



Zina (Adultery) in the Perspectives of Islamic Criminal Law and Indonesian Positive Law: A Comparative Analysis of Criminal Elements, Evidentiary Standards, and Penal Sanctions

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Info Articles	Abstract
<p>Article History Received: 2024-05-02 Revised: 2024-05-14 Published: 2024-05-30</p> <p>Keywords: <i>Jarimah Zina</i>, Islamic Criminal Law, Indonesian Positive Law, Evidentiary Requirements, Criminal Sanctions.</p>	<p>Zina is a criminal offense that receives significant attention in both Islamic Criminal Law and Indonesian Positive Law because it is closely related to the protection of morality, social order, and family institutions. The enactment of Law Number 1 of 2023 concerning the Indonesian Criminal Code has introduced new legal developments regarding the regulation of adultery, making it important to compare its provisions with the concept of <i>jarimah zina</i> in Islamic Criminal Law. This study aims to analyze and compare the elements of the offense, evidentiary requirements, and criminal sanctions for zina from the perspectives of Islamic Criminal Law and Indonesian Positive Law. This research employs a normative legal research method using statutory and conceptual approaches. Data were collected through library research, including the examination of legislation, the Qur'an, Hadith, scholarly books, and relevant scientific journals. The findings reveal that Islamic Criminal Law classifies zina as a <i>jarimah hudud</i>, with clearly defined elements, evidentiary standards, and sanctions derived from Islamic legal sources. In contrast, Indonesian Positive Law regulates adultery through statutory provisions based on the principles of legality and modern criminal justice. The fundamental differences between the two legal systems are reflected in their evidentiary standards and forms of punishment. Nevertheless, both systems share a common objective of preserving public order, protecting individual dignity, and maintaining family integrity within society.</p>

I. INTRODUCTION

Zina constitutes one of the most controversial issues in criminal law because it intersects legal, moral, religious, and social dimensions. In Islamic Criminal Law, zina is classified as a *jarimah hudud*, namely a criminal offense whose prohibition and punishment are explicitly regulated by the Qur'an and Sunnah. The prohibition of zina is intended to protect lineage (*hifz al-nasl*), honor (*hifz al-'ird*), family integrity, and social order. Therefore, Islamic law considers zina not merely as an individual wrongdoing but also as an act that may threaten public morality and societal stability (Hanafi et al., 2024).

The importance of regulating zina is reflected in the strict evidentiary standards established under Islamic Criminal Law. Unlike ordinary criminal offenses, zina requires exceptionally rigorous proof, including voluntary confession, testimony of four trustworthy witnesses, and several other forms of evidence

recognized by Islamic jurisprudence. Such requirements demonstrate the seriousness of the offense while simultaneously protecting individuals from false accusations. According to Siahaan (2020), the evidentiary system in Islamic Criminal Law differs significantly from Positive Law because Islamic law recognizes confession, witness testimony, *al-qarinah*, and *li'an* as means of proof, whereas Positive Law relies upon witness testimony, expert testimony, documents, indications, and statements of the accused.

In Indonesia, the regulation of adultery has undergone significant transformation through the enactment of Law Number 1 of 2023 concerning the Criminal Code. Previously, adultery was regulated under Article 284 of the former Criminal Code, which limited criminal liability to sexual intercourse involving at least one married person. However, Article 411 of the new Criminal Code expands the scope of adultery by

criminalizing sexual intercourse outside a lawful marriage. This reform reflects Indonesia's effort to accommodate religious, moral, and cultural values while maintaining the principles of legality and modern criminal justice. Nevertheless, adultery remains classified as a complaint-based offense (*delik aduan*), meaning that prosecution can only proceed upon a complaint from parties specifically authorized by law.

The reform of adultery regulation has generated extensive debate among legal scholars. Supporters argue that the new Criminal Code better reflects Indonesian social and religious values and strengthens the protection of family institutions. Conversely, critics contend that broader criminalization may increase state intervention in private affairs and raise concerns regarding human rights protection. These debates demonstrate that adultery remains a dynamic legal issue requiring comprehensive academic analysis from both Islamic and positive law perspectives.

The academic discussion concerning zina has become increasingly relevant due to changing social conditions, including the rise of cohabitation, premarital sexual relationships, and shifting moral values among younger generations. From the perspective of Islamic Criminal Law, zina is categorized as a public offense because it violates divine commands and threatens social order. Consequently, its prosecution does not depend upon complaints from particular individuals. In contrast, Indonesian Positive Law adopts a more procedural approach by requiring complaints from spouses, parents, or children in specific circumstances. These differences indicate the existence of distinct legal philosophies underlying both legal systems.

