



THE PROGRESS OF ISLAMIC CRIMINAL LAW IN INDONESIA: AN ANALYSIS OF THE DYNAMIC AND THE URGENCY OF IT'S IMPLEMENTATION

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Article	Abstract
<p>Keywords: Criminal Law, Islamic Criminal Law, Urgency.</p> <p>DOI: 10.28946/scls.v1i1.2905</p>	<p>Although the application of Islamic criminal law still raises pros and cons due to the assumption that the sanctions tend to be sadistic. It does not mean Islamic criminal law is impossible to apply in Indonesia. Positive law in Indonesia results from thinking based on three components that substantially influence European, customary, and Islamic law. The problem related to the formation of positive law in Indonesia is the position of Islamic law, especially those still vague and unfamiliar to the public. So that the formulation of the problem in this study is: how are the dynamics of existence and the urgency of applying Islamic criminal law in Indonesia? This research used normative juridical methods or legal research. The study results show that the dynamics of Islamic criminal law in Indonesia began in the colonial period as a subsystem of customary law. As for the legalization process of Islamic law or criminal law in Indonesian law, it cannot be carried out easily due to the tendency of the influence of Western state law, which previously colonized Indonesia. Nowadays, Islamic criminal law has been applied to one of Indonesia's regions, namely Nanggroe Aceh Darussalam. Another dynamic that Indonesia has to face in implementing Islamic criminal law is the existence of a stigma that punishment in Islamic criminal law seems sadistic and inhumane or violates human rights. The urgency of implementing Islamic criminal law in Indonesia is that Islamic criminal law contains more than all the goals commonly known in the world of criminal law, namely retribution, deterrence, and reformation.</p>

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A. Introduction

There are various legal systems in the world, namely the Civil Law legal system,¹ Common Law,² Customary Law³, and Islamic Law.⁴ Even though most Indonesian citizens embrace Islam, the influence of Islamic law is not prominent in the existing legal system in Indonesia, both in terms of substance, structure, and legal culture.⁵ Recently, Islamic criminal law (*jinayat*) has been studied and developed by Indonesian legal scientists, both Islamic law experts and general law experts. This is a logical consequence of the disappearance of the application of Islamic criminal law in the Islamic world during the last seven centuries, except in a few countries, such as Saudi Arabia and other Islamic countries. Islamic criminal law has long been replaced by criminal law from the West, for example, English, French and Dutch criminal law.⁶

Integrating aspects of Islamic criminal law is relatively tricky because of the impression of "grief" and "sadism" attached to it. Islamic criminal law material is considered "gritty" and "sadistic" because it contains severe sanctions for the perpetrators of certain crimes, for example, the punishment of cutting off the hand for the perpetrator of the crime of theft, punishment of stoning (planted and stoned to death) for the perpetrator of the crime of adultery who is married (*muhsan*), punishment for death (*qishas*) for the perpetrators of the crime of intentional killing. A complete lack of understanding of the Islamic criminal law system and its underlying philosophical foundations makes this cruel/sadistic impression surface.⁷

However, it does not mean Indonesia cannot implement Islamic criminal law. This can be seen from the application of Islamic criminal law in one of the special provinces in Indonesia, namely the Province of Nanggroe Aceh Darussalam. As for the existence of Islamic criminal punishment in Aceh, it has had a significant influence on the crime rate in Aceh. Ferdiansyah's research on the effectiveness of the implementation of caning for violations of Islamic law in the jurisdiction of Banda Aceh City, which took samples in the last five years, states that crime has decreased. Meanwhile, Al Yasa Abubakar stated that the caning punishment is closer to the people's sense of justice in applying the law. In addition, a survey conducted by the author of several community groups regarding the authority of the Wilayatul Hisbah shows that the

¹ Civil Law originates from codified Roman law made at the time of Emperor Justinian and spread throughout the European continent and throughout the world. In the Civil Law system, the main principle on which this system is based is that law gains binding force because it is embodied in regulations in the form of laws and systematically arranged in certain codifications or compilations. Firdaus Muhamad Iqbal, "Kontribusi Sistem Civil Law (Eropa Kontinental) Terhadap Perkembangan Sistem Hukum Di Indonesia," *Jurnal Dialektika Hukum* 4, no. 2 (2022): 180-200, <https://doi.org/10.36859/jdh.v4i2.1120>.

