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INTEGRATING ISLAMIC CRIMINAL LAW INTO INDONESIA'S NEW CRIMINAL CODE: A STUDY OF LEGAL PLURALISM AND NORMATIVE TRANSFORMATION

Junaidi Abdillah*, Tri Nurhayati, Maulana Anwar
Faculty of Sharia and Law, UIN Walisongo Semarang, Semarang City, Indonesia
*junaidi@walisongo.ac.id

Abstract

The enactment of New Criminal Code signifies a pivotal shift in Indonesia's criminal law, aiming to harmonize national identity with religious, customary, and Western legal principles. This study investigates the influences of Islamic law to the New Criminal Code, focusing on criminal acts. Understanding this interaction is essential to explain how Islamic legal principles contribute to shaping contemporary national criminal law reform in Indonesia. This study employs doctrinal legal research, which examines legal principles, statutory provisions, and legal doctrines related to Islamic criminal law and Indonesia's New Criminal Code. The research relies primarily on legal documents, including legislation, scholarly literature, and authoritative legal texts. The collected data were analyzed qualitatively using the analytical model of Miles and Huberman, which consists of data reduction, data display, and conclusion drawing. The research identifies two key findings: (1) Islamic law significantly influences the provisions of the New Criminal Code, evident in material and formal legality aligning with societal values; and (2) Islamic principles exhibit greater responsiveness in addressing legality standards, the retroactive principle, and crime classification. These findings underscore the progressive and integrative potential of Islamic law in enriching national criminal law reforms. This study offers a novel contribution by mapping the substantive transformation of Islamic criminal law principles into Indonesia's New Criminal Code, thereby highlighting the role of Islamic legal thought in contemporary national criminal law reform.

Keywords: Influence of Islamic Law; New Criminal Code; Islamic Criminal Law; Legal Pluralism.

A. Introduction

The enactment of the New Criminal Code marks a transformative milestone in Indonesia's legal history, introducing a criminal law framework that reflects the national character (Tampubolon, 2024) . Despite its enactment in January 2023, following decades of deliberation since the initial efforts in 1963, its journey has been fraught with challenges owing to political, philosophical, sociological, and juridical variables (Eide & Boeré, 2024). The New Criminal Code is intended to replace the Dutch colonial-era Old Criminal Code, introducing reforms such as decolonization, democratization, consolidation, harmonization, and modernization (Faisal et al., 2024). These objectives aim to align Indonesia's criminal law with its national identity, incorporating living laws while addressing contemporary societal needs (Effendy, 1998).

In the context of legal pluralism, Indonesia's legal system integrates customary, Western, and Islamic legal principles as subsystems of national law (Muhtamar et al., 2017). This approach resonates with democratization and harmonization, allowing diverse legal traditions to contribute to national legal development (Nurrohman & Wahid, 2002). Given Indonesia's Muslim-majority

population, Islamic law has the potential to provide substantial influence, particularly in reflecting societal values and religious norms (Yilmaz, 2024). The New Criminal Code incorporates elements such as forgiveness, criminal compensation, and concepts rooted in Islamic law, signifying its dialectical relationship with Islamic criminal law principles (Zakariyah, 2015).

Prior studies have highlighted the influence of Indonesia's legal system, emphasizing the interplay between national and religious laws (Wardhani et al., 2022). While the New Criminal Code reflects advancements in codifying living laws and addressing modern legal challenges, its incorporation of Islamic legal principles, such as provisions on adultery, cohabitation, and supernatural crimes, remains underexplored (Audah, 1992). The existing literature focuses predominantly on the theoretical compatibility of Islamic law with national law, leaving a gap in understanding the extent and form of its material contributions (Auda, 2008).

Despite the acknowledged influence of Islamic law on the New Criminal Code, the process of its symbolization, objectification, and integration remains inadequately analyzed (Saragih et al., 2024). This study aims to address these gaps by quantifying the material contribution of Islamic law to the New Criminal Code. Specifically, it investigates which elements of Islamic law have been absorbed, their manifestations, and their implications for Indonesia's legal system. This study seeks to bridge the gap between the theoretical recognition and practical implementation of Islamic law in shaping national criminal law reform.

B. Method

This study uses a legal hermeneutics approach, chosen for its focus on analyzing texts within Islamic Law and the New Criminal Code. The primary aim of this approach is to uncover the implicit meanings behind legal texts, such as moral messages, socio-historical contexts, and underlying ideologies. The doctrinal legal research method was chosen, acknowledging that legal texts emerge from documents shaped by time and space. After collecting the necessary data, the analysis follows these steps: (1) data reduction to extract information relevant to the problem formulation; (2) description, where the data are organized into a narrative text; (3) comparative analysis to build theories for further testing; and (4) conclusion, which will be verified to ensure its accuracy (Miles & Huberman, 1992).

