



## Criminal Acts of Persecution in the Perspective of Islamic Criminal Law and the Criminal Code: A Comparative Analysis of Concepts and Sanctions

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### Abstract

The crime of persecution is a crime against the human body that has a direct impact on the protection of human rights, a sense of justice, and social order, so that its regulation is an important issue in criminal law. Differences in the applicable legal system affect how an act is qualified as persecution and how criminal sanctions are imposed on the perpetrator. This paper aims to analyze comparatively the concept of the criminal act of persecution and its sanctions from the perspective of Islamic Criminal Law and the Criminal Code, as well as assess the relevance of the normative values contained in it for the development of national criminal law. This study uses normative legal research methods with legislative, conceptual, and comparative approaches. The legal materials used include laws and regulations, sources of Islamic law, as well as relevant legal doctrines and literature, which are analyzed qualitatively by prescriptive-analytical methods. The results of the discussion show that the Criminal Code views persecution as a violation of public order and the legal interests of the state with the imposition of criminal sanctions that are repressive and state-centric, so that the role of victims in the criminal process is relatively limited. Islamic Criminal Law views persecution as a jinayah against the human body that emphasizes the principles of balance, proportionality, and protection of the rights of victims through the concepts of qishash and diyat, as well as opening up space for forgiveness and the restoration of social relations. The conclusion of this study confirms that the comparison of the two legal systems shows a significant difference in the criminal paradigm, where the values of substantive justice and restorative orientation in Islamic Criminal Law have important relevance to be used as a normative reference in the reform of national criminal law, especially in the regulation of criminal acts of persecution that are more just and humane.

## I. INTRODUCTION

The criminal act of persecution is a form of crime against the human body that has serious implications for the protection of human rights and social order. This act not only causes physical suffering, but also has psychological and social impacts on the victim. In law enforcement practice, persecution is often seen as a personal offense, even though the consequences extend to create a sense of insecurity in society (Ndapabehar & Rahaditya, 2023).

The positive criminal law system in Indonesia regulates the crime of persecution explicitly in the Criminal Code (KUHP). The regulation focuses on unlawful acts that attack the integrity of other people's bodies with criminal sanctions in the form of imprisonment or fines. This approach reflects a retributive paradigm that places the state as the main

party in sentencing, while the victim's position is often limited to mere means of proof (Dwi, 2023).

Islamic Criminal Law offers a different construction in looking at the criminal act of persecution. The concept of jinayah towards the human body is governed by the principles of qishash and diyat which emphasize the balance between deeds and retribution, and provides significant space for the rights of the victim and his family. This framework shows an orientation of justice that is not only punitive, but also restorative and preventive (Heratih, 2023).

The paradigm difference between the Criminal Code and Islamic Criminal Law raises an interesting conceptual issue to be studied in depth. The definition of persecution, the elements of wrongdoing, and the purpose of the punishment show pressure points that are

not entirely in line. These inequalities have the potential to affect the way society understands justice and the effectiveness of the law in dealing with crimes against the human body (Zaidun & Setiyono, 2024).

The context of Indonesia as a country with a national legal system that is sourced from positive laws as well as influenced by religious values makes this comparative study even more relevant. The discourse on national criminal law reform cannot be separated from the need to explore the values of law that live in society, including the principles of justice in Islamic Criminal Law (Pranata et al., 2022).

Law enforcement practices in cases of persecution often draw criticism related to the proportionality of sanctions and victim protection. The inequality between the suffering of victims and the punishment imposed on perpetrators is often perceived as a failure of the law in presenting substantive justice. This reality opens up a space for evaluation of the concept and purpose of punishment that has been applied.

The comparative approach between Islamic Criminal Law and the Criminal Code allows for a more comprehensive analysis of the concept of persecution and its sanctions. The comparison is not intended to oppose the two legal systems, but to find common ground and normative values that can enrich the development of national criminal law.

Based on this background, this study seeks to critically analyze the concept of the criminal act of persecution and its sanctions from the perspective of Islamic Criminal Law and the Criminal Code. This comparative analysis is expected to be able to make an academic contribution in understanding the differences and similarities between the two legal systems, as well as offering an alternative perspective in formulating a more equitable criminal law policy.

## **II. RESEARCH METHODS**

This research is a normative legal research that aims to examine the concept and sanctions of the crime of persecution from the perspective of Islamic Criminal Law and the Criminal Code. The focus of the research is directed at the analysis of legal norms and doctrines that govern crimes against the human body in both legal systems (Suyanto, 2023).