² The Anglo-Saxon legal system (common law) which has historical roots in the British Empire makes court decisions as its legal basis. This is because in the early history of the British Empire there was no strong parliament but only king's orders were used as legal rules. Choky Ramadhan, "Konvergensi Civil Law Dan Common Law Di Indonesia Dalam Penemuan Dan Pembentukan Hukum," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 30, no. 2 (2018): 213, <https://doi.org/10.22146/jmh.31169>.

³ Customary law is a set of rules which, although not determined by statutory bodies in a "*werkelijkheid*" (reality) environment, are nevertheless adhered to. This is because people are able to accept these principles as law and it has been shown that these legal principles are maintained by other community authorities who are not part of the statutory body. Cindawati, "Kaedah-Kaedah Hukum Kebiasaan Internasional Yang Berlaku Dalam Kontrak Bisnis Internasional," *SOLUSI* 16, no. 1 (2018): 37-52.

⁴ Islamic law or Islamic shari'a is a system of rules based on the revelations of Allah SWT and the Sunnah of the Prophet regarding the behavior of a recognized and trusted person who can be burdened with obligations, which is binding on all adherents. Eva Iryani, "Hukum Islam, Demokrasi Dan Hak Asasi Manusia," *Jurnal Ilmiah Universitas Batanghari Jambi* 17, no. 2 (2017): 24-31.

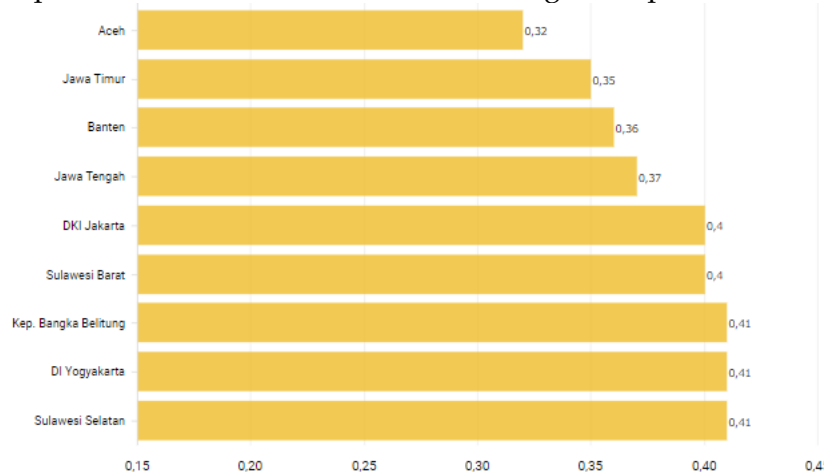
⁵ I Made Gede Wisnu Murti, "Melihat Berbagai Sistem Hukum Di Dunia Dalam Kajian Pengantar Ilmu Hukum," *Jurnal Komunitas Yustitia* 4, no. 3 (2021): 959-69.

⁶ M. Sularno, "Membumikan hukum Pidana Islam Di Indonesia (Agenda Dan Kendala)," *Al-Mawarid* 12, no. 1 (2017): 19-32, <https://doi.org/10.20885/almawarid.vol12.iss1.art2>.

⁷ Rokhmadi, *Hukum Pidana Islam* (Semarang: Karya Abadi Jaya, 2015), p. viii.

community has hopes for the application of Islamic Law fairly and transparently within the framework of the legal system.⁸ This can be seen from the following data:

Graph: Provinces with the Lowest Percentage of Population Victims of Crime Nationally (2021)



Sources: <https://databoks.katadata.co.id/datapublish/2022/11/29/minim-kejahatan-bali-jadi-provinsi-teraman-di-indonesia>

The data above shows that Aceh is one of the safest provinces because the percentage of crime victims is small, namely only 0.32%.⁹ The yearly decrease in crimes in Aceh highly supports this data.¹⁰ In other words, the application of Islamic criminal law in Aceh has functioned because it is sufficient to prevent people from committing crimes. The Province of Nanggroe Aceh Darussalam (NAD) is the only province within the Unitary State of the Republic of Indonesia which, based on Law Number 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh, has the authority to fully implement Islamic sharia including Islamic criminal law throughout the Aceh province.¹¹

