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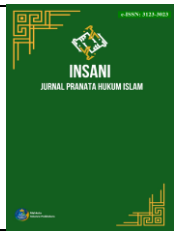

The Secularisation of Islamic Criminal Law and Its Implications for the Protection of Human Rights in Indonesia

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Abstract

This study aims to critically analyse the dynamics of secularisation of Islamic criminal law in Indonesia and examine its implications for protecting human rights in a pluralistic and democratic society. This study uses library research combined with comprehensive theoretical integration, in which the exploration of literature both classical and contemporary works by legal scholars, philosophers, theologians, and social scientists does not merely map the discourse, but also directs attention to the critical dialectic between various paradigms that interact and even compete in the context of the secularisation of Islamic criminal law and its implications for the protection of human rights in Indonesia. The results state that the secularisation of Islamic criminal law in Indonesia is not merely a matter of separating religious norms from the national legal system, but is a crucial arena for the struggle for identity, legitimacy of justice, and the fulfilment of human rights in a pluralistic society. This process requires the state to avoid narrow political compromises and instead dare to creatively and inclusively integrate the substantive values of Islamic justice with universal human rights principles, thereby establishing a criminal law system that truly guarantees equality, respects human dignity, and strengthens social cohesion amidst the nation's diversity.

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Introduction

The implications of the secularisation of Islamic criminal law for the protection of human rights in Indonesia are complex and multidimensional.[1] On the one hand, the secularisation of criminal law is seen as an effort to guarantee the principles of non-discrimination, equality before the law, and the protection of individual rights, as guaranteed in the constitution and various international instruments ratified by Indonesia, such as the International Covenant on Civil and Political Rights (ICCPR). By placing criminal law on a secular basis, the state seeks to ensure that the law does not become a tool of oppression based on religious beliefs. This is important to ensure that every citizen, regardless of religion, can enjoy equal legal protection and receive proportional justice.

The principle of secularism in criminal law also serves as a bulwark for minorities against the potential tyranny of the majority, which could instrumentalise religion-based criminal law for specific political or social purposes. However, on the other hand, rigid and exclusive secularisation can give rise to new paradoxes in the context of human rights protection. When the aspirations and religious identities of the majority group are not given proportional space in the construction of criminal law, this can lead to social tension, alienation, and even the potential for radicalisation. In societies that are still highly religious in sociological terms, the secularisation of criminal law is sometimes perceived as a rejection of the noble values held by society, leading to resistance and delegitimisation of national legal products. Such implications have the potential to reduce the effectiveness of law in regulating and controlling societal behaviour, due to the gap between positive law and the values that are alive in society.

This is where the importance of an integrative approach lies, one that can balance universal human rights principles and the particularities of religious values believed by the majority of society, so that national criminal law does not get stuck in the dichotomy of secularism and sharia formalism alone. It is interesting to note that efforts to integrate Islamic criminal law values into the national legal system are not always contradictory to human rights principles. In some respects, Islamic criminal law principles such as justice (*'adl*), public interest (*maslahah*), and the prohibition of torture are in line with the spirit of modern human rights.[2] However, the main problem often arises in the methodology of interpretation and implementation of criminal sanctions. A textual and literal approach to sharia texts often causes problems when applied in a pluralistic and dynamic society, especially when it comes to hudud sanctions that are literally contrary to the principle of non-derogable rights in international human rights. This requires progressive hermeneutic and *ijtihad* capabilities to ensure that the essential values of Sharia are accommodated within the national criminal legal system without compromising the fundamental principles of human rights.

The fact that Indonesia is neither a purely secular state nor a religious state means that there is always room for negotiation between Islamic criminal law and the principles of secularism.[3] A symbiotic model of integration, in which religious values can influence national law without becoming the sole source of law, could be a strategic solution to the problem of the secularisation of criminal law. This approach requires a strong commitment to the principle of legal pluralism, recognition of social diversity, and

[1] Nasaruddin Umar et al., "Reproduction of Islamic Law in The Era of Globalization and Pluralism," *Jurnal Hukum Dan Peradilan* 12, no. 3 (2023): 629–54, https://doi.org/10.25216/jhp.12.3.2023.629-654.

[2] Samiul Hasan, "Philanthropy and Social Justice in Islam: Principles, Prospects, and Practices," *Prospects, and Practices (January 30, 2024)*, 2024, https://doi.org/10.2139/ssrn.4709876.

[3] Aftab Haider et al., "Can Islamic Law and Secular Law Coexist Without Conflict," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (2025): 485–512, https://doi.org/10.29240/jhi.v10i2.11331.

respect for universal human rights. In practice, the integration of Islamic criminal law into the national system must be carried out carefully, selectively, and responsively to social dynamics and developments in international human rights standards.