The approaches used include a legislative approach to examine the regulation of persecution in the Criminal Code, a conceptual approach to examine the principles of *jinayah*, *qishash*, and *diyat* in Islamic Criminal Law, and a comparative approach to assess the similarities and differences in concepts and sanctions applied.

The legal materials used consist of primary, secondary, and tertiary legal materials obtained through literature studies. All legal materials are analyzed qualitatively by prescriptive-analytical analysis methods to produce systematic and argumentative normative conclusions.

## **III. RESULTS AND DISCUSSION**

### **A. The Concept of Persecution in the Criminal Code**

Persecution in the Criminal Code is placed as a crime against human body and life that violates the interests of the law in the form of physical integrity. This regulation is listed in Book II of the Criminal Code which emphasizes that any act that deliberately causes pain, injury, or physical suffering to another person is a criminal act. This conception suggests that positive criminal law is oriented towards the protection of individuals from physical attacks that violate human rights. The state positions itself as a disadvantaged party in the abstract due to the disruption of public order. The framework shows the public character of the criminal act of persecution (Parasdika et al., 2022).

The element of intentionality is a central element in the construction of the crime of persecution according to the Criminal Code. The perpetrator's intention to cause pain or injury is the basis for the assessment of criminal guilt. This provision emphasizes that persecution is not solely seen from the consequences, but also from the inner attitude of the perpetrator when committing the act. This aspect reflects the principle of culpability that requires the existence of guilt as the basis for punishment. Without proof of the element of intentionality, criminal liability cannot be legally charged (Tompodung, 2021).

The Criminal Code distinguishes persecution into several forms based on the degree of consequences caused. Petty mistreatment, ordinary mistreatment, severe mistreatment, and premeditated mistreatment

have different legal consequences. This differentiation aims to create proportionality between criminal acts and sanctions. This rationality shows a positive legal effort to classify crimes objectively. This approach places physical consequences as the main indicator of the seriousness of the crime (Bunga & Isnawati, 2022).

Criminal sanctions in the Criminal Code against perpetrators of persecution are generally in the form of imprisonment and fines. The crime is repressive with the aim of providing a deterrent effect to the perpetrator. The orientation of punishment focuses on retribution for violations of legal norms. This model shows the dominance of the retributive paradigm in positive criminal law. The interests of the victim are not the main focus in determining the type and severity of sanctions (Putri & Adhari, 2024).

The role of victims in persecution cases according to the Criminal Code tends to be passive. The victim is positioned as the party who provides information for the purpose of proof at the trial. Restoring the suffering of victims is not the main goal of the penal system. The mechanism for compensation is outside the criminal system and is often difficult to access. This condition raises criticism of the effectiveness of victim protection in positive criminal law (Shidiq et al., 2025).

The state through law enforcement officials holds full control in the process of handling persecution cases. The principle of *dominus litis* places the prosecutor as the controller of the case. This position emphasizes the public character of the criminal act of persecution. The state's interest in maintaining public order takes precedence over the individual interests of the victims. The consequences of this approach can be seen in the lack of room for victim participation in determining the settlement of the case.

The principle of legality is the main basis in regulating persecution according to the Criminal Code. No act can be punished without the provisions of the law that govern it first. This principle provides legal certainty while limiting state power. Protection of perpetrators from arbitrariness is one of the main goals. Such legal certainty is often confronted with substantive demands for justice from victims (Adilang, 2021).

The construction of persecution in the Criminal Code shows a formalistic approach to criminal law. The assessment of the act is based on the normative fulfillment of the elements of the crime. The moral dimension and social relations between the perpetrator and the victim received less attention. This approach emphasizes the positivistic nature of the national criminal justice system. Justice is understood as obedience to written rules (Adilang, 2021).

The development of modern criminal law thought began to question the effectiveness of the retributive approach in cases of persecution. Criticism arises regarding the imbalance between the suffering of victims and the sanctions imposed on the perpetrators. This reality encourages the need to re-evaluate the concept of persecution in the Criminal Code. The evaluation is relevant in the context of national criminal law reform. Comparative perspective is one of the strategic methods for this goal (Sururiyah, 2017).