Islamic criminal law (*fiqh jinayah*) is the Shari'a of Allah SWT which regulates legal provisions regarding criminal acts committed by people of *mukallaf* (people who can be burdened with obligations), as a result of understanding the detailed legal arguments from Al-Qur'an¹² and Hadith.¹³ Islamic criminal law essentially contains benefits for human life in this

⁸ Ridwan Nurdin, "Kedudukan Qanun Jinayat Aceh Dalam Sistem Hukum Pidana Nasional Indonesia," *MIQOT: Jurnal Ilmu-Ilmu Keislaman* 42, no. 2 (2019): 356, <https://doi.org/10.30821/miqot.v42i2.542>.

⁹ "Minim Kejahatan, Bali Jadi Provinsi Teraman Di Indonesia," accessed May 13, 2023, <https://databoks.katadata.co.id/datapublish/2022/11/29/minim-kejahatan-bali-jadi-provinsi-teraman-di-indonesia>.

¹⁰ "Polresta Banda Aceh Ungkap 1.178 Kasus Kriminal Selama 2022 - ANTARA News Aceh," accessed May 13, 2023, <https://aceh.antaranews.com/berita/320643/polresta-banda-aceh-ungkap-1178-kasus-kriminal-selama-2022>.

¹¹ Suharyo, "Otonomi Khusus Di Aceh Dan Papua Di Tengah Fenomena Korupsi, Suatu Strategi Penindakan Hukum," *Jurnal Penelitian Hukum De Jure* 18, no. 3 (September 21, 2018): 305-18, <https://doi.org/10.30641/DEJURE.2018.V18.305-318>.

¹² Linguistically, the Qur'an is rooted in the word *qaraa yaqrau quranaan* which means "reading". In general, the Qur'an is defined as a book which contains a collection of the words of Allah, a miracle revealed to the Prophet Muhammad SAW through the intermediary of the angel Gabriel, written in *mushaf* whose purity is always maintained, and reading it is an act of worship. Muhammad Jaedi, "Pentingnya Memahami Al-Qur'an Dan Ilmu Pengetahuan," *Jurnal Pendidikan Dan Studi Islam* 5, no. 1 (2019): 62-70, <https://doi.org/10.5281/zenodo.2618950>.

¹³ Hadith is the second source of Islamic teachings after the Qur'an. The term hadith usually refers to everything that is based on the Prophet Muhammad SAW, in the form of words, deeds, agreements, and their nature (physical or psychological), both that occurred before and after his prophethood. Leni Andariati, "Hadis Dan Sejarah Perkembangannya," *Jurnal Ilmu Hadis* 4, no. 2 (2020): 153-66.

world and hereafter. The intended Islamic *Shari'a*¹⁴ materially has essential obligations for every human being to implement it. The concept of essential sharia obligations places Allah SWT as the holder of all rights. Everyone is just an executor who is obliged to fulfill the command of Allah SWT. The intended command of Allah SWT must be carried out for the benefit of personal humans and other people, in contrast to positive criminal law, which is man-made. Because human minds process these legal products, they must have flaws and loopholes so that humans can do things that break the law at will.¹⁵

Thus, even though the application of Islamic criminal law still raises pros and cons due to the assumption that the sanctions tend to be sadistic, based on the data and arguments above, it does not mean that Islamic criminal law is impossible to apply in Indonesia. Positive law in Indonesia results from thinking based on three components that substantially influence it: European, customary, and Islamic law. The problems that arise in this component, the existence of customary law and Islamic law among the general public, often fade due to a lack of socialization from competent parties in these fields. More specifically, what will be discussed in this paper is Islamic criminal law, which is still within the scope of Islamic law. So that the formulation of the problem in this study is how are the dynamics of existence and the urgency of applying Islamic criminal law in Indonesia?

B. Research Method

In the research used by the author using the normative juridical method (legal research), the normative juridical method relies on implementing positive laws that live in society, such as legal rules or legal norms. As for the material for analysis in discussing the main problems in research, to produce results from discussions and conclusions are rational and objective. This normative research is a legal method used to examine existing library materials. It traces the sources of analytical literature, such as explaining laws and regulations related to legal theory as a focal point of research.

