



Bridging the Normative Gap: A Comparative Analysis of Indonesia's Adultery Law and Islamic Criminal Jurisprudence in the Era of Criminal Code Reform

OPEN ACCESS

Dewi Kurnia Rizki^{1*}

Assoc. Prof. Dr. Samsurijal Hasan, MM.
Universitas Pahlawan, Indonesia.

¹Faculty of Law, Universitas Islam Riau, Indonesia.

*CORRESPONDENCE

Dewi Kurnia Rizki
email: dwkurniarizki@gmail.com

COPYRIGHT© 2025
Dewi Kurnia Rizki (Authors)



This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.

ABSTRACT

Purpose of the study: Article 284 of the Indonesian Criminal Code (KUHP), a colonial-era Dutch legal instrument, provides a narrow and contested framework for the criminalization of adultery. It restricts prosecution to cases where at least one party is legally married and requires a formal complaint (delik aduan) from the aggrieved spouse, leaving unmarried adults engaged in sexual relations legally unpunishable. This stands in fundamental tension with Islamic criminal law (fiqh jinayah), which broadly prohibits all sexual intercourse outside of lawful marriage. This study aims to conduct a juridical analysis of Article 284 KUHP from the perspective of Islamic criminal law, identifying normative gaps, comparative legal disparities, and implications for criminal law reform in Indonesia

Methodology: A normative legal research methodology was employed, utilizing doctrinal analysis, comparative legal analysis (comparative law), and statutory interpretation. Primary legal sources include the KUHP, the Quran, Hadith, classical fiqh jurisprudence, and relevant Indonesian legislation. Secondary sources include Scopus- and WOS-indexed academic literature

Results: The analysis reveals eleven structural weaknesses in Article 284 KUHP relative to Islamic criminal law, across dimensions of legal formulation, perpetrator scope, criminal sanctions, legal sources, and enforcement mechanisms. Islamic criminal law classifies zina as a hudud offense, applicable to all morally competent adults regardless of marital status, with graduated punishments (100 lashes for ghairu muhsan; rajam for muhsan), requiring no private complaint.

Conclusions: Article 284 KUHP inadequately reflects Indonesia's social and religious values as a Muslim-majority nation. Comprehensive criminal law reform is urgently needed, as partially reflected in the New Criminal Code (R-KUHP 2022/KUHP 2023), though significant gaps remain. The study advocates for a progressive harmonization of positive law with maqasid al-shari'ah principles within the bounds of Indonesia's pluralist legal system.

Keywords:

adultery; article 284 kuhp; delik aduan; fiqh jinayah; islamic criminal law; juridical analysis; maqasid al-shari'ah.

Citation APA Style 7:

Rizki, D. K. (2025). Bridging the Normative Gap: A Comparative Analysis of Indonesia's Adultery Law and Islamic Criminal Jurisprudence in the Era of Criminal Code Reform. *Veritas Socialis Et Legalis*, 1(01), 13-19. <https://doi.org/10.53905/Veritas.v1i01.3>

Received: December 10, 2024 | Accepted: January 08, 2025 | Published: January 10, 2025

INTRODUCTION

The intersection of positive criminal law and religious law in Indonesia represents one of the most legally complex and socially charged areas of jurisprudence in the country. As the world's largest Muslim-majority nation, with approximately 87% of its population identifying as Muslim, Indonesia faces persistent tension between its secular-nationalist legal framework, rooted in colonial Dutch legal traditions, and the aspirations of Muslim citizens to live under Sharia-compliant legal arrangements (Hosen, 2007; Salim, 2008). Nowhere is this tension more visible than in the treatment of adultery—known in Indonesian law as perzinaan—and its regulation under Article 284 of the Kitab Undang-Undang Hukum Pidana (KUHP), the national Criminal Code.

Article 284 KUHP, inherited from the colonial Wetboek van Strafrecht (WvS) of 1918, restricts the criminalization of adultery to cases involving at least one married party and classifies the offense as a delik aduan—a complaint-based offense that can only be prosecuted upon formal complaint by the aggrieved spouse. This narrow scope excludes pre-marital and consensual extramarital sexual relations among unmarried adults from criminal sanction entirely, a position fundamentally inconsistent with the dominant Islamic moral and legal framework operative in Indonesian society (J.M., 2010; Pompe, 2005). The failure of KUHP to align with Islamic values has generated social conflict, extrajudicial enforcement, and increasing calls for legislative reform.

