



Between Islamic Morality and Legal Certainty: Political Compromise in Regulating Adultery and Non-Marital Cohabitation in Indonesia's New Criminal Code

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Abstract

The reformulation of articles concerning adultery and cohabitation in the new Criminal Code (Law No. 1 of 2023) raises fundamental questions regarding how Islamic values can be harmonized with national criminal law without undermining legal certainty and the protection of individual rights. This study aims to analyze the mechanisms for harmonizing Islamic values within the new Criminal Code, particularly in the articles on adultery and cohabitation, as well as to assess the relevance of legal politics in regulating public morality. The study employs a qualitative-descriptive approach with content analysis, relying on primary legal documents and secondary legal literature. The analysis is conducted thematically to evaluate the extent to which the new Criminal Code provides legal certainty, substantive justice, and protection of individual rights. The findings indicate the existence of a political compromise pattern reflected in the adjustment of sanctions, limitations in the scope of law enforcement, and interactions among legislators, law enforcement officers, and religious stakeholders. This study confirms that the new Criminal Code functions as an adaptive and proportional legal instrument, with significant implications for legal politics in Indonesia, particularly in harmonizing public aspirations, constitutional principles, and societal moral norms.

Keywords: Legal Politics, New Penal Code, Islamic Values, Adultery Provisions

Abstrak

Perumusan kembali pasal-pasal mengenai zina dan kohabtasi dalam KUHP baru (UU No. 1 Tahun 2023) menimbulkan pertanyaan mendasar mengenai bagaimana nilai-nilai Islam dapat diharmonisasikan dengan hukum pidana nasional tanpa mengorbankan kepastian hukum dan perlindungan hak individu. Penelitian ini bertujuan untuk menganalisis mekanisme harmonisasi nilai Islam dalam KUHP baru, khususnya dalam pasal zina dan kohabtasi, serta menilai relevansi politik hukum dalam pengaturan moralitas publik. Penelitian menggunakan pendekatan kualitatif-deskriptif dengan analisis konten, mengandalkan dokumen hukum primer dan literatur hukum sekunder. Analisis dilakukan



secara tematik untuk menilai sejauh mana KUHP baru memberikan kepastian hukum, keadilan substantif, dan perlindungan hak individu. Temuan menunjukkan adanya pola kompromi politik yang tercermin dari penyesuaian sanksi, pembatasan ruang penerapan hukum, dan interaksi antara legislator, aparat hukum, dan pemangku kepentingan agama. Penelitian ini menegaskan bahwa KUHP baru berfungsi sebagai instrumen hukum yang adaptif dan proporsional, dengan implikasi signifikan bagi politik hukum di Indonesia, khususnya dalam menyelaraskan aspirasi publik, prinsip konstitusional, dan norma moral masyarakat.

Kata Kunci: Politik Hukum, KUHP Baru, Nilai Islam, Pengaturan Zina

Introduction

The practice of adultery and cohabitation in Indonesia reflects a complex social dynamic. Urban communities and those experiencing shifts in social values face interactions between religious norms, customary law, and state regulations. This phenomenon has sparked debates regarding the moral boundaries that should be regulated by criminal law. In some cases, such actions provoke strong social reactions, ranging from stigma to informal law enforcement. These situations reflect an imbalance between formal regulations and societal behavior, highlighting the need to examine how the law can accommodate social and religious values proportionally, without neglecting the principles of justice and legal certainty.

The debate becomes increasingly complex with the inclusion of articles on adultery and cohabitation in the new Criminal Code (Law No. 1 of 2023). While these regulations are intended to provide a clear legal framework, in practice, they have generated controversy among the public, academics, and legal practitioners.¹ Uncertainty arises regarding proportional sanctions, protection of individual rights, and the social impact of moral criminalization.² This condition necessitates a comprehensive study analyzing how these provisions are harmonized with religious values, cultural norms, and human rights, ensuring that criminal law functions not only as a repressive tool but also as an educational and preventive instrument.

Legal literature in Indonesia indicates that harmonizing religious values within criminal law remains a complex issue. Some studies emphasize the need for harmonization of national law with public morality principles, yet analyses on the application of Islamic values in adultery and cohabitation articles in the new Criminal Code remain limited. A conceptual framework based on Islamic legal principles and the proportionality principle of criminal law offers a strong foundation, but its implementation in Indonesian legislation is rarely empirically examined. This highlights the need for research that bridges theory and practice, particularly in evaluating the extent to which modern criminal law reflects ethical, religious, and social values prevalent in society.

¹ Akbar Sani, "Tinjauan Yuridis terhadap Pasal Kontroversial tentang Perzinaan dalam KUHP Baru dan Dampaknya terhadap Penegakan Hukum Pidana," *Jurnal Fakta Hukum* 2, No. 2 (2024): 103–13, <https://doi.org/10.58819/jfh.v2i2.152>.

² Andrie Irawan and Vicella Kesya Galuh Iranti, "Kohabitusi dalam KUHP 2023: Analisis Yuridis atas Intervensi Hukum Pidana terhadap Kehidupan Pribadi," *Journal of Islamic and Law Studies* 9, No. 1 (2025): 1–17, <https://doi.org/10.18592/jils.v9i1.16187>.

Previous studies have explored the interaction between Islamic law and national law in Indonesia. Butt's research, using case studies in three Indonesian courts, found that these court decisions tended to support the interests of conservative Muslim groups and reinforced the role of religion within the national legal system.³ Studies by Ariyanti and Supani indicate that the new Criminal Code accommodates Islamic moral values and demonstrates active public participation in its legislative process.⁴ Research by Yasir et al. shows that both Islamic and national criminal law share similar goals of maintaining order and public welfare, even though Indonesia is not an Islamic state, it applies Islamic legal values in various regulations.⁵

Moreover, Kamalluddin's research emphasizes the importance of contextualizing Pancasila values as the foundation of legal politics in criminal law reform that interacts with Islamic legal principles.⁶ Faisal's findings indicate that the revision of the new Criminal Code reflects a shift from colonial law toward a humanistic national legal system, grounded in substantive justice and living law of Indonesian society.⁷ Nasoha et al. argue that Pancasila values can serve as a strong foundation to harmonize Islamic law and national law through inclusive, dialogical approaches, as well as regulatory reform and justice-based legal education.⁸

These previous studies demonstrate the close relationship between religious values, legal politics, and public morality in shaping national criminal law. However, prior research has not specifically addressed efforts to harmonize Islamic values with public morality, particularly in the context of adultery and cohabitation articles in the new Criminal Code. This study is designed to fill this research gap by focusing on the relevance of legal politics in regulating public morality contextually. A study integrating normative, juridical, and social perspectives can provide a more comprehensive understanding of how Indonesian criminal law responds to social change and public demands, while offering new insights into the interaction between Islamic law and national law in Indonesia.

The urgency of this study lies in the need to understand the harmonization of Islamic values in the new Criminal Code systematically. This study is significant not only for academics and legal researchers but also for legislators, law enforcement officers, and other

³ Simon Butt, "Religious Conservatism, Islamic Criminal Law and the Judiciary in Indonesia: A Tale of Three Courts," *The Journal of Legal Pluralism and Unofficial Law* 50, No. 3 (2018): 402-34, <https://doi.org/10.1080/07329113.2018.1532025>.