C. Results and Discussion

1. Adaptability of Islamic (Criminal) Law

The use of Arabic as a medium for expressing God’s law, initially conveyed through revelation and later objectified in written form, marks the beginning of a historical process influenced by cultural and empirical rules (Abdelkhalek, 2018). While the universal and sacred messages of Islamic law are intended for all humanity, they are also tied to the particularities of language and time, particularly the Arabic language and legal traditions (Lewis, 2018). However, the local nature of Islamic law allows for its formalization in other languages and cultures, preventing its exclusivity of Islamic law from becoming an obstacle to its spread beyond the Arab world (Irwansyah et al., 2021). Just as all religious laws require a cultural medium to develop, Islamic law also emerged within the context of a specific culture and language. Consequently, Islamic law cannot be separated from the cultural structures that shape it, and its diverse expressions reflect the influence of various historical and interpretive constructions, resulting in the development of different schools of thought and local cultural interpretations (Al-Qarâdhawî, 2001).

The interaction between Islamic law and local cultures shows that Islam can influence and be influenced by local traditions. This dialectical relationship, in which Islam either shapes or is shaped by local cultural heritage, has led to the localization (or Indonesianization) of Islamic law, giving rise to distinct Indonesian jurisprudence (Purkon, 2021). In Indonesia, this dynamic is often

characterized by the trend of Arabicizing local traditions in the name of Islam, where local cultural values are measured against an Arabic-Islamic standard, often sidelining the local context. This approach, while rooted in the belief that Islamic law, originating from Arab lands and influenced by the Arabic language and culture, cannot differentiate between local practices and core Islamic teachings, may hinder the universal applicability of Islamic values. Islamic law, as a dialectical product of divine will and human culture, inherently possesses both universal (eternal) and particular (contextual) dimensions. Its dual character includes an immutable, sacred aspect *(tsawābit)* and a dynamic, changeable side (*mutaghayyirāt*) shaped by human interpretation *(ijtihād)*, allowing Islamic law to evolve with the changing needs of society (Al-Qarâdhawî, 2001).

The dual nature of Islamic law, encompassing both universal and contextual elements, necessitates the renewal of Islamic teachings, particularly through dynamization and indigenization. This process has been ongoing through the work of scholars and *mujtahidīn*, including in the Indonesian Archipelago. One such example is the reform of Islamic criminal law through the *zawājir* theory, introduced by the Indonesian thinker Ibrahim Hossen. This approach challenges the rigid application of punishments strictly based on Quranic texts and Hadith, suggesting that punishments can be adapted as long as they achieve the intended legal goals of deterrence and prevention (Erni & Litigasi, 2024). Similar to the boundary (*hudūd)* theory, but more flexible, the *zawājir* approach allows for variable punishments tailored to specific circumstances, making it more applicable in modern contexts, such as Indonesia, where a punishment like amputation may not be suitable for repeat offenders (Praja, 2011).

Hosen's approach to ijtihad, particularly in Islamic criminal law, prioritizes the *ta'aqqulī* (rational) approach over the *ta'abbudi* (unquestioned acceptance) approach, emphasizing the need for the rationalization of Islamic law to make it both understandable and applicable in practice (Aqimuddin, 2016). While acknowledging that some Islamic legal teachings are purely *ta'abbudī*, he advocates re-examining them to ensure they align with *maqāshid al-syarī'ah*, understanding the rationale *('illat),* and the wisdom of legislation *(tasyrī')* (Abdillah, 2017). His focus on the *zawājir* (deterrent) function of Islamic criminal law is evident in his argument that punishments, such as for adultery or theft, should not necessarily be rigidly based on Quranic texts but should aim to deter further crime. He posits that the law of cutting off hands, for example, is a means to an end, not the goal itself, with forgiveness playing a central role in the system (Hosen, 1990). Hosen's method of ijtihad includes a contextual understanding of the Qur'an and Hadith, reliance on clear *ijma'* (consensus) of scholars, the application of fiqh principles such as *irtikāb akhaff al-ḍararain* (the least harm) and *hukm al-hākim ilzāmun wa yarfa'u al-khilāf* (the ruler's binding judgment to remove conflict), and the recognition that some *qath'ī* (definitive) laws may not be universally applicable across time and space (Arfan et al., 2024).