Critical Examination of Existing Literature

Scholarly inquiry into the adequacy of Article 284 KUHP has produced a growing body of literature. Hiariej (2015) argues that the colonial legacy of KUHP renders it fundamentally misaligned with Indonesian socio-cultural norms. Marpaung (1996) traced the historical genealogy of Article 284 to Dutch liberal individualism, which treats sexuality as a private domain protected by state

non-interference, in contrast to the communal and theocentric orientation of Islamic jurisprudence. [Muslich \(2004\)](#) provides a comprehensive analysis of *jarimah zina* in Islamic law, demonstrating the broader normative and theological grounding of Islamic prohibitions on adultery compared to KUHP's positivistic formulation.

Comparative legal studies have been advanced by [Andriasari \(2011\)](#), who contrasted Indonesian and Turkish approaches to adultery criminalization, noting that Indonesia, unlike secular Turkey, still maintains a formal adultery offense, albeit a limited one. [Nim. \(2011\)](#) examined the criminalization of adultery in both KUHP and Islamic law, emphasizing that the gradual expansion of the KUHP's scope through successive R-KUHP drafts (2008, 2012, 2013, 2015, and ultimately 2022) reflects growing legislative acknowledgment of Islamic values. [Elvariani \(2017\)](#) analyzed the philosophical basis of corporal punishment (*dera*) in Islamic law for *zina* offenses, arguing that the Islamic conception of justice through proportional punishment is not inherently incompatible with modern human rights frameworks when contextualized within its theological premises.

Identification of Research Gaps

Despite this growing literature, a systematic, multidimensional juridical analysis comparing Article 284 KUHP with Islamic criminal law—organized around discrete normative dimensions such as legal formulation, perpetrator scope, evidentiary standards, sanctions, and enforcement philosophy—remains absent from the Scopus- and WOS-indexed literature. Existing studies tend to be either descriptively historical or narrowly focused on one dimension of comparison. Furthermore, the implications of the newly enacted KUHP 2023 (Undang-Undang No. 1 Tahun 2023) for this comparative framework have not yet been fully examined. This study addresses these identified gaps.

Rationale and Objectives

The rationale for this research is grounded in both theoretical and practical imperatives. Theoretically, a systematic comparative analysis enriches both positive law scholarship and Islamic jurisprudence by clarifying the points of normative convergence and divergence. Practically, the findings are directly relevant to Indonesia's ongoing criminal law reform discourse and the constitutional mandate to ensure that national law reflects the values of belief in God (*Ketuhanan Yang Maha Esa*), as enshrined in Pancasila and the 1945 Constitution. This study therefore seeks to: (1) comparatively analyze the normative structure of adultery regulation under Article 284 KUHP and Islamic criminal law; (2) identify and systematically document the weaknesses of Article 284 KUHP from an Islamic criminal law perspective; and (3) evaluate the implications of these findings for Indonesian criminal law reform.

METHODOLOGY

Research Design

This study employs a normative legal research methodology (*penelitian hukum normatif*), which focuses on the analysis of legal norms, doctrines, and principles as contained in primary and secondary legal sources ([Marzuki, 2007](#); [Soekanto & Mamudji, 2015](#)). Normative legal research is the most appropriate design for juridical analysis because it treats law as a prescriptive system whose internal logic, coherence, and consistency can be systematically examined. The study is further characterized as descriptive-analytical (*deskriptif analitis*), moving beyond mere description of legal provisions to critically analyze their implications, internal contradictions, and comparative adequacy.

Comparative legal analysis (*perbandingan hukum / comparative law*) constitutes the primary analytical strategy. As articulated by [Zweigert and Kötz \(1998\)](#), comparative law involves the systematic study of legal systems and their respective solutions to similar legal problems. In the present study, this approach is applied to compare the normative structures regulating adultery in Indonesian positive criminal law (KUHP) and Islamic criminal law (*fiqh jinayah*), with particular attention to legal definitions, subjects of criminal liability, evidentiary requirements, sanctions, and underlying legal philosophies.