C. Discussion

1. The Dynamics of the Existence of Islamic Criminal Law in Indonesia

Islamic criminal law is part of Islamic law or *fiqh* in general, a scientific discipline focusing on discussing Islam or *sharia*. The basic teachings of Islam cover three main aspects: faith, Islam and *ihsan*, or *aqidah*, *sharia*, and morals. These three main aspects require three different disciplines. The science of faith or *aqidah* is called the science of monotheism, the science of Islam or *sharia* is called the science of *fiqh*, and the knowledge of *ihsan* or morals is called the science of *tasawuf*.¹⁶

Islamic Criminal Law is a translation of *jinayah fiqh*, one of the six branches of *fiqh* in Islamic law. The six branches of *fiqh* are *fiqh* worship, *muamalah* (social & business interaction), *munakahat* (marriage), *jinayah* (criminal), *fiqh siyasah* (politics), and *Mawaris* (inheritance). Islamic Criminal Law is part of Islamic law. Jumhurul fuqaha' have agreed that generally, there are four sources of Islamic law: the Qur'an, hadith, Ijmak, Qiyas, and these laws must be followed. If there is no provision of an event or act regulating the Qur'an, look for it in the hadith and other

¹⁴ Islamic Shari'a originates from the Al-Quran and Al-Hadith which are the only legal systems that protect human life. However, the Shari'a will still be able to protect all future problems at any time. Elan Sumarna, "Syariah Islam Dalam Konteks Perguliran Sosial, Politik, Dan Budaya," *Sosio Religi: Jurnal Kajian Pendidikan Umum* 14, no. 2 (2016): 59-64.

¹⁵ Lysa Anggraini, "Hukum Pidana Dalam Perspektif Islam Dan Perbandingannya Dengan Hukum Pidana Di Indonesia," *Hukum Islam* 15, no. 1 (2015): 46-60.

¹⁶ M. Nurul Irfan, *Hukum Pidana Islam* (Jakarta: Amzah, 2016), p. 6.

Islamic law sources. That is the process of seeking law in the Islamic religion. As for there are still several different sources, but there are still many disputes about whether they are binding or not, such as Istihsan,¹⁷ Ijtihad,¹⁸ Maslahat Mursalah,¹⁹ Urf,²⁰ and Saddu al-Dzari'ah.²¹ So Islamic criminal law also comes from these sources.²²

Punishment is a tool in criminal law as a form of compensation for perpetrators of criminal acts because it represents society's resistance to criminals causing the crimes committed. The ultimate goal of punishment in Islamic Criminal Law is peace or *rahmatan lila'lamin*. The strictness of punishment determined by Allah is His love (grace) to humans and the natural surroundings so that life becomes peaceful, just, peaceful, and prosperous. In other words, the strictness of the punishment that Allah has decreed for the perpetrators of crimes is intended as an effort to prevent damage and bring about safety, and peace in life in this world and the hereafter, directing them towards truth, justice, wisdom and explaining the path of true truth.²³ The main goals in punishing Islamic law are prevention, teaching, and education.

The struggle between Islamic law in all its fields, customary law, and Western law in academic discourse among jurists and the history of its existence has been going on since the colonial period. For example, the answer is customary law to determine which law was first born in Indonesia according to mainstream understanding among legal experts in Indonesia, or which was developed in studies at law faculties. There are few views of legal experts who seem not to know the existence of Islamic law in Indonesia. There are also who view it as a subsystem of customary law. Such a view is certainly to be questioned. It must be admitted that the science of law studied in Indonesia is from a Western perspective. The colonial experience gave rise to a strong spirit for the superiority of Western law, so many former colonial countries deliberately implanted their laws through acceptance and acculturation from their former colonial masters. Colonialism was not focused on the transplantation of law. Even if the colonial rulers forced the enactment of their legal system, it was only for political interests.²⁴

The process of legislating Islamic law does not mean that it goes smoothly. There are still factors that influence the legislative process. For example, the influence of colonialism and Liberal thoughts are quite a headache for scholars and ulemas regarding the concepts of Islamic law. However, this does not mean that this criticism has stopped the implementation of Islamic law. Still, adapting it to the conditions of Islamic society has become material for consideration, especially in Indonesia. The success of the Islamic law legislation process was the rise of Law

¹⁷ Etymologically, istisan comes from the word al-hasan, which means something good. In terms of terminology, istihisan is moving from the law of a same problem to another one because of a stronger argument. Fitriyani, "Istihisan Dan Pembaharuan Hukum Islam," *Tahkim* 13, no. 1 (2017): 141-54.

