



## Comparison of Criminal Sanctions in Sharia Law and Positive Law: Jinayah Fiqh Perspective

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<b>Article History</b> Received: 2025-11-20 Revised: 2025-12-02 Published: 2025-12-30  <b>Keywords:</b> <i>Comparison; sanctions; criminal; shari'ah; Squir</i>	<p>This study aims to examine the comparison of criminal sanctions in Sharia law and positive law, with an emphasis on the view of Jinayah Fiqh. Sharia law, based on the Qur'an and Hadith, stipulates severe punishments and often severe sanctions for certain violations, such as hudud, qisas, and ta'zir. In contrast, positive laws applied in Indonesia emphasize the principles of restorative and rehabilitative justice, with sanctions varying from prison sentences to fines. This study applies a qualitative method with a comparative analysis approach to investigate the differences and similarities in the application of sanctions in the two legal systems. The findings of the study indicate that despite fundamental differences in methods and types of punishment, the two legal systems have a similar goal, which is to achieve social justice and order. By analyzing this comparison, it is hoped that similarities will be found between the two legal systems that can enrich law enforcement practices in Indonesia. This study contributes to the academic discourse on the merging of Sharia law and positive law within the framework of legal pluralism in Indonesia.</p>

### I. INTRODUCTION

The development of modern society, which is characterized by social, political, and cultural complexity, demands a legal system that is able to respond to various problems in a fair and proportionate manner (Gunawan et al., 2024). In this context, law is no longer understood solely as a set of normative rules, but rather as a social instrument that functions to maintain order, uphold justice, and protect the interests of society (A. M. Harahap et al., 2023). A country with a pluralistic character like Indonesia faces more complex challenges, because it coexists with various legal systems that have different philosophical and methodological foundations, including positive law and Sharia law (I. P. Harahap & Harahap, 2024).

Indonesia as a country of laws based on the constitution adopts positive law as the main legal system in the administration of the state (Tama et al., 2023). However, at the same time, Sharia law also has a significant role, especially in the life of Muslim communities and in certain settings accommodated by the state. The existence of these

two legal systems creates its own dynamics, especially in the field of criminal law, where the concept of crime, the purpose of punishment, and the form of sanctions can be understood differently. These differences often cause debate, both in the academic realm and in law enforcement practice.

In Sharia law, the criminal aspect is regulated in the discipline of Jinayah Fiqh, which has its own structure and characteristics. Jinayah Fiqh classifies criminal acts and their sanctions into the categories of hudud, qisas-diyat, and ta'zir, each of which has a clear normative basis, purpose, and implementation mechanism (C. Calvin & Azizah, 2024). Sanctions in Sharia law are not only intended as a form of retribution for criminal acts, but also function as a means of prevention (zawajir) and moral education (answerir) for individuals and society. Thus, criminalization in the perspective of Fiqh Jinayah has an integrated spiritual, social, and normative dimension.

On the other hand, positive law in Indonesia, especially criminal law, emphasizes a rational and humanistic approach oriented towards the

protection of human rights, legal certainty, and rehabilitation of perpetrators of criminal acts (Saleh & Calvin, 2023). The criminal system in positive law is not absolute, but it provides space for judges to consider various aspects, such as the circumstances of the perpetrator, social impact, and the purpose of the punishment that is corrective. This approach reflects the state's efforts to create social justice in a heterogeneous society and uphold the principles of democracy and the rule of law (M. Calvin & Nasution, 2023).

The fundamental difference between Sharia law and positive law in looking at criminal sanctions makes comparative studies an urgent academic need. A comparative analysis of these two legal systems is not intended to contradict or negate either, but rather to understand the philosophical foundation, purpose of punishment, and the relevance of its application in the context of modern society. Through a comparative approach, it is possible to identify common points and constructive differences between Fiqh Jinayah and positive criminal law, thus opening up a space for more objective and scientific dialogue.