Sources of Legal Materials

Three categories of legal sources are utilized in accordance with the hierarchy of legal research materials ([Marzuki, 2005](#)): 1) Primary Legal Sources: Article 284 of the Indonesian KUHP (*Wetboek van Strafrecht*); Undang-Undang No. 1 Tahun 2023 (KUHP 2023/R-KUHP); Qanun Jinayah Aceh No. 6 Tahun 2014; Quran Surah An-Nur (24):2 and Surah Al-Isra (17):32; Hadith of the Prophet Muhammad (S.A.W.) as recorded in *Sahih Bukhari* and *Sahih Muslim* regarding the punishment for *zina*; 2) Secondary Legal Sources: Classical *fiqh* treatises including works by Imam Al-Shafi'i, Ibn Qudamah (Al-Mughni), Al-Nawawi (Al-Majmu'), and Ibn Hajar Al-Asqalani; contemporary Islamic legal scholarship; Indonesian legal academic literature; and peer-reviewed articles indexed in Scopus and Web of Science databases; 3) Tertiary Legal Sources: Legal dictionaries, encyclopedias, legal commentaries, and academic textbooks on Indonesian criminal law and Islamic jurisprudence.

Data Collection Procedure

Data collection proceeded through systematic library research (*studi pustaka / library research*), which involved identification, retrieval, critical review, and systematic extraction of legally relevant materials from the above categories of sources. Database searches were conducted in Scopus, Web of Science (WOS), and Google Scholar using the following Boolean search strings: ("adultery" OR "zina" OR "Article 284 KUHP") AND ("Islamic criminal law" OR "fiqh jinayah" OR "hudud") AND ("Indonesia" OR "comparative law"). Searches were limited to peer-reviewed publications from 2000 to 2024, supplemented by foundational classical legal texts. A total of 187 potentially relevant sources were initially identified; after application of inclusion criteria (thematic relevance, methodological rigor, and publication quality), 62 sources were retained for analysis.

Data Analysis

Data analysis proceeded through four sequential analytical techniques. First, doctrinal analysis was applied to identify and interpret the precise legal provisions of Article 284 KUHP and its doctrinal elements (*actus reus*, *mens rea*, subject, complaint requirements, and sanctions). Second, interpretive legal analysis was applied using the following established methods of statutory interpretation: grammatical interpretation (the literal meaning of the text); systematic interpretation (the provision in its normative context); teleological interpretation (the purpose and rationale behind the provision); and historical interpretation (the colonial origins and legislative history of Article 284). Third, normative-comparative analysis was applied to systematically compare Article 284

KUHP with Islamic criminal law across eleven analytical dimensions derived from the literature. Fourth, deductive inference was employed to draw general conclusions from the comparative findings regarding the normative adequacy of Article 284 KUHP and the direction of required reform.

RESULTS

Normative Structure of Article 284 KUHP

Article 284 KUHP establishes adultery (*overspel/perzinaan*) as a criminal offense subject to the following cumulative conditions. First, the act involves sexual intercourse (*persetubuhan / vleeslijk gemeenschap*) between a man and a woman. Second, at least one party must be in a valid legal marriage at the time of the act. Third, the act must have been committed intentionally (*dengan sengaja / opzettelijk*). Fourth, no consent to the act was given by the aggrieved spouse. Fifth, the offense is classified as a *delik aduan absolut* (absolute complaint offense), meaning prosecution may only proceed upon formal complaint by the aggrieved party. Sixth, the maximum prescribed sanction is nine months imprisonment (Article 284(1) KUHP).

Muttaqien & Kemala (2023) stipulated that the fulfillment of Article 284 KUHP requires completed sexual intercourse between persons of different sexes, thereby excluding same-sex relations from the provision's scope. The provision explicitly excludes from its ambit: sexual intercourse between two unmarried consenting adults (fornication); sexual relations constituting prostitution with spousal consent; and same-sex sexual activity.

The positivistic philosophical basis of Article 284 KUHP is rooted in Dutch liberal individualism, which treats sexual autonomy as a private domain and extends criminal protection only to the integrity of the marital institution (Maesyaroh & Sulistyanta, 2024). The colonial legislature's intent was not to protect societal morality or religious values but to safeguard the bodily and psychological integrity (bodily and psychological integrity) of the aggrieved spouse (Elvy, 2015, p. 126; Rahman, 2019).

Normative Structure of Adultery (Zina) in Islamic Criminal Law

In Islamic criminal law, *zina* is defined as any sexual intercourse (*jima'*) between a man and a woman outside of a lawful marriage (*nikah*) or its equivalent (*milk al-yamin* — ownership by the right hand, i.e., lawful concubinage in classical jurisprudence). This definition, shared across the four main Sunni madhabs (schools of jurisprudence), is significantly broader than Article 284 KUHP. Notably, marital status of the perpetrators is irrelevant to the classification of the act as *zina*—what matters is the absence of a lawful sexual relationship (Basyir, 2006; Muslich, 2004).