⁴ Vivi Ariyanti and Supani, "Examining Muslims' Aspirations in Drafting the New Criminal Code: Analyzing Criminal Law Policy in Indonesia from a Maslaha Perspective," *Al-Manahij: Jurnal Kajian Hukum Islam* 18, No. 1 (2024): 37, <https://doi.org/10.24090/mnh.v18i1.8280>.

⁵ Moh Yasir et al., "Islamic Law and National Law (Comparative Study of Islamic Criminal Law and Indonesian Criminal Law)," *Al-Hurriyah: Jurnal Hukum Islam* 6, No. 2 (2021): 167-81, <https://doi.org/10.30983/alhurriyah.v6i2.4952>.

⁶ Iqbal Kamalludin, "Restoration of Pancasila Values Against Criminal Law Reform Strategy in Indonesia Political Perspective of Islamic Law," *Syariah: Jurnal Hukum dan Pemikiran* 22, No. 1 (2022): 31-47, <https://doi.org/10.18592/sjhp.v22i1.4637>.

⁷ Faisal et al., "Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia's New Criminal Code," *Cogent Social Sciences* 10, No. 1 (2024): 2301634, <https://doi.org/10.1080/23311886.2023.2301634>.

⁸ Ahmad Muhammad Mustain Nasoha et al., "Perspektif Pancasila dalam Harmonisasi Hukum Islam dan Hukum Nasional: Pancasila Perspective in Harmonizing Islamic Law and National Law," *Dirasah: Jurnal Kajian Islam* 2, No. 1 (2025): 1-13.

stakeholders in formulating fair criminal policies. By understanding the process of accommodating and harmonizing religious and social values, this research can provide guidance for more effective implementation, reduce potential conflicts between law and society, and strengthen the legitimacy of criminal law within Indonesia's plural social and cultural context.

This research employs a qualitative-descriptive approach with content analysis as the primary method to explore the harmonization of Islamic values in adultery and cohabitation articles of the new Criminal Code. Primary data includes the new Criminal Code and related legal documents, while secondary data is sourced from scholarly journals, previous studies, and relevant legal literature to build a conceptual framework and identify research gaps. Analysis is conducted thematically, starting with data familiarization, coding key concepts, grouping themes, and interpreting inter-theme relationships, allowing an assessment of the extent to which the new Criminal Code harmonizes legal certainty, substantive justice, and protection of individual rights. The validity of the findings is ensured through data triangulation from primary and secondary sources, providing a comprehensive understanding of the harmonization of Islamic legal principles, social norms, and public interests in contemporary legislation.

The objective of this study is to analyze the mechanisms of harmonizing Islamic values in the new Criminal Code, particularly regarding adultery and cohabitation articles, and to assess the relevance of legal politics in regulating public morality. The study also aims to contribute to Indonesian criminal law literature, particularly regarding the harmonization of religious values within national law. The findings are expected to serve as a reference for legislators, law enforcement, and other stakeholders in formulating fair, proportional strategies for implementing the new Criminal Code in accordance with the principles of *maqāṣid al-shari‘ah*, while providing a foundation for further research on moral criminalization.

Legal Politics of the New Criminal Code

Etymologically, the term *legal politics* originates from the Dutch *rechtspolitiek*, which means the direction of legal policy.⁹ In legal studies, legal politics is understood as a state strategy in formulating, establishing, and implementing laws and regulations in accordance with the values to be upheld.¹⁰ Mahfud MD defines legal politics as a legal policy (*legal policy*) that serves as a guideline for the state in building and enforcing the law. Legal politics encompasses two main aspects: the formulation of laws responsive to societal developments and the implementation of laws supported by law enforcement institutions. Legal politics thus becomes an official framework guiding the development of national law.

In the context of Indonesia, legal politics cannot be separated from the social, cultural, and religious influences present within society. This is evident in the process of revising the Criminal Code, where the state seeks to replace the colonial legacy with a national criminal law system that better reflects the nation's identity. The new Criminal Code is not merely a

⁹ Muhammad Safar and Ismaidar Ismaidar, "Sejarah Perkembangan Politik Hukum Nasional," *Innovative: Journal of Social Science Research* 3, No. 6 (2023): 9078–88.

¹⁰ Khoirunnisa and Didi Jubaidi, "Political Configuration of Law in Law Enforcement in Indonesia," *Ilomata International Journal of Social Science* 4, No. 4 (2023): 560–76, <https://doi.org/10.52728/ijss.v4i4.880>.

technical legal instrument; it also serves as a political compromise integrating moral values, religious teachings, and human rights principles.¹¹ Therefore, the revision of the Criminal Code highlights the role of legal politics as a means of harmonizing the interests of a plural society with the aspirations of national law.

The history of Indonesia's criminal law politics cannot be separated from the legacy of the old Criminal Code, which was drafted during the Dutch colonial period and has been in force since 1918.¹² This Code reflected colonial legal values and interests, which were often incompatible with the identity of a sovereign Indonesia. In practice, the old Criminal Code was frequently considered outdated, unable to meet the needs of modern society, and misaligned with evolving social and religious values in Indonesia. This situation created an urgent need for comprehensive criminal law reform through a national Criminal Code.

The drive to revise the Criminal Code emerged from the awareness that criminal law is a vital instrument for regulating societal behavior. The old, colonial-oriented Code did not adequately accommodate local and religious values present in Indonesian society. Discussions on drafting a national Criminal Code began as early as 1963, although the process was long and complicated.¹³ Various drafts were proposed over the years but often stalled due to political and social factors. It was not until 2023 that the new Criminal Code was finally enacted as a manifestation of national legal politics, affirming Indonesia's independence in formulating its own criminal law.¹⁴

The fundamental difference between the old and new Criminal Codes lies in their sources of values and legal orientation. The old Code was based on the Dutch legal system, which tended to be secular and focused on individual protection. In contrast, the new Criminal Code accommodates the social, cultural, and religious values present in Indonesian society, including Islamic norms. This is evident in the regulation of offenses emphasizing morality and public order.¹⁵ For instance, adultery and cohabitation, which were not explicitly regulated in the old Code, are now addressed in the new Code as a form of harmonizing law with moral and religious values in Indonesian society.

The drafting process of the new Criminal Code spanned decades and involved intense debate. The first draft emerged in 1963, but discussions continued into the 2000s, often facing setbacks due to differing opinions among political groups, academics, and civil

¹¹ Ida Tutia Rakhmi et al., "Relasi Agama dan Negara dalam Hak Konstitusional Warga Negara Berdasarkan Pasal 300–305 KUHP 2023," *Iuris Studia: Jurnal Kajian Hukum* 6, No. 2 (2025): 566–79, <https://doi.org/10.55357/is.v6i3.996>.

¹² Nafi Mubarok, "Sejarah Perkembangan Hukum Pidana di Indonesia: Menyongsong Kehadiran KUHP 2023 dengan Memahami Dari Aspek Kesejarahan," *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam* 27, No. 1 (2024): 15–31, <https://doi.org/10.15642/alqanun.2024.27.1.15-31>.

¹³ Ai Nurani, "Reform of Indonesian Criminal Law in The Political of Law Perspective," Atlantis Press, August 30, 2024, 256–64, https://doi.org/10.2991/978-2-38476-279-8_29.

¹⁴ Eltasya Nadiani and Bambang Ali Kusumo, "Politik Hukum Pidana dalam Pembaharuan Hukum Pidana Nasional: Analisis terhadap KUHP Baru Indonesia," *Indonesian Journal of Law and Justice* 2, No. 4 (2025): 10–10, <https://doi.org/10.47134/ijlj.v2i4.4135>.