Furthermore, the comparative study of criminal sanctions in Sharia law and positive law has practical significance in the context of national law development. In the reality of Indonesian legal pluralism, the integration of Islamic legal values with positive legal principles is both a challenge and an opportunity. Without a comprehensive understanding, differences in legal systems can trigger normative tensions and legal uncertainty. Instead, with a proportionate scientific approach, these differences can be managed as a source of legal wealth that strengthens the national criminal justice system.

Therefore, this study aims to examine in depth the comparison of criminal sanctions in Sharia law and positive law using the perspective of Jinayah Fiqh. This study is expected to be able to provide a more complete understanding of the concept of criminality in both legal systems, as well as offer a conceptual contribution to the development of criminal law in Indonesia that is fair, balanced, and sensitive to the plurality of existing laws.

## **II. RESEARCH METHODS**

This study uses a qualitative approach with a comparative analysis method, which is focused on the comparison of criminal sanctions in Sharia law and positive Indonesian law from the perspective of Jinayah Fiqh (Abdussamad & Sik, 2021). The qualitative approach was chosen because this study does not aim to measure phenomena statistically, but rather to understand in depth the concepts, philosophy, and implications of the application of criminal sanctions in two legal systems that have different normative and epistemological foundations. Comparative analysis is used to identify similarities, differences, and common points between the two legal systems in looking at the purpose and function of punishment.

The data types in this study consist of primary data and secondary data. Primary data was obtained through semi-structured interviews with informants who have competence and experience in the field of criminal law and Islamic law, such as legal academics, legal practitioners, and Jinayah Fiqh experts. The interviews were conducted in depth to explore normative and practical views on the application of criminal sanctions, including perceptions of the relevance and challenges of integrating Sharia law and positive law in the Indonesian context. The semi-structured approach allows for flexibility in digging into information while maintaining the focus of the research.

Secondary data was obtained through a comprehensive literature study of various written sources, including laws and regulations, court decisions, classical and contemporary books of Jinayah Fiqh, criminal law textbooks, scientific journals, and relevant policy documents. This data is used to build a theoretical and normative framework, as well as as a comparative basis in analyzing criminal sanctions in both legal systems. Literature research is conducted selectively by considering the authority of the source, the relevance of the substance, and the actuality of the discussion.

The data collection technique is carried out through three main stages, namely in-depth interviews, literature review, and analysis of

official documents that reflect the application of criminal sanctions in the practice of Sharia law and positive law. The collected data was then analyzed using thematic and comparative analysis techniques. Thematic analysis is used to identify key themes related to the concept of criminal sanctions, the purpose of punishment, and their social impact, while comparative analysis is used to examine the differences and similarities between Sharia law and positive law in both normative and implementive aspects.

To ensure the validity and reliability of the data, this study uses triangulation techniques, both source triangulation and method triangulation, by comparing the results of interviews, literature, and legal documents. In addition, member checking is also carried out, which is confirming initial findings to relevant informants to ensure the accuracy of data interpretation. With this comprehensive methodological approach, the research is expected to be able to provide a comprehensive understanding of the relationship between Sharia law and positive law, as well as the contribution of each system in building fair, contextual, and responsive criminal law enforcement to legal pluralism in Indonesia.

### **III. RESULTS AND DISCUSSION**

#### **A. Definition and Legal Basis of Criminal Sanctions**

##### **1. Sharia Law**

Sharia Law is a normative legal system that comes directly from Divine revelation and is developed through the *ijtihad* of scholars to regulate human life as a whole (Darussamin, 2014). As a legal system rooted in the Qur'an and Hadith, Sharia law not only functions as a moral and spiritual guideline, but also as an instrument of social regulation that aims to realize the benefits of the *ummah*. In the context of criminal law, Sharia law views crime as a violation of the rights of Allah, human rights, or both, so that criminal sanctions are not solely interpreted as retribution, but also as a means of enforcing justice and maintaining social order (Najmudin et al., 2024).