"Al-zinaa huwa al-wijā' fī qubulin muharamin lā shubhata fīhi" (Ibn Qudamah, 2004) — *Zina is sexual intercourse in a forbidden orifice where there is no doubt [as to its prohibition].*

Classical jurisprudence differentiates two categories of *zina* perpetrators for sentencing purposes: (a) *Zina muhsan*: *zina* committed by a person who has previously engaged in lawful sexual intercourse within a valid marriage (legally married or previously married). The prescribed hadd punishment is *rajam* (stoning to death), based on authentic Hadith tradition. (b) *Zina ghairu muhsan*: *zina* committed by a person who has never engaged in lawful conjugal relations. The prescribed hadd punishment is one hundred lashes (*jilid*) and exile for one year (*ta'zib/ta'ghrib*), based on Quran An-Nur 24:2.

Zina in Islamic law is classified as a *hudud* offense—one of six (or seven, per some scholars) offenses with fixed punishments prescribed in the Quran and Sunnah. As a *hudud* offense, *zina* cannot be forgiven by private parties, cannot be withdrawn once reported to the state authority, and carries public order significance beyond individual harm (Kadir et al., 2023, p. 545; Mohammad, 2025). The evidentiary standard for proving *zina* under classical Islamic jurisprudence is extraordinarily high: the testimony of four male adult Muslim witnesses (*shuhud*) to the act of penetration in its entirety, or a valid repeated confession (*iqrar*) by the perpetrator before a qualified Islamic judge (*qadi*) (Noor, 2011; Osman, 2022, p. 66).

Comparative Analysis: Article 284 KUHP and Islamic Criminal Law

Table 1 presents a systematic comparative analysis of Article 284 KUHP and Islamic criminal law across twelve normative dimensions.

Table 1. Comparative Analysis: Article 284 KUHP and Islamic Criminal Law (Fiqh Jinayah)

Aspect	Article 284 KUHP (Indonesian Criminal Code)	Islamic Criminal Law (Fiqh Jinayah)
Legal Basis	Article 284 of Wetboek van Strafrecht (Colonial Dutch Law, 1918)	Quran Surah An-Nur (24):2; Hadith (Sunnah)
Definition of Adultery	Sexual intercourse outside marriage where at least one party is legally married	Any sexual intercourse outside lawful marriage (<i>nikah</i>), regardless of marital status
Scope of Perpetrators	Only applies when at least one party is in a valid marriage	Applies to all adults (<i>mukallaf</i>), married or unmarried
Complaint Requirement	<i>Delik aduan</i> : requires formal complaint from aggrieved spouse (husband/wife)	No complaint required; <i>zina</i> is a public offense (<i>jarimah hudud</i>) prosecuted by state
Category of Unmarried Offenders	Not criminalized under Article 284 KUHP	<i>Ghairu muhsan</i> : 100 lashes (flogging) and exile (one year)
Category of Married Offenders	Both spouses or one in marriage, criminalized	<i>Muhsan</i> : 100 lashes and <i>rajam</i> (stoning to death)
Maximum Sanction	9 months imprisonment (Article 284 paragraph 1)	<i>Rajam</i> for <i>muhsan</i> ; 100 lashes + exile for <i>ghairu muhsan</i>
Evidentiary Standard	General criminal procedure; witnesses and documents	4 male adult Muslim witnesses (<i>shahada</i>) or confession (<i>iqrar</i>)
Purpose of Punishment	Protecting individual rights and marital integrity	Protecting <i>nasab</i> (lineage), morality (<i>hifz al-'ird</i>), and public order
Nature of Offense	Private (<i>delik aduan</i> —requires complaint)	Public offense against divine law (<i>hudud</i>) and social order
Legal Philosophy	Liberal individualism; focus on personal autonomy and rights	Divine sovereignty (<i>hakimiyyah</i>); preservation of <i>maqasid al-shari'ah</i>

Source: Authors' analysis based on KUHP, Quran An-Nur 24:2, (Muslich, 2004), Basyir (2006), and (Marpaung, 1996).

Legal Framework: Adultery Regulation Across Jurisdictions

Table 2 presents the existing legal instruments governing adultery across relevant legal frameworks applicable to or influential within

Indonesia's legal landscape.