The phenomenon of sharia-based regional regulations in a number of regions is a clear example of how negotiations between Islamic criminal law and secularism work in practice. On the one hand, sharia-based regional regulations are expected to respond to the aspirations of the Muslim community, but on the other hand, they often give rise to strong criticism regarding human rights violations, particularly the rights of women, religious minorities, and other vulnerable groups.[4] The implementation of Sharia-based criminal law, such as in Aceh, with the enactment of *qanun jinayat* regulating criminal sanctions for moral violations, creates a dilemma between respect for local wisdom and commitment to national and international human rights standards.[5] The existence of Sharia regulations within the framework of regional autonomy shows that the secularisation of criminal law in Indonesia has not been linear, but rather dynamic, reflecting political constellations, social pressures, and compromises between the centre and the regions.

Abdullahi Ahmed An-Na'im provides a global perspective on how Islamic law can interact with the principles of secularism in modern states.[6] An-Na'im argues that the application of Islamic law in modern nation states requires reconstruction and adaptation to align with the principles of human rights and democracy. Tim Lindsey and Simon Butt emphasise that the construction of Indonesia's national law has always been in tension between the aspirations of Islamisation and the needs of secularisation.[7] In the context of criminal law, the compromise between religious values and secular principles has become more apparent in the ongoing process of revising the Criminal Code. This work clarifies how changes in criminal law are not only legal-formal in nature, but also laden with political identity and social negotiation.

Ratno Lukito's study emphasises that Indonesia's legal system is highly pluralistic, with Islamic law, customary law and national law interacting in complex ways.[8] Lukito reminds us that legal pluralism can enrich society, but it also has the potential to create legal uncertainty if not managed according to principles of justice and human rights. Previous studies have also highlighted direct conflicts between Islamic criminal sanctions at the local level and human rights principles, particularly in cases involving qanun jinayat in Aceh.[9] These studies confirm that physical punishment such as flogging is often criticised by the international and national communities as a violation of basic rights.

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[4] Zumiyati Sanu Ibrahim et al., "Integration of Maqaṣid Al-Shari'ah in the Criminal Law Reform to Achieve Justice and Human Dignity," *Jurnal Hukum Islam* 23, no. 1 (2025): 105–44.

[5] Nur Insani et al., "Islamic Law and Local Wisdom: Exploring Legal Scientific Potential in Integrating Local Cultural Values," *Kanun Jurnal Ilmu Hukum* 26, no. 1 (2024): 101–24, https://doi.org/10.24815/kanun.v26i1.32930.

[6] Abdullahi Ahmed An-Naim, *Islam and the Secular State: Negotiating the Future of Sharia* (Harvard University Press, 2008).

[7] Simon Butt and Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Sydney: Bloomsbury Publishing, 2012).

[8] Ratno Lukito, *Legal Pluralism in Indonesia: Bridging the Unbridgeable* (Routledge, 2012), https://doi.org/10.4324/9780203113134.

[9] Dian Andi Nur Aziz et al., "Examining Qanun in Aceh from a Human Rights Perspective: Status, Substance and Impact on Vulnerable Groups and Minorities," *Ijtihad J. Wacana Huk. Islam Dan Kemanus* 23 (2023): 37–56, https://doi.org/10.18326/ijtihad.v23i1.37-56; Abdul Halim, "Non-Muslims in the Qanun Jinayat and the Choice of Law in Sharia Courts in Aceh," *Human Rights Review* 23, no. 2 (2022): 265–88, https://doi.org/10.1007/s12142-021-00645-x; Tim Mann and Dina Afrianty, "Aceh's Islamic Criminal Code: Formalising Discrimination," in *Crime and Punishment in Indonesia* (Routledge, 2020), 507–34, https://doi.org/10.4324/9780429455247-25.

Based on this literature review, this study aims to critically analyse the dynamics of the secularisation of Islamic criminal law in Indonesia and examine its implications for the protection of human rights in a pluralistic and democratic society. The main objective of this study is to identify forms of secularisation of Islamic criminal law, describe the factors behind the emergence of secularisation, and analyse its impact on the guarantee and protection of human rights, both at the national and regional levels. The essence lies in an effort to understand and unravel the complex relationship between Islamic criminal law, secularism, and human rights in a critical and in-depth manner.

Methods

This study uses a library research method combined with comprehensive theoretical integration, in which the exploration of literature both classical and contemporary works by legal thinkers, philosophers, theologians, and social scientists does not merely stop at mapping the discourse, but is also directed towards a critical dialectic between various paradigms that interact and even compete in the context of the secularisation of Islamic criminal law and its implications for the protection of human rights in Indonesia. Through a multidisciplinary examination of primary and secondary sources such as books, scientific journals, court decisions, national and international regulations, and public policies, this study traces the complexity of criminal law transformation under the pressure of social pluralism, demands for modernisation, and the struggle between the particularity of Sharia values and the universality of human rights.