¹⁸ Ijtihad means the use of independent legal interpretation to provide an answer to a problem when the Qur'an and al-Sunnah remain silent. Ahmad Hanany Naseh, "Ijtihad Dalam Hukum Islam," *An-Nur* 4, no. 2 (2012): 248-59.

¹⁹ Mashlahat or mashlahah is something considered good according to common sense because it brings goodness and avoids damage or evil for humans and in line with syara' goals in establishing law. Hendri Hermawan Adinugraha and Mashudi Mashudi, "Al-Maslahah Al-Mursalah Dalam Penentuan Hukum Islam," *Jurnal Ilmiah Ekonomi Islam* 4, no. 01 (2018): 63, <https://doi.org/10.29040/jiei.v4i1.140>.

²⁰ Urf is a custom that applies in area and used as one of the considerations in Islamic law. M. Noor Harisudin, "Urf Sebagai Sumber Hukum Islam (Fiqh) Nusantara," *Jurnal Ushuluddin: Media Dialog Pemikiran Islam* 20, no. 1 (2017): 66-86, <http://103.55.216.56/index.php/alfikr/article/view/2311>.

²¹ Saddu al-Dzari'ah is blocking everything that becomes the path of damage. Muhamad Takhim, "Saddu Al-Dzari'ah Dalam Muamalah Islam," *AKSES: Jurnal Ekonomi Dan Bisnis* 14, no. 1 (2020): 19-25, <https://doi.org/10.31942/akses.v14i1.3264>.

²² Zainuddin Ali, *Hukum Pidana Islam* (Jakarta: Sinar Grafika, 2009), p. 9.

²³ Ridwan Syah Beruh, *Membumikan Hukum Tuhan Perlindungan HAM Perspektif Hukum Pidana Islam* (Yogyakarta: Pustaka Ilmu, 2015), pp. 186-187.

²⁴ Achmad Irwan Hamzani, "Sejarah Berlakunya Hukum Pidana Islam Di Nusantara," *HIKMATUNA: Journal for Integrative Islamic Studies* 2, no. 2 (2016): 261-84.

no. 1 of 1974 concerning marriage, Law no. 7 of 1989 concerning the Religious Courts, Law Number 13 of 2008 concerning the Implementation of the Hajj Pilgrimage, Law No 23 of 2011 concerning Management of Zakat, Presidential Instruction No. 1 of 1991 concerning Compilation of Islamic Law, and Law no. 41 of 2004 concerning Waqf. The formation of these regulations also has serious obstacles and debates in terms of their stipulation. However, state law still accommodates civil matters, while criminal law still adheres to the concept of Dutch law, namely the Criminal Code.

In addition, the existence of the special autonomy law that applies in Aceh is the first step in practice and a reflection of the concept of state law to accommodate civil and criminal Islamic law. This is the first step for the State, in this case, the Aceh government, to make Islamic law a legal concept in their regional regulations. This issue does not escape the pros and cons of specificity. Even though it has been given broad authority and autonomy in Islamic law after enacting the Law on Governing Aceh (UUPA) No. 11/2006, Islamic law in Aceh, within six years of implementing the UUPA, still shows anomaly symptoms. On the one hand, the authority and autonomy of Aceh in drafting sharia qanuns (regulations at the level of regional rules) has been expanded from previously only dealing with areas of worship, *ahwal syakhsiyah* and *muamalah*, to the field of *jinayah* (criminal) law. Not only that, the contents of sanctions for *qanun jinayat* are also excluded from the general provisions of sanctions (*uqubat*) which can be contained in qanuns as long as they are by what is regulated in other laws and regulations. But on the other hand, this limited authority and jurisdiction face a big problem when the process of incorporating Islamic law into the Aceh Shari'a qanun must also be built within the frame and scope of the national legal system so that more or less the Shari'a qanun will have to undergo various "adjustments" with legal reality in force in Indonesia.²⁵

Islamic criminal law, often portrayed in the mass media, is cruel and inhumane, even though such an impression arises because it is not seen as a whole and comprehensive. Islamic criminal law is part of Islamic law. For example, the law of cutting off hands is often accused of being too cruel and unfair. On the one hand, Islamic penal lawmakers do not compile legal provisions from shari'a without any purpose but have specific broad objectives. Thus, to understand the importance of a provision, it is absolutely necessary to know what the purpose of that provision is.

