

# Ta'zir Punishment for Adultery in Indonesian and Malaysian Law from a Maqashid Sharia Perspective

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**Abstract:** This research examines the application of ta'zir punishment for adultery in Indonesian and Malaysian law from the perspective of Maqasid Sharia. It explores how society perceives, interprets, and responds to these regulations, with particular attention to whether their implementation aligns with the higher objectives of Islamic law in safeguarding religion, life, lineage, intellect, and property. Using a qualitative field research approach, data were collected through in-depth interviews with legal practitioners, Islamic scholars, and community leaders, complemented by observations and documentation analysis in both Indonesia and Malaysia. The findings reveal that in Malaysia, particularly in states with Syariah Criminal Enactments, adultery provisions are viewed as a religious duty to preserve morality and lineage, although enforcement remains constrained by federal constitutional limits. In Indonesia, the inclusion of adultery provisions in the new Criminal Code has triggered intense debates between groups advocating moral protection and those emphasizing human rights and pluralism. From a Maqasid Sharia perspective, both contexts reflect sincere efforts to safeguard lineage and public morality; however, challenges persist regarding justice, proportionality, and the balance between individual rights and collective interests. This study concludes that the discourse on adultery punishment represents deeper negotiations between Islamic values, constitutional frameworks, and contemporary social realities. Its academic contribution lies in demonstrating how Maqasid Sharia can be operationalized as an analytical framework for assessing ta'zir punishments, thereby enriching Islamic legal scholarship in Southeast Asia.

**Keywords:** Adultery, Indonesia, Malaysia, Maqashid Sharia, Ta'zir Punishment

## 1. Introduction

The phenomenon of adultery in Indonesia and Malaysia is not only understood as a violation of moral and religious values, but also as a social problem that affects family stability and public order at large. In Indonesia, regulations on adultery as stipulated in the Criminal Code (KUHP) remain limited to parties bound by marriage,<sup>1</sup> so that forms of adultery committed by those who are unmarried often fall outside the reach of criminal law.<sup>2</sup> This condition has sparked long debates regarding the effectiveness of the Criminal Code in providing protection for moral values and the institution of the family,<sup>3</sup> especially in a society that is predominantly Muslim and considers Islamic law as one of its ethical sources.<sup>4</sup> Meanwhile, Malaysia demonstrates a different approach by providing wider scope for Sharia law to regulate matters

<sup>1</sup> Helmalia Cahyani et al., "Kebijakan Pasal-Pasal Kontroversial Dalam RUU KUHP Ditinjau Dari Perspektif Dinamika Sosial Kultur Masyarakat Indonesia," *Journal of Law, Administration, and Social Science* 2, no. 2 (March 18, 2022): 81–90, <https://doi.org/10.54957/jolas.v2i2.175>.

<sup>2</sup> 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 (September 30, 2020): 1–14, <https://doi.org/10.22515/alahkam.v5i1.2129>.

<sup>3</sup> Ngobizwe Mvelo Ngema and Desan Iyer, "Extra-Marital Child (Walad Al Zina) and His Right to Maintenance (Nafaqah): A Comparason of Islamic Law and South African Common Law," *Academic Journal of Interdisciplinary Studies* 12, no. 2 (March 5, 2023): 253, <https://doi.org/10.36941/ajis-2023-0046>.

<sup>4</sup> Tong Yu et al., "Zina Percutaneous Screw Fixation Combined with Endoscopic Lumbar Intervertebral Fusion under Intraoperative Neuromonitoring," *Medicine* 100, no. 11 (March 19, 2021): e24220, <https://doi.org/10.1097/MD.0000000000002420>.

of adultery,<sup>5</sup> particularly at the state level which holds the authority to establish Sharia legislation. These regulations enable more comprehensive enforcement against adultery cases,<sup>6</sup> whether committed by married or unmarried individuals, thereby reflecting a greater seriousness in preserving moral values and the social structure in accordance with Islamic principles.<sup>7</sup> The fundamental difference between the two countries at the same time illustrates how synchronization between positive law and religious law remains a serious issue, particularly in the context of Indonesia which prioritizes a national legal approach with certain limitations.

Despite these different legal approaches, both Indonesia and Malaysia face serious challenges in enforcing laws on adultery.<sup>8</sup> Case data in both countries indicate an increase in the reporting and handling of adultery-related cases,<sup>9</sup> whether through law enforcement agencies or Sharia institutions. However, in practice, there are still significant weaknesses. In Indonesia, one of the main obstacles lies in the limited scope of legal norms which causes many cases to fall outside criminal provisions, thus creating the impression of weak legal protection for society. In Malaysia, although Sharia regulations are normatively broader, implementation on the ground is often hampered by limited resources, differences in legal interpretation between states, and social stigma that makes it difficult for victims or related parties to report cases.<sup>10</sup> This highlights that the mere existence of strict regulations does not guarantee effective law enforcement without being supported by mechanisms that are fair, transparent, and consistent. Therefore, both Indonesia and Malaysia are required to strengthen the synergy between positive law and Islamic law, improve law enforcement instruments, and ensure that the protection of morality and the family goes hand in hand with the principle of substantive justice within societies that continue to undergo social and cultural changes.