¹⁵ Rizki Yudha Bramantyo et al., "Perbandingan Hukum Pidana KUHP Lama Indonesia dengan KUHP Baru Indonesia ditinjau dari Perspektif Pembaruan Hukum Pidana," *Transparansi Hukum* 7, No. 2 (2024): 62–73, <https://doi.org/10.30737/transparansi.v7i2.5795>.

society.¹⁶ Nonetheless, the government and the House of Representatives (DPR) remained committed to advancing legislation, revising drafts as necessary.¹⁷ This process demonstrates that forming the new Criminal Code is not only a juridical technical matter but also a political one, requiring alignment with evolving societal aspirations and dynamics.

The DPR and the government played key roles in the legislative process. The government, particularly the Ministry of Law and Human Rights, proposed drafts, while the DPR reviewed and approved significant articles.¹⁸ During deliberations, both institutions faced strong pressure from various social groups. On one side were demands to uphold moral and religious values, while on the other, there were criticisms regarding human rights protection. The roles of the DPR and the government were thus strategic in bridging these opposing interests, enabling the new Criminal Code to be accepted as national law.

Public controversy marked the drafting process, especially concerning morality-related provisions such as adultery and cohabitation.¹⁹ Pro-revision groups argued that these provisions were necessary to preserve decency and social order, while opposing groups feared encroachment on private life. Demonstrations and protests emerged, particularly among students and human rights activists, who believed certain articles could restrict individual freedom. This debate illustrates that the new Criminal Code is not only a legal product but also a battleground for ideological conflicts over morality and freedom in Indonesian society.

In addressing this controversy, political compromise was essential. Three major groups—nationalists, liberals, and religious—held differing views regarding the direction of the Criminal Code reform. Nationalists advocated for legal independence, liberals emphasized human rights protection, and religious groups demanded the reinforcement of moral norms.²⁰ The compromise is reflected in the regulation of adultery and cohabitation articles, where religious norms are accommodated but limited to prevent violations of human rights. Consequently, the new Criminal Code can be seen as a convergence point for conflicting political and ideological interests.

The adultery provision in the new Criminal Code exemplifies this compromise. While the old Code regulated adultery only if one party was married, the new Code expands the definition to include sexual relations outside marriage by anyone. However, this offense is treated as a complaint-based crime, meaning prosecution can only proceed upon reports

¹⁶ Aldi Rizki and Rospita Adelina Siregar, "Tantangan Perubahan dan Perkembangan KUHP Baru di Indonesia," *Jurnal Hukum Mimbar Justitia* 11, No. 1 (2025): 205–17, <https://doi.org/10.35194/jhmj.v11i1.5463>.

¹⁷ Parningotan Malau, "Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023," *Al-Manhaj: Jurnal Hukum dan Pranata Sosial Islam* 5, No. 1 (2023): 837–44, <https://doi.org/10.37680/almanhaj.v5i1.2815>.

¹⁸ Faisal et al., "Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia's New Criminal Code," *Cogent Social Sciences* 10, No. 1 (2024): 2301634, <https://doi.org/10.1080/23311886.2023.2301634>.

¹⁹ Roli Pebrianto et al., "Integrasi Nilai-Nilai Hukum Islam dalam Pembaruan Hukum Pidana Nasional terkait Tindak Pidana Zina dan Kohabitusi," *Pemuliharaan Keadilan* 2, No. 3 (2025): 162–75, <https://doi.org/10.62383/pk.v2i3.1048>.

²⁰ Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, No. 2 (2023): 190–214, <https://doi.org/10.1080/10383441.2023.2243772>.

from specific parties, such as spouses or parents.²¹ This regulation demonstrates an effort by legal politics to uphold moral norms while protecting individual rights, ensuring the state does not arbitrarily intrude into private life.

The cohabitation article, which criminalizes living together without marriage, is also introduced in the new Criminal Code, unlike the old Code, which did not regulate it. Similar to adultery, it is complaint-based, enforced only when a close family member files a report.²² This approach illustrates a harmonization between religious values advocating moral protection and the principle of individual freedom emphasizing private space. Thus, the new Criminal Code seeks to balance religious norms with individual rights while maintaining social justice within the national legal framework.

Criticism from academics and human rights activists regarding adultery and cohabitation provisions is substantial. They argue that criminalizing private behavior could lead to over-criminalization and discrimination. The complaint-based mechanism, while limiting state intervention, does not fully guarantee human rights protection, as social pressure may still affect individuals.²³ Conversely, proponents of the new Code contend that such regulation is necessary to reflect national moral values and address public concerns about moral decline. This debate illustrates a classic dilemma between protecting public morality and respecting individual freedoms.

The new Criminal Code can be regarded as a product of complex legal-political compromise. The formulation of adultery and cohabitation provisions reflects interactions among various actors: the DPR and government as lawmakers, religious groups advocating moral protection, and liberal groups emphasizing individual rights and personal freedom.²⁴ The Code does not fully adopt either liberal or religious values but seeks a middle path through political compromise mechanisms, including the complaint-based offense as a proportional regulation. This illustrates how legal politics in Indonesia operates within a dynamic arena of competing interests, where legal decisions reflect negotiation between moral norms, individual rights, and public interest. The new Criminal Code is not a perfect product but a reflection of legal and moral pluralism in the nation and an illustration of how political compromise shapes national legislation.

Islamic Values in Criminal Law

Islamic criminal law is built upon a normative framework that governs three main categories of sanctions: *hudud*, *ta'zir*, and *qisas*. *Hudud* refers to punishments explicitly prescribed by the *nash*, such as adultery, theft, or consumption of alcohol. *Ta'zir*, on the other

²¹ Nasruddin S and Achmad Nurdaim, "Tindak Pidana Zina Menurut UU No. 1 Tahun 1946, UU No. 1 Tahun 2023 (KUHP), dan Hukum Islam," *Journal of Law and Nation* 3, No. 1 (2024): 1-13.

²² Irineza Okta Cahyani et al., "Kohabitusi dan Hukum Pidana Baru Indonesia: Antara Progresivitas Kriminalisasi dan Nilai Ketimuran," *Tanjungpura Legal Review* 3, No. 2 (2025), <https://jurnal.untan.ac.id/index.php/tlr/article/view/87017>.

²³ M. Rizki Yudha Prawira, "Potensi Overkriminalisasi pada Pengaturan Tindak Pidana Kohabitusi dalam Kitab Undang-Undang Hukum Pidana: Perspektif Fair Trial," *Jurnal Hukum Statuta* 4, No. 1 (2024): 31-49, <https://doi.org/10.35586/jhs.v4i1.9530>.

²⁴ Zuraidah et al., "Sinkronisasi Aturan dalam KUHP Baru (Undang-Undang Nomor 1 Tahun 2023) dan Undang-Undang No 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual dalam Rangka Melindungi Korban Tindak Pidana Kekerasan Seksual," *Proceedings Series on Social Sciences & Humanities* 23 (June 2025): 134-40.

hand, provides judges with discretion to adjust the type and severity of punishment according to the level of wrongdoing.²⁵ *Qisas* emphasizes the principle of restorative justice, which includes proportional retaliation or forgiveness with compensation (*diyat*).²⁶ These three instruments demonstrate that Islamic criminal law is not only repressive but also flexible and morally oriented, capable of harmonizing individual justice with broader social interests.