2. Construction of Islamic Law concerning Criminal Offenses

Islamic criminal law encompasses three key themes: the nature of criminal acts, the legal basis for determining criminality, and crime categorization. The first theme addresses the meaning of criminal acts, with terms such as *jarīmah* and *jināyah*, both of which refer to prohibited actions under Sharia. While *jarīmah* includes both prohibited actions and omissions, *jināyah* specifically refers to acts forbidden by Shariah that affect life, property, or other areas. The second theme involves the legal basis for criminal acts in Islam, highlighting the principle of legality, which asserts that an act is criminal only if a prior law prohibits it. This principle is supported by verses from the Quran and is detailed in the fiqh rules. Islamic law also includes unwritten laws based on the principle of rejecting harm (*ḍarar*) and promoting benefits. The third theme concerns the division of crimes into three categories: *hudūd* (fixed punishments), *qiṣāṣ-diyāt* (retribution and compensation), and *ta'zīr* (discretionary punishment). *Hudūd* crimes, in particular, are those for which fixed sanctions are prescribed and are intended to prevent sinful behavior, symbolizing a boundary set by Allah to deter wrongdoing (Al-Bustani, 1983).

The term *hudūd* in Islamic legal tradition refers to crimes with fixed punishments explicitly outlined in the Quran and Sunnah. These crimes are called *jarīmah al-ḥadd* and include seven offenses: drinking alcohol, theft, robbery, adultery, false accusation of adultery, rebellion against legitimate authority, and apostasy (Kamali, 2019). The second category, *jarīmah qiṣāṣ-diyāt*, pertains to crimes such as murder or bodily harm, where the punishment is an equivalent act, such as retaliation. Unlike *hudūd* crimes, *qishāsh-diyat* has a civil aspect, as the victim's involvement is required in the imposition of punishment, and forgiveness is a central principle. In cases of *qishāsh*, forgiveness can replace retaliation, and *diyat* (compensation) is applied when retaliation is not carried out, especially in cases of semi-intentional or unintentional harm. Islam's influence on criminal law introduced significant changes, emphasizing divine values, humanitarian principles, and a more nuanced approach to justice (Zahrah, 1998).

The category of *ta'zīr* criminal acts refers to offenses whose type, method, and severity of punishment are not explicitly prescribed in the Qur an or Hadith, leaving their determination to the government or judge (*ulī al-amr*) (Rofiq & Arief, 2021). Rooted in the principle of *ḍarar* in Islamic law, *ta'zīr* crimes encompass any action causing harm and are divided into two types: those where the Quran and Hadith mention the offense but not the punishment, such as slander or gambling, and those where neither the offense nor the punishment is specified (Hamja, 2024). This broad category operates on the principle of material legality, aiming to reject harm (*dar'u al-mafasid*) and promote benefits (*jalb al-masalih*), with punishments tailored to uphold societal welfare (Zahrah, 1998).

Table 1.
Types of Criminal Acts in Islamic Criminal Law

No.	Types of Punishment	Details of Types of Punishment	
1.	*Qisas* and *Diyat* Punishments: Punishments applied to crimes against life and bodily integrity based on the principle of retaliation *(qisas)* or compensation (*diyat*). *Qisas* allows proportional retaliation for intentional homicide or bodily injury, while diyat provides financial compensation to the victim or the victim's family when retaliation is not applied or when forgiveness is granted	1. Capital Punishment (*qisas and diyat*) 2. Physical Injury Punishment 3. Fines for Loss of Life 4. Fines for Injuries	
2.	*Hudud* Punishments: Fixed punishments determined by Islamic law for specific crimes such as theft, adultery, false accusation *(qadzf),* drinking alcohol, and robbery. These punishments may include flogging, amputation, exile, or capital punishment depending on the offense	Criminal Penalties on Life include:	1. Capital Punishment by Sword 2. Capital Punishment by Crucifixion 3. Capital Punishment by Stoning
		Punishments on the Body include:	1. Punishment of Hand and Foot Amputation 2. Punishment of Hand or Foot Amputation 3. Punishment of Flogging 4. Punishment of Beating and/or Slapping with the Foot 5. Punishment of Beating with a Stick

No.	Types of Punishment	Details of Types of Punishment	
		Punishments on Liberty include:	1. Punishment of Exile (Banishment) 2. Punishment of Detention (Imprisonment)
		Punishments on Property include:	Punishment of Compensation
3.	*Tazir* Punishment (*Ijtihadi* punishment): Discretionary punishments determined by judges or authorities for crimes not specifically regulated under hudud or qisas. The forms of punishment may include warnings, fines, detention, imprisonment, or other corrective measures.	Punishments with an Educational Orientation include:	1. Punishment of Beating or Slapping 2. Punishment of Detention or Confinement
		Punishment Based on Judicial *Ijtihad* (Government)	Punishment Based on Judicial Ijtihad
		Punishment of *Hukumah*	Punishment on Property as a Substitute for *Diyat*.