The integration of various theoretical frameworks ranging from maqashid syariah, theories of secularism and legal pluralism, to principles of human rights is used to reconstruct the dialectical relationship between religious values, national legal politics, and the socio-political constellation that influences both the legislative process and the implementation of national and local criminal law (such as sharia by-laws). Thereby producing a critical mapping and rich conceptual synthesis and offering normative arguments that are both solution-oriented and contextually relevant for formulating an inclusive, civilised model of Indonesian criminal law that aligns with the commitment to universal human rights protection without losing its religious and national roots.

Result and Discussion

The Paradox of Implementing Islamic Law in a Secular State

Adapting Islamic criminal law principles into Indonesia's secular legal system should be seen as a dialectical process, not just a normative transfer or textual translation. The substance of Islamic criminal law is built on the principles of justice (*'adl*), benefit (*maslahah*), protection of life, property, intellect, lineage, and religion (maqashid syariah), which inherently have substantial overlaps with human rights protection norms as enshrined in international instruments such as the Universal Declaration of Human Rights (UDHR) and the ICCPR. However, efforts to adopt Sharia principles literally into a secular legal framework often encounter resistance, both at the ideological and practical levels. This is not merely a matter of normative substance, but more related to interpretation, methodology, and implementation mechanisms. This is where the urgent need for a substantive-progressive approach lies. Islamic criminal law principles are not imported rigidly and textually, but rather internalised in the national legal construct through contextual reinterpretation responsive to social realities and human rights protection needs.

At the philosophical level, integrating Islamic criminal law into Indonesia's secular legal system is possible as long as it is carried out by prioritising substantive values, not

merely normative symbolism or expressions of political identity. For example, the principle of justice in Sharia can serve as a reference in building a humane, proportional, and corrective-rehabilitative penal system, rather than merely repressive. Similarly, the concept of maqashid syariah can be used as a basis for arguing for protecting the right to life, freedom of religion, and the right to security for every individual, which are highly relevant values in modern human rights discourse. However, transforming these values into positive regulations requires progressive methods of ijtihad and legal hermeneutics, so Islamic law does not appear in a rigid, literal form, but rather in a form that is inclusive and adaptive to the diverse context of Indonesia.

At the normative level, Indonesia's national legal system has provided limited and selective space for Sharia principles to enter through two main channels: national law codification (particularly Sharia family and economic law) and regional regulations (Sharia-based local regulations). National legal codification that adopts Sharia values, such as the Marriage Law or the Sharia Banking Law, is generally more easily accepted because its substance does not directly conflict with sensitive fundamental rights in a pluralistic society and human rights. However, the direct application of Islamic criminal principles through Sharia regulations, particularly those targeting morality or social order, often causes controversy and paradoxes.

The partial implementation of Islamic law through sharia regulations in several regions in Indonesia cannot be separated from the post-1998 political decentralisation. Local governments, especially in Muslim-majority areas, have utilised their broad autonomy to issue sharia-based regulations, under the pretext of responding to the religious aspirations of the local community. However, this practice has created a duality: on the one hand, sharia-based local regulations are perceived as a manifestation of local democracy and recognition of religious identity, while on the other hand, these regulations are often criticised for being prone to discrimination, social exclusion, and human rights violations, particularly against minority groups, women, and other vulnerable communities. For example, regulations prohibiting activities during prayer times, requiring women to wear the hijab, banning LGBTQ activities, and imposing physical punishments such as flogging have raised concerns about the strengthening of majority tyranny and the erosion of non-discrimination principles that form the foundation of universal human rights.[10]

Sharia-based local regulations can indeed provide a sense of identity representation for the Muslim majority and strengthen internal social cohesion. Still, their side effects include increased social tension, stigmatisation, and marginalisation of groups with different beliefs, lifestyles, or interpretations of religion. Numerous reports indicate that women, religious minorities, and non-heteronormative communities are the primary targets of these regulations, both socially and legally.[11] The enforcement of Sharia-based regulations often creates a chilling effect: citizens become afraid to express their identity or feel unsafe in public spaces for fear of violating majority norms formalised in rules. In some cases, the implementation of Sharia-based local regulations even conflicts with constitutional guarantees, such as Article 27 of the 1945 Constitution, which guarantees equality before the law for all citizens, or the principles of non-discrimination enshrined in various international human rights treaties ratified by Indonesia.

[10] Zumiyati Sanu Ibrahim et al., "Islamic Law and Human Rights: Convergence or Conflict?," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 24, no. 2 (2024): 431–48, https://doi.org/10.19109/nurani.v24i2.19595.