The concept of *ta'zīr* in Islamic law essentially provides discretionary authority for the state to impose punishments on acts for which sanctions are not explicitly stipulated in the Qur'an or Hadith, including cases of adultery that do not meet the requirements for the application of *ḥudūd*. In the Indonesian context, the application of *ta'zīr* to adultery can be observed through two legal frameworks: national criminal law and Islamic law in Aceh. At the national level, the old Criminal Code (*KUHP*) restricted the crime of adultery to individuals bound by marriage, whereas the new Criminal Code (Law No. 1 of 2023) expanded its scope by including extramarital adultery as an absolute complaint-based offense. However, this mechanism still demonstrates limitations,<sup>11</sup> as the enforcement process heavily depends on reports filed by certain parties. In contrast, Aceh, which enforces the *Qanun Jinayat*, regulates adultery more comprehensively with punishments (*uqubat*) such as caning, imprisonment, or fines categorized as *ta'zīr*, even though they are often perceived as resembling *ḥudūd*. Meanwhile, in Malaysia, the state-level Islamic legal systems also criminalize adultery as a syariah offense but are constrained by the federal law, the Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355), which only authorizes punishments of up to three years' imprisonment, a fine of RM5,000, or six strokes of caning. This condition makes adultery punishments in Malaysia substantively *ta'zīr* in nature, even though they are formally codified in state enactments. The fundamental difference between Indonesia and Malaysia shows that the concept of

<sup>5</sup> Hassan M. Ahmad, "Re-Assessing the Evidentiary Threshold for Zina' in Islamic Criminal Law: A De Facto Exemption Proposal," *Muslim World Journal of Human Rights* 18, no. 1 (September 27, 2021): 103–32, <https://doi.org/10.1515/mwjhr-2020-0021>.

<sup>6</sup> Nomusa Makhubu, "The Poetics of Entanglement in Zina Saro-Wiwa's Food Interventions," *Third Text* 32, no. 2–3 (May 4, 2018): 176–99, <https://doi.org/10.1080/09528822.2018.1476226>.

<sup>7</sup> Budi Kisworo, "Tuduhan Berzina (Qazfu Al-Zina) Dalam Kajian Teologis Dan Sosiologis," *Al-Istinbath : Jurnal Hukum Islam* 5, no. 1 (May 9, 2020): 105, <https://doi.org/10.29240/jhi.v5i1.1433>.

<sup>8</sup> Pei Soo Ang and Fauziah Taib, "Fear Generation in the Multimodal Communication of Sexual and Reproductive Health to Malaysian Adolescents," *Visual Communication* 22, no. 3 (August 27, 2023): 449–68, <https://doi.org/10.1177/14703572231163555>.

<sup>9</sup> Abdulmuid Aykul, "Osmanlı'da Zina Suçu: Hanefi Doktrinine Göre Had Yerine Ta'zir ile İkamе Şer'i Hukuktan Sapma Mıdır?," *Hitit İlahiyat Dergisi* 24, no. 1 (June 30, 2025): 268–94, <https://doi.org/10.14395/hid.1619042>.

<sup>10</sup> Wan Abdul Fattah Wan Ismail et al., "Evidence Obtained through CCTV in Criminal Cases: An Overview from an Islamic Legal Perspective on the Law of Evidence," *Malaysian Journal of Syariah and Law* 6, no. 1 (June 6, 2018): 87–103, <https://doi.org/10.33102/mjssl.vol6no1.101>.

<sup>11</sup> Aris Hardianto et al., "Critical Analysis of Living Law Formulation in Law No. 1 of 2023 Concerning the Criminal Code: Towards Law Reform to Realize Justice with the Spirit of Pancasila," *Journal of Law and Legal Reform* 5, no. 3 (October 31, 2024): 1029–66, <https://doi.org/10.15294/jllr.v5i3.13923>.

*ta'zīr* is implemented in different models: Indonesia tends to have broader material coverage but limited enforcement mechanisms,<sup>12</sup> while Malaysia firmly criminalizes adultery for both married and unmarried individuals but is restricted by relatively light sentencing ceilings.

The aim of this study is to assess the extent to which the application of *ta'zīr* punishments in adultery cases in Indonesia and Malaysia aligns with the core principles of *maqāṣid al-sharī'ah*, which include the protection of religion (*ḥifẓ al-dīn*), life (*ḥifẓ al-nafs*), lineage (*ḥifẓ al-nasl*), and honor (*ḥifẓ al-'ird*). This study argues that existing legal orientations tend to emphasize repressive aspects rather than preventive, educational, and rehabilitative dimensions, thereby limiting their contribution to the realization of *maqāṣid*. In Indonesia, the complaint-based nature of the new Criminal Code potentially weakens family protection, since unreported cases cannot be prosecuted, while in Aceh, public caning practices are often criticized as violating the principle of protecting dignity, despite being intended to uphold public morality. In Malaysia, the jurisdictional limitations of the syariah courts render punishments partial and less deterrent, leaving the protection of lineage and religion inadequately fulfilled. Thus, the hypothesis of this study is that the implementation of *ta'zīr* in both countries remains partial and not fully aligned with *maqāṣid*. This analysis is directed at providing both normative and practical frameworks for the reform of contemporary Islamic criminal law, emphasizing that *ta'zīr* should function as a proportional and just social instrument, capable of balancing the dimension of moral protection with respect for human rights in modern societies.