In Islamic law, adultery (*zina*) is considered a serious violation of moral integrity and social stability. *Zina* is defined as sexual relations between a man and a woman outside the bonds of lawful marriage. Punishments for *zina* fall under the category of *hudud*, making them fixed and not subject to judicial discretion. However, the requirements for proving *zina* in *fiqh* are very stringent, such as the testimony of four reliable witnesses.²⁷ This demonstrates that the primary goal of these rules is not merely punitive but also preventive, enforced through strict social norms. The concept of *zina* underscores the protection of family honor and the preservation of societal moral order.

Cohabitation, or living together without marriage, is also considered a morally reprehensible act. Although the term “cohabitation” is not found in the *nash*, the practice is seen as a form of concealed adultery that erodes societal moral values. Islamic law emphasizes that relationships between men and women are only legitimate within lawful marriage. Cohabitation is viewed as a form of free social interaction that can lead to adultery. Islamic law prohibits cohabitation not only because it violates Sharia, but also because it undermines the family institution, which is a foundational pillar of society.

Fiqh jinayah, as a branch of Islamic jurisprudence governing criminal law, plays an important role in explaining the conceptual framework of Islamic criminal law. Through classical scholars’ works, the concepts of criminal acts, evidentiary requirements, and forms of punishment are systematically formulated. *Fiqh jinayah* serves as a normative bridge between sacred texts and the social realities of Muslim communities.²⁸ In a modern context, it also functions as a reference for drafting penal regulations that comply with Sharia principles while remaining responsive to contemporary needs. Therefore, *fiqh jinayah* not only regulates criminal law normatively but also contributes to contemporary discourse on law and morality.

A prominent feature of Islamic criminal law is its close relationship with public morality. Many offenses, such as adultery or alcohol consumption, are prohibited not merely because they infringe individual rights, but because they undermine the moral fabric of society. This relationship makes Islamic law function in a dual capacity: maintaining social

²⁵ Budi Dermawan and M. Noor Harisudin, “Transformasi Pemikiran Hukum Pidana Islam terhadap Hukum Pidana Nasional (Analisis Implementatif Jarimah Hudud, Qishash dan Ta’zir),” *Rechtenstudent* 1, No. 3 (2020): 251–63, <https://doi.org/10.35719/rch.v1i3.34>.

²⁶ Mira Maulidar, “Korelasi Filosofis Antara Restorative Justice dan Diyat dalam Sistem Hukum Pidana Islam,” *At-Tasyri’: Jurnal Ilmiah Prodi Muamalah* 13, No. 2 (2021): 143–55, <https://doi.org/10.47498/tasyri.v13i2.856>.

²⁷ Fattah Hanafi et al., “Hukum Zina dalam Perspektif Pidana Islam,” *Jurnal Cendikia ISNU SU* 1, No. 3 (2024): 209–15, <https://doi.org/10.70826/jcisnu.v1i3.523>.

²⁸ Aditya Renaldi Yasdin et al., “Tinjauan Fikih Jinayah terhadap Konsekuensi Zina dalam KUHP Tahun 1946 dan No. 01 Tahun 2023,” *Al-Qiblah: Jurnal Studi Islam dan Bahasa Arab* 3, No. 4 (2024): 608–30, <https://doi.org/10.36701/qiblah.v3i4.1655>.

order while shaping collective ethics.²⁹ At the same time, it presents challenges when Islamic law intersects with modern principles of individual freedom. Yet, through this interaction, Islamic law offers a paradigm that views crimes not solely as violations of formal law, but also as moral damage with broad implications for social stability.³⁰

In a pluralistic state, the application of Islamic criminal law is often contested. On one side, some argue that Islamic values should be present in national law as a reflection of the majority's identity. On the other, there are concerns that such application could restrict the freedoms of non-Muslim communities. This debate illustrates the tension between religious identity and the principles of pluralism. The challenge lies in accommodating Islamic values without causing discrimination.³¹ A more inclusive approach is needed in analyzing the implementation of Islamic criminal law. Principles of justice and morality in Islam must be adapted to the context of a pluralistic nation-state.

Conflicts between Islamic law and positive law often emerge, particularly regarding public morality.³² For instance, the severe sanctions for adultery in Islamic law often differ from positive law, which tends to prioritize individual freedom. Conflicts also appear in methods of proof, where positive law relies on forensic evidence while Islamic law emphasizes witness testimony.³³ Nonetheless, such conflicts are not insurmountable. Through legal dialogue and legislative innovation, these potential contradictions can be transformed into opportunities to develop a richer legal system that harmonizes Islamic moral values within a modern national legal framework.

The convergence of Islamic law with Pancasila and the 1945 Constitution (*UUD 1945*) lies in a shared commitment to human dignity, justice, and social order. Islam emphasizes the protection of life, honor, and family, while Pancasila promotes morality and just humanity. The Constitution guarantees human rights but also allows limitations based on public morality.³⁴ This harmonization creates room for compromise, enabling Islamic values to be accommodated within the national penal system without conflicting with constitutional foundations. Harmonization of Islamic values in Indonesian criminal law can thus be viewed as an implementation of the nation's fundamental principles.

Examples of the application of Islamic law within the national criminal system can be seen in specific regulations such as the *Qanun Jinayat* in Aceh. This regulation governs certain

²⁹ Ahmad Muhamad Mustain Nasoha et al., "Kontribusi Hukum Pidana Islam terhadap Pembentukan Warga Negara yang Berkeadaban," *Birokrasi: Jurnal Ilmu Hukum dan Tata Negara* 2, No. 4 (2024): 195–207, <https://doi.org/10.55606/birokrasi.v2i4.1588>.

³⁰ Sri Asmita and Ema Fathimah, "Resesi Seks: Antara Kebebasan Individu dan Hukum Islam," *FiTUA: Jurnal Studi Islam* 5, No. 1 (2024): 19–37, <https://doi.org/10.47625/fitua.v5i1.553>.

³¹ Mumpuni Gati Lintang, "Sinkronisasi Hukum Negara dengan Hukum Islam dalam Konteks Pluralisme Hukum di Indonesia," *Journal of Society and Scientific Studies* 1, No. 1 (2025): 20–32, <https://doi.org/10.62504/scientiva5>.

³² Tanuri Tanuri, "Epistemologi Hukum Islam dalam Hukum Positif di Indonesia," *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial* 12, No. 01 (2024), <https://doi.org/10.30868/am.v12i01.5611>.

³³ Islamu Haq, "Pengaruh Perbedaan Keterangan Saksi Jarimah Zina (Perpektif Hukum Positif dan Hukum Pidana Islam)," *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 5, No. 1 (2020): 1–14, <https://doi.org/10.22515/alahkam.v5i1.2129>.

³⁴ Khoiriatal Jamiah et al., "Keadilan Sosial Dalam Perspektif Alquran Dan Pancasila," *Panangkaran: Jurnal Penelitian Agama dan Masyarakat* 9, No. 1 (2025): 68–89, <https://doi.org/10.14421/panangkaran.v9i1.4278>.

offenses, including adultery, *khalwat*, and alcohol consumption, by directly referencing Islamic law.³⁵ Although it applies locally, the existence of the *qanun* demonstrates how Islamic law can be harmonized within the national legal framework. The Aceh experience illustrates that the application of Islamic law can be limited yet remain constitutional, showing that accommodating Islamic values in Indonesian criminal law is not entirely foreign.