Fiqh Jinayah as a branch of science in Islamic law regulates in detail the acts that are categorized

as *jarimah* and the sanctions that accompany them (MALINI, 2024). The sources of law used in Fiqh Jinayah are not limited to the Qur'an and Hadith, but also involve *ijma'* and *qiyas* as a form of legal development that is adaptive to the changing times. Through this mechanism, Sharia law demonstrates methodological flexibility without losing its normative authority. The division of criminal sanctions into *hudud*, *qisas-diyat*, and *ta'zir* reflects the systematic structure of Islamic criminal law, in which the level of legal certainty and discretion of authority is determined based on the type of offense committed.

The *hudud* sanction is seen as a permanent provision because it is explicitly stipulated in the *nash*, so the space for interpretation and modification is very limited (C. Calvin & Azizah, 2024). Meanwhile, *qisas-diyat* places restorative justice as one of the main principles by providing space for the victim or the victim's family to determine the form of settlement. The *ta'zir* gives authority to the ruler or judge to determine the form and type of sanction based on considerations of the benefits and social conditions of the community. Thus, Sharia criminal law is not monolithic, but rather combines elements of legal certainty and contextual flexibility.

In practice, the application of Sharia law in various Muslim countries shows significant diversity (C. Calvin & Azizah, 2024). Some countries apply Islamic criminal law comprehensively, while others only adopt certain aspects, especially in the field of Islamic family and civil law. The main challenges in the application of Sharia law are often related to differences in interpretation, modern social dynamics, and human rights issues. Despite this, Sharia law still has a strong normative and sociological legitimacy for Muslims, as it is rooted in the values of justice, morality, and social responsibility.

##### **2. Positive Law**

Positive law is a legal system that is formed and enforced by the state through formal mechanisms, such as laws and regulations, court decisions, and administrative policies (Hamsinar, 2020). As a secular and institutional law, positive law does not rely on transcendental sources, but on social agreements and state authority. The main purpose

of positive law is to create order, legal certainty, and protection of citizens' rights in the life of society and the state.

In the context of criminal law, positive law views sanctions as an instrument to respond to acts that violate legal norms and harm the public interest (Kurniati, 2020). Criminal sanctions are designed to achieve various goals, such as crime prevention, proportionate retribution, rehabilitation of perpetrators, and community protection. This approach reflects the dynamic and positive character of the law and is open to change, as the type and severity of criminal sanctions can be adjusted to the development of social, political, and cultural values of the community.

Theoretically, positive law is influenced by the thinking of jurists such as Jeremy Bentham who emphasized the principle of utilitarianism, and H.L.A. Hart who developed the concept of law as a system of primary and secondary rules (Pratiwi et al., 2022). This thinking affirms that the law must provide practical benefits and be effectively enforced by state institutions. Therefore, criminal sanctions in positive law are not absolute, but rather provide room for the discretion of judges to consider subjective and objective factors in making decisions.

In Indonesia, the positive criminal law is reflected in the Criminal Code (KUHP) and other laws and regulations that regulate various criminal acts. This system places the state as the main authority in law enforcement, emphasizing the principle of legality and *due process of law* (Sutrisno, 2025). Thus, positive law functions as an instrument of social control that aims to maintain a balance between the interests of the individual and the interests of society as a whole.

Through a comprehensive understanding of the legal basis and characteristics of criminal sanctions in Sharia law and positive law, it can be seen that both systems have the same goal, which is to realize justice and social order, although pursued through different normative and philosophical approaches. This understanding is an important foundation for comparative studies in order to find a constructive common ground

between the two legal systems in the context of legal pluralism in Indonesia.

## B. Definition of Sanctions

Sanctions are essentially a fundamental instrument in every legal system that functions to maintain the applicability of norms and ensure that rules do not stop at the level of ideality, but have real coercive power (Fatimah, 2020). In the Islamic theological perspective, the declaration of the law including sanctions is not a manifestation of divine violence, but a manifestation of Allah's love for humans. The threat of sanctions is positioned as a means of education (*ta'dib*) and prevention (*zajr*) so that humans remain in the corridor of benefits and avoid social damage (Widiastuti, 2010). Thus, sanctions are not intended solely to punish, but to maintain a balance between human rights and obligations.