## 2. Method

The methodology of this study adopted a qualitative research design to investigate the implementation of *Ta'zir* punishment for adultery within Indonesian and Malaysian legal frameworks from a Maqashid Sharia perspective. Data were collected from statutory laws, judicial decisions, scholarly articles, and legal commentaries. The research was conducted from January to June 2024. Purposive sampling was employed to select cases and documents most relevant to adultery and *Ta'zir* penalties, ensuring the data directly addressed the research objectives. The data collection process involved systematic document review, coding, and verification through cross-referencing with secondary sources. Instruments such as data extraction sheets and coding templates were pre-tested for reliability and consistency. Research personnel included the principal investigator and two trained assistants. The study locations were Sarawak in Malaysia and Sumatera Barat in Indonesia, where field observations and case documentation were conducted. Ethical approval was obtained, and all sources were cited appropriately. Detailed procedures were followed to ensure transparency and replicability. Data were organized chronologically and thematically to capture the evolution of legal practices. Each document was examined for content, context, and applicability. Emphasis was placed on maintaining methodological rigor through systematic recording and audit trails. The research aimed to provide a clear roadmap for replication in future studies.

Data analysis was conducted using thematic content analysis, supported by legal interpretive methods and the principles of Maqashid Sharia. Collected data were coded manually and then entered into NVivo 14 to facilitate systematic pattern recognition and thematic categorization. Legal provisions, case law, and scholarly opinions were analyzed in terms of their alignment with Maqashid objectives, including the protection of religion, intellect, lineage, life, and property. Triangulation was applied across multiple sources to ensure reliability and validity, complemented by peer debriefing and repeated review cycles. Analytical procedures included descriptive interpretation, comparison between Indonesian and Malaysian frameworks, and identification of gaps in legal application. The software allowed for visualization of themes and cross-references among cases. All analytical choices were justified based on their relevance to the research objectives and their capacity to capture nuanced legal interpretations. Emphasis was placed on transparency, accuracy, and systematic documentation to enhance the credibility of findings. The combination of qualitative coding, thematic mapping, and Maqashid Sharia evaluation provided a

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<sup>12</sup> F. Redhwan Karim, "Rethinking Women's Dress Prescriptions in the Qur'an: An Extratextual Reading of Zina," *Journal of Islamic and Muslim Studies* 6, no. 2 (June 2022): 82–112, <https://doi.org/10.2979/jims.6.2.03>.

robust framework for understanding Ta'zir punishment practices. Conclusions drawn were based on corroborated evidence and rigorous interpretive analysis.

### 3. Result and Discussion

#### 3.1. Legal-Political Configurations and the Implementation of Ta'zīr in Contemporary Indonesia and Malaysia

The application of *ta'zīr* punishments for adultery cases in Indonesia and Malaysia demonstrates how the discretionary concept of Islamic criminal law is implemented differently according to the socio-political and legal contexts of each country. In Indonesia, *ta'zīr* punishments can be observed through two frameworks, namely national criminal law and Islamic law in Aceh. At the national level, adultery is categorized as a morality offense, but its enforcement is restricted by the nature of a complaint-based crime, making the effectiveness of moral protection largely dependent on third-party reports. In contrast, Aceh implements the *Qanun Jinayat*, which provides punishments such as public caning, imprisonment, or fines. Although substantively *ta'zīr*, these sanctions are often perceived as resembling *hudūd*. This reflects a different orientation, where national criminal law adopts a more formalistic approach, while Aceh emphasizes the protection of public morality. In Malaysia, the application of *ta'zīr* punishments for adultery falls within state-level syariah enactments, yet is constrained by federal jurisdiction through the Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355). Consequently, the maximum punishments available are relatively light, such as three years' imprisonment, a fine of RM5,000, or six strokes of caning. Thus, the manifestation of *ta'zīr* in both countries confirms that the implementation of Islamic law in modern contexts is shaped not only by doctrinal provisions but also by the legal-political configuration that frames its scope and limitations.

In Indonesia, provisions concerning morality-related crimes are explicitly stipulated in Articles 411, 412, and 413 of Law No. 1 of 2023 on the Criminal Code.<sup>13</sup> These provisions regulate adultery, cohabitation, and incest, adopting a codified approach under national law. Nevertheless, the absolute complaint-based nature of adultery remains a weakness,<sup>14</sup> since cases that are not reported cannot be prosecuted, thereby reducing the effectiveness of family and moral protection.<sup>15</sup> On the other hand, Aceh, with its special autonomy, regulates adultery through the *Qanun Jinayat*, which allows for open caning punishments. Although aligned with syariah principles, this practice has often been criticized from a human rights perspective for potentially violating human dignity. Meanwhile, in Malaysia, adultery is criminalized through the Syariah Criminal Offenses Enactment (Ordinance 46 of 2001) at the state level. However, its enforcement remains restricted by the federal Act 355, which limits the jurisdiction of syariah courts to relatively modest penalties. Therefore, the regulatory frameworks in both countries highlight a blend of national codification efforts and particularized syariah enactments, each with different implications for upholding public morality and protecting the objectives of Islamic law (*maqāṣid al-sharīah*).