Comparative studies with other countries provide additional insights. For example, Saudi Arabia and Iran formally implement Islamic criminal law fully.³⁶ In contrast, Malaysia and Brunei adopt a legal dualism approach, where Islamic criminal law applies only to Muslims.³⁷ These differences demonstrate the flexibility of applying Islamic law according to each country's social and political context. Indonesia can learn from these comparisons to determine the extent to which Islamic law can be accommodated without conflicting with constitutional principles and societal diversity. Table 1 below illustrates the differences in implementation across countries:

Table 1. Comparison of Islamic Criminal Law Implementation in Selected Countries

Country	Application of Islamic Criminal Law	Target Group	Implications
Saudi Arabia	Formal / Full implementation	Entire population	Islamic criminal law is applied comprehensively to all citizens
Iran	Formal / Full implementation	Entire population	Islamic criminal law is applied comprehensively to all citizens
Malaysia	Dual legal system	Muslims	Islamic criminal law applies only to Muslims; non-Muslims are subject to civil law
Brunei	Dual legal system	Muslims	Islamic criminal law applies only to Muslims; non-Muslims are subject to civil law
Indonesia	Limited to Aceh	Muslims in Aceh	Islamic criminal law applies only in Aceh for Muslims; in other regions, the Criminal Code (KUHP) applies to all

Arguments supporting the accommodation of Islamic values in the Criminal Code are based on the need to maintain public morality and social stability. Proponents believe that the religious values upheld by the majority can strengthen the legitimacy of criminal

³⁵ Fauzah Nur Aksa et al., "The Implementation of Qānūn of Jināyāt in Aceh: A Legal Point of View," *Al-Ahkam: Jurnal Ilmu Syari'ah dan Hukum* 8, No. 1 (2023): 16–34, <https://doi.org/10.22515/alahkam.v8i1.5896>.

³⁶ Muhammad Arafat and Asmuni, "Implementation of Maqashid Al-Syariah in Islamic Criminal Law in Muslim Countries: A Comparative Study in Saudi Arabia, Iran, Malaysia, and Indonesia," *Al-Sulthaniyah* 14, No. 1 (2025): 45–68, <https://doi.org/10.37567/al-sulthaniyah.v14i1.3577>.

³⁷ Yulia Rimapradesi et al., "Analisis Perbandingan Sistem Hukum Syariah Malaysia dan Brunei Darussalam dalam Mengimplementasikan Sharia Penal Code (Hukum Pidana Syariah)," *Dialektika Publik* 8, No. 1 (2024): 1–8, <https://doi.org/10.33884/dialektikapublik.v8i1.8135>.

law. By incorporating Islamic norms, national law is considered more contextual and capable of addressing moral decline. Furthermore, accommodating Islamic values is seen as respecting the identity of the Muslim-majority nation.³⁸ Therefore, harmonizing Islamic norms in the new Criminal Code should not be perceived as a threat but as an effort to strengthen justice and social order.

Conversely, arguments against accommodating Islamic values emphasize the importance of upholding individual freedom in a democratic state. Critics argue that religion-based criminal law has the potential to discriminate against minority groups and could lead to over-criminalization of private matters. Moreover, the application of religious norms in positive law is seen as susceptible to political misuse.³⁹ For these reasons, opponents contend that national criminal law should be grounded in universal human rights principles and modern rationality rather than solely on a specific religious doctrine.

Contemporary Islamic legal scholars hold diverse views on this issue. Some argue that accommodating Islamic values in criminal law is necessary to keep the law relevant to the majority culture, while others emphasize the need for contextual *ijtihad* to prevent the imposition of Islamic law inappropriately. Scholars also discuss the importance of applying *maqashid sharia* principles in criminal law reform, ensuring that the law remains oriented toward public welfare and justice. This discourse illustrates that the implementation of Islamic values in criminal law is complex and requires ongoing study and adaptive approaches.

Islamic values are significantly relevant to modern Indonesian criminal law. Sharia principles concerning moral protection, family, and human dignity can strengthen public morality, while the flexibility of *ta'zir* allows adaptation to social dynamics. In Indonesia, accommodating Islamic values does not necessarily mean full formalization but selective harmonization aligned with Pancasila and the 1945 Constitution. Thus, national criminal law can maintain social order while reflecting the nation's identity. This relevance provides a foundation for formulating fair, proportional, and contextual criminal policies.

Harmonization of Islamic Values and the New Criminal Code

Legal harmonization is a concept emphasizing the alignment of various sources of law within a legal system. In theory, harmonization is not merely formal consistency but also the alignment of values, objectives, and legal practices to achieve order, justice, and legal certainty.⁴⁰ In a pluralistic state, harmonization becomes a crucial instrument for reducing normative conflicts between religious law and state law while maintaining the social legitimacy of regulations. This concept highlights the need for normative dialogue, compromise mechanisms, and legislative procedures that accommodate diverse interests without sacrificing substantive justice or the protection of individual rights, ensuring that the law remains relevant and socially acceptable.

³⁸ Pebrianto et al., "Integrasi Nilai-Nilai Hukum Islam dalam Pembaruan Hukum Pidana Nasional."

³⁹ Rizky, "Maqasid Syariah dalam Teori dan Penerapan Analisis Legal terhadap UU No. 1 Tahun 2023 tentang KUHP sebagai Pengganti KUHP Lama," *ICSS Proceedings* 1 (December 2024): 135–44.

⁴⁰ Dina Rahmita et al., "Analisis Komparatif Sistem Hukum Adat dan Hukum Positif dalam Harmonisasi Kebijakan Publik di Indonesia," *Presidensial: Jurnal Hukum, Administrasi Negara, dan Kebijakan Publik* 2, No. 1 (2025): 107–20, <https://doi.org/10.62383/presidensial.v2i1.456>.

Harmonization between religious law and state law is particularly urgent in Indonesia's national legal system. Religious values, especially Islamic ones, serve as moral guidelines for the majority, while state law functions as an instrument regulating a pluralistic society.⁴¹ Harmonizing the two is essential to ensure that sensitive criminal regulations, such as articles on adultery and cohabitation, are implemented correctly and proportionally. The absence of harmonization can result in social resistance or injustice, whereas effective harmonization allows state regulations to align with societal moral aspirations while respecting human rights principles. This approach underscores that law is not only repressive but also educative, shaping collective behavior.

The legislative process provides the primary arena for achieving value harmonization. Through the drafting and discussion of provisions, legislators have the opportunity to reconcile public demands with individual rights principles. This mechanism allows compromise between majority interests, academic perspectives, and civil society input. Additionally, legislation offers an official forum to discuss the social, ethical, and legal implications of regulations to be implemented. This process emphasizes the importance of deliberative procedures, where legal decisions are made not only through political consensus but also considering moral legitimacy and societal acceptance of the regulations.⁴²

Harmonization of the adultery (*zina*) provision in the new Criminal Code exemplifies the accommodation of Islamic values. The article considers religious norms as a moral foundation while restricting the application of the law to ensure proportionality and justice. Harmonization includes establishing realistic evidentiary guidelines and non-discriminatory sanctions. At the same time, legislators emphasize limits to prevent excessive infringement on individual rights. This effort demonstrates that criminal law is not solely repressive but also oriented toward ethical formation and moral education, allowing the adultery provision to be socially accepted without conflicting with constitutional norms.⁴³

Harmonization of the cohabitation provision illustrates a more complex dynamic due to the relative novelty of this social practice. Legislators use interpretative space to harmonize Islamic moral norms with the flexibility of positive law. This approach allows law enforcement to implement regulations adaptively, taking into account social context and individual rights. Harmonizing cohabitation shows that criminal law can respond to changes in social behavior without losing moral legitimacy. Careful interpretation also emphasizes that the law does not merely punish but guides society to comply with social and moral norms, enabling criminal regulations to function preventively and educationally.