Source: Author's Analysis Results

3. The Reform of Criminal Acts in the New Criminal Code

The New Criminal Code has presented a reform of national criminal law in all its aspects. In other words, compared to the Old Criminal Code, there are new things that reflect national law from an Indonesian perspective. This can be seen from the systematic aspects formulated; criminal acts, criminal liability, and punishment have experienced a paradigm shift as well as reform (Rosyadi & Ahmad, 2010). The New Criminal Code has formulated legal entities called new criminal acts and special criminal acts (Parindo et al., 2024).

Judging from its systematics, for example, the number of chapters in the New Criminal Code appears simpler than the Old Criminal Code, even though the number of articles has increased. The book contains 43 chapters and 624 articles. The Old Criminal Code consisted of 49 chapters and 569 articles. Interestingly, the New Criminal Code no longer differentiates between felonies and misdemeanors. The New Criminal Code equates these two terms into criminal acts consisting of 37 chapters and 437 articles (Ulya, 2022). Moreover, the New Criminal Code has absorbed criminal acts based on modern needs, as contained in new and special criminal acts (Sumardi et al., 2021). The following is a systematic comparison between the old Criminal Code and the New Criminal Code:

Table 2.
Systematic Comparison of the Old Criminal Code and the New Criminal Code

Aspect	The Old Criminal Code (Wetboek van Strafrecht voor Nederlandsch-Indië (WvSvNI)	The New Criminal Code
Number of Chapters	49 Chapter 569 Articles	43 Chapters and 624 Articles
General Rules	9 Chapters and 103 Articles	6 Chapters and 187 Articles
Criminal Acts Distribution	Felonies	
	31 chapters and 385 articles	37 Chapters and 437 Articles
	Misdemeanors 9 chapters and 81 articles	

Source: Author's Analysis Results

The table above shows changes and updates to the New Criminal Code. In particular, the New Criminal Code no longer differentiates between crimes and violations in terms of criminal acts. There are several reasons why the two are no longer differentiated, as it is difficult to differentiate between the two. This means that, in practice, law enforcers often experience overlap in distinguishing between them. It is not uncommon for something that is seen as a crime to be a violation and vice versa. This results in inconsistencies in the application of these two areas (Muhammad, 2007). Another argument that removes the separation of crimes and violations in the New Criminal Code is that the same acts were regulated as felonies (*kejahatan*) and misdemeanors in the Old Criminal Code (Utama, 2020).

Furthermore, differences and updates are visible in the construction of chapter I. There are at least 6 (six) fundamental differences between the Old Criminal Code and the New Criminal Code. First, the provisions on criminal acts contained in Chapter II do not yet regulate criminal acts (Abdillah, 2018). Meanwhile, the New Criminal Code places criminal offense provisions in Chapter III and has formulated criminal action provisions (Wahid, 2025). Second, regarding the provisions for the abolition of criminal penalties, they are integrated with Chapter III, whereas the Old Criminal Code formulates the provisions for the abolition of criminal penalties, which are formulated separately in Chapter II of the New Criminal Code. This means that the details of the New Criminal Code are more comprehensive (Laia, 2024).

Third, there is a difference in the provisions regarding Attempt (*percobaan*) Participation and Crime on Complaint. The Old Criminal Code placed these three offenses in different chapters. Meanwhile, the New Criminal Code places all three in the same chapter, namely, Chapter II. Thus, the New Criminal Code appears simpler (Mansar & Lubis, 2023). Fourth, the provisions of recidivism by the Old Criminal Code are formulated by the Old Criminal Code, which is placed separately in Chapter 26 of Book 1 (Haizul et al., 2018). Meanwhile, in the New Criminal Code, recidivism is formulated in one chapter related to Criminal Aggravation in Chapter 2. Fifth, the concurrence provision is formulated separately by the Old Criminal Code (Istiqomah et al., 2024), while the new Criminal Code formulated concurrence as part of Chapter 3 concerning sentencing, punishment and measure*, and* sixth, there are differences regarding the Closing Provisions (Mandiana & Lisanawati, 2026). The Old Criminal Code does not regulate it in a separate chapter, while the New Criminal Code formulates closing regulations in a separate chapter, Chapter 6 (Wahyuni, 2024).