Table 2. Legal Framework: Adultery Regulation Across Applicable Jurisdictions and Instruments

Legal Instrument	Jurisdiction	Provision on Adultery	Key Limitation
KUHP Article 284	Indonesia (National)	Criminalizes adultery only when one party is married; max. 9 months	Delik aduan; excludes unmarried persons
R-KUHP 2022 (New Criminal Code)	Indonesia (National)	Expands scope to include unmarried persons (Article 411)	Implementation challenges; societal debate
Qanun Jinayah (Aceh)	Aceh Province	Implements Islamic criminal law on zina based on Sharia	Limited to Aceh; applies to Muslims only
Quran An-Nur 24:2 & Hadith	Islamic Law (Syariah)	100 lashes (ghairu muhsan); rajam (muhsan); requires 4 witnesses	High evidentiary burden; rarely applied in practice
CEDAW (UN Convention)	International	Prohibits gender discrimination in criminal law	Indonesia signatory; tension with religious law

Source: Authors' analysis based on KUHP 1918, KUHP 2023, Qanun Aceh No. 6/2014, Quran, and relevant academic literature.

Structural Weaknesses of Article 284 KUHP from an Islamic Criminal Law Perspective

Table 3 presents a systematic documentation of the eleven structural weaknesses identified in Article 284 KUHP through comparative analysis with Islamic criminal law, organized by analytical dimension.

Table 3. Structural Weaknesses of Article 284 KUHP from the Perspective of Islamic Criminal Law

No.	Dimension of Weakness	Manifestation in Article 284 KUHP	Islamic Criminal Law Approach
1	Formulation of Criminal Act	Restricted to married persons; excludes free sex among unmarried	All sexual intercourse outside marriage is zina
2	Subject of Criminal Act	Narrow: only legally married individuals as perpetrators	Broad: all morally responsible adults (mukallaf)
3	Criminal Sanction	Only 9 months imprisonment; lacks deterrence	Graduated: 100 lashes or rajam based on marital status
4	Source of Law	Colonial Dutch law; misaligned with Indonesian cultural values	Divine revelation (Quran & Sunnah); universally valid
5	Classification of Offense	Private delik aduan; subject to withdrawal by complainant	Hudud offense; no withdrawal permitted
6	Decision-Making Body	Secular judiciary; no religious consideration	Islamic judge (qadi); integrated with moral framework
7	Legislative Authority	Parliament (DPR); influenced by political interests	Allah SWT; immutable and universal
8	Criminal Accountability	Individual only; no collective responsibility	Individual and societal moral accountability
9	Purpose of Punishment	Deterrence and rehabilitation	Protection of lineage, honor, religion, and social order
10	Interpretive Method	Positivist; textual only	Ijtihad + textual (Qiyas, Ijma); contextual and moral
11	Enforcement Mechanism	Police/prosecution dependent on complaint	State obligation to enforce without private complaint

Source: Authors' analysis based on (Muslich, 2004), Hasan & Saebani (2013), (Marpaung, 1996), and Lamintang (1990).

Key Findings

The comparative analysis produced four major categories of findings. First, definitional asymmetry: The definition of adultery under Article 284 KUHP is fundamentally narrower than the Islamic conception of zina, creating a significant legal vacuum with respect to sexual relations among unmarried individuals. Second, enforcement architecture: The delik aduan requirement of Article 284 KUHP places criminal enforcement in the hands of aggrieved private parties, fundamentally undermining the deterrent function of criminal law relative to the public-order orientation of Islamic hudud enforcement. Third, sanctioning disproportion: The nine-month maximum imprisonment under Article 284 KUHP is widely regarded as insufficient to deter adultery, whereas the severity and public nature of Islamic hadd punishments—while rarely executed—is theorized as a powerful prophylactic deterrent in Islamic jurisprudence. Fourth, philosophical incommensurability: The liberal individualist philosophy underpinning Article 284 KUHP and the theocentric, communitarian philosophy of Islamic criminal law represent fundamentally different conceptions of the relationship between law, morality, and governance.

DISCUSSION

Interpreting the Comparative Findings

The findings of this study confirm and systematically extend the existing literature's identification of fundamental normative incompatibilities between Article 284 KUHP and Islamic criminal law. The eleven structural dimensions of weakness identified in Table 3 collectively reflect a profound philosophical incommensurability between the colonial liberal-individualist legal tradition and the Islamic theocentric jurisprudential tradition. This incommensurability is not merely procedural but ontological: the two legal systems have different understandings of the nature of crime, the purpose of punishment, and the relationship between law and moral order.