[11] Nur Insani, Suud Sarim Karimullah, and Sulastri, "Islamic Law Challenges in Addressing Human Trafficking and Sexual Exploitation," *Jurnal Hukum Islam* 21, no. 2 (2023): 357–87, https://doi.org/10.28918/jhi.v21i2.1732.

This paradox becomes even more complex when considering the political dimensions behind the enactment of sharia-based local regulations. It cannot be denied that sharia-based regulations are often not merely expressions of religious aspirations but also products of political compromises, or even tools for electoral mobilisation by local actors.[12] In situations where identity politics is on the rise, sharia-based local regulations can become an effective tool for gaining political legitimacy or asserting the supremacy of the majority group.[13] However, the consequence blurs the orientation towards protecting fundamental rights and substantive justice. When religious law is institutionalised in the public sphere, the potential for abuse of power by both officials and vigilante groups becomes very high, making individual rights vulnerable to being sacrificed in the name of morality or public order.

Amidst these issues, it is essential to highlight that the principles of Islamic criminal law can be substantively adapted into the national legal system without causing fundamental conflicts with universal human rights values, provided that the adaptation process is carried out carefully, contextually, and not textualistically.[14] This requires modern ijtihad that can separate the eternal values of sharia (the spirit of justice, public interest, and protection of human rights) from historical forms of law that arose from specific socio-political contexts. Thinkers such as Abdullahi Ahmed An-Na'im, Khaled Abou El Fadl, and Indonesian intellectuals such as Syafii Maarif and Nurcholish Madjid have emphasised the importance of creatively reformulating Sharia to make it compatible with the principles of the modern rule of law, democracy, and universal human rights. This means that instead of adopting Islamic criminal sanctions such as hudud or takzir literally in a pluralistic society, it would be wiser to translate the principles of justice and protection contained in maqashid syariah into universal and non-discriminatory positive legal norms.

In legislative practice, this substantive adaptation can be achieved through two main strategies: first, placing Sharia values as a source of ethical inspiration in formulating national law, not as textual norms that all citizens must rigidly follow; second, harmonising religious values and international human rights standards through inclusive, transparent, and participatory social-political dialogue mechanisms. With this approach, national criminal law can take the spirit of justice and benefit from Sharia without getting caught up in symbolic formalism prone to discrimination. Criminal sanctions, for example, must be formulated based on the principles of proportionality, legal certainty, and respect for human rights, and their compatibility with national and international standards must be tested through judicial review or other credible oversight mechanisms.

The paradox of implementing Islamic law in a secular Indonesian state ultimately challenges us to transcend the false dichotomy between secularism and religion. On the one hand, it cannot be denied that most Indonesians still strongly desire the presence of religious values in the public sphere and legal system. However, on the other hand, the reality of pluralism and commitment to universal human rights requires the state to be

[12] Arif Sugitanata, Suud Sarim Karimullah, and Rizal Al Hamid, "Hukum Positif Dan Hukum Islam: Analisis Tata Cara Menemukan Hukum Dalam Kacamata Hukum Positif Dan Hukum Islam," *JURISY: Jurnal Ilmiah Syariah* 3, no. 1 (2023): 1–22, https://doi.org/10.37348/jurisy.v3i1.242.

[13] Rizal Al Hamid, Arif Sugitanata, and Suud Sarim Karimullah, "Sinkronisasi Pendekatan Sosiologis Dengan Penemuan Hukum Islam Sui Generis Kum Empiris," *Bertuah Jurnal Syariah Dan Ekonomi Islam* 4, no. 1 (2023): 48–60, https://doi.org/https://doi.org/10.56633/jsie.v4i1.553.

[14] Suud Sarim Karimullah, Sulastri Sulastri, and Kamsi Kamsi, "Islamic Law and the Regulation of Human Rights Issues in Separatist Conflicts," *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman* 10, no. 2 (2024): 373–94, https://doi.org/10.24952/fitrah.v10i2.12260.

cautious in accommodating Sharia in regulations that have a broad impact. The main issue is not the presence or absence of sharia in national law, but rather how religious values are articulated into legal norms that are fair, non-discriminatory, and respectful of the humanity of every citizen.[15]

The solution to this paradox is not to sacrifice one side the universality of human rights or the particularity of religious values, but to develop substantive and innovative adaptation mechanisms, grounded in progressive legal hermeneutics and an inclusive and democratic political culture. In this context, strengthening human rights institutions, constitutional courts, and civil society participation are prerequisites for ensuring that the legislative and legal implementation processes, both at the national and local levels, are always oriented towards protecting the fundamental rights of all citizens, without exception. Efforts to reformulate Sharia contextually must continue to be encouraged in academia and practice, so that Islamic law can contribute to Indonesian legal civilisation in a creative, relevant and just manner.[16]

The paradox of implementing Islamic law in a secular country, particularly in criminal law and regional regulations, reflects the contestation of values, identity, and power in Indonesia's pluralistic society. The middle ground needed is not merely a normative compromise, but a substantial transformation through continuous dialogue across values. Thus, the principles of Islamic criminal law are no longer understood as a threat to human rights but as a source of inspiration to strengthen a legal system rooted in universal values of justice, diversity, and respect for the dignity of every individual. Only then can Indonesia become a model of a democratic state capable of managing the paradox of religious identity and a secular legal state in a fair, dynamic, and dignified manner.