Compromise politics plays a crucial role in harmonization, particularly when the moral aspirations of the Muslim community intersect with human rights principles.

⁴¹ Najiburrahman Najiburrahman et al., "Legalitas Hukum Perkawinan Beda Agama dalam Praktik Hukum Masyarakat Indonesia: Harmonisasi Hukum Positif dan Hukum Agama," *Hakam: Jurnal Kajian Hukum Islam dan Hukum Ekonomi Islam* 8, No. 2 (2024), <https://doi.org/10.33650/jhi.v8i2.10428>.

⁴² Rikki Dean, "Deliberating Like a State: Locating Public Administration Within the Deliberative System," *Political Studies* 72, No. 3 (2024): 924–43, <https://doi.org/10.1177/00323217231166285>.

⁴³ Muhammad Safar and Suci Ramadani, "Criminalization for Adultery in Indonesia Comparative Analysis of Article 284 of the 1946 Criminal Code and Article 411 of the Criminal Code No. 1 of 2023 | International Journal of Society and Law," *International Journal of Society and Law* 2, No. 2 (2024): 125–35, <https://doi.org/10.61306/ijsl>.

Legislators must reconcile majority moral demands with constitutionally recognized individual freedoms.⁴⁴ This compromise process involves intensive negotiation, academic discussion, and social risk evaluation. Such strategies ensure that sensitive provisions are not merely formalistic but practical, realistic, and socially acceptable. Through compromise, the new Criminal Code can uphold substantive justice, maintain social order, and remain aligned with humanistic values enshrined in human rights.

The role of religious scholars (*ulama*) and Islamic organizations is inseparable from the harmonization process. They provide moral, ethical, and legal perspectives relevant to drafting sensitive provisions.⁴⁵ Their input often serves as a critical consideration in determining norms, sanctions, and implementation procedures. The involvement of *ulama* and organizations also enhances the social legitimacy of the new Criminal Code, as the public perceives that criminal regulations do not neglect religious values. This participatory approach enables smoother harmonization, allowing state law to accommodate religious aspirations without losing objectivity or substantive justice.

Internal debates within the Muslim community also influence the harmonization process. Some groups stress strict enforcement of religious norms, while others emphasize the need for adaptation to modern contexts. These differences reflect a rich intellectual dynamic, where Islamic criminal law is not applied dogmatically but critically examined in relation to contemporary societal needs. Such debates enrich the legislative process, allow for rational compromise, and highlight the importance of harmonization between moral compliance and legal flexibility in responding to social challenges.⁴⁶

From a sociological perspective, harmonization is not merely a matter of legal text but also of social and cultural interaction. The effectiveness of sensitive provisions depends on public acceptance and the law's ability to adapt to social practices.⁴⁷ In this approach, criminal law is understood as part of a broader social structure rather than as a separate entity. Successful harmonization emphasizes that legal norms, moral values, and social behavior must be aligned so that regulations are not only formalistic but also educative and capable of shaping collective behavior according to societal aspirations.

Criticism of harmonization arises when some parties perceive the process as half-hearted. Sensitive provisions are seen as overly compromising, potentially weakening moral authority and sanction effectiveness. Such criticism warns that excessive caution in harmonization can undermine legal legitimacy and reduce preventive effects. However, this approach also reflects social reality, in which the law must reconcile diverse interests to

⁴⁴ Ferdiana Rikawati and Dwi Indah Lestari, "Harmonisasi Hukum dan Kebijakan dalam Penegakan Hukum Lingkungan," *Indonesian Journal of Law and Justice* 1, No. 1 (2024): 1–10, <https://doi.org/10.61476/dje6t923>.

⁴⁵ Imam Bayhaki, "Peran Fatwa Majelis Ulama Indonesia (MUI) dalam Membentuk Kebijakan Hukum Nasional: Tinjauan Perspektif Hukum Positif Indonesia," *Al-Qadlaya Jurnal Hukum Keluarga Islam* 4, No. 01 (2024): 21–29, <https://doi.org/10.55120/qadlaya.v4i01.2121>.

⁴⁶ Yayan Muhammad Royani and Hee Cheol Park, "Striking a Balance: Exploring Harmony in Indonesian Criminal Law and Islamic Jurisprudence," *Walisongo Law Review (Walrev)* 5, No. 2 (2023): 155–82, <https://doi.org/10.21580/walrev.2023.5.2.18196>.

⁴⁷ Nuryadin Nuryadin and Hilalludin Hilalludin, "Integrasi Hukum Islam dan Hukum Nasional: Studi Kritis atas Harmonisasi Regulasi di Indonesia," *Jurnal Imanu* 1, No. 01 (2025): 56–70.

avoid conflict. Criticism thus encourages ongoing evaluation and refinement of harmonization mechanisms to make them more effective and just.⁴⁸

Debates for and against legal harmonization reveal various challenges within a pluralistic framework. Harmonization is viewed positively for bridging religious values with constitutional norms, yet concerns arise regarding potential reductions in legal certainty or neglect of minority rights.⁴⁹ This discourse highlights that modern criminal law must balance moral legitimacy, individual rights protection, and societal pluralism. It also demonstrates that harmonization is not a final solution but a dynamic process requiring continuous evaluation, reflection, and adjustment to ensure the law remains relevant and socially accepted.

The relevance of harmonization to national legal development lies in its ability to bridge moral, ethical, and constitutional values. Harmonization strengthens the legitimacy of criminal law by reconciling the aspirations of the majority, minority, and human rights principles. The process also serves as a crucial instrument for creating adaptive law that responds to social changes and navigates the complexities of a pluralistic society. With harmonization, the new Criminal Code becomes not only a formal regulation but also a tool for behavioral formation, moral education, and social stability.

Harmonization represents a realistic middle path for managing value differences in Indonesia's criminal legal system. It allows for the accommodation of Islamic values without compromising individual freedom or minority rights. This approach demonstrates that modern criminal law can be adaptive, proportional, and educative. Harmonization serves as a model of rational compromise that preserves social, moral, and constitutional legitimacy. The process confirms that the new Criminal Code can achieve broad acceptance, shape collective behavior according to moral values, and remain consistent with the principles of a democratic and pluralistic rule-of-law state.

Social and Juridical Implications

The implementation of adultery (*zina*) provisions in criminal law has significant social implications for society. This law functions to uphold moral and ethical norms while also providing a preventive effect against behaviors that disrupt social order.⁵⁰ In urban areas, social pressure and public moral perception often serve as effective mechanisms of social surveillance, whereas in rural regions, customary norms reinforce the enforcement of the law. These impacts are not limited to the individuals who violate the law but also affect social interactions, family reputation, and community structures. Such provisions serve as instruments for strengthening social ethics, forming the foundation of communal life.

Laws regulating cohabitation, or living together without a formal marriage, produce tangible social consequences for both individuals and the community. Couples engaging in such practices often face stigma, ostracism, or negative judgment from their environment for

⁴⁸ Sani, "Tinjauan Yuridis Terhadap Pasal Kontroversial Tentang Perzinaan Dalam KUHP Baru."