The relevance of this issue is also reflected in academic studies conducted by scholars from the Faculty of Sharia and Law, State Islamic University of North Sumatra. Siahaan (2020), through research published in *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam*, examined the evidentiary system of adultery under Islamic Criminal Law and Positive Law and concluded that significant differences exist regarding the admissibility and standard of proof required to

establish criminal liability. The study remains one of the important references in understanding the comparative evidentiary framework governing zina in Indonesia.

Several previous studies have examined zina from different perspectives. Hanafi et al. (2024) focused on the concept of zina in Islamic Criminal Law and emphasized its classification as a *jarimah hudud* whose sanctions are directly prescribed by Islamic legal sources. Sirajuddin et al. (2024) analyzed adultery as a complaint offense under Law Number 1 of 2023 and compared its regulation with Islamic legal principles. Their findings demonstrate that the transformation of adultery provisions under the new Criminal Code introduces new legal consequences concerning complaint procedures and law enforcement mechanisms. Amelia et al. (2024) examined zina and false accusations of zina from the perspective of Islamic Criminal Law and concluded that the protection of honor and dignity constitutes a central objective of Islamic criminal justice.

Furthermore, recent studies concerning the reform of adultery provisions in the new Criminal Code have primarily focused on criminalization policies, legal politics, complaint procedures, and sanctions. While these studies contribute significantly to legal scholarship, they generally discuss only one dimension of zina regulation. Existing literature rarely provides a comprehensive comparative analysis that simultaneously examines the elements of the offense, evidentiary requirements, and criminal sanctions under Islamic Criminal Law and Indonesian Positive Law.

Based on the foregoing discussion, a significant research gap remains in the literature. Most previous studies focus either on sanctions, evidentiary standards, or legal reform separately, without integrating these dimensions into a single analytical framework. Moreover, previous studies often analyze zina from either the perspective of Islamic Criminal Law or Positive Law without comprehensively comparing both systems. Therefore, there is still a need for research that systematically examines the similarities and differences between Islamic Criminal Law and

Indonesian Positive Law concerning the elements of the offense, standards of proof, and criminal sanctions applicable to zina.

The novelty of this research lies in its integrated comparative approach. Unlike previous studies that focus primarily on legal reform, sanctions, or evidentiary issues, this study comprehensively analyzes zina through three interconnected dimensions: criminal elements, evidentiary requirements, and penal sanctions. In addition, this study contextualizes the analysis within Indonesia's contemporary criminal law reform following the enactment of Law Number 1 of 2023 concerning the Criminal Code. Consequently, the study contributes to the ongoing discourse regarding the harmonization of Islamic legal values and national criminal law development in Indonesia.

Accordingly, this study seeks to answer the following research questions: (1) How are the elements of zina regulated in Islamic Criminal Law and Indonesian Positive Law? (2) What are the similarities and differences in evidentiary requirements governing zina under both legal systems? (3) How are criminal sanctions for zina formulated in Islamic Criminal Law and Indonesian Positive Law? and (4) What legal implications arise from the differences between the two legal systems in regulating zina?

II. RESEARCH METHODS

This study employs normative legal research (doctrinal legal research), which examines law as a system of norms, legal principles, doctrines, and statutory regulations. Normative legal research focuses on analyzing legal rules and legal concepts contained in legislation, legal doctrines, court decisions, and scholarly opinions. According to Sukiati (2016), normative research aims to understand legal phenomena through the study of legal materials and literature in order to formulate legal arguments and provide solutions to legal issues. Likewise, Marzuki (2021) explains that normative legal research is conducted by examining legal norms contained in statutory regulations and other authoritative legal sources. Therefore, this method is considered appropriate because the

present study focuses on analyzing and comparing the regulation of zina in Islamic Criminal Law and Indonesian Positive Law.

This research adopts a statutory approach (statute approach) and a conceptual approach (conceptual approach). The statutory approach is utilized to examine legal provisions governing zina in both Islamic legal sources and Indonesian legislation, particularly Law Number 1 of 2023 concerning the Criminal Code. Meanwhile, the conceptual approach is employed to analyze legal concepts and doctrines concerning jarimah zina, evidentiary standards, and criminal sanctions as developed by Islamic jurists and legal scholars. Through these approaches, the study seeks to identify similarities and differences between Islamic Criminal Law and Indonesian Positive Law regarding the regulation of zina (Efendi & Ibrahim, 2022).