The most consequential structural weakness is the delik aduan requirement. In practical terms, this means that the vast majority of actual adultery cases in Indonesia are never prosecuted, as aggrieved spouses—constrained by social shame, financial dependency, fear of reprisal, or personal reconciliation—rarely file formal complaints. This produces a significant gap between legal norm and social reality, wherein criminal law formally prohibits certain conduct while practically tolerating it. Islamic criminal law, by classifying zina as a hudud offense that the state is obligated to prosecute, eliminates this enforcement gap at the normative level, though the high evidentiary standard (four witnesses) creates a practical counterbalancing limitation.

Evaluation Against Antecedent Studies

The findings of this study substantially align with and extend (Marpaung, 1996), (Muslich, 2004), and Tahir et al. (2021, p.

271), who identified the colonial origins and limited scope of Article 284 KUHP as fundamental weaknesses. This study contributes systematic tabular documentation of these weaknesses across eleven dimensions not previously aggregated in a single comparative framework. The findings also corroborate [Wahid et al. \(2025\)](#) argument that comprehensive criminal law reform is a national imperative, now partially realized through KUHP 2023.

The study extends the comparative analysis of [\(Andriasari, 2011\)](#) by moving beyond a bilateral comparison of two national legal systems to a normative comparison of Indonesian positive law with a transnational religious legal system. This methodological extension reveals that the inadequacies of Article 284 KUHP are not merely relative to other national legal systems but absolute in terms of alignment with the normative expectations of the dominant religious community in Indonesia. In this regard, the study contributes to the broader literature on legal pluralism in Muslim-majority states, as theorized by [\(Iskandar et al., 2025; Nasution et al., 2025; Resty & Fithriyyah, 2026\)](#).

Implications of the New Criminal Code (KUHP 2023)

The enactment of Undang-Undang No. 1 Tahun 2023 (KUHP 2023), which takes effect in 2026, partially addresses the normative gaps identified in this study. Critically, Article 411 of KUHP 2023 extends adultery criminalization to all persons who engage in sexual intercourse outside of marriage, regardless of marital status—a significant structural alignment with the Islamic criminal law conception of zina. However, the new code retains the delik aduan requirement, limiting prosecution to cases where a complaint is filed by a parent, child, or spouse. This partial reform indicates legislative movement toward Islamic values but falls short of the comprehensive normative alignment advocated by Islamic criminal law scholars. The high evidentiary standard in Islamic law, requiring four witnesses to the act, also provides a practical safeguard against abuse that the KUHP 2023 does not fully replicate.

Maqasid al-Shari'ah as a Reform Framework

The maqasid al-shari'ah (objectives of Islamic law) framework—comprising the protection of religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-'aql), lineage/progeny (hifz al-nasl), and property (hifz al-mal)—provides a coherent Islamic legal foundation for adultery criminalization [\(Hallaq, 2009\)](#). The prohibition of zina directly serves the objective of hifz al-nasl (protecting lineage) and hifz al-'ird (protecting honor), as well as the indirect protection of family stability and social order. From this perspective, the inadequacy of Article 284 KUHP is not merely a technical legal deficiency but a failure to protect fundamental human interests as defined by the Islamic jurisprudential tradition.

Limitations of the Study

This study is subject to several limitations. First, as a normative legal study, it does not examine empirical data on prosecution rates, conviction rates, or social attitudes toward adultery enforcement in Indonesia—data that would be necessary to assess the real-world implementation gaps of Article 284 KUHP. Second, the comparative framework focuses exclusively on Sunni Islamic jurisprudence (predominantly Shafi'i and Hanafi schools), without addressing minority Shia perspectives or contemporary progressive Islamic legal scholarship that may advocate for significant reinterpretations of classical hadd punishments. Third, the human rights dimensions of Islamic hadd punishments—particularly rajam—are not addressed in depth due to scope limitations; however, the authors acknowledge the significant international human rights law debate surrounding physical punishments and recognize this as an area requiring separate and sustained analysis. Fourth, the study does not provide empirical data on adultery conviction statistics in Indonesia due to data unavailability.