Normative analysis of the Criminal Code shows that persecution is seen as a violation of state legal norms. The main focus lies on actions and sanctions, not on the restoration of social relations. This conception has the advantage of guaranteeing legal certainty. Limitations arise in the aspects of restorative justice and victim protection. This condition opens up space for dialogue with other legal systems that have different orientations.

## **B. The Concept of Persecution in the Perspective of Islamic Criminal Law**

Islamic Criminal Law views persecution as part of the *jinayah* against the human limbs. This act is qualified as a serious violation of the honor and safety of life. The normative basis is derived from the Qur'an and Hadith which affirm the prohibition of hurting fellow human beings without rights. The principle of protecting soul and body is the main foundation of this arrangement. The framework shows the strong moral and religious dimensions in Islamic criminal law (Sukardi, 2015).

The concept of persecution in Islam cannot be separated from the principle of *qishash*. *Qishash* contains the meaning of retribution that is commensurate between the deed and the consequences caused. This principle emphasizes balance and substantive justice.

The application of qishash is intended to preserve life and prevent similar crimes. Preventive and corrective goals are the main character of this approach (Ichwanto, 2017).

In addition to qishash, Islamic criminal law recognizes the concept of diyat as an alternative solution. Diyat is a form of compensation given by the perpetrator to the victim or his family. This mechanism provides a large space for the victim's recovery. The choice between qishash and diyat demonstrates the flexibility of Islamic criminal law. The victim has a central position in determining the form of resolving the case (Darussamin, 2014).

Errors in Islamic criminal law are understood through the concept of intent or *qasd*. The assessment of the act does not only rely on the physical consequences, but also on the motives and intentions of the perpetrator. This approach emphasizes the moral dimension and individual responsibility. Criminal liability is personal and non-transferable. This principle is in line with the principle of justice in Islam (Maghfiroh, 2019).

Sanctions in Islamic criminal law are not solely repressive. Criminalization is directed to protect the public and individual interests. The principles of prevention, repair, and recovery are the main goals. This orientation distinguishes Islamic criminal law from the purely retributive system. Justice is understood as a balance between the rights of the perpetrator, the victim, and the community (Maghfiroh, 2019).

The role of victims in persecution cases according to Islamic criminal law is very dominant. The victim has the right to demand qishash, receive diyat, or grant forgiveness. This right places the victim as the main subject of justice. Forgiveness is even seen as a noble act that has the value of worship. This ethical dimension enriches the concept of criminal justice (Sari, 2020).

Islamic criminal law also emphasizes the principle of strict proportionality. It is not allowed to impose sanctions that exceed the acts committed. This provision aims to prevent excessive acts of revenge. Certainty and justice run in a balanced manner. This principle shows the rationality of Islamic criminal law in regulating sanctions (Puspita et al., 2025).

The restorative aspect is very prominent in the concept of persecution according to Islamic

criminal law. The restoration of social and psychological relationships is part of the purpose of the penalty. Settlement of cases does not always end in physical punishment or suffering. Reconciliation is seen as a more sustainable solution. This approach is relevant to the development of modern restorative justice theory.

The normative foundation of Islamic criminal law is transcendent as well as rational. Legal norms are not only juridically binding, but also morally and spiritually. Obedience to the law is understood as a form of obedience to God. This dimension provides strong ethical force in its application. Law is not separated from the value of substantive justice (Puspita et al., 2025).

Normative analysis shows that Islamic criminal law views persecution as a violation of individual rights and the moral order. The sanctions system is designed to maintain balance and benefits. The position of a strong victim is the main characteristic. This character provides an alternative perspective to the modern penal system. Its relevance is increasingly evident in the discourse of criminal law reform.

### **C. Comparative Analysis of Persecution Concepts and Sanctions**

The comparison between the Criminal Code and Islamic criminal law shows fundamental differences in the legal paradigm. The Criminal Code is oriented towards the interests of the state and public order. Islamic criminal law emphasizes the balance of rights between perpetrators and victims. These differences affect the way each system views justice. The normative consequences can be seen in the construction of sanctions and the role of victims (Puspita et al., 2025).

The concept of error in the Criminal Code is legal-formal and focuses on the elements of delicacy. Islamic criminal law combines aspects of intention, morality, and consequences of actions. This approach results in differences in the assessment of criminal liability. Islamic law places greater emphasis on the inner dimension of the perpetrator. These differences reflect the philosophical character of each legal system (Ndapabehar & Rahaditya, 2023).