⁴⁹ Yonathan Parlinggoman Wicaksono and Mahipal Mahipal, "Eksistensi Hukum Islam dalam Sistem Hukum Nasional Indonesia: Peluang dan Tantangan," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, No. 3 (2025): 2138–51, <https://doi.org/10.62976/ijjel.v3i3.1238>.

⁵⁰ A. Danardana and Vincentius Patria Setyawan, "Kriminalisasi Fenomena Penyimpangan Sosial Kumpul Kebo (Samenleven) dalam Perspektif Hukum Pidana," *Justitia et Pax* 38, No. 1 (2022), <https://doi.org/10.24002/jep.v38i1.5713>.

violating religious and customary norms. These social impacts extend to their families, who frequently experience social pressure and reputational decline. Cohabitation is viewed as behavior that increases the likelihood of adultery and undermines prevailing social values. The enforcement of this law demonstrates that moral regulations operate on a broader social scale, maintaining interactional order and societal stability.⁵¹

Criminalization of moral behavior generates diverse public perceptions.⁵² Some segments of society regard it as essential for upholding rules and ethics, seeing law as a tool to preserve religious and customary values that guide social life. Conversely, more liberal groups perceive it as limiting individual freedom and potentially generating injustice if enforced selectively or repressively. These differing perspectives reveal a tension between the need to protect societal morality and the individual's right to make personal life choices. Law enforcement must reconcile societal interests with individual freedoms to maintain norms without causing excessive social resistance.

Civil society and human rights activists tend to respond critically and reflectively to moral behavior regulations.⁵³ They emphasize proportionality in law enforcement to prevent discrimination against specific groups or violations of individual rights, including privacy and personal freedoms.⁵⁴ Such criticism fosters dialogue among policymakers, law enforcement authorities, and civil society to ensure the law is applied fairly and transparently. Critical evaluation by civil society serves as an essential mechanism for aligning the implementation of moral laws with justice principles while maintaining public legitimacy and collective awareness of the law's educative objectives.

Law enforcement officials play a crucial role in implementing moral provisions. Their responsibility extends beyond mere enforcement to understanding local social contexts and cultural norms to ensure fair and proportional decisions. The level of understanding among officials regarding the principles and objectives of criminal law significantly influences enforcement quality. Misunderstanding or misinterpretation can result in injustice, such as selective criminalization or overly repressive application.⁵⁵ Therefore, training, legal education, and strengthening awareness of local context are critical factors enabling officials to enforce moral laws effectively and gain societal acceptance.

The potential for selective criminalization represents a tangible risk in applying moral provisions. Laws may be applied differently to certain groups based on social status, religion, or political pressure, resulting in injustice that undermines public trust in the legal system. Cases of selective criminalization often generate societal controversy, highlighting

⁵¹ Cahyani et al., "Kohabitation dan Hukum Pidana Baru Indonesia."

⁵² Hafrida Hafrida et al., "Students' Perception of the Criminalization of Cohabitation (Kumpul Kebo) in Indonesia: From Quantitative to Normative Analysis," *Jambe Law Journal* 7, No. 1 (2024): 127–47, <https://doi.org/10.22437/home.v7i1.340>.

⁵³ Nadianti and Kusumo, "Politik Hukum Pidana dalam Pembaharuan Hukum Pidana Nasional."

⁵⁴ Arthur Josias Simon Runturambi et al., "No Viral No Justice: A Criminological Review of Social Media-Based Law Enforcement from the Perspective of Progressive Law," *Jurnal IUS Kajian Hukum dan Keadilan* 12, No. 1 (2024): 177–95, <https://doi.org/10.29303/ius.v12i1.1361>.

⁵⁵ Wahyu Beny Mukti Setiyawan et al., "Relation of Pancasila Morality on Law Enforcement Officials in Guarding Criminal Law Reform in Indonesia," *Migration Letters* 20, No. 6 (2023): 701–7, <https://doi.org/10.59670/ml.v20i6.3516>.

the need for rigorous oversight mechanisms.⁵⁶ Empirical analysis indicates that without transparency and accountability, law can be misused as a tool of oppression. Clear, objective, and equitable enforcement is essential for public perception of the law as an instrument of justice rather than discrimination or intimidation.

The enforcement of moral laws directly impacts individual freedom. Rules governing personal behavior, such as extramarital sexual relations, limit an individual's space to make personal choices. In modern society, these constraints are often viewed as strong social controls, potentially conflicting with personal rights. Harmonizing societal interests with individual rights is a central issue in discussions on moral law. Enforcement not only evaluates the correctness of behavior but also influences life decisions and individual autonomy, necessitating consideration of social context, religious values, and justice principles.

Moral law enforcement also affects broader social harmony. Enforced norms can strengthen societal order and foster ethical awareness, reducing conflicts and deviant behavior. However, impacts may vary for minority groups or communities with different cultural backgrounds, who may perceive the law as restrictive. Public acceptance is thus crucial for maintaining social harmony. Context-sensitive enforcement allows individuals and communities with diverse perspectives to coexist peacefully, transforming moral law into a social adhesive rather than a source of tension.

The comparison of moral regulation enforcement across regions shows significant variation in legal implementation. Local culture, the level of religiosity within communities, and the capacity of law enforcement officers influence how these laws are applied. Some regions enforce the law strictly and consistently, while others adopt a more tolerant approach, adjusting to social and customary conditions.⁵⁷ This variation underscores the importance of adapting the law to local realities. Field studies indicate that successful implementation largely depends on public awareness, community support, and the ability of authorities to harmonize formal regulations with prevailing social norms, ensuring broad acceptance.

An analysis of the effectiveness of the new Criminal Code reveals challenges in aligning moral interests with individual human rights. The moral provisions aim to preserve norms of decency while allowing social adaptation through a flexible *ta'zir* mechanism. The successful implementation of the new Criminal Code largely depends on the consistency of law enforcement officers, public understanding of moral norms, and the readiness of authorities to enforce the law fairly. Preliminary evaluations indicate that the new Criminal Code has the potential to strengthen public morality, but its effectiveness requires clear monitoring mechanisms, legal education, and proper public dissemination to ensure that law

⁵⁶ Ichsan Anwary, "Evaluation of the Effectiveness of Public Administration Policies in the Development of Stringent Legal Framework: An Analysis of the Criminal Justice System in Indonesia," *International Journal of Criminal Justice Sciences* 17, No. 2 (2022): 312-23.

⁵⁷ Pairuz Amanina and Dinda, "Hukum Zina dalam Perspektif Jinayah: Konsep dan Penerapannya di Negara Indonesia," *Jurnal Multidisiplin Sosial dan Humaniora* 1, No. 2 (2024): 74-83, <https://doi.org/10.70585/jmsh.v1i2.35>.

enforcement operates in harmony with the principles of justice, public welfare, and the protection of individual rights.⁵⁸

Legal practitioners have raised various criticisms regarding moral provisions in the new Criminal Code. Concerns include ambiguous definitions, challenging evidentiary procedures, and potential conflicts with human rights.⁵⁹ Such critiques encourage policymakers to consider revisions or technical guidelines to make the law clearer, fairer, and consistently enforceable. Practitioner perspectives are vital to bridging gaps between legal text and field practice, assessing whether laws genuinely uphold justice and public morality without generating excessive distrust or social tension.