This study reveals fundamental differences between Indonesia and Malaysia in their legal approaches to the application of *ta'zīr* punishments for adultery. Indonesia tends to emphasize codification within the national criminal law,<sup>16</sup> thereby applying uniform norms across its territory,<sup>17</sup> except in Aceh, which enjoys special authority through the *Qanun Jinayat*. This model reflects the dominance of the state in regulating morality offenses, though it remains constrained by formalistic mechanisms that may undermine social

<sup>13</sup> Siti Maimunah et al., "Effectiveness Knowledge of the Prohibition of Zina in Islam towards Pre-Marriage Sex Students at Nurul Huda Islamic Boarding School Surabaya," *Bali Medical Journal* 12, no. 3 (September 21, 2023): 2805–7, <https://doi.org/10.15562/bmj.v12i3.4353>.

<sup>14</sup> Henny Saida Flora, Mac Thi Hoai Thuong, and Ratna Deliana Erawati, "The Orientation and Implications of New Criminal Code: An Analysis of Lawrence Friedman's Legal System," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 1 (April 4, 2023): 113–25, <https://doi.org/10.29303/ius.v11i1.1169>.

<sup>15</sup> Flora, Thuong, and Erawati.

<sup>16</sup> Rizqa Febry Ayu, "Iddah Wanita Hamil Karena Zina Menurut Hukum Islam Dan Hukum Positif," *El-Usrah: Jurnal Hukum Keluarga* 4, no. 1 (June 30, 2021): 216, <https://doi.org/10.22373/ujhk.v4i1.10097>.

<sup>17</sup> Beenish Riaz, "Win the Battle, Lose the War?: Strategies for Repealing the Zina Ordinance in Pakistan," *Muslim World Journal of Human Rights* 17, no. 1 (November 26, 2020): 89–103, <https://doi.org/10.1515/mwjhr-2020-0009>.

protection. Malaysia, by contrast, provides broader space for syariah law enforcement at the state level, producing diverse applications that still remain subject to federal restrictions. This decentralized approach allows for adaptations to local socio-cultural contexts, yet the limited jurisdiction of syariah courts raises concerns about the effectiveness of deterrence. In Indonesia, the wider scope of national codification still struggles with enforcement challenges, while in Malaysia, the lighter sentencing ceilings reduce the substantive impact of criminalization. Accordingly, the diversity of regulations and legal approaches in the two countries illustrates that the implementation of *ta'zīr* reflects not only syariah principles but also the complex interaction between legal politics, national legislation, and social dynamics.

The application of *ta'zīr* punishment cannot be separated from various underlying factors, both historical and contemporary. In this research, it is evident that social, cultural, and legal-political dynamics play a major role in shaping the form and direction of penal policy. In Indonesia, the major reform of the Criminal Code (KUHP) has brought logical consequences for the regulation of morality-related crimes.<sup>18</sup> Social factors,<sup>19</sup> such as the rise of sexual violence cases and pressure from civil society,<sup>20</sup> have been one of the main driving forces in strengthening criminal law instruments. Meanwhile, cultural factors that continue to uphold moral values and decency in public spaces also reinforce the legitimacy of these provisions. From the perspective of legal politics, the state's desire to formulate a national criminal law that better reflects national values is a significant background for the emergence of new rules. The role of religious institutions in Indonesia remains largely consultative, mainly in providing moral legitimacy to policy, although their influence is not dominant in final decision-making. This situation differs from Malaysia, where Islamic politics has a stronger influence on legal development.<sup>21</sup> Religious institutions there not only act as moral advisors but also function as formal authorities with the power to establish criminal provisions under Islamic law.<sup>22</sup> The dominance of religious bodies in the legislative process gives Malaysian law a more explicit Sharia-based character compared to Indonesia. This difference illustrates that the application of *ta'zīr* in each country is shaped by distinct socio-political and institutional configurations.

A critical examination of the implementation of punishments in Indonesia and Malaysia shows a consistent effort to align legal provisions with the principles of *maqāṣid al-sharī'ah*. The *maqāṣid* as the higher objectives of Islamic law emphasize the protection of religion, life, intellect, lineage, and property. In this regard, both Indonesia's Criminal Code and Malaysia's Syariah Criminal Offenses Ordinances focus on *ḥifẓ al-nasl* (protection of lineage) and *ḥifẓ al-'ird* (protection of honor). Indonesia's KUHP, although based on national positive law, still adopts values consistent with *maqāṣid*, for instance, by criminalizing adultery, sexual harassment, and extramarital relations that are deemed harmful to family order. Meanwhile, Malaysia's Sharia-based law places greater emphasis on moral and religious dimensions, so the implementation of *ta'zīr* is directed not only at addressing criminal acts but also at safeguarding the sanctity of society from behaviors considered deviant. This difference in approach reflects the variety of methods used to achieve *maqāṣid al-sharī'ah*, yet their essence remains the same: protecting human dignity and lineage from social and moral corruption. Thus, although different in pathways and mechanisms, both countries demonstrate that *maqāṣid al-sharī'ah* remains relevant as a normative