In a positive legal perspective, the definition of sanctions is rationalized through normative and empirical approaches. Andi Hamzah views sanctions as punishments imposed due to violations of the provisions of the law, while criminal sanctions are legal consequences for violations of criminal norms that can be criminal or action (AZ. Abidin and Andi Hamzah, 2010). This interpretation places sanctions as a logical consequence of unlawful acts that have been predetermined by the state. The Indonesian Encyclopedia traces the etymological roots of the term sanction from the word *sanctio*, which contains the meaning of coercion to ensure compliance with regulations, while the Legal Dictionary affirms it as a legal reaction to an act. Susilo's view that emphasizes the aspect of psychological suffering shows that sanctions also touch the psychological dimension of the perpetrator as a form of moral responsibility.

In Islamic law, the concept of sanctions is known as *'uqubah*, which according to Ahmad Fathi Bahasni is a retribution set by the *shari'a* to prevent violations and strengthen obedience to Allah's commands (Nurhadi, 2023). This definition emphasizes that sanctions have a transcendental dimension that goes beyond the interests of the state alone. The Dictionary of Fiqh Terms and the view of Rahmat Hakim further

enriches the understanding that sanctions are a form of appropriate retribution for actions that damage the rights of Allah and human rights. Thus, both in sharia law and positive law, sanctions are normative mechanisms that aim to uphold justice, maintain order, and ensure the sustainability of the law in community life.

### **1. Sanctions in Sharia Law**

In the Islamic legal system, sanctions are an integral part of the Jinayah Fiqh which regulates criminal acts committed by mukallaf individuals. Fiqh Jinayah is not only oriented towards the aspect of revenge, but also aims to maintain the five basic principles of maqashid al-shari'ah, namely the protection of religion, soul, intellect, descent, and property (Fatimawali et al., 2024). Therefore, every form of sanction in Islamic law is always associated with the benefit of the ummah, both in the worldly and ukhrawi dimensions.

Normatively, Islamic criminal law places Allah as the absolute owner of rights, while humans are positioned as the executors of the shari'a mandate. The obligation to obey the law is not only a social demand, but also a consequence of faith (Mustakhim, 2015). In this context, breaking the law is seen as a form of betrayal of the divine mandate, so sanctions have strong moral and spiritual value.

Based on the existence of nash, sanctions in Islamic law are distinguished between punishments that have been explicitly specified in the Qur'an and Hadith such as hudud, qishas, diyat, and kafarat and punishments that do not have a specific nash known as ta'zir. Hudud and qishas are definite and cannot be changed because they are the right of Allah, while ta'zir gives discretion to the ruler or judge to adjust the punishment to the social context and the level of harm done (C. Calvin & Azizah, 2024).

In terms of the structure of punishment, Islamic law recognizes the concept of 'uqubah ashliyyah as the main punishment that is the core of the penalty, 'uqubah badaliyyah as a substitute when the main punishment cannot be carried out, and 'uqubah taba'iyyah and takmiliyyah which serve to complement and strengthen the deterrent effect. This diversity shows that the Islamic

sanctions system is flexible but still based on the principle of substantive justice (Hadiwijaya, 2024).

Judging from the judge's authority, Islamic law distinguishes between punishments that have a single limit that cannot be modified and punishments with a certain range that allows the judge to consider the conditions of the perpetrator, the victim, and the community. Meanwhile, in terms of its object, sanctions in Islamic law include punishments that target physical, soul, liberty, and property, all of which are designed to restore the social and moral balance disturbed by criminal acts.

### **2. Sanctions in Positive Law**

In Indonesia's positive law, the concept of criminal sanctions is systematically regulated in the Criminal Code (KUHP) as the main instrument of law enforcement. Criminal sanctions are positioned as a tool of the state to maintain public order, protect the legal interests of the community, and uphold the rule of law. The division of sanctions into principal and auxiliary crimes reflects a modern legal approach that focuses not only on punishment, but also on prevention and rehabilitation (Sinulingga & Sugiharto, 2020).