The international response to Indonesia's morality provisions demonstrates significant concern regarding human rights. Human rights organizations and several countries emphasize the need to protect individual freedoms, including the right to privacy and equal treatment. International criticism often highlights the potential for discrimination against minority groups or the risk of repressive enforcement.⁶⁰ This global response urges the government to clarify the legal foundation, moral purpose, and enforcement mechanisms in accordance with universal human rights principles. Openness to global critique is essential to maintain Indonesia's legal credibility while ensuring that moral laws are enforced fairly, transparently, and broadly accepted by society.

The future implementation of morality provisions is expected to face increasing complexity. Rapid social changes, the penetration of information technology, and differing interpretations of religion and custom influence public perception of legal norms. These dynamics demand flexibility from law enforcement agencies to ensure that implementation remains relevant, fair, and acceptable across diverse social groups. Communication strategies, legal socialization, and education are essential so that the public understands the ethical objectives behind these rules. Such approaches enable the law to function as a means of social development rather than mere repression, thereby upholding public morality without generating excessive resistance or social tension.⁶¹

The application of moral laws is complex and requires strict oversight to achieve legal objectives effectively. Without continuous evaluation and control, laws risk misuse, injustice, or erosion of public trust in the legal system.⁶² Oversight mechanisms involving regular audits, officer training, and community participation are critical for ensuring objective and

⁵⁸ Yenny Febrianty et al., "The Limitations of Living Law in Indonesian Criminal Law Reform: An Effort to Realize Justice," *Jurnal IUS Kajian Hukum dan Keadilan* 11, No. 2 (2023): 192–208, <https://doi.org/10.29303/ius.v11i2.1232>.

⁵⁹ Amanda Aprilia Putri and Muhammad Lana Firdaus, "Ambiguitas Hak Asasi Manusia terhadap Kitab Undang-undang Hukum Pidana Lama dan Baru," *Sanskara Hukum dan HAM* 3, No. 03 (2025): 150–60, <https://doi.org/10.58812/shh.v3i03.440>.

⁶⁰ Muhammad Eko Saputro et al., "Identification of International Human Rights Principles in Indonesia's New Criminal Code," *Law Research Review Quarterly* 9, No. 4 (2023): 435–58, <https://doi.org/10.15294/lrrq.v9i4.74125>.

⁶¹ Ahmad Rivai Ardiansyah Harahap et al., "Implementation of Pancasila Values in the Formation of Law No. 1 of 2023 (New Criminal Code)," *Formosa Journal of Science and Technology* 4, No. 1 (2025): 27–38, <https://doi.org/10.55927/fjst.v4i1.13001>.

⁶² Siti Khumairoh Kusuma Arum and Khilmatin Maulidah, "Pembaruan Hukum Pidana Melalui Penerapan Prinsip Insignifikansi: Kajian dalam KUHP Baru Indonesia," *Jurnal Hukum Ekualitas* 1, No. 1 (2025): 57–69, <https://doi.org/10.56607/73krj443>.

transparent law enforcement. This complexity confirms that moral law cannot be applied mechanically but requires an adaptive and socially responsive approach, allowing moral guidance to achieve its goals without negative societal impact.

Beyond formal legal aspects, moral provisions have tangible psychological effects on individuals and communities. Fear of sanctions, social stigma, and emotional pressure can affect mental well-being, particularly among vulnerable groups. These psychological impacts are crucial considerations in policy formulation and law enforcement strategies. Humane and educative approaches can mitigate traumatic effects while strengthening societal understanding of the moral law's objectives. Law enforcement thus safeguards norms while considering psychological welfare to ensure social acceptance without excessive tension.

The role of legal education and public socialization is key to ensuring that morality provisions are accepted and understood by society. Understanding the purpose of these articles, their application limits, and the values they seek to uphold helps reduce misunderstandings and potential social conflict.⁶³ Systematic legal education enables active public participation in upholding ethical norms while providing authorities with proper understanding for enforcement. Effective socialization transforms moral law from a mere punitive tool into a means of societal guidance, fostering ethical awareness, strengthening public morality, and promoting social order without excessive distrust or resistance.

Reflection on the integration of law and social values underscores the importance of balancing formal regulations with community norms. Moral law should not function solely as a punitive instrument but as a means of fostering ethical and moral consciousness.⁶⁴ A contextual approach sensitive to culture, religion, and local conditions is essential for law to be accepted and relevant. With balanced harmonization, moral law can strengthen national identity, uphold justice, maintain social harmony, and remain adaptive amid modern pluralistic dynamics. This ensures that the law not only regulates behavior but also guides society toward ethical and harmonious communal life.

From a legal-political perspective, the implementation of adultery and cohabitation provisions in the new Criminal Code reflects legislative efforts to strategically integrate Islamic legal values into national criminal law. The process involves interaction among the executive, legislature, religious scholars, academics, and civil society, providing normative, ethical, and social input.⁶⁵ This approach underscores the importance of aligning religious community aspirations with individual rights principles, ensuring that resulting norms possess legal and social legitimacy while remaining relevant to contemporary societal values.

The government and legislature function as arenas for compromise, aligning the interests of diverse stakeholders. This harmonization approach considers religious values, customary norms, and formal legal certainty while accounting for public response and the risk of controversy.⁶⁶ The new Criminal Code is not merely an instrument for regulating behavior but a product of legal politics that manages social consensus, preserves moral stability, and upholds legal legitimacy within a pluralistic society.

⁶³ Yenny Febrianty et al., "The Effect of Legal Education on Public Legal Awareness," *Journal of Public Representative and Society Provision* 5, No. 1 (2025): 204–21, <https://doi.org/10.55885/jprsp.v5i1.532>.

⁶⁴ Royani and Park, "Striking a Balance."

⁶⁵ Ariyanti and Supani, "Examining Muslims' Aspirations in Drafting the New Criminal Code."

⁶⁶ Royani and Park, "Striking a Balance."

Furthermore, adultery and cohabitation provisions can be analyzed from the perspective of human rights and legal effectiveness. Although these norms protect public morality, criticisms arise regarding potential excessive restrictions on individual freedoms. This indicates that legal harmonization must be selective and evaluative, ensuring criminal law maintains social order without compromising individual rights. Continuous evaluation of legislative mechanisms is crucial for ensuring the new Criminal Code remains fair, effective, and responsive to social dynamics.

Conclusion

This study demonstrates that the adultery (*zina*) and cohabitation provisions in the new Criminal Code reflect an effort to harmonize Islamic values with national criminal law while simultaneously balancing individual rights and public moral aspirations. These regulations function as adaptive legal instruments, mediating the interaction between religious norms, customary practices, and public interests, and exemplifying the legal-political approach of the government in integrating social aspirations with formal legal principles. The findings underscore the relevance of legal politics in regulating public morality and broaden the understanding of harmonizing Islamic values within Indonesia's criminal law.

The study's limitations lie in its focus on document and literature analysis, leaving the practical implementation in the field less explored. Based on the findings, practical recommendations include continuous evaluation of the enforcement of moral provisions, legal education for both law enforcement officers and the public, and the strengthening of oversight mechanisms to prevent selective criminalization. Theoretically, this study contributes by highlighting legal-political patterns that reconcile legal certainty, substantive justice, and social legitimacy, while also providing a foundation for further research on the interaction between Islamic law and national law in pluralistic societal contexts.

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