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include the Qur'an, Hadith, Law Number 1 of 2023 concerning the Criminal Code, and other relevant legal regulations. Secondary legal materials consist of books, scientific journals, legal commentaries, and previous studies related to zina, Islamic Criminal Law, and Indonesian Positive Law. Tertiary legal materials include legal dictionaries, encyclopedias, and other supporting references that facilitate the understanding of legal concepts and terminology. The use of these three categories of legal materials is intended to ensure comprehensive legal analysis and accurate interpretation of legal norms (Soekanto & Mamudji, 2001).

The technique of collecting legal materials is carried out through library research (library research). This technique involves identifying, collecting, classifying, and reviewing legal materials relevant to the research topic from various authoritative sources. According to Sukiati (2016), library research is an essential component of normative legal research because it enables researchers to obtain theoretical foundations and legal arguments systematically. Accordingly, legal materials collected in this study are classified based on the research focus, namely

the elements of the offense, evidentiary requirements, and criminal sanctions for zina under Islamic Criminal Law and Indonesian Positive Law.

The collected legal materials are analyzed using qualitative descriptive analysis. The analysis begins by describing legal provisions concerning zina in Islamic Criminal Law and Indonesian Positive Law. Subsequently, a comparative analysis is conducted to identify similarities and differences regarding the elements of the offense, standards of proof, and criminal sanctions. The findings are then interpreted using legal doctrines and theories relevant to criminal law and Islamic jurisprudence. Qualitative analysis is particularly suitable for normative legal research because it allows researchers to examine legal norms comprehensively and systematically (Negara, 2023).

Finally, conclusions are drawn through deductive reasoning, namely by deriving specific conclusions from general legal principles and legal norms. Through this method, the study seeks to provide a comprehensive understanding of the regulation of zina in Islamic Criminal Law and Indonesian Positive Law and to formulate legal conclusions regarding the similarities, differences, and implications of zina regulation in both legal systems.

III. RESULTS AND DISCUSSION

A. Research result

The findings of this study indicate that significant differences exist between Islamic Criminal Law and Indonesian Positive Law regarding the regulation of zina. These differences can be observed in the elements constituting the offense, evidentiary requirements, and criminal sanctions imposed upon offenders. Despite these differences, both legal systems share a common objective of maintaining social order, protecting family institutions, and preserving moral values within society.

In Islamic Criminal Law, zina is categorized as a jarimah hudud, meaning that its prohibition and punishment are explicitly determined by the Qur'an and Sunnah. Zina is generally defined as

sexual intercourse between a man and a woman outside a lawful marriage. Islamic jurists regard zina as a serious violation because it threatens the protection of lineage (hifz al-nasl), honor (hifz al-'ird), and social morality. Consequently, Islamic law imposes strict evidentiary requirements and severe sanctions to ensure justice and prevent false accusations.

Meanwhile, Indonesian Positive Law regulates adultery through Article 411 of Law Number 1 of 2023 concerning the Criminal Code. The new Criminal Code expands the scope of adultery by criminalizing sexual intercourse outside a lawful marriage. However, the offense remains classified as a complaint-based crime (delik aduan), meaning that prosecution can only proceed upon a complaint from a spouse, parent, or child as specified by law.

The comparative findings regarding zina regulation are presented in the following table:

Table 1. Comparative Analysis of Zina in Islamic Criminal Law and Indonesian Positive Law

Aspect	Islamic Criminal Law	Indonesian Positive Law
Legal Basis	Qur'an, Hadith, and classical fiqh doctrines	Law Number 1 of 2023 concerning the Criminal Code (Article 411)
Legal Classification	Jarimah Hudud	Criminal offense against morality
Definition of Zina	Sexual intercourse outside a valid marriage	Sexual intercourse with a person who is not one's lawful spouse
Nature of Offense	Public offense (haqq Allah)	Complaint-based offense (delik aduan absolut)
Parties Entitled to Report	Not dependent upon	Spouse, parent, or

	complaints from particular individuals	child of the offender
Standard of Proof	Confession, testimony of four witnesses, and other recognized Islamic evidences	Witness testimony, expert testimony, documents, indications, and defendant's statement
Burden of Proof	Very strict	Based on criminal procedural law
Sanctions	100 lashes for unmarried offenders; severe sanctions for married offenders according to classical jurisprudence	Maximum imprisonment of one year or a category II fine
Legal Objective	Protection of lineage, morality, and social order	Protection of family institutions, morality, and legal certainty

The findings further reveal that evidentiary requirements constitute one of the most fundamental differences between the two legal systems. Islamic Criminal Law requires either a voluntary confession or the testimony of four trustworthy witnesses who directly observed the act. Such requirements demonstrate the strict nature of Islamic criminal procedure and its commitment to protecting individual dignity. Conversely, Indonesian Positive Law adopts a modern evidentiary system that recognizes multiple forms of evidence as regulated by criminal procedural law.