The Controversy Over Islamic Law Enforcement and Individual Freedom

One of the epicentres of the controversy over Islamic law enforcement is the practice of imposing criminal sanctions that are explicitly regulated in Islamic criminal law, such as flogging (*al-jald*) and stoning (*al-rajm*). From the perspective of classical Islamic jurisprudence, these two punishments are considered part of hudud, a category of crimes and punishments normatively viewed as directly derived from divine revelation, severely limiting human authority to make changes.[17] Violations of adultery laws, for example, are punishable by stoning or flogging. In contrast, breaches of alcohol consumption, *qadzaf* (false accusation of adultery), and several other criminal acts also have clear hudud penalties. In traditional Muslim societies, hudud is often seen as an expression of obedience to God and an effort to maintain collective morality. However, in modern and pluralistic societies, the interpretation of these criminal sanctions is often problematic, especially when confronted with demands for respect for individual human rights, particularly the right to be free from torture, cruel treatment, and humiliation of human dignity.

Normatively, the principle of non-derogable rights in international human rights law, particularly as enshrined in Article 5 of the UDHR and Article 7 of the ICCPR, asserts that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' This prohibition is absolute and cannot be derogated under

[15] Suud Sarim Karimullah, "Pursuing Legal Harmony: Indonesianization of Islamic Law Concept and Its Impact on National Law," *Mazahib* 21, no. 2 (December 27, 2022): 213–44, https://doi.org/10.21093/mj.v21i2.4800.

[16] Sumiyati Beddu et al., "From Doctrine to Action: Islamic Law's Journey towards Social Change," *Jurnal Wawasan Yuridika* 8, no. 1 (2024): 1–24, https://doi.org/10.25072/jwy.v8i1.4177.

[17] Suud Sarim Karimullah, "From Tradition to Mainstream: Understanding the Integration of Islamic Law in Various Global Settings," *Justicia Islamica* 20, no. 2 (2023): 214–40, https://doi.org/10.21154/justicia.v20i2.6478.

any circumstances, including in times of emergency or war. Thus, the application of sanctions such as flogging and stoning, which are essentially physical and cause both physical and psychological suffering, inherently risks violating internationally recognised human rights principles. Various UN bodies, such as the Human Rights Committee, the UN Special Rapporteur on Torture, Amnesty International and Human Rights Watch, have consistently categorised flogging, stoning, amputation and cruel capital punishment as forms of torture and inhuman treatment prohibited under international law. The argument is not based solely on the intensity of pain or physical suffering caused by these sanctions, but also on their psychological effects, stigmatisation, and violation of human dignity.

The situation is further complicated by the formal enforcement of Islamic criminal law in several regions of Indonesia, such as Aceh, which has special autonomy to implement qanun jinayat (Islamic criminal law). The application of flogging in Aceh, which is intended for moral offences such as adultery, khalwat, alcohol consumption, and gambling, has repeatedly attracted national and international attention. Many cases have been widely documented on social media, showing the process of public flogging, which not only causes physical suffering to the perpetrators but also deep shame and social stigma. The response from civil society, both at the local and national levels, has been mixed some support the practice as an effort to uphold religious norms and maintain public morality. Still, most progressives, academics, and human rights activists condemn it as a serious violation of human rights and inconsistent with the spirit of the Indonesian constitution, which upholds human dignity.[18]

Human rights organisations in Indonesia, such as Komnas HAM, KontraS, ELSAM, LBH, and other civil society networks, have consistently voiced their rejection of cruel physical punishments, including flogging and stoning. They emphasise that criminal law, regardless of its philosophical or religious foundations, must remain subject to constitutional standards and principles of non-discrimination and respect for individual fundamental rights. Komnas HAM has even explicitly recommended that the central and local governments cease the practice of flogging and similar punishments, as they are deemed inconsistent with the constitution and Indonesia's commitments to international rights instruments that have been ratified.

In addition, various international human rights institutions continue to monitor these practices and often warn the Indonesian government about the risks to its global reputation and the adverse impact on protecting citizens' fundamental rights. Arguments usually put forward by supporters of applying Islamic criminal sanctions are that the hudud law is a manifestation of obedience to God and a preventive measure to maintain social and moral order.