The death penalty as the highest sanction reflects the state's attitude towards crimes that are considered the most serious and threaten the existence of society (C. Calvin & Azizah, 2024). Despite the debate from a human rights perspective, the death penalty is still maintained as a form of maximum legal protection for the public interest. Prison sentences, as the most common form of sanction, are designed not only to provide a deterrent effect, but also to foster and rehabilitate offenders through the correctional system. Meanwhile, imprisonment and fines show a gradation of sanctions that are adjusted to the level of error and the impact of criminal acts.

Additional crimes in positive law have important preventive and corrective functions (Btr et al., 2024). The revocation of certain rights aims to limit the space for perpetrators to return to commit crimes, especially in the public sphere. The confiscation of goods resulting from criminal acts is not only repressive, but also restorative, because it restores economic balance and social justice. The announcement of the judge's decision

serves as a means of public education, emphasizing that every violation of the law has real consequences.

Thus, sanctions in positive law are a reflection of the state's will to create an orderly and just social order. Through a layered and proportionate sanction system, positive law seeks to balance legal certainty, justice, and utility, while adjusting to the dynamics of community development.

### **C. Purpose of Sanctions**

Sanctions are an essential element in the legal system because they function as a bridge between ideal norms and social realities that are full of potential violations (Irmawanti & Arief, 2021). Without sanctions, the law will lose its binding force and will only become a moral guideline that has no coercive power. Therefore, the purpose of sanctions cannot be understood solely as retribution for violations, but as an instrument to maintain social balance, protect the public interest, and ensure the upholding of the value of justice. In both sharia and positive law, sanctions are always designed to answer the fundamental questions of why an offense should be punished and what benefits are to be achieved from the penalty.

In a theoretical context, the purpose of sanctions is always related to the relationship between the perpetrator, the victim, and the community. Sanctions function to correct deviant behavior, restore disturbed order, and affirm that every act has legal consequences. Although the approach and philosophical foundation between sharia law and positive law are different, they meet in a common point, namely the effort to create an orderly, just, and dignified social life.

#### **1. The Purpose of Sanctions in Sharia Law**

The purpose of sanctions in sharia law is rooted in the principle of *rahmatan lil 'alamin*, which places the law as a means of bringing mercy, not just a tool of enforcement (Alhasbi et al., 2024). Criminalization in Islam is not understood as a stand-alone repressive act, but rather as part of a divine system to uphold justice, maintain order, and realize the benefits of mankind, both in this world and in the hereafter. Therefore, sanctions in Islamic law are always positioned within an integrated moral, spiritual, and social framework.

One of the main purposes of sanctions in sharia law is prevention. The punishment was imposed so that the perpetrator would not repeat his actions and so that the wider community would learn a lesson so that they would be reluctant to commit the same offense. This prevention includes two dimensions, namely prevention of violations of prohibitions and prevention of deflation of obligations (Nelli & Syahrizan, 2024). In violation of the prohibition, sanctions serve to stop acts that are prohibited by sharia because they cause damage, while in the denial of obligations, sanctions aim to encourage the implementation of obligations that are neglected for the benefit of individuals and society. Thus, prevention in Islamic law is not passive, but active in maintaining a balanced order of life.

In addition to prevention, the purpose of sanctions in sharia law is also educational and corrective (June, 2025). Punishment is intended to teach the perpetrator a lesson to realize his mistake and return to the right path. Internal awareness is seen as more effective than external fear, as behavioral changes born from awareness are believed to be more sustainable. Therefore, sanctions in Islam should not be imposed arbitrarily, but must be proportionate and consider the benefits of the perpetrator and its impact on society.

Another goal is the enforcement of justice and the restoration of victims' rights. In Islamic criminal law, sanctions do not only target the perpetrators, but also pay attention to the rights of the victims, especially in cases involving life and property. This makes sanctions in Islamic law have a dual character, namely criminal and civil. Justice is realized by ensuring that punishment is commensurate with the deed and the victim gets a proper recovery.