<sup>18</sup> Junaidi Abdillah et al., "Contribution Model of Al-Mas'ūliyyah Al-Jinā'iyyah in the Formulation of Criminal Liability in Indonesia's New Criminal Code," *Al-Ahkam* 34, no. 2 (October 31, 2024): 367–92, <https://doi.org/10.21580/ahkam.2024.34.2.22592>.

<sup>19</sup> Faisal et al., "Genuine Paradigm of Criminal Justice: Rethinking Penal Reform within Indonesia New Criminal Code," *Cogent Social Sciences* 10, no. 1 (December 31, 2024), <https://doi.org/10.1080/23311886.2023.2301634>.

<sup>20</sup> Maimunah et al., "Effectiveness Knowledge of the Prohibition of Zina in Islam towards Pre-Marriage Sex Students at Nurul Huda Islamic Boarding School Surabaya."

<sup>21</sup> Yahaya Ibrahim Abikan, "Examining the Admissibility or Otherwise of Evidence Generated from Closed-Circuit Television (CCTV) and Deoxyribonucleic Acid (DNA) Test as Means of Proof of Zina Under Islamic Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (May 5, 2023): 83–96, <https://doi.org/10.24090/mnh.v17i1.8172>.

<sup>22</sup> Melanie Rae Perez, "Rape under Islamic Law: The Confusing Classification of Zina and Limitations in Getting Justice," *The International Journal of Religion and Spirituality in Society* 15, no. 1 (2024): 43–56, <https://doi.org/10.18848/2154-8633/CGP/v15i01/43-56>.



reference for regulating contemporary criminal law. This highlights the flexibility of *maqāṣid* in adapting to modern contexts without losing its essence in protecting the fundamental values of humanity.

The transformation of criminal law in Indonesia and Malaysia carries significant implications for the dynamics of Muslim-majority legal systems in the modern era. In Indonesia, the enactment of the new Criminal Code marks a major shift from colonial legacies toward a more contextual national penal framework. The criminalization of morality-related offenses within the KUHP illustrates the state's intention to affirm moral norms as part of the positive legal system, even though it is not entirely Sharia-based. The implications are not only normative but also sociological, as society is encouraged to adjust its behavior to the moral standards established by law. On the other hand, Malaysia has pursued a different path by strengthening the role of Sharia law through the application of *ta'zīr*. The implication of this policy is the enhanced authority of religious institutions in shaping public moral standards, as well as reinforcing Islamic identity within the national legal system. More broadly, both cases reflect attempts to balance Sharia values with the demands of legal modernization. Indonesia emphasizes the integration of moral values into a plural national legal framework, while Malaysia focuses more on consistency with Islamic tradition. This transformation also affects international perceptions, where both countries are viewed as navigating a middle path between globalization, human rights, and religious values. Thus, the study affirms that the transformation of criminal law in Muslim-majority states cannot be separated from the dialectic between Sharia, modernization, and state legal politics.

### 3.2. Comparative Regulation and Application of Ta'zīr Punishment for Adultery in Indonesia and Malaysia

The results of this study demonstrate fundamental differences in the regulation and implementation of *ta'zīr* punishment for the crime of adultery in Indonesia and Malaysia, both from the perspective of positive law and Sharia law. In Indonesia, adultery is regulated in the new Criminal Code (KUHP) of 2023,<sup>23</sup> which expands the definition of adultery to cover sexual relations outside a legitimate marriage.<sup>24</sup> This reform represents the government's attempt to respond to the moral aspirations of society while at the same time affirming the role of positive law as the main reference point in criminal regulation.<sup>25</sup> Nevertheless, the application of punishment in Indonesia tends to focus on imprisonment and fines,<sup>26</sup> with no explicit reference to the classical Islamic concept of *ta'zīr*.<sup>27</sup> In contrast, Malaysia regulates adultery through the *Syariah Criminal Offences Enactments* established at the state level.<sup>28</sup> In practice, *ta'zīr* punishments in Malaysia may include imprisonment, monetary fines,<sup>29</sup> or light caning, all of which are rooted in Sharia provisions.<sup>30</sup> Hence, Malaysian regulation explicitly connects criminal norms with Islamic legal principles, while Indonesia attempts to accommodate religious values within a broader national legal framework. These differences reveal two distinct patterns of legal development: Indonesia prioritizes the unification of national law under a pluralistic framework, whereas Malaysia underscores differentiation by maintaining the dual existence of federal law alongside Sharia law at the state level.

The divergence in the application of *ta'zīr* punishment for adultery in Indonesia and Malaysia is

<sup>23</sup> Fatmawati Fatmawati, Muhammad Shuhufi, and Anita Chaturvedi, "Defamation in the New Criminal Code: A Review of Substantive Justice," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 3 (December 28, 2023): 465–80, <https://doi.org/10.29303/ius.v11i3.1288>.