They believe the threat of harsh sanctions can serve as a deterrent, reducing crime rates and moral deviance, and fostering social compliance with religious teachings. On the other hand, this argument is often criticised by civil society and human rights groups, who emphasise the importance of proportionality, humanity, and protection of individuals from arbitrary actions by the state or religious authorities. They argue that the success of law enforcement and the creation of a moral society cannot be achieved through repressive approaches or physical sanctions, disregarding fundamental rights. Instead, such approaches are prone to creating a culture of fear, violating the principles

[18] Suud Sarim Karimullah, "For True Humanity: Harmonization of Islamic Law and Human Rights Towards Universal Justice," *Matan: Journal of Islam and Muslim Society* 5, no. 2 (2023): 40–56, https://doi.org/10.20884/1.matan.2023.5.2.9125.

of fair trial, and reinforcing discriminatory practices against marginalised groups, including women, religious minorities, or those with different sexual orientations.[19]

Furthermore, Islamic criminal law enforcement practice in regions such as Aceh has sparked intense public debate. Many studies show that the majority of the local population, especially those who are conservative, support the implementation of qanun jinayat because they believe it preserves cultural and religious identity. However, many feel intimidated or threatened by these regulations, especially those from minority groups or those with different religious beliefs. Women, for example, are often victims of discriminatory morality regulations, such as dress codes, restrictions on public activities, and strict surveillance of behaviour.[20]

One aspect that needs to be highlighted is how the practice of Islamic criminal sanctions, especially those that are physical, often encourages vigilantism, abuse of power, and the institutionalisation of violence in society. Public flogging, for example, opens the door to mass humiliation, persecution, and systematic stigmatisation of perpetrators. In many cases, the law enforcement process is not always accompanied by guarantees of fair trials, access to legal aid, or protection of victims from inhumane treatment.[21] This situation is exacerbated by weak oversight of judicial institutions and the state's tendency to allow violations to occur in the name of religion or local culture. Therefore, it is unsurprising that human rights organisations, both at the national and international levels, continue to pressure the Indonesian government to impose a moratorium, revise, or even repeal criminal regulations contrary to humanitarian principles.

In response to this controversy, there is also debate among Muslim scholars and intellectuals regarding the relevance and validity of applying hudud sanctions in the context of a modern state. Some progressive thinkers assert that Sharia is dynamic, and the application of hudud law must always consider the maqashid syariah, or the main objectives of Sharia, which emphasise justice, protection of life, and the welfare of humanity. In a society that has not yet been able to fulfil all the requirements of justice, legal protection, and the elimination of all forms of bias and discrimination, the enforcement of physical criminal sanctions is considered inconsistent with the spirit of Sharia itself.

Amidst the wave of globalisation, demands for harmonisation between national, local, and international human rights standards are growing stronger. Countries that still maintain physical punishments such as flogging and stoning face increasing pressure, whether through resolutions, diplomatic sanctions, or criticism in international forums. Indonesia, as a country committed to Pancasila, democracy, and respect for human rights, finds itself in a dilemma.[22] On the one hand, the state must respect the aspirations and rights of local communities to practise their beliefs. Still, on the other hand, it is also obligated to guarantee the protection of universal individual rights. This

[19] Suud Sarim Karimullah, "The Implications Of Islamic Law On The Rights Of Religious Minorities In Muslim-Majority Countries," *MILRev: Metro Islamic Law Review* 2, no. 2 (2023): 90–114, https://doi.org/10.32332/milrev.v2i2.7847.

[20] Nur Insani et al., "Empowering Muslim Women: Bridging Islamic Law and Human Rights with Islamic Economics," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (2024): 88–117, https://doi.org/10.18860/j-fsh.v16i1.26159; Arif Sugitanata, Siti Aminah, and Ahmad Muhasim, "Living Law And Women Empowerment: Weaving Skills as a Marriage Requirement in Sade, West Nusa Tenggara," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 15, no. 1 (2023): 145–60, https://doi.org/10.14421/ahwal.2022.15108.

[21] Adi Mansar, "Legal Aid Is the State's Responsibility and the Rights of Children in Conflict with the Law," *International Journal Reglement & Society (IJRS)* 3, no. 3 (2022): 301–8, https://doi.org/10.55357/ijrs.v3i3.379.

[22] Robiatul Adawiyah and Umi Rozah, "Indonesia's Criminal Justice System with Pancasila Perspective as an Open Justice System," *Law Reform* 16, no. 2 (2020): 149–62, https://doi.org/10.14710/lr.v16i2.33783.

dilemma becomes even more complex given the existence of regional autonomy and the growing trend of identity politics.