The modernization mission of the New Criminal Code is further illustrated by its inclusion of criminal acts that threaten the public interest, categorized as special criminal offenses (Faisal et al., 2024). These offenses include (1) gross violations of human rights, (2) terrorism, (3) corruption, (4) money laundering, and (5) narcotics-related crimes. Derived from laws outside the Criminal Code, these offenses serve as a bridge between the Criminal Code and other legislations (Simandjuntak et al., 2024). Special criminal offenses are characterized by serious consequences, transnational scope, unique criminal procedures, deviations from general criminal law principles, specialized law enforcement agencies, support from international conventions, and societal condemnation (Iqbal et al., 2025). In addition to these offenses, the New Criminal Code introduces entirely new crimes not found in the Old Criminal Code or other laws, such as (1) cohabitation (Article 412), (2) misrepresentation of the judicial process (Article 278), (3) interruption and obstruction of the judicial process (Article 280), and (4) bestiality (Article 337, Paragraph (1), Letter (b) (Manik et al., 2025).

Moreover, the New Criminal Code formulates criminal acts relevant to other laws, such as (1) crimes regarding the flag, language, national emblem, and anthem (Law Number 24 of 2009); (2) counterfeit money (Law Number 7 of 2011); (3) wiretapping and electronic interference (Law Number 11 of 2008 in conjunction with Law Number 19 of 2016); (4) the elimination of racial and ethnic discrimination (Law Number 40 of 2008); (5) domestic violence, including marital rape

(Law Number 23 of 2004); (6) health-related crimes, such as abortion and the trafficking of organs and blood (Law Number 36 of 2009); (7) child protection, including statutory rape (Law Number 23 of 2002 as amended by Law Number 35 of 2014); (8) human trafficking (Law Number 21 of 2007); (9) pornography (Law Number 44 of 2008); and (10) immigration-related crimes, such as human smuggling (Law Number 6 of 2011) (Wahyudhi et al., 2026).

Based on the criminal offense formulations above, it is clear that the New Criminal Code carries the spirit of reform by ratifying legal entities that were born on a national and international scale. Apart from that, there is also a spirit of modernization, harmonization, and legal responsiveness from an Indonesian perspective (Gani & Handayani, 2024).

4. Measuring Material Influences

Before exploring the dialectic between religious law and the transformation of the Islamic Criminal Code into the New Criminal Code, it is essential to compare the elements of the Islamic Criminal Code and the Criminal Code. The Criminal Code addresses criminal acts, and this comparison illustrates the dialectic between the two systems. It is natural that the Islamic Criminal Code and the New Criminal Code have both similarities and differences, which can be understood through different epistemological perspectives (Anas, 1972). The first area of discourse concerns the nature of the criminal acts. As discussed in Chapter 3, the Islamic Criminal Code and the Criminal Code share fundamental similarities, with no significant gaps. The Islamic Criminal Code defines a criminal act (*jarīmah*) as an action by a person (*mukallaf*) that contradicts core religious teachings (*shari'ah*), specifically one that causes harm or resolves problems (*dar'u al-mafāsid wa jalb al-masālih*) (Roslaili et al., 2025). In standard terms, criminal acts are often referred to as "*jināyah*" or "*jarimah*," both of which share similar meanings but differ in context. The term "*jināyah*" refers to actions prohibited by Shari' ah, punishable by *hadd* or *ta'zīr* (Zulkarnain Lubis, 2016). According to al-Jurjani, "*jināyah*" refers to all prohibited actions that harm life or others (al-Jurjani, al-Ta' rīfāt, 79). Audah further explains that "*jināyah*" is the term for any action prohibited by Shari' ah, whether it concerns life, property, or other matters ('Audah, 1996).

Several of the definitions above have narrowed down the substance of criminal acts in the Islamic Criminal Code, namely: (1) the existence of a perpetrator or legal subject; (2) the existence of an act; (3) *madarrah*; and (4) the existence of legal consequences related to life or other matters. Thus, in Islam, when these four entities are fulfilled, it is said to be a criminal act (*jarīmah*). A similar formulation appears in the provisions of the New Criminal Code, which states the provisions for criminal acts, specifically in Article 12, which reads:

> "(1) A criminal act is an act that is threatened by criminal sanctions and/or measure by statutory regulations; (2) To be declared a criminal act, an act that is threatened with criminal sanctions and/or measure by statutory regulations must be unlawful or contrary to the laws existing in society; (3) Every criminal act is always against the law, unless there is a justification" (KUHP; 2023: 9)

Article 12 of the New Criminal Code emphasizes that criminal acts are actions that violate the law, whether written (statutory law) or unwritten laws that emerge in society (living law). In simple terms, an act is considered a criminal offense when it endangers the lives of individuals or the public, regardless of whether the law is written or unwritten. Both types of law are used to determine the occurrence of a criminal act, with written law primarily focusing on protecting individual rights and ensuring legal certainty. In contrast, the living law concept represents a new entity that distinguishes the New Criminal Code from the old one. This shift reflects a desire to recognize criminal acts derived not only from written laws but also from unwritten laws, marking a progressive step toward better protecting the broader interests of society. Therefore, the New Criminal Code's formulation regarding the determination of criminal acts aims to protect the interests of individuals, the state, and society as a whole (al-Fatlawi & al-Daboubi, 2021).

