 1 (2019): 65–74. https://doi.org/10.13128/ds-25439.

Setiawan, Mahbub. *Islamisasi Nusantara: Dari Episteme Ke Rezim Kebenaran*. Jawa Timur: Academia Publication, 2023.

Syafira Saragih, Yansa Alif Mulya El. "Melihat Persepsi Korupsi Masyarakat: Analisis Kolektivisme Dan Gaya Pengambilan Keputusan." *JPFI: Jurnal Psikologi Forensik Indonesia* 4, no. 1 (2024). https://doi.org/10.71088/jpfi.v4i1.46.

Syahrul Fauzan Putra Rinaldi, Lyestie Marlya Anggrainy, Cindy Livia Malva, Tiara Desita Sari, Mohammad Alvi Pratama. "Hukum Positivisme: Analisis Pemikiran Hans Kelsen Tentang Grundnorm." *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora* 3, no. 1 (2025): 1–25. https://journal.forikami.com/index.php/nusantara/article/view/961.

Titit Fridawati, Khairol Gunawan, Reza Andika, Muhammad Rafi, Rafsanjadi Ramadhan, Muhammad Isan. "Perkembangan Teori

Pertanggungjawaban Pidana Di Indonesia: Kajian Pustaka Terhadap Literatur Hukum Pidana." *Jimmi: Jurnal Ilmiah Mahasiswa Multidisiplin* 1, no. 3 (2024): 317–28. https://doi.org/10.71153/jimmi.v1i3.149.

Unger, Roberto Mangabeira. *Politics: A Work in Constructive Social Theory*. I. New York: Cambridge University Press, 1987.

Wahyuni, Sri. *Politik Hukum Islam Pasca Orde Baru*. Yogyakarta: Gapura Publishing.com, 2014.

Watson, Alan. *Legal Transplants: An Approach to Comparative Law*. Georgia: University of Georgia Press, 1993.

Yuni Roslaili, Faisal Fauzan, Suparwani. "Islamic Criminal Law in a Plural Legal Order: A Systematic Literature Review of Qanun Jinayah Effectiveness in Aceh, Indonesia." *El-Hadhanah: Indonesian Journal Of Family Law And Islamic Law* 5, no. 2 (2025): 115–30. https://doi.org/10.22373/hadhanah.v5i2.7885.

Zahrah, Muḥammad Abū. *Al-Jarīmah Wa Al-ʻUqūbah Fī Al-Fiqh Al-Islāmī*. Damaskus: Dar al-Fikr, 1984.

Zumiyati Sanu Ibrahim, Suud Sarim Karimullah, Andi Istiqlal Assaad, Rina Septiani, Huseyin Okur. "Integration of Maqaṣid Al-Shari'ah in the Criminal Law Reform to Achieve Justice and Human Dignity." *Jurnal Hukum Islam* 23, no. 1 (2025): 105–44. https://doi.org/10.28918/jhi.v23i1.04.