Persecution sanctions in the Criminal Code tend to be uniform and determined by the

state. Islamic criminal law offers a variety of sanctions through qishash and diyat. This flexibility provides a more contextual space for justice. The victim has the right to determine the direction of the case settlement. This condition shows the difference in orientation between state-centric and victim-centric systems (Sari, 2020).

Victim protection in the Criminal Code is indirect. Penal mechanisms do not always guarantee the recovery of victims. Islamic criminal law explicitly recognizes the victim's right to compensation and forgiveness. This approach strengthens the position of victims in the criminal justice system. Justice is not only measured by the punishment of the perpetrator, but also by the recovery of the victim (FETUS & ALFIYAN, n.d.).

The purpose of punishment in the Criminal Code is dominated by the effect of deterrence and retaliation. Islamic criminal law combines elements of prevention, retribution, and remediation. This orientation results in a more comprehensive concept of justice. Criminalization is not only punitive, but also educational. This distinction is relevant in the modern context that demands the humanization of criminal law.

The principle of legality in the Criminal Code provides strong legal certainty. Islamic criminal law adds an ethical and transcendental dimension to the enforcement of norms. Legal certainty is complemented by moral justice. This combination shows the superiority of the normative value of Islamic law. The relevance of such values can be considered in the renewal of national law (Robensyah et al., 2026).

The evidentiary system in the Criminal Code emphasizes formal procedures. Islamic criminal law emphasizes honesty, fair testimony, and moral responsibility. These differences affect the law enforcement process. A substantive approach in Islamic law has the potential to reduce excessive formality. The effectiveness of justice is the main goal (Zaidun & Setiyono, 2024).

The integration of Islamic criminal law values into national law does not mean replacing the Criminal Code. The comparative approach opens up space for value harmonization. The principles of restorative justice and victim protection can be adopted normatively. Criminal law reform requires

dialogue between legal systems. This process is in line with the pluralistic character of Indonesian society.

This comparative study shows that both legal systems have advantages and limitations. The Criminal Code excels in legal certainty and formal structure. Islamic criminal law excels in substantive justice and victim restoration. This combination of values has the potential to strengthen the national criminal law system. The normative perspective is the basis for critical evaluation.

A normative analysis of the concept and sanctions of persecution emphasizes the importance of just criminal law reform. This comparison makes a theoretical contribution to the development of Indonesian criminal law. The value of balance, proportionality, and victim protection is a central issue. Academic discourse is expected to be able to encourage the reformulation of criminal law policies. A comparative approach is a strategic means for this goal.

## **CONCLUSION AND SUGGESTIONS**

### **A. Conclusion**

This study shows that the criminal act of persecution has a conceptual construction and a fundamentally different sanction orientation between the Criminal Code and Islamic Criminal Law. The Criminal Code views persecution as a violation of public order and the legal interests of the state, with an emphasis on fulfilling the elements of delinquency and imposing criminal sanctions in the form of imprisonment or fines. This paradigm places the state as the main actor in the law enforcement process, while victims tend to be in a passive position and have not yet obtained optimal recovery.

Islamic Criminal Law views persecution as a crime against the human body that not only violates the rights of the individual, but also the moral order and substantive justice. The concepts of qishash and diyat reflect the principles of balance, proportionality, and a strong recognition of the rights of the victim. The purpose of punishment is not solely retaliation, but also prevention, improvement, and restoration of social relations. The central role of the victim and the existence of a space for forgiveness show the restorative character that stands out in Islamic criminal law.

The comparison of the two legal systems confirms that each has advantages and limitations. The Criminal Code excels in legal certainty and formal structure, while Islamic Criminal Law offers substantive justice and more comprehensive victim protection. These findings show the relevance of Islamic criminal law values as a source of normative inspiration in the reform of national criminal law, especially in the regulation of criminal acts of persecution that are oriented towards justice and humanity.

## B. Suggestions

Criminal law policymakers need to consider strengthening victim protection in the regulation of criminal acts of persecution, both through compensation mechanisms and restorative approaches. The values of proportionality, balance, and restoration contained in Islamic Criminal Law can be used as a normative reference in the reform of the Criminal Code without ignoring the principles of legality and legal certainty. Further studies are recommended to examine the implementation of the concept of restorative justice in criminal justice practice in order to realize a more just and humane penal system.

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