The above comparisons have provided an understanding that The Islamic Criminal Code and New Criminal Code regarding the conception of criminal acts have similarities. The following is a table of comparative indicators between the two as follows:

Table 3.
Comparison between Islamic Criminal Code and the New Criminal Code

No	Criminal Indicators	
	Islamic Criminal Law	**New Criminal Code**
1.	*Mukallaf* (Individual)	Legal Subject (individual or corporation)
2.	Acts Against Sharia	Acts contrary to the law
3.	Religious texts (rules).	Statutory law
4.	*Madlarat*	Harm
5.	*Ma'ruf* Concept	Laws that grow in society

Source: Author's Analysis Results

The comparison above presents a strong thesis that the essence of criminal acts in the Islamic Criminal Code and the New Criminal Code are similar. The similarities between the two are material and formal legality. Formal legality lies in the two entities that place the reference and legal source. Meanwhile, material legality can be seen from the emphasis on protecting society and the public interest through the formulation of conceptions of *ma'rūf* and living law (laws that grow in society) (Coetsee & al-Marakeby, 2022).

The concept of *ma'rūf* in the doctrine of *amar ma'rūf nahi munkar* (commanding good and preventing evil) reflects societal values that have undergone public testing and collective reasoning (Abdillah, 2017). *Ma'rūf* emphasizes religious and social morals embedded in society, especially among Muslims, aligning with laws such New Criminal Code, which is similarly shaped by societal values (Butt, 2023). Despite similarities between Islamic Criminal Code and the Criminal Code, differences exist, particularly in the scope of criminal acts and the validity of legal actions. Islamic Criminal Code approach, which is based on protecting essential values like religion, life, reason, offspring, and wealth (*maqāshid al-syarī'ah*), contrasts with the Criminal Code's broader approach to criminal acts, especially regarding corporate crimes (Abdullah, 2000). The Criminal Code operates on formal legality, recognizing both written and unwritten law, but is criticized for its potential fragility due to the dynamic nature of societal values. In contrast, Islamic Criminal Law bases the validity of criminal acts on whether they align with the *maqāshid al-syarī'ah*, emphasizing the protection of these core elements (Ukaz, 1982). Furthermore, while the Criminal Code strictly adheres to formal legality, disallowing retroactive application, Islamic Criminal Code's approach, under the principle of material legality, offers a more dynamic and adaptable framework, potentially making it more responsive to fast-evolving social issues. The differences between Islamic Criminal Code and the Criminal Code highlight the flexibility of Islamic law, which focuses on safeguarding fundamental societal goals, offering a more nuanced response to changing legal contexts (Arief, 1987).

However, the application of the retroactive principle is still open with a narrow tap. This means that this principle applies in the New Criminal Code in the context of changes to the law that are more favorable to the defendant and for criminal acts that are categorized as extra ordinary crimes, such as groos violations of human rights. This conception can be seen in New Criminal Code Article 3 paragraph 1: "*In the event that there are changes to statutory regulations after the act has occurred, the new statutory regulations shall apply, except for the provisions of the old statutory regulations. profitable for perpetrators and accomplices of criminal acts*"

The provisions of New Criminal Code allow for retroactive application when legal regulations change in favor of the offender, but this is contingent on the existence of new, more beneficial laws. The retroactive principle is closed when there are no changes in the legal rules, aligning with the principle of legal certainty, which asserts that there is no crime without prior statutory regulations, forbids legal analogies, and prohibits retroactive enforcement. A critical issue arises when balancing legal certainty with justice: in cases involving individual perpetrators, the rejection of retroactive enforcement aligns with legal certainty (Kirchner, 2020). However, for criminal acts causing widespread social harm, retroactive enforcement may be necessary to restore social justice and public order, prioritizing collective well-being over strict adherence to legal certainty. This perspective advocates for universal justice, suggesting that retroactive application should be applied more readily in cases with significant societal impact. In contrast, the Islamic Criminal Code system, while emphasizing legality in determining criminal acts, also permits the application of the retroactive principle in certain circumstances, suggesting a more flexible approach compared to the rigid formal legality in the Criminal Code.