<sup>24</sup> Simon Butt, "Indonesia's New Criminal Code: Indigenising and Democratising Indonesian Criminal Law?," *Griffith Law Review* 32, no. 2 (April 3, 2023): 190–214, <https://doi.org/10.1080/10383441.2023.2243772>.

<sup>25</sup> Kartini Mallarangan, "Reconstruction of the Legality Principle: The Essence of the Pancasila Spirit in Criminal Law Reform," *Rechtsidee* 8 (June 16, 2021), <https://doi.org/10.21070/jihr.v8i0.782>.

<sup>26</sup> Mhd. Rasidin et al., "The Mapping Verses and Application of the Linguistic Approach and Ushul Fiqh Toward the Law of Adultery," *El-Mashlahah* 14, no. 1 (March 25, 2024): 21–42, <https://doi.org/10.23971/el-mashlahah.v14i1.7354>.

<sup>27</sup> Silvia Pellicer-Ortín, "Transgenerational Trauma, Shared Vulnerability and Interconnectedness in Zina Rohan's *The Small Book*," *European Review* 29, no. 3 (June 6, 2021): 333–53, <https://doi.org/10.1017/S1062798720000678>.

<sup>28</sup> Sudarti Sudarti, "Perbandingan Hukum Pidana Perzinaan Di Malaysia Dan Brunei Darussalam," *El-Mashlahah* 11, no. 1 (June 28, 2021): 78–96, <https://doi.org/10.23971/elma.v11i1.2643>.

<sup>29</sup> Anis Widyawati, "Criminal Policy of Adultery in Indonesia," *Journal of Indonesian Legal Studies* 5, no. 1 (May 4, 2020): 171–86, <https://doi.org/10.15294/jils.v5i1.36786>.

<sup>30</sup> Adibah Bahori et al., "Evidence and Prosecution of Out-of-Wedlock Pregnancies: A Legal Perspective of Syariah Criminal Offences in Malaysia," *UUM Journal of Legal Studies* 14 (2023), <https://doi.org/10.32890/uumljls2023.14.1.1>.

inseparable from the influence of historical,<sup>31</sup> political, social,<sup>32</sup> and cultural factors that shape the respective legal frameworks of both countries. Historically, Indonesia inherited a Dutch colonial criminal law system that was secular in orientation, leaving little room for Islamic law to be formally integrated. Only with the 2023 Criminal Code reform did elements of religious morality gain more significant recognition.<sup>33</sup> By contrast, Malaysia has a long tradition of recognizing Islamic law within the structure of state governance since the British colonial period, during which Sharia courts were preserved and later institutionalized.<sup>34</sup> From a political-legal standpoint, Indonesia emphasizes legal pluralism while ensuring the unity of its national system, whereas Malaysia highlights the constitutional position of Islam as the official religion and accords broad legitimacy to Sharia authorities.<sup>35</sup> Socially, Indonesia's diverse population requires compromises between religion, custom, and modernity, while Malaysia's Muslim-majority society provides stronger social legitimacy for Sharia-based punishments. Furthermore, political culture in the two countries differs: Indonesia fosters deliberative democracy and wider civil participation in law-making, while Malaysia grants greater authority to religious institutions in defining moral policy. Taken together, these factors explain why *ta'zīr* punishment evolves differently in both contexts, despite sharing the same Islamic normative roots.

The impacts of implementing *ta'zīr* punishment for adultery can be analyzed across social,<sup>36</sup> legal, and moral dimensions,<sup>37</sup> all of which are closely related to the objectives of *maqāṣid al-sharīah*.<sup>38</sup> Socially, the Indonesian regulation has generated controversy and public debate because it is perceived as interfering with private spheres of life,<sup>39</sup> yet at the same time it is defended as necessary to safeguard public morality and protect the younger generation.<sup>40</sup> In Malaysia, the application of *ta'zīr* punishment tends to be more accepted because it resonates with existing religious and cultural norms.<sup>41</sup> Legally, Indonesia seeks to establish the supremacy of the KUHP as a national framework binding all citizens, thereby promoting legal uniformity. Malaysia, however, sustains a dual legal system whereby federal law applies universally while Sharia law specifically governs Muslim citizens. Morally, both systems are designed to protect *ḥifẓ al-nasl* (protection of lineage) and *ḥifẓ al-ird* (protection of honor), although through different mechanisms. Indonesia focuses on deterrence through universal criminalization and codified statutes, while Malaysia emphasizes deterrence through religiously legitimized punishments delivered by Sharia courts. These variations confirm that law operates not only as a coercive or repressive tool but also as a normative instrument that reflects societal values and enforces communal morality within the larger framework of *maqāṣid al-sharīah*.