The controversy over enforcing Islamic law and individual freedoms in Indonesia ultimately poses a significant challenge for the legal system, the state, and civil society to find common ground between religious authority and human rights principles. In this context, strengthening oversight institutions, public education on human rights, and interdisciplinary dialogue between religious scholars, legal experts, academics, and civil society have become urgent. The state must establish adequate checks and balances to ensure that all forms of law enforcement, including those based on religion, do not stray from the principles of humanity and substantive justice. Similarly, religious communities must be encouraged to reflect critically on their legal practices so that spiritual values are not used to justify actions contrary to human dignity.

Identity Politics in the Dynamics of Legal Secularisation

A historical review of the secularisation of Islamic criminal law in Indonesia shows that debates about the position of Sharia law in the national legal system have never been free from political interests. Since the formulation of the state's foundations, compromises between nationalist and Islamist groups have left their mark on every important decision regarding the role of religion in the public sphere. Efforts at secularisation through adopting the colonial-era Criminal Code, the explicit exclusion of Islamic criminal law from the public legal sphere, and the emergence of a hybrid legal system after the reform era have all taken place within the context of identity contestation. Normatively, legal secularisation is projected as a form of maintaining state neutrality, protecting minorities, and guaranteeing equality. However, in practice, the space for secularisation often becomes a discursive and political battleground between those who seek to reinforce Islamic identity and those who strive to promote inclusivity and pluralism.[23]

The fundamental question that arises is whether the secularisation of Islamic criminal law is truly a political strategy of the state to stem religious identity politics or whether it is a form of affirmation of Islamic identity through institutional channels.[24] In practice, the secularisation of law in Indonesia often presents an ambivalent face. On the one hand, the state appears to be making strenuous efforts to reduce the potential expansion of Islamic criminal law into the national sphere through regulatory restrictions for example, by emphasising that the new Criminal Code must not be subject to textual and exclusive intervention by religious norms. On the other hand, decentralisation and regional autonomy have opened the legal-formal floodgates to manifest Islamic identity through sharia-based local regulations, *qanun jinayat*, and recognising Islamic law as a source of values in national law.[25] The state is in a liminal position, where secularisation is carried out half-heartedly: at the central level, it is promoted as a strategy for demarcating identity, but at the local level, it is often tolerated or even facilitated as a form of recognition of the aspirations of the majority group.

What is more subtle, but far more influential, is how the ruling elite uses legal secularisation as a political bargaining tool. When there is intense pressure from

[23] Husnul Fatarib et al., "Sultan's Law and Islamic Sharia in The Ottoman Empire Court: An Analysis of The Existence of Secular Law," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May (2023): 117–34, https://doi.org/10.29240/jhi.v8i1.4908.

[24] Suud Sarim Karimullah, "Comparison of the Concept of Justice in Islamic Law and Western Law," *UNISKA LAW REVIEW* 4, no. 2 (2023): 145–73, https://doi.org/10.32503/ulr.v4i2.4379.

[25] Karimullah, "From Tradition to Mainstream: Understanding the Integration of Islamic Law in Various Global Settings."

religious groups to expand the application of Islamic criminal law, the state tends to use the narrative of secularisation as a shield to dampen these demands, to maintain social stability and cohesion. However, secularisation is often interpreted flexibly when political polarisation occurs, providing room for compromise for legalising religious identity through regional legal channels or affirmative policies.[26] At this point, secularisation is no longer merely a project of legal modernisation, but a highly flexible instrument of political identity: sometimes as a pillar of pluralism, sometimes as a form of symbolic negotiation to reinforce the status quo of power.

In this context, the politicisation of Islamic criminal law has multidimensional impacts on social cohesion and interfaith relations in Indonesia. On the one hand, the institutionalisation of Islamic identity through regional laws, as in Aceh, Padang, and several other regions does provide political representation for the Muslim majority. This is often justified as a form of respect for local aspirations and cultural wisdom. However, at the same time, this practice reinforces the dividing lines between 'us' and 'them,' solidifying into regulations that directly impact religious minorities, women, and other vulnerable groups. Field studies show that Sharia regulations or qanun jinayat regulate behaviour and stimulate the formation of exclusive religious-based collective identities. Social cohesion at the community level is often maintained, but the risk of fragmentation and exclusion at the national level increases, especially when there are clashes between religious values and interpretations.