The principle of *al-ātsaru al-raj'ī* (retroactive application) in Islamic law allows newly promulgated laws to be applied to crimes committed before the law was enacted, provided certain conditions are met (al-Mawardi, n.d.). This principle, which deviates from strict formal legality, reflects the Mu'tazilah philosophical view that humans, through their moral sense, can distinguish between good and bad actions without divine revelation, and thus should be held accountable for their choices (Asshiddieqy, 1977b). Historically, the retroactive application of law is exemplified in the case of *qadhf* (false accusation of adultery) involving Aishah, the wife of Prophet Muhammad, where legal sanctions were imposed despite the absence of explicit rules, demonstrating that retroactive enforcement can be necessary to restore order and establish clear legal norms (Coulson, 1969). This precedent shows that retroactive legal application in Islamic jurisprudence is both theoretically permissible and historically practiced to maintain justice and societal harmony.

The story of Prophet Muhammad SAW applying retroactive legal principles in cases like *qadhf* (slander) and *hirābah* (robbery) illustrates how Islamic law allows for retroactive punishment under specific circumstances (Asshiddieqy, 1977a). For instance, in the case of slander, the Prophet could not initially punish the offenders due to the absence of legal regulations, but after the revelation of a verse in *QS. An-Nur 4*, he imposed the punishment (Usman, 1994). Similarly, in the case of *hirābah*, a robbery that occurred before the relevant verse in *QS. al-Māidah 33* was revealed was later addressed with punishment after the revelation Similarly, in the case of *hirābah*, a robbery that occurred before the relevant verse in *QS. al-Māidah 33* was revealed was later addressed with punishment after the revelation (Beik, 1954). This demonstrates that Islamic Criminal Code permits retroactive application of law, especially for crimes that harm public welfare. However, this principle is typically limited to certain serious crimes, such as *hirābah*, *qadhf*, and *zhihār*. The retroactive application in Islamic Criminal Code is conditioned on two factors: the new law being more beneficial to the perpetrator and the crime endangering public security. In contrast, New Criminal Code offers retroactive application with more restrictions, primarily allowing it when it benefits the convicted individual under the new law. Despite these differences, both systems share similar values regarding retroactive application, especially in cases of serious societal harm.

Another key difference between Islamic Criminal Code New Criminal Code is the classification of criminal offenses. The Criminal Code categorizes offenses into three weights: very light, serious, and very serious. However, it does not include extraordinary crimes, such as those related to terrorism, treason, or narcotics, which are still treated as special categories. This reflects the Code's strict adherence to formal legality principles, as seen in the regulation of societal laws through Government Regulations (Haris et al., 2024). This approach, however, creates a pseudo-paradigm, narrowing the scope of criminal offenses to formal ones, while the

growing societal norms are confined within strict legal frameworks. The need to adjust legal formulations to societal changes often results in the law lagging behind evolving social behaviors. Although the Criminal Code aims to build a dynamic and responsive criminal law, the requirement for material criminal offenses to align with Government Regulations hinders its adaptability. In contrast, Islamic Criminal Code offers a more flexible and responsive framework for addressing criminal acts, particularly through the concept of *ta'zīr* and the principle of *ḍarar* (avoiding harm), which can more readily respond to the changing dynamics of society

Islamic Criminal Code has divided the types of criminal acts (*jarīmah*) into three categories, namely *jarīmah hudud*, *jarimah qisās* and *jarimah ta'zīr* (Arkoun, 1999). These three fingers have different functions and philosophical values. *Jarīmah hudūd* is a criminal offense whose type and form of punishment has been determined (fixed punishment) by authoritative sources (the Quran and al-Hadith) (Schuon, 1993). Thus, the punishment cannot be changed by anyone. In hudud crimes too, according to the expert's view there is Allah's *haqq* or Allah's rights which must be executed with criminal sanctions. As a consequence of the *haqq Allāh* terminology, *jarīmah hudūd* is seen by experts as the most dangerous criminal act in people's lives (Panitia Penyusunan Biografi Prof K.H.Ibrahim Hosen, 1990).

There are seven crimes that fall into the category of hudud crimes. The seven are (1) adultery with a penalty of being beaten/stoning (2) stealing with a penalty of cutting off one's hand (3) *qadzaf* with a penalty of 80 lashes (4) drunkenness or consumption of khamer with a penalty of 40 lashes (5) robbery accompanied by violence/murder with a penalty the penalty of death by cross or ordinary death or cutting off hands and feet immediately; (6) rebellion against the state with the death penalty and (7) apostasy with the penalty of murder or death. These seven crimes are hudud crimes and in them are Allah's rights which therefore cannot be canceled or must be implemented in the world. This right of Allah is what differentiates it from crimes or other criminal acts in Islamic Criminal Code (Ariyanti, 2024).