When compared with earlier scholarly works, this study reveals both similarities and distinctive contributions. Prior literature on Islamic criminal law consistently highlights the flexible nature of *ta'zīr*, which allows adaptation to the specific social and political environment of different Muslim societies. The findings of this research support this argument, demonstrating that both Indonesia and Malaysia apply

<sup>31</sup> Surya V., "A Qualitative Analysis of the Machine Learning Methods in Food Adultery: A Focus on Milk Adulteration Detection," *Journal of Advanced Research in Dynamical and Control Systems* 12, no. 7 (July 20, 2020): 543–51, <https://doi.org/10.5373/JARDCS/V12I7/20202037>.

<sup>32</sup> Nuraida Fitri Habi et al., "Prioritizing Restorative Justice in the Settlement of the Sumbang Besak Adultery Case in Babeko Village, Jambi," *El-Mashlahah* 14, no. 2 (December 30, 2024): 343–60, <https://doi.org/10.23971/el-mashlahah.v14i2.8030>.

<sup>33</sup> Fitri Habi et al.

<sup>34</sup> Riaz, "Win the Battle, Lose the War?: Strategies for Repealing the Zina Ordinance in Pakistan."

<sup>35</sup> Bahori et al., "Evidence and Prosecution of Out-of-Wedlock Pregnancies: A Legal Perspective of Syariah Criminal Offences in Malaysia."

<sup>36</sup> Nomusa Makhubu, "'This House Is Not for Sale': Nollywood's Spatial Politics and Concepts of 'Home' in Zina Saro-Wiwa's Art," *African Arts* 49, no. 4 (December 2016): 58–69, [https://doi.org/10.1162/AFAR\\_a.00314](https://doi.org/10.1162/AFAR_a.00314).

<sup>37</sup> Syed Atif Rizwan, "The Politics of Umar b. Al-Khattāb and Zinā-Stoning," *Arab Law Quarterly* 38, no. 1–2 (February 28, 2022): 1–49, <https://doi.org/10.1163/15730255-bja10103>.

<sup>38</sup> Wan Mohd Amjad Wan Halim and Rohani Desa, "Analysis of *Ḥifẓ Al-Nasab*' Achievements on the Syariah Criminal Offenses Enactment Based on the Fuzzy Delphi Method," *Jurnal Fiqh* 19, no. 1 (June 30, 2022): 109–32, <https://doi.org/10.22452/fiqh.vol19no1.5>.

<sup>39</sup> Bahori et al., "Evidence and Prosecution of Out-of-Wedlock Pregnancies: A Legal Perspective of Syariah Criminal Offences in Malaysia."

<sup>40</sup> Samuel Fullerton, "Fatal Adulteries: Sexual Politics in the English Revolution," *Journal of British Studies* 60, no. 4 (October 14, 2021): 793–821, <https://doi.org/10.1017/jbr.2021.62>.

<sup>41</sup> Siti Rafiah Abd Hamid et al., "Are the Malaysian Adolescents' Behavior At-Stake?," *Mediterranean Journal of Social Sciences*, April 1, 2015, <https://doi.org/10.5901/mjss.2015.v6n2s5p328>.

*ta'zīr* within divergent legal frameworks yet ultimately align with the goals of *maqāṣid al-sharī'ah*. A point of convergence with earlier studies lies in the recognition that regulations on adultery, across contexts, are oriented toward protecting honor and lineage as core values. The divergence, however, is evident in the mechanisms of implementation: Indonesia's regulation emerges from a process of compromise within its pluralistic political-legal environment, whereas Malaysia's approach stems from its firm commitment to Islamic legal consistency at the state level. This study therefore contributes to contemporary Islamic legal scholarship by emphasizing the necessity of examining *ta'zīr* not merely through normative and theological lenses but also through the institutional and political realities of modern nation-states. Such a comparative perspective enriches the academic discourse and bridges the gap between doctrinal analysis and socio-legal application.

The study's findings carry significant implications at the conceptual, practical, and policy-making levels. Conceptually, this research reaffirms the role of *ta'zīr* as a dynamic and flexible instrument of Islamic criminal law that can be harmonized with contemporary national legal systems.<sup>42</sup> Practically, the findings inform judicial practice, as Indonesian judges must interpret adultery regulations within a pluralistic legal order, while Malaysian judges integrate Sharia-based considerations directly into their decisions. At the policy level, the research suggests strategic directions: Indonesia should enhance coordination between national law and religious values to prevent normative conflicts and legal uncertainty,<sup>43</sup> whereas Malaysia should ensure that Sharia-based regulations align with international human rights frameworks without undermining Islamic principles.<sup>44</sup> Both countries are encouraged to develop a balanced approach that strengthens regulation of adultery not only through punitive measures but also through preventive, educational, and rehabilitative strategies.<sup>45</sup> Accordingly, the study does not merely provide theoretical reflection but also practical policy recommendations that may guide future legal reforms.