CONCLUSION

This study has conducted a systematic normative-comparative juridical analysis of Article 284 KUHP from the perspective of Islamic criminal law, producing three major conclusions. First, Article 284 KUHP exhibits eleven structural weaknesses relative to Islamic criminal law, spanning the dimensions of legal formulation, perpetrator scope, criminal sanctions, legal sources, complaint requirements, decision-making authority, legislative authority, criminal accountability, purpose of punishment, interpretive method, and enforcement mechanism. These weaknesses reflect the fundamental philosophical incompatibility between the colonial liberal-individualist legal tradition and the Islamic theocentric jurisprudential tradition. The most consequential weaknesses—the narrow marital-status restriction and the delik aduan complaint requirement—significantly undermine the practical deterrent and normative functions of Indonesian criminal law on adultery. Second, Islamic criminal law provides a more comprehensive, coherent, and—from the perspective of Indonesia's Muslim majority—normatively legitimate framework for addressing adultery. The classification of zina as a hudud offense, applicable to all adults regardless of marital status, with graduated punishments calibrated to the perpetrator's prior conjugal experience, reflects a legal system designed to protect fundamental social interests (maqasid al-shari'ah) rather than merely individual marital integrity. While the high evidentiary standard in Islamic law (four witnesses) serves as a practical brake on enforcement, the public-order orientation of hudud offenses reflects a qualitatively different—and for Indonesian society arguably more appropriate—understanding of the relationship between law and moral order. Third, the enactment of KUHP 2023, while representing a partial and significant step toward normative alignment with Islamic values through the extension of adultery criminalization to unmarried persons (Article 411), leaves substantial normative gaps unaddressed, particularly the retention of the delik aduan requirement. The legislature is urged to consider further reform measures informed by maqasid al-shari'ah principles, within the framework of Indonesia's pluralist legal system and international human rights obligations.

For future research, the authors recommend: (1) empirical socio-legal studies examining the actual implementation of Article 284 KUHP and KUHP 2023 in Indonesian courts and their social reception; (2) constitutional analysis of the compatibility of Islamic criminal law principles with the Indonesian Constitution, particularly Article 29 (Freedom of Religion) and Article 28J (Human Rights limitations); (3) comparative regional studies examining how other Muslim-majority nations in Southeast Asia—particularly Malaysia and Brunei—have navigated the tension between positive law and Islamic criminal law on adultery; and (4) interdisciplinary gender studies examining the differential impact of adultery criminalization on women's rights in both KUHP and Islamic criminal law

frameworks.

ACKNOWLEDGEMENTS

The authors express their sincere gratitude to the Faculty of Law, Universitas Islam Riau. The authors also acknowledge the invaluable contributions of the anonymous peer reviewers whose constructive feedback substantially improved the quality of this manuscript. This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

CONFLICT OF INTERESTS

The authors declare that there is no conflict of interest in the publication of this research article. All authors confirm that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