The phenomenon of Islamic criminal law, which seems sadistic at the same time, shows how the understanding of the meaning of punishment or legal sanctions, especially the death penalty, is still at the level of classical (barbaric) traditions, which are considered irrelevant to modern life which upholds human values (human rights). Islamic criminal law, which includes *qishash* and *diyat* (*hudud*), is considered by some Western and Indonesian jurists as a law that represents the underdevelopment of human values and is even considered to preserve the traditions of the ignorant society. Therefore, many legal and human rights experts reject the idea of the existence of the death penalty as the main punishment in the modern positive legal system. This refusal is based on considerations, among others, first, a cruel and terrible punishment, which is reminiscent of the law of the jungle; secondly, the death penalty will not be able to eradicate crime or will not be able to prevent someone from committing murder; third, the death penalty is eternal, meaning that if it is carried out, it cannot be changed, even if at a later date, it is known that the decision did not have a strong legal basis; fourth, the death

²⁵ Syarif Hidayatullah, "Perkembangan Dan Eksistensi Hukum Pidana Islam Sebagai Sumber Hukum Di Indonesia," *SANGAJI: Jurnal Pemikiran Syariah Dan Hukum* 1, no. 2 (2017): 245–63, <https://doi.org/10.52266/sangaji.v1i2.206>.

penalty is contrary to the freedom of people (personal) because human life is personal property, which is essential and cannot be disturbed by other people.²⁶

2. The Urgency of Implementing Islamic Criminal Law in Indonesia

The scholars also pointed out the nature of the purpose of punishment in Islam, namely that, in general, it has two functions: first, its nature is *zawajir* which connotes the interests of humans in the world. Secondly, its nature is accountable, which connotes human interests that are *ukhrawi*.²⁷

- a. The first function of criminal law in Islam is to awaken the criminal offenders so they do not repeat the crimes. Punishment becomes a lesson for others so they do not dare commit crimes. Those who have committed these crimes and have not been caught should be thinking long to repeat what he did. Thus, there will be peace living in this world.
- b. While the second function is intended to save the convict from torment in the afterlife (because his guilt has been paid for in the world), his sins of committing *jarimah* will be erased, and it will become a virtue for him because he has participated in enforcing God's law.

Azyumardi Azra, for example, in responding to the question of the possibility of converting Islamic law into national law, said that what must be considered is the condition of the Indonesian Muslim community, which is not a monolithic reality, but a diverse reality, many groups, understandings of Islam, attachments, and other knowledge. It is feared that this sociological reality will lead to viability problems. This means that Islamic law cannot survive. It might even be counterproductive when layers of Muslim society whose understanding of Islam differs do not turn out as expected.²⁸

Thus, Islamic criminal law contains more than all the goals commonly known in criminal law: retribution, deterrence, and reformation.²⁹ It is undeniable that many legal observers and writers are frightened by seeing the formulation of Islamic criminal law. So they argue that the only purpose of punishment in Islamic law is for retribution. This assumption is considered wrong and premature because it is only based on research that is not in-depth (alleged) and not objective toward punishment in Islamic law. Two things are the focus of attention of these observers so that Islamic law is associated with retributive nature (retaliation): the severity of punishment and the necessity (absoluteness) of punishing if a crime is proven.³⁰

Punishments in Islamic criminal law are also based on psychological considerations to combat the tendency of criminals to return, violating the law and other comprehensive considerations of all the consequences of these crimes. Thus, apart from being retributive, it also tends to be deterrence and reform. Islamic criminal law recognizes the aspect of prevention deeper and firmer when compared to other criminal laws because prevention is the primary justification for punishment and not solely retaliation. Al-Mawardhi defines *hudud* (plural of had) as a collection of preventive punishments ordained by Allah to prevent humans from

²⁶ Taufik Hidayat, "Penerapan Hukum Pidana Islam Pada Sistem Hukum Nasional Perspektif Hak Asasi Manusia," *Lex Administratum* 3, no. 4 (2015): 1-27.