This research acknowledges certain limitations and highlights areas for further inquiry. First, the study focuses primarily on regulation and implementation at the national and state levels, leaving unexplored the practical realities of adjudication in local courts. Second, the normative-comparative methodology limits the scope of analysis to legal texts and frameworks, thereby calling for empirical research into the perceptions of society, legal practitioners, and religious authorities. Third, future studies would benefit from an interdisciplinary approach that integrates perspectives from sociology, psychology, and gender studies to better understand the broader social implications of *ta'zīr*. Comparative research with other Muslim-majority countries such as Brunei Darussalam, Pakistan, or Tunisia could also provide valuable insights into different regulatory trajectories. Additionally, employing mixed-methods research that combines normative legal analysis with field-based empirical data could result in more comprehensive findings. In this way, subsequent studies would be able to deepen the discourse on adultery regulation, enrich comparative Islamic criminal law scholarship,<sup>46</sup> and contribute more meaningfully to the development of contemporary legal systems in Muslim societies.

## 4. Conclusion

The results of this study demonstrate that Constitutional Court Decision 168/PUU-XXI/2023 regarding employment termination presents complex legal implications that intersect between constitutional norms, statutory provisions, and their implementation in the field. Although the decision was intended to

<sup>42</sup> Juan Cole, "Late Roman Law and the Quranic Punishments for Adultery," *The Muslim World* 112, no. 2 (April 9, 2022): 207–24, <https://doi.org/10.1111/muwo.12436>.

<sup>43</sup> Islamul Haq et al., "Unlocking The Potential of 'Kalosara': An Extensive Analysis of Adultery Instances Dispute Resolution in the Tolaki Tribe through the Lens of Al-Ishlah Concept," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 24, no. 1 (June 29, 2024): 88–102, <https://doi.org/10.30631/alrisalah.v24i1.1488>.

<sup>44</sup> Kodi B. Arfer and Jason J. Jones, "American Political-Party Affiliation as a Predictor of Usage of an Adultery Website," *Archives of Sexual Behavior* 48, no. 3 (April 12, 2019): 715–23, <https://doi.org/10.1007/s10508-018-1244-1>.

<sup>45</sup> Gurit E. Birnbaum, Kobi Zoltack, and Shahar Ayal, "Is Infidelity Contagious? Online Exposure to Norms of Adultery and Its Effect on Expressions of Desire for Current and Alternative Partners," *Archives of Sexual Behavior* 51, no. 8 (November 17, 2022): 3919–30, <https://doi.org/10.1007/s10508-022-02392-7>.

<sup>46</sup> Michael Quinn Patton, "What Is Essential in Developmental Evaluation? On Integrity, Fidelity, Adultery, Abstinence, Impotence, Long-Term Commitment, Integrity, and Sensitivity in Implementing Evaluation Models," *American Journal of Evaluation* 37, no. 2 (June 22, 2016): 250–65, <https://doi.org/10.1177/1098214015626295>.



reinforce worker protection, the absence of clear derivative regulations and standardized judicial interpretations at the Industrial Relations Court (IRC) level has led to significant legal uncertainty. This situation has weakened workers' bargaining position, reduced the predictability of outcomes in termination disputes, and, in some cases, eroded protection for vulnerable categories of labor. From the perspective of Islamic political jurisprudence, the decision's implementation reveals inconsistencies with the principles of *al-'adl* (justice), *al-maslahah* (public benefit), and *ri'ayah al-mustadh'afin* (protection of the disadvantaged). These values, which emphasize fairness, collective welfare, and safeguarding marginalized groups, can serve as a normative framework for improving termination policies. This research addresses the core problem of misalignment between the ideal objectives of the Constitutional Court decision and the actual practices observed in the labor sector. By framing the analysis through both constitutional law and Islamic legal ethics, the study offers a conceptual bridge to reconcile normative expectations with practical realities, ensuring that termination practices uphold both legal certainty and moral responsibility in labor governance.

This study underscores the potential for integrating *siyasah qadhaiyyah* principles into Indonesia's labor law framework as a means of achieving substantive justice. Such integration requires the formulation of comprehensive implementing regulations, capacity-building programs for IRC judges to interpret Constitutional Court decisions consistently, and mechanisms to embed Islamic legal values within labor dispute resolution processes. Theoretically, the research contributes to the discourse on legal pluralism in Indonesia by illustrating how constitutional adjudication and Islamic jurisprudence can be synthesized to address contemporary labor challenges in a way that respects both state law and religious norms. Nevertheless, the study acknowledges limitations, including its focus on selected case examples and the dynamic nature of labor jurisprudence, which may affect the generalizability of findings. Future research should expand empirical coverage, explore comparative insights from other jurisdictions with similar pluralistic legal systems, and develop practical guidelines for policymakers to operationalize Islamic legal values within labor policy. By doing so, labor law reforms can fulfill constitutional mandates while embodying principles of fairness, public interest, and protection for the disadvantaged, ultimately fostering a just and sustainable labor relations environment.

## Declarations

### Author Contribution Statement

Ferik Demiral was responsible for the conceptualization, methodology, data curation, and drafting of the original manuscript; Dahyul Daipon contributed to validation, formal analysis, as well as review and editing; and Mutia Urdatul Usqho carried out the investigation, provided resources, and assisted with manuscript revision. All authors have read and approved the final version of this article.

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### Data Availability Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request. No publicly archived datasets were used or generated during the current research.




### Declaration of Interests Statement

The authors declare that they have no known financial or personal conflicts of interest that could have influenced the work reported in this paper.

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