The study also finds differences in the philosophy of punishment. Islamic Criminal Law

emphasizes deterrence, protection of morality, and preservation of lineage through sanctions categorized as hudud. In contrast, Indonesian Positive Law emphasizes legality, legal certainty, and procedural justice by imposing imprisonment or fines as criminal sanctions. Article 411 of the Criminal Code provides a maximum imprisonment of one year or a category II fine for adultery offenders.

These findings indicate that although Islamic Criminal Law and Indonesian Positive Law share similar concerns regarding moral protection and family integrity, they differ significantly in terms of legal philosophy, evidentiary standards, and punishment mechanisms. Such differences reflect the distinct foundations upon which each legal system is constructed.

B. Discussion

1. Elements of Zina in Islamic Criminal Law and Indonesian Positive Law

The findings of this study indicate that the concept of zina in Islamic Criminal Law differs significantly from the concept of adultery regulated under Indonesian Positive Law. In Islamic Criminal Law, zina is generally defined as sexual intercourse between a man and a woman outside a lawful marriage without any legal justification recognized by Islamic law. Such conduct is categorized as a *jarimah hudud*, namely a criminal offense whose prohibition and sanctions are determined directly by the Qur'an and Sunnah. Consequently, zina is not merely regarded as a violation of individual morality but also as a violation of divine law and public order (Hanafi et al., 2024).

From the perspective of Islamic legal theory, the prohibition of zina is closely related to the theory of *Maqashid al-Shariah*. According to Al-Shatibi, one of the primary objectives of Islamic law is the protection of lineage (*hifz al-nasl*). The prohibition of zina therefore aims to preserve family integrity, ensure legal certainty regarding lineage, and prevent social disorder resulting from unlawful sexual relations. In this context, criminal sanctions serve not only as punishment but also as a mechanism for protecting public welfare

(*masalah*) and social stability (Amelia et al., 2024).

The findings further reveal that Indonesian Positive Law adopts a different approach in defining adultery. Article 411 of Law Number 1 of 2023 concerning the Criminal Code expands the scope of adultery by criminalizing sexual intercourse outside a lawful marriage. This provision differs from Article 284 of the former Criminal Code, which limited adultery to sexual intercourse involving at least one married person. The reform reflects the state's attempt to accommodate religious, moral, and cultural values that continue to influence Indonesian society (Januarsyah et al., 2023).

The development of adultery regulation in Indonesia may be analyzed through the theory of legal politics. According to Mahfud MD, legal products are influenced by the political configuration and social values prevailing within society. The enactment of Article 411 demonstrates the state's legal policy in responding to social demands for stronger moral protection while simultaneously maintaining the principles of legality and constitutional governance. Therefore, the criminalization of adultery under the new Criminal Code can be understood as a manifestation of legal reform aimed at harmonizing national law with the moral aspirations of Indonesian society (Januarsyah et al., 2023).

Another significant difference concerns the legal nature of the offense. Islamic Criminal Law treats zina as a public offense because it affects the broader interests of society and violates divine commands. Accordingly, prosecution is not dependent upon complaints from particular individuals. In contrast, Indonesian Positive Law classifies adultery as an absolute complaint offense (*delik aduan absolut*), meaning that criminal proceedings may only be initiated upon complaints from spouses, parents, or children as stipulated by law. This distinction demonstrates the different legal philosophies underlying both systems. Islamic Criminal Law prioritizes the protection of public morality, whereas Indonesian Positive Law seeks to balance moral protection with individual rights and procedural justice (Sirajuddin et al., 2024).

Furthermore, the concept of zina in Islamic Criminal Law is inseparable from the principle of protecting honor (*hifz al-'ird*). Islamic law not only prohibits zina but also criminalizes false accusations of zina (*qadzaf*). This principle demonstrates the commitment of Islamic law to safeguarding individual dignity and preventing reputational harm. According to Amelia et al. (2024), the strict regulation of zina and *qadzaf* reflects a comprehensive legal framework aimed at protecting both morality and human dignity.

The findings of this study therefore suggest that although Islamic Criminal Law and Indonesian Positive Law share a common objective of protecting morality and family institutions, they differ substantially in their conceptualization of zina. Islamic Criminal Law approaches zina from a theological and moral perspective rooted in divine revelation, whereas Indonesian Positive Law approaches adultery from a statutory and constitutional perspective that seeks to balance moral values, legal certainty, and human rights considerations. This difference reflects the distinct philosophical foundations upon which each legal system is constructed.

2. Evidentiary Requirements for Zina in Islamic Criminal Law and Indonesian Positive Law

The research findings indicate that the evidentiary system constitutes one of the most fundamental distinctions between Islamic Criminal Law and Indonesian Positive Law in regulating zina. Although both legal systems seek to uphold justice and legal certainty, they adopt different standards and mechanisms for establishing criminal liability. Islamic Criminal Law imposes exceptionally strict evidentiary requirements, whereas Indonesian Positive Law relies on a broader evidentiary framework regulated by criminal procedural law.

In Islamic Criminal Law, the offense of zina cannot be established solely based on suspicion, public opinion, or circumstantial allegations. Classical Islamic jurisprudence requires either a voluntary confession (*iqrar*) by the offender or the testimony of four trustworthy witnesses who directly observed the act of sexual intercourse. The

strictness of these requirements reflects the seriousness of the accusation and demonstrates the commitment of Islamic law to protecting human dignity and preventing wrongful punishment. According to Hanafi et al. (2024), the stringent evidentiary standards in zina cases are intended to ensure that criminal sanctions are imposed only when the offense has been proven beyond any doubt.

The strict evidentiary requirements may also be analyzed through the theory of legal protection proposed by Philipus M. Hadjon. This theory argues that legal norms should provide protection against arbitrary actions and unjust treatment. In the context of zina, Islamic law not only prohibits adultery but also prohibits false accusations of adultery (*qadzaf*). Therefore, the requirement of four witnesses functions as a legal safeguard designed to protect individual honor and reputation from unsubstantiated allegations. Amelia et al. (2024) emphasize that the regulation of zina and *qadzaf* demonstrates the comprehensive nature of Islamic Criminal Law in protecting both morality and personal dignity.

Furthermore, Islamic Criminal Law applies the principle of *dar' al-hudud bi al-shubuhat*, which means that *hudud* punishments should not be imposed when there is any doubt regarding the commission of the offense. This principle demonstrates that although Islamic law prescribes severe sanctions for zina, it simultaneously establishes strict procedural safeguards to prevent miscarriages of justice. Recent research by Haniyah et al. (2025) concludes that the strict evidentiary system in Islamic Criminal Law serves as a mechanism to prevent arbitrary criminalization and excessive intervention in private life while still maintaining moral norms within society.

By contrast, Indonesian Positive Law adopts a more flexible evidentiary framework. The Indonesian Criminal Procedure Code (*KUHAP*) recognizes witness testimony, expert testimony, documentary evidence, indications, and statements of the accused as lawful forms of evidence. Article 183 of the Criminal Procedure Code further provides that judges may impose criminal sanctions only when at least two lawful pieces of evidence support their conviction that a criminal offense

has occurred. This evidentiary model reflects the principle of due process of law, which emphasizes fairness, procedural justice, and judicial evaluation of evidence.

The evidentiary framework governing adultery under Article 411 of Law Number 1 of 2023 concerning the Criminal Code also reflects the state's effort to balance moral protection and individual rights. Although the new Criminal Code expands the definition of adultery, the offense remains classified as a complaint-based crime (*delik aduan absolut*). Consequently, criminal proceedings may only be initiated upon complaints from spouses, parents, or children of the alleged offender. The Constitutional Court has also noted that prosecution under Article 411 depends upon complaints from legally authorized parties, thereby limiting excessive state intervention in private matters.

The differences between the two evidentiary systems may be further explained through Gustav Radbruch's theory of legal certainty. According to Radbruch, legal certainty requires clear procedural rules and objective standards for determining criminal liability. Islamic Criminal Law seeks legal certainty through exceptionally strict evidentiary requirements, whereas Indonesian Positive Law achieves legal certainty through codified procedural rules and judicial assessment of multiple forms of evidence. Although the mechanisms differ, both systems aim to minimize the risk of wrongful conviction and ensure fairness in criminal proceedings.

Recent studies on the criminalization of adultery in Indonesia further indicate that evidentiary issues remain one of the principal challenges in the implementation of Article 411 of the new Criminal Code. Because adultery generally occurs in private settings, obtaining sufficient evidence remains difficult despite the broader formulation of the offense. As a result, law enforcement authorities continue to face challenges in balancing moral protection, evidentiary sufficiency, and respect for privacy rights. Haniyah et al. (2025) argues that this challenge demonstrates the need to harmonize moral values, legal certainty, and individual rights within contemporary criminal law reform.

Based on the foregoing analysis, it can be concluded that Islamic Criminal Law and Indonesian Positive Law adopt different approaches to evidentiary requirements in zina cases. Islamic Criminal Law prioritizes the protection of honor and the prevention of false accusations through highly restrictive evidentiary standards, whereas Indonesian Positive Law emphasizes procedural justice through a more flexible evidentiary framework. Nevertheless, both legal systems share a common objective: ensuring justice, legal certainty, and the protection of individual rights in the adjudication of adultery cases.

3. Criminal Sanctions for Zina in Islamic Criminal Law and Indonesian Positive Law

The findings of this study demonstrate that criminal sanctions for zina constitute one of the most significant differences between Islamic Criminal Law and Indonesian Positive Law. Although both legal systems prohibit sexual intercourse outside a lawful marriage, the objectives, forms, and implementation of punishment differ substantially. These differences are rooted in the distinct legal philosophies underlying each system. Islamic Criminal Law derives its sanctions from divine revelation and emphasizes moral accountability, whereas Indonesian Positive Law formulates sanctions through legislative processes and constitutional principles.

In Islamic Criminal Law, sanctions for zina are categorized as *hudud* punishments. The concept of *hudud* reflects the belief that certain offenses constitute violations against divine commands and therefore require sanctions prescribed by Islamic legal sources. The primary objective of punishment is not merely to retaliate against offenders but to preserve public morality, protect lineage (*hifz al-nasl*), and maintain social order. According to Syafaatullah & Zulfiko (2025), sanctions in Islamic Criminal Law are intended to prevent the spread of immoral conduct and ensure the protection of family institutions, which are regarded as fundamental elements of social stability.

The rationale for imposing sanctions in Islamic Criminal Law may be understood through

the theory of *maqashid al-shariah*. This theory explains that Islamic legal rules are designed to protect essential human interests, including religion, life, intellect, lineage, and property. Within this framework, sanctions for zina are closely related to the protection of lineage and honor. Consequently, punishment serves both preventive and educational functions by discouraging unlawful conduct and reinforcing social responsibility. Studies on Islamic criminal justice further indicate that sanctions are intended to achieve *maslahah* (public welfare) and prevent social harm resulting from illicit sexual relationships (Syafaatullah & Zulfiko, 2025).

By contrast, Indonesian Positive Law regulates adultery through Article 411 of Law Number 1 of 2023 concerning the Criminal Code. The provision stipulates a maximum punishment of one year imprisonment or a Category II fine. The formulation of these sanctions reflects the principles of modern criminal law, which prioritize proportionality, legal certainty, and the protection of constitutional rights. Unlike Islamic Criminal Law, Indonesian Positive Law does not distinguish sanctions based on the offender's marital status. Instead, punishment is applied uniformly to individuals who fulfill the legal elements of the offense.

The development of adultery provisions in the new Criminal Code can be analyzed through the theory of criminal law policy. According to this theory, criminal legislation reflects the legal and political choices adopted by the state in addressing social problems. Safar et al. (2024) argues that the expansion of adultery provisions under Article 411 represents a criminal law policy aimed at strengthening moral protection while remaining consistent with constitutional principles and contemporary human rights standards. Therefore, the regulation of adultery in Indonesia reflects an effort to accommodate societal values without abandoning the principles of a democratic legal system.

Another important aspect concerns the relationship between criminal sanctions and legal pluralism in Indonesia. The Indonesian legal system is characterized by the coexistence of religious,

customary, and national legal traditions. Consequently, the formulation of adultery sanctions in the new Criminal Code represents a process of legal harmonization rather than the direct adoption of Islamic criminal sanctions. Maulana et al. (2025) explain that the influence of Islamic legal values is evident in the broader criminalization of adultery, yet the sanctions remain consistent with the structure of modern criminal law. This demonstrates that Indonesia adopts a hybrid legal approach that integrates moral values with constitutional governance.

The effectiveness of criminal sanctions also constitutes an important issue in evaluating the regulation of zina. Contemporary criminal law scholarship emphasizes that the effectiveness of punishment should not be measured solely by the severity of sanctions. Rather, effectiveness depends upon legal certainty, public compliance, law enforcement capacity, and social legitimacy. Putri (2025) notes that the criminalization of moral offenses under the new Criminal Code seeks to strengthen social norms while avoiding excessive state intervention in private life. Accordingly, the complaint-based nature of adultery offenses serves as a mechanism for balancing moral protection and individual rights.

Furthermore, the regulation of adultery in the new Criminal Code reflects a political compromise between religious morality and constitutional values. Maulana et al. (2025) argue that Indonesia's criminal law reform illustrates the state's attempt to reconcile Islamic moral principles with contemporary legal standards. This compromise is evident in the limitation of sanctions, the retention of the complaint-based offense mechanism, and the avoidance of corporal punishment. As a result, the new Criminal Code incorporates moral considerations while maintaining compatibility with constitutional democracy and human rights protections.

Based on the foregoing analysis, it can be concluded that criminal sanctions for zina in Islamic Criminal Law and Indonesian Positive Law differ in terms of legal foundations, objectives, and implementation mechanisms. Islamic Criminal Law emphasizes deterrence, moral protection, and the preservation of lineage through sanctions

rooted in divine law. In contrast, Indonesian Positive Law emphasizes proportionality, rehabilitation, legal certainty, and constitutional safeguards through imprisonment and fines. Despite these differences, both legal systems share a common objective of protecting morality, family institutions, and social order within society.

4. Legal Implications Arising from the Differences Between Islamic Criminal Law and Indonesian Positive Law in Regulating Zina

The comparison between Islamic Criminal Law and Indonesian Positive Law reveals significant differences in the regulation of zina, particularly concerning the elements of the offense, evidentiary standards, and criminal sanctions. These differences generate various legal implications for law enforcement, legal certainty, the protection of individual rights, and the development of criminal law in Indonesia. Although both legal systems seek to protect morality and family institutions, their divergent legal foundations produce distinct approaches to criminal liability and legal protection.

One of the primary legal implications concerns the differing concepts of criminalization. Islamic Criminal Law regards zina as a violation of divine law and public morality, thereby classifying it as a public offense whose prosecution is not dependent upon complaints from particular individuals. In contrast, Indonesian Positive Law treats adultery as an absolute complaint offense (*delik aduan absolut*), meaning that prosecution can only proceed upon complaints from legally authorized parties, such as spouses, parents, or children. This difference affects the scope of law enforcement because many acts that would constitute zina under Islamic law may not be prosecuted under Indonesian Positive Law in the absence of a formal complaint. Maulana et al. (2025) argue that the complaint-based mechanism under Article 411 of Law Number 1 of 2023 reflects a political compromise intended to balance public morality with individual privacy and constitutional rights.

Another important implication concerns legal certainty. Islamic Criminal Law establishes highly specific evidentiary requirements, particu-

larly the requirement of four trustworthy witnesses or a voluntary confession. These strict standards aim to prevent wrongful accusations and ensure that criminal sanctions are imposed only when guilt is established beyond doubt. Conversely, Indonesian Positive Law adopts a broader evidentiary framework that allows judges to evaluate multiple forms of evidence in accordance with the Criminal Procedure Code. According to Siahaan (2020), these differences demonstrate contrasting approaches to achieving legal certainty, with Islamic law emphasizing evidentiary rigor and Positive Law emphasizing procedural flexibility.

The differences between the two systems also have implications for the protection of human rights. Contemporary legal scholarship emphasizes that criminal law must balance moral values with the protection of individual freedoms. Putri (2025) explains that the criminalization of adultery under the 2023 Criminal Code reflects an effort to accommodate societal moral values while simultaneously avoiding excessive state intervention in private life. The retention of the complaint-based offense mechanism illustrates the state's attempt to protect individual autonomy and privacy, particularly in matters relating to consensual adult relationships.

Furthermore, the divergence between Islamic Criminal Law and Indonesian Positive Law reflects the broader reality of legal pluralism in Indonesia. The Indonesian legal system incorporates elements of religious law, customary law, and national law. As a result, the regulation of adultery under the new Criminal Code represents a process of legal harmonization rather than the direct adoption of Islamic criminal law. Supardin & Syatar (2021) observe that the reform of adultery provisions demonstrates the influence of Islamic legal values on national criminal law while maintaining conformity with constitutional principles and contemporary legal standards.

The differences in sanctions also generate important legal implications. Islamic Criminal Law emphasizes deterrence, moral correction, and the protection of lineage through *hudud* sanctions, whereas Indonesian Positive Law prioritizes proportionality and rehabilitation through

imprisonment and fines. Syafaatullah & Zulfiko (2025) conclude that these differing approaches reflect distinct philosophies of punishment. Islamic law focuses on preserving moral order and preventing social harm, while Positive Law seeks to balance punishment with rehabilitation and legal certainty. Consequently, the effectiveness of sanctions is evaluated through different criteria in each legal system.

Another implication relates to criminal law reform in Indonesia. The enactment of Law Number 1 of 2023 concerning the Criminal Code demonstrates the state's effort to integrate moral and religious values into national legislation while remaining committed to constitutional governance. Mashendra (2024) argues that the reformulation of adultery provisions under Article 411 represents a significant development in Indonesian criminal law because it broadens the scope of criminalization while maintaining procedural safeguards. This development indicates an ongoing process of legal adaptation aimed at addressing societal concerns regarding morality and family protection.

The differences between Islamic Criminal Law and Indonesian Positive Law also influence public perceptions of justice. In communities that strongly adhere to Islamic values, the sanctions provided by Positive Law may be perceived as insufficient to deter immoral conduct. Conversely, from a constitutional and human rights perspective, the sanctions contained in the new Criminal Code may be viewed as more proportionate and consistent with modern legal standards. This divergence demonstrates the continuing challenge of reconciling religious norms, societal expectations, and constitutional principles within Indonesia's plural legal system (Rizki Maulana, Fouza Azwir Abdul Azis, & Muammar Izazi, 2025, pp. 560–565).

From the perspective of legal politics, the differences between the two legal systems illustrate the state's effort to navigate competing legal and social interests. The regulation of zina in Indonesia reflects neither a complete adoption of Islamic Criminal Law nor a complete separation from religious values. Rather, it represents a middle path that seeks to harmonize morality, legal

certainty, constitutional rights, and social realities. Such an approach is consistent with Indonesia's constitutional framework, which recognizes religious values while maintaining the principles of a democratic state governed by law.

Based on the foregoing analysis, it can be concluded that the differences between Islamic Criminal Law and Indonesian Positive Law in regulating zina generate important legal implications concerning law enforcement, legal certainty, human rights protection, legal pluralism, criminal law reform, and public perceptions of justice. Although the two legal systems differ in their legal foundations and regulatory mechanisms, both ultimately seek to preserve morality, protect family institutions, and maintain social order. Therefore, future legal development should continue to pursue a balanced harmonization between Islamic legal values, constitutional principles, and contemporary human rights standards.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

This study concludes that significant differences exist between Islamic Criminal Law and Indonesian Positive Law in regulating zina, particularly regarding the elements of the offense, evidentiary requirements, and criminal sanctions. In Islamic Criminal Law, zina is classified as a *jarimah hudud* and is defined as any sexual intercourse occurring outside a lawful marriage. Conversely, Indonesian Positive Law regulates adultery under Article 411 of Law Number 1 of 2023 concerning the Criminal Code, which criminalizes sexual intercourse outside a legal marriage while maintaining its status as an absolute complaint offense.

Regarding evidentiary requirements, Islamic Criminal Law adopts a stricter evidentiary system by requiring a voluntary confession (*iqrar*) or the testimony of four trustworthy witnesses to establish the offense of zina. In contrast, Indonesian Positive Law applies the evidentiary system regulated under the Criminal Procedure Code, which recognizes witness testimony, expert testimony, documentary evidence, indications, and statements of the accused. These differences reflect distinct

approaches to achieving justice and legal certainty within each legal system.

Furthermore, the study finds that criminal sanctions for zina are formulated differently in both systems. Islamic Criminal Law emphasizes deterrence, moral protection, and the preservation of lineage through *hudud* sanctions, whereas Indonesian Positive Law prioritizes proportionality, rehabilitation, legal certainty, and constitutional safeguards through imprisonment and fines. Despite these differences, both legal systems share a common objective of protecting morality, family integrity, and social order.

Finally, the differences between Islamic Criminal Law and Indonesian Positive Law generate important legal implications concerning law enforcement, human rights protection, legal certainty, legal pluralism, and criminal law reform in Indonesia. The regulation of zina under the new Criminal Code demonstrates an effort to harmonize religious values, constitutional principles, and contemporary legal standards within Indonesia's plural legal system.

B. Suggestion

Based on the findings of this study, it is recommended that future criminal law reforms in Indonesia continue to strengthen the harmonization between Islamic legal values and national legal principles while maintaining respect for constitutional rights and human rights standards. Lawmakers should ensure that the implementation of Article 411 of Law Number 1 of 2023 provides legal certainty and avoids inconsistent interpretation in practice.

In addition, legal scholars are encouraged to conduct further research concerning the practical implementation of adultery provisions under the new Criminal Code, particularly regarding evidentiary challenges, law enforcement mechanisms, and their impact on society. Further comparative studies between Islamic Criminal Law and national criminal law are also necessary to support the development of a more responsive and balanced criminal justice system that accommodates Indonesia's legal pluralism and social values.

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