²⁷ Ibrahim Hosen, "Jenis-Jenis Hukuman Dalam Hukum Pidana Islam Dan Perbedaan Ijtihad Ulama Dalam Penerapannya," *Mimbar Hukum* 6, no. 20 (2019): 14-24.

²⁸ Massadi Massadi, "Peluang Dan Tantangan Pelaksanaan Pidana Islam Di Indonesia," *Al-Bayyinah* 3, no. 2 (2019): 252-68, <https://doi.org/10.35673/al-bayyinah.v3i2.473>.

²⁹ Abdul Syatar, "Relevansi Antara Pemidanaan Indonesia Dan Sanksi Pidana Islam," *DIKTUM: Jurnal Syariah Dan Hukum* 16, no. 1 (2018): 118-34, <https://doi.org/10.35905/diktum.v16i1.525>.

³⁰ Muhammad Tahmid Nur, "Urgensi Penerapan Hukum Pidana Islam (Tinjauan Filsafat Hukum)," *Journal of Islamic Family Law* 01, no. 01 (2020): 1-16.

doing what is forbidden and neglecting what is obligatory. The meaning of *hudūd* includes aspects of prevention and determining punishment for violators of the rules.³¹

Islamic Criminal Law, categorized as unwritten law according to the principle of legality, can still be recognized in Indonesia constitutionally as law and continues to apply according to Article II of the Transitional Rules of the 1945 Constitution. However, this basic provision has not been followed up with legal instruments to enter into the form of a legality principle instrument. Meanwhile, the Legality Principle of Islamic Criminal Law significantly contributes to Indonesia's renewal of criminal law. The principle of legality of Islamic criminal law has the potential to realize the Criminal Code based on Pancasila's first philosophy, Belief in One Almighty God (ideological contribution). The principle of legality of Islamic criminal law also has the potential to realize a Criminal Code, which has a simple but comprehensive formula for criminal acts. It has a responsive, progressive, and balanced character (juridical contribution).³²

The application of Islamic punishment is not a new thing. Several Muslim countries, such as Saudi Arabia, Afghanistan, and Sudan, have long practiced it. Islamic law in these countries is strictly enforced, especially concerning criminal law (*hudud*). However, even though most of the population is Muslim in Indonesia, they inherited colonial laws that were ultimately unfamiliar and received little appreciation in the academic space. Not a few are pessimistic and think that Islamic criminal law is no longer relevant to be applied in modern times. Destructive stigma has also become mainstream in positioning Islamic criminal law as cruel, rigid, inhumane, barbarian, and violating human rights. The dominant connotations are stoning (stoning to death), cutting off hands, binding, and *qishas* (punishment for crimes against life).³³

D. Conclusions

The dynamics of Islamic criminal law in Indonesia began during the colonial period as a subsystem of customary law. As for the legalization process of Islamic law or criminal law in Indonesian law, it cannot be carried out easily due to the tendency of the influence of Western state law, which previously colonized Indonesia. Nonetheless, Islamic criminal law has been applied to one of Indonesia's regions, namely Nanggroe Aceh Darussalam. Even though it has not been fully implemented in all regions of Indonesia, this fact shows that Islamic criminal law is not impossible to apply in Indonesia. Apart from this, Indonesia has to face another dynamic in implementing Islamic criminal law: the stigma that punishment in Islamic criminal law seems sadistic and inhumane or violates human rights. The urgency of implementing Islamic criminal law in Indonesia is that Islamic criminal law contains more than all the goals commonly known in the world of criminal law, namely retribution, deterrence, and reformation. Punishments in Islamic criminal law are also based on psychological considerations to combat the tendency of criminals to violate the law again and with other comprehensive considerations of all the consequences of these crimes.

³¹ Subehan Khalik et al., "Hudud Dalam Al-Quran," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 5, no. 2 (December 21, 2018): 237–48, <https://doi.org/10.24252/AL-QADAU.V5I2.7105>.

³² Moh Khasan, "Prinsip-Prinsip Keadilan Hukum Dalam Asas Legalitas Hukum Pidana Islam (Legality of Islamic Criminal Law)," *Jurnal Rechtsvinding* 6, no. 1 (2017): 21–36.

³³ Hamzani, "Sejarah Berlakunya Hukum Pidana Islam Di Nusantara."

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