Qis*ā*s crimes in Islamic Criminal Code, such as murder and injury, emphasize proportional retribution but allow for forgiveness (*al-'afwu*) from the victim or heirs, enabling reconciliation and alternative punishments like *diyat* (fines). Unlike the immutable *hudūd* crimes tied to Allah's rights, *qisās* balances justice and restorative potential. Both categories address severe societal crimes, many aligning with New Criminal Code, except for apostasy (*riddah*), rooted in early Islamic contexts. Islamic Criminal Code categorizes crimes into hudud and *ta'zīr*. *Hudūd* preserves societal order, while *ta'zīr* provides flexibility to address emerging crimes through judicial discretion, reflecting the absence of explicit Quranic or Hadith provisions. This structure balances fixed principles with adaptability, ensuring responsiveness to societal changes and effective deterrence (Thamsir et al., 2025).

Judges determine punishments in *ta'zir* cases using principles like *ḍarar* (actions that cause absolute harm) and *dirār* (harm caused outside religious provisions). These principles enable the law to remain dynamic and responsive to evolving crimes. Islamic law's overarching goal in criminal matters is to safeguard human life and well-being, encapsulated in the theory of *daf'u al-ḍarar wa jalb masālih* (rejecting harm and attracting benefit). This conceptual framework ensures crimes are identified and addressed through a balance of preventing harm and promoting societal welfare (Afandi & Bagaskoro, 2024). A number of indicators contained in the concept of *ḍarar* to draw a conclusion as to whether an act can be punished are: (a) A person's actions endanger (*ḍarar*) the standard of religious values framed in *maqāshid al-syarī'ah* (b) These actions have an impact on damage mainly related to *maqāshid al-syarī'ah* and (c) These actions at the same time hinder the creation of good human life according to *maqāshid al-syarī'ah* standards. These three indicators must be "signposts" for judges in determining whether an act falls into the realm of a criminal offense (*jarimah*).

The concept of *ḍarar* contained in the *ta'zīr jarimah*, as elaborated above, is actually increasingly eye-opening that Islamic law through this institution has a further and wider reach.

Apart from that, it is even more responsive to the changes and speed of crime that arise as a result of the social dynamics of society (Teungku & Meulaboh, 2024). At the same time, the government, in this case judges, will have greater opportunities to innovate (*ijtihād*) in imposing criminal sanctions. The above analyzes further strengthen the argument that in the realm of criminal offenses, the Islamic Criminal Code formulation which only divides into two types, namely *hudūd* and *ta'zīr*, is actually more comprehensive and flexible than the formulation of New Criminal Code.

Table 4.
Influence of Islamic Criminal Code into the New Criminal Code

No	Material	Islamic Criminal Law	New Criminal Code	Influence
1.	Legal principles	Recognizes the principle of legality	Recognizes the principles of legality	It has been transformed into New Criminal Code
2.	Unwritten Law	Recognition of Unwritten Law through the Concept of *Ma'ruf*	Recognition of Unwritten Law through the Concept of Living Law	It has been transformed into New Criminal Code
3.	Unwritten Law Criteria	Based on the values of *maqāshid al-syarī'ah*	Based on the new law through the Government Regulation mechanism	Islamic Criminal Code coverage is more comprehensive than New Criminal Code
4.	Retroactive Principle	Primarily recognized for crimes that endanger life at large (*hudud*)	Recognizing this principle, however, it only applies to provisions where new and beneficial laws exist for convicts.	It has not been transformed into New Criminal Code
5.	Fraud of Criminal Acts	The *Ta'zir* concept is more dynamic and responsive	Fraud has not been able to respond to legal dynamics	The Islamic Criminal Code conception is more responsive and flexible than New Criminal Code

Source: Author's Analysis Results

D. Conclusion

In the context of the influence of criminal acts, the Islamic Criminal Code and the New Criminal Code actually have similarities. The similarities between the two looks at material legality and formal legality. Formal legality lies in the two laws, which both place positive legal references. Meanwhile, material legality can be seen from the emphasis on protecting society and the public interest through the implementation of the concept of ma'ruf in the Islamic Criminal Code and living law in the New Criminal Code. However, in three courses related to (1) Standards used to determine the validity of a criminal act (2) retroactive principle and (3) Qualification and division of criminal acts, the Islamic Criminal Code construction is actually more responsive and futurist than the New Criminal Code. It is said that because, Islamic Criminal Code in the form of criminal offense qualifications and its aspects contains the spirit and is oriented towards protecting individuals and society and is oriented towards victims. This is what is called the realization of balance.

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