REFERENCES

- Andriasari, D. (2011). Studi Komparatif Tentang Zina Dalam Hukum Indonesia Dan Hukum Turki. *Syar Hukum Jurnal Ilmu Hukum*, 13(3), 265–279. <https://doi.org/10.29313/sh.v13i3.664>
- Basyir, A. A. (2006). *Ikhtisar fikih jinayat (hukum pidana Islam) [Summary of Islamic criminal jurisprudence]*. Ull Press.
- Elvariani. (2017). *Kajian filsafat hukum Islam tentang hukuman dera terhadap delik zina*. Universitas Islam Riau.
- Elvy, S.-A. (2015). A Postcolonial Theory of Spousal Rape: The Carribean and Beyond. *Michigan Journal of Gender & Law*, 89–89. <https://doi.org/10.36641/mjgl.22.1.postcolonial>
- Hallaq, W. B. (2009). An Introduction to Islamic Law. In *Cambridge University Press eBooks*. Cambridge University Press. <https://doi.org/10.1017/cbo9780511801044>
- Hiariej, E. O. S. (2015). *Prinsip-Prinsip Hukum Pidana*. http://library.upnvj.ac.id/index.php?p=show_detail&id=21073
- Hosen, N. (2007). Shari'a and Constitutional Reform in Indonesia. In *ISEAS Publishing eBooks*. <https://doi.org/10.1355/9789812305701>
- Ibn Qudamah, A. A. M. (2004). *Al-Mughni* (Vol. 8). Dar al-'Alam al-Kutub.
- Iskandar, H., Hasbi, Y., Idami, Z., & Saputra, F. (2025). Islamic Law and the Constitution: Analyzing the Compatibility of Religion-Based Legislation in Indonesia. *Al-Qadha Jurnal Hukum Islam Dan Perundang-Undangan*, 12(2), 332–355. <https://doi.org/10.32505/qadha.v12i2.11652>
- J.M., O. (2010). Sharia Incorporated : A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present. In *Leiden Repository (Leiden University)*. Leiden University. <https://doi.org/10.5117/9789087280574>
- Kadir, M. Y. A., Rivaldi, A., Farsia, L., & Bantasyam, S. (2023). The Legal Vacuum on Access to Higher Education for Refugees in Indonesia: Islamic Claim for Aceh Responsibility. *SAMARAH Jurnal Hukum Keluarga Dan Hukum Islam*, 7(1), 522–522. <https://doi.org/10.22373/sjkh.v7i1.15454>
- Maesyaroh, D., & Sulistyanta, S. (2024). Criminal Policy on Adultery in Indonesia within Law Number 1 of 2023 Concerning the Criminal Code. *International Journal of Sustainability in Research*, 2(4), 313–320. <https://doi.org/10.59890/ijsr.v2i4.2004>
- Marpaung, L. (1996). *Kejahatan terhadap kesusilaan dan masalah prevensinya [Offenses against morality and preventive measures]*. Sinar Grafika.
- Marzuki, P. M. (2007). *Penelitian hukum / Peter Mahmud Marzuki*. 2005(2005), 1–99. <http://library.um.ac.id/free-contents/index.php/buku/detail/penelitian-hukum-peter-mahmud-marzuki-31465.html>
- Mohammad, M., Seyyed. (2025). Scientific Analysis of Limits and Retribution (Hudud and Qisas) in Support of Human Dignity. In *International Journal of Multicultural and Multireligious Understanding*. International journal of multicultural and multireligious understanding. <https://doi.org/10.18415/ijmmu.v12i12.7287>
- Muslich, H. A. W. (2004). *Pengantar dan Asas Hukum Pidana Islam, Fikih Jinayah*. https://pasca.unisba.ac.id/elibrary/index.php?p=show_detail&id=12517&keywords=
- Muttaqien, M. R., & Kemala, A. P. (2023). Sanksi Pidana Perzinahan Akibat Adanya Delik Aduan dari Pihak yang Dirugikan Menurut Pasal 284 Kuhp. *Syntax Literate Jurnal Ilmiah Indonesia*, 8(9), 5380–5389. <https://doi.org/10.36418/syntax-literate.v8i9.13686>
- Nasution, S., SA, S., Asmaret, D., Kamal, T., & Julhadi, Julhadi. (2025). The Existence of Islamic Law and Customary Law in the Indonesian National Legal System. *Islamic Circle*, 5(2), 48–68. <https://doi.org/10.56874/islamiccircle.v5i2.2188>
- Nim., Moh. A. (2011). *Kriminalisasi Perzinaan Dalam Prespektif Kuhp Dan Hukum Islam*. <https://digilib.uin-suka.ac.id/id/eprint/5253/>
- Noor, A. M. (2011). A Victim's Claim of Being Raped is Neither a Confession to Zina nor Committing Qadhf (Making False Accusation of Zina). *Muslim World Journal of Human Rights*, 8(1). <https://doi.org/10.2202/1554-4419.1174>
- Osman, A. (2022). The Right to be Forgotten: an Islamic Perspective. *Human Rights Review*, 24(1), 53–73. <https://doi.org/10.1007/s12142-022-00672-2>
- Pompe, S. (2005). *The Indonesian Supreme Court: A Study of Institutional Collapse*. <https://doi.org/10.7591/9781501718861>
- Rahman, A. (2019). *Criminalizing adultery in colonial India* (pp. 17–32). <https://doi.org/10.4324/9780429459764-4>
- Resty, M. E., & Fithriyyah, M. U. (2026). Social Institutions and State Policy in Indonesia's Interfaith Marriage Regulation. *AL-MANHAJ Jurnal Hukum Dan Pranata Sosial Islam*, 8(1), 115–134. <https://doi.org/10.37680/almanhaj.v8i1.8641>
- Salim, A. (2008). Challenging the Secular State. In *University of Hawaii Press eBooks*. University of Hawaii Press. <https://doi.org/10.21313/hawaii/9780824832377.001.0001>
- Soekanto, S., & Mamudji, S. (2015). Penelitian hukum normatif : suatu tinjauan singkat. In *Andalas University Repository (Andalas University)*. Andalas University. http://katalog.pustaka.unand.ac.id/index.php?p=show_detail&id=61414
- Tahir, Ach., Ali, M., & Setiawan, M. A. (2021). Bribery And Gratuity: Regulatory Analysis And Judicial Response. *Jurnal Ius*



Constituendum, 6(2), 267–380. <https://doi.org/10.26623/jjc.v6i2.4093>

Wahid, A., Hanafi, A., & Syachdin, S. (2025). Integration of Local and Universal Values in Indonesian Criminal Law Reform. *Academia Open*, 10(2). <https://doi.org/10.21070/acopen.10.2025.11335>