A further impact of the politicisation of Islamic criminal law through secular legal-formal instruments is the emergence of tensions between universal human rights norms and the particularities of local identities. The state faces a constitutional dilemma: it must ensure that all citizens are equal before the law, but it is also obliged to respect the right of communities to express their religious identity. In practice, dominant political interests often win these value conflicts at the expense of principles of non-discrimination, individual freedom, and minority protection. This phenomenon can be seen in several regional regulations that discriminate against non-Muslim groups, women, or even Muslims who hold religious views different from the mainstream.[27]

Another issue that is no less important is the long-term effect of the politicisation of Islamic criminal law on the construction of citizenship and the strengthening of a culture of tolerance. The institutionalisation of religious identity in criminal regulations creates a logic of exclusivism at the social and legal levels. The rights of citizens to practise their beliefs or choose a particular lifestyle become vulnerable to compromise by a legal logic that prioritises the morality of the majority group.[28]

This process is exacerbated by the lack of tolerance education, minimal authentic interfaith dialogue, and ineffective mechanisms to peacefully resolve disputes or conflicts of values. As a result, legal and social discrimination becomes part of everyday practice, even considered a price worth paying to maintain social harmony as defined by the majority. Equality before the law is increasingly difficult to achieve, as the state has implicitly chosen to side with the logic of identity rather than the principle of

[26] Zakaria Sajir, "A Post-Secular Approach to Managing Diversity in Liberal Democracies: Exploring the Interplay of Human Rights, Religious Identity, and Inclusive Governance in Western Societies," *Religions* 14, no. 10 (2023): 1325, https://doi.org/10.3390/rel14101325.

[27] Suud Sarim Karimullah et al., "Rethinking Gender In Islamic Law," *Musāwa Jurnal Studi Gender Dan Islam* 23, no. 1 (2024): 99–113, https://doi.org/10.14421/musawa.2024.223.99-113.

[28] Syahwal Syahwal, "Worship in the Shadow of Capital: Neoliberalism and the Fate of Religious Freedom in Indonesia," *The Indonesian Journal of International Clinical Legal Education* 7, no. 1 (2025): 167–202, https://doi.org/10.15294/iccle.v7i1.25745.

universal justice.[29] The dynamics of identity politics in the secularisation of Islamic criminal law also have a domino effect on the quality of democracy and statehood.

Secularisation, which should be a space for inclusion and alignment of norms across identities, has often become fertile ground for religious populism, political polarisation, and the co-optation of legal instruments by elites for electoral interests.[30] When Islamic identity is institutionalised through criminal law, the state not only fails to curb identity politics but also strengthens it structurally. In this context, the narrative of legal secularisation changes function: from a pillar of pluralism to an instrument of negotiation or even co-optation in the name of collective interests. Instead of being a fair referee, the state becomes an active player in risky identity contests, both socially, politically, and in inter-religious relations.

Another often overlooked effect is the erosion of public trust in legal institutions. When criminal law is used as an arena for identity affirmation, the public's perception of legal justice becomes distorted. Citizens begin to see the law as a tool of certain groups, rather than as a protector of the rights of all citizens. Suspicions and prejudices become more prominent, especially among minorities or those who feel discriminated against by religion-based regulations. This disconnect between law and a sense of justice is dangerous for national stability, as it can trigger alienation, resistance, and even acts of defiance that undermine social cohesion and national consensus.

The dynamics of identity politics and the secularisation of law are not monolithic or always reactive. In some situations, secularisation can provide space for innovation in redefining the relationship between religion and the state more justly and equitably. However, the key prerequisite is a strong political commitment to prioritising human rights, strengthening a culture of dialogue, and ensuring that all citizens receive equal protection under the law. The state must be able to position religious identity as part of social wealth, not as a reason to discriminate against or exclude others.

Conclusion

The secularisation of Islamic criminal law in Indonesia, rather than merely serving as a space for compromise between the demands of pluralism and religious identity aspirations, has raised fundamental issues regarding the meaning of justice, legal legitimacy, and the future of human rights protection in a pluralistic society. This process challenges the state to go beyond symbolic regulation or temporary political compromises and instead dare to build a legal system that is genuinely inclusive, critical, and progressive, one that embraces the essence of substantive justice within the Islamic tradition while meeting the standards of non-discrimination, equality, and respect for fundamental rights as guaranteed by global human rights principles. The way forward is not to pit secularism against sharia, but to find common ground where the noble values of both can serve as the foundation for a criminal legal system that humanises, strengthens social cohesion, and ensures a safe space for every citizen without exception; only through a visionary paradigm shift and a genuine commitment to universal justice can Indonesia transform the secularisation of Islamic criminal law into a bridge toward a democratic, just, and civilised society in the modern era.

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[29] Hanoch Dagan and Avihay Dorfman, "Precontractual Justice," *Legal Theory* 28, no. 2 (2022): 89–123, https://doi.org/10.1017/S1352325222000076.

[30] Raymond Hinnebusch, "Identity and State Building over Time: Political Institutions and Syria's Sectarianism–Nationalism Balance," in *Sectarianism and Civil War in Syria* (Routledge, 2025), 41–64, https://doi.org/10.4324/9781003557722-4.

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