Furthermore, sanctions in sharia law serve as a means of repentance for the perpetrator. Punishment is seen as able to erase sin and cleanse the perpetrator from guilt, so that he can return to living with dignity in society. The concept of *ishlah* or improvement is at the core of Islamic punishment, not only at the individual level, but also in order to build a harmonious, mutually respectful, and upholding society of moral values.

All of these goals are in harmony with maqashid al-shari'ah, which is to maintain religion, soul, intellect, property, and offspring as the foundation of human life (June, 2025).

## **2. The Purpose of Sanctions in Positive Law**

The purpose of sanctions in positive law is based on the rationality of modern law that places law as an instrument of social control. Sanctions are designed to ensure legal certainty, maintain public order, and uphold justice in a plural and dynamic society. In contrast to sharia law which has a transcendental dimension, positive law emphasizes the legitimacy of the state and public interest as the basis for punishment (Utomo, 2025).

One of the main goals of sanctions in positive law is to create a deterrent effect, both for perpetrators and the wider community. The threats and the implementation of punishment are intended so that the perpetrator does not repeat his actions and so that the public realizes that every violation will lead to legal consequences. This deterrent effect is the foundation of prevention in the modern criminal justice system, especially in maintaining social stability (Reumi et al., 2025).

In addition to prevention, positive law also develops rehabilitation goals. Criminalization is no longer solely oriented towards retribution, but is also directed at improving the behavior of the perpetrator so that he can return to function as law-abiding members of society. This concept is reflected in the correctional system that emphasizes coaching, education, and social reintegration, especially for perpetrators of minor and intermediate crimes (Reumi et al., 2025).

The purpose of retribution is still recognized in positive law, but it is limited by the principle of proportionality. Punishment must be balanced with the level of the offense and the impact of the act, so that justice does not turn into arbitrariness (Fatoni et al., 2025). In recent developments, positive law also adopts a restorative approach that emphasizes the restoration of relationships between perpetrators, victims, and society. This approach places sanctions as a means of resolving social conflicts, not just a tool for state repression.

In the end, the purpose of sanctions in positive law is also closely related to the enforcement of the rule of law. The imposition of sanctions confirms that the law applies to everyone without exception and that the state is present to protect the legal interests of the people. Thus, sanctions in positive law function simultaneously as a repressive, preventive, and constructive tool, all of which are directed at realizing a just, orderly, and civilized social order.

## **D. Comparison of Effectiveness, Similarities, and Differences in Sanctions in Sharia Law and Positive Law**

The comparison of criminal sanctions in sharia law and positive law cannot be separated from the difference in philosophical paradigms, sources of legitimacy, and orientation of penal goals that underlie the two legal systems (Ulmufitri et al., 2024). Sharia law departs from the normative-transcendental concept, where law is seen as a divine command that binds human beings not only in the social, but also spiritual and moral dimensions. On the contrary, positive law rests on human agreement through state mechanisms, so that the legitimacy of sanctions is rational, secular, and constitutional (Sari & Hermawan, 2025). This basic difference then affects the effectiveness, form, and acceptance of sanctions in the practice of social life.

In sharia law, the effectiveness of sanctions is closely related to the purpose of maintaining maqashid al-shari'ah, namely the protection of religion, soul, intellect, descent, and property (Muhaki & Aziz, 2024). Sanctions are not solely intended as retribution, but as an instrument to maintain moral and social order. The existence of hudud and qishas sanctions that are fixed and firm are often seen as having high deterrence because they are accompanied by religious awareness that violations of the law not only have worldly impacts, but also have ukhrawi consequences. In a society that is religious and relatively homogeneous in values, this spiritual dimension makes sharia law sanctions effective in shaping internal obedience and moral awareness. However, this effectiveness is often questioned when sharia law is faced with the context of

modern society which is plural, complex, and heavily influenced by human rights discourse. The application of textual and absolute sanctions is often considered less adaptive to social change if it is not accompanied by a contextual approach and progressive *ijtihad*.

On the other hand, positive law places the effectiveness of sanctions within the framework of legal certainty, social order, and protection of the public interest. Sanctions are designed to be universally applicable to all citizens regardless of religious background, so that they are more compatible with the character of a pluralistic society. Positive legal flexibility allows for the adjustment of the form and severity of sanctions in accordance with social, political, and technological developments (Fatoni et al., 2025). Its effectiveness is highly dependent on the quality of law enforcement, the integrity of the apparatus, and the public's trust in the judicial system. The main weakness of positive law lies in its tendency to emphasize external obedience more, so that it does not always touch the moral roots and ethical awareness of the perpetrator. As a result, violations of the law often recur when sanctions are not internalized as values, but rather simply as risks to be avoided.

Although they depart from different foundations, sharia law and positive law have a number of substantial similarities in interpreting sanctions. Both place sanctions as a means to uphold justice, protect society, and prevent crime. In both systems, sanctions function as a social control mechanism aimed at maintaining order and stability of common life. Both sharia law and positive law also require certain procedures in imposing sanctions so that there is no arbitrariness, so that the principles of justice and accountability are maintained. Thus, although ideologically different, these two legal systems both seek to use sanctions as a tool to create an orderly and safe social life.

The most striking difference lies in the source of the law and the value orientation that underpins it. Sharia law comes from revelation and *ijtihad* of scholars, so sanctions have a dimension of worship and accountability to God. Meanwhile, positive law comes from laws and regulations

made by the state, with sanctions oriented to the public interest and social order. This difference is also reflected in the types of sanctions applied, where sharia law recognizes the division of *hudud*, *qishas*, and *ta'zir*, while positive law recognizes criminal, civil, and administrative sanctions with a wider and more flexible variation.

The judicial process and public acceptance of the two legal systems also show significant differences. Sharia law tends to be morally and emotionally accepted by Muslim communities as part of their religious identity, while positive law is required to be inclusive and neutral in order to be accepted by all citizens. In the pluralistic Indonesian context, these two systems often do not stand dichotomically, but interact with each other and influence each other, both in the formation of legal norms and in law enforcement practice.

Thus, a comparison of the effectiveness, similarities, and differences in sanctions in sharia law and positive law shows that no one system is completely superior in all contexts. Sharia law has the power to form moral and spiritual awareness, while positive law excels in the flexibility and certainty of law in a pluralistic society. The integration of the ethical and spiritual values of sharia law into a positive legal framework, without neglecting constitutional principles and human rights, has the potential to be a more comprehensive approach in addressing the challenges of criminalization in the modern era.

## **IV. CONCLUSION AND SUGGESTIONS**

### **A. Conclusion**

A study of the comparison of criminal sanctions in sharia law and positive law shows that the two legal systems have different characters, goals, and orientations, but both serve to uphold justice and maintain social order. Sharia law, especially in the perspective of *Jinyah Fiqh*, views sanctions as a divine instrument aimed at maintaining *maqashid al-shari'ah* and shaping the moral and spiritual consciousness of individuals. Sanctions are not only understood as retribution, but also as a means of education, prevention, and self-improvement of perpetrators for the benefit of society at large. On the other hand, positive law



places sanctions within a rational and constitutional framework with the main goal of ensuring legal certainty, protecting the public interest, and adjusting to the dynamics of a plural and complex society.

Although they differ in sources and approaches, the two systems have fundamental similarities in efforts to create a deterrent effect, protect the community, and prevent the recurrence of criminal acts. The most prominent differences lie in the spiritual dimension of sharia law and the administrative flexibility of positive law. In the context of pluralistic Indonesia, this study emphasizes that a comparative understanding of the two legal systems is important to formulate criminal policies that are fair, contextual, and responsive to the needs of society without neglecting moral and humanitarian values.

## B. Suggestion

It is necessary to strengthen interdisciplinary studies between sharia law and positive law so that the formulation of criminal policy is more adaptive to the plural Indonesian social context. Policymakers are expected to be able to integrate the ethical values and benefits of Fiqh Jinayah into a positive legal system without overriding constitutional principles and human rights. In addition, academics and legal practitioners need to encourage a contextual approach in the application of sanctions so that the goals of justice, prevention, and social improvement can be achieved in a balanced and